

Case Summary

Jason Dixon appeals his conviction for Class B misdemeanor disorderly conduct. We affirm.

Issue

Dixon raises one issue, which we restate as whether there is sufficient evidence to support his disorderly conduct conviction.

Facts

On March 22, 2009, Indianapolis Metropolitan Police Officer John Walters responded to a call for assistance at a house on LaSalle Street. When Officer Walters arrived, the scene was chaotic. Three individuals were in the yard and another, Dixon, was on the porch. One of the individuals in the yard was in handcuffs. The two others and Dixon were yelling obscenities at the police officers. The two others, one of whom was apparently eight months pregnant, were arrested. Dixon became more agitated and more aggressive and came off the porch and yelled at the police officers. He said, “you can’t f***** touch them, she’s f***** pregnant, you can’t arrest them, f*** you police.” Tr. pp. 7-8. Dixon was “[v]ery agitated, very aggressive, rude, insolent, belligerent, he had balled fists, clenched jaw, and it just seemed like his, his behavior was escalating.” Id. at 8.

Officer Walters told Dixon he was under arrest and asked him to come down from the porch. Dixon did not comply and “retreated further up onto the porch still yelling obscenities saying you can’t f***** arrest me.” Id. Dixon continued to yell and ran

into the house. Officer Walters was unable to follow Dixon into the house because there were several large pit bulls inside, and Dixon told them to “get ‘em” when Officer Walters opened the door. Id. at 9. Officer Walters closed the door and tased Dixon from outside the door. During the incident, Officer Walters asked Dixon to stop yelling several times, and other people’s attention was drawn to the altercation.

On March 23, 2009, the State charged Dixon with Class A misdemeanor resisting law enforcement and Class B misdemeanor disorderly conduct. At the beginning of the bench trial, the trial court denied the State’s request to amend the resisting law enforcement charge and entered a not guilty verdict on that charge. Dixon was found guilty of the disorderly conduct charge. Dixon now appeals.

Analysis

Dixon argues there is insufficient evidence to support his conviction for disorderly conduct. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. We affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id. There is sufficient evidence to support a conviction if an inference may reasonably be drawn from it to support the verdict. Id. at 147.

A person who recklessly, knowingly, or intentionally makes unreasonable noise and continues to do so after being asked to stop commits Class B misdemeanor disorderly

conduct. Ind. Code § 35-45-1-3(a)(2). Dixon argues that there is insufficient evidence to support his conviction because his comments were protected speech under the Indiana Constitution. Dixon relies on Article 1, Section 9 of the Indiana Constitution, which provides, “No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.”

When deciding whether the State has violated Article 1, Section 9, we employ the following two-step analysis. “First, we must determine whether state action has restricted a claimant’s expressive activity; second, if it has, we must decide whether the restricted activity constituted an ‘abuse’ of the right to speak. Blackman v. State, 868 N.E.2d 579, 584-85 (Ind. Ct. App. 2007), trans. denied. “Article 1, Section 9 is implicated when the State poses a direct and significant burden on the claimant’s expression.” Id. at 585. Because Dixon was arrested, the State restricted his expressive activity. See id.

To establish the second prong of the test, Dixon must show that the State could not reasonably conclude that the restricted expression was an abuse of his right to speak and, therefore, the State could not properly proscribe the conduct. See id. Generally, when we review the State’s determination that a claimant’s expression was an abuse of the right of free speech under the Indiana Constitution, we need only find that the determination was rational. Id. If, however, the expressive activity that precipitated the conviction was political in nature, the State must demonstrate that it did not materially burden the claimant’s opportunity to engage in political expression. Id. “Expressive activity is political if its aim is to comment on government action, including criticism of an official

acting under color of law.” Id. An individual’s expression that focuses on the conduct of a private party, including the speaker, is not political. Id.

Where a claimant successfully demonstrates that his or her speech was political, the burden shifts to the State to show that it did not materially burden the claimant’s opportunity to engage in political expression. Id. The State can do this by producing evidence showing that the expression inflicted particularized harm analogous to tortious injury on readily identifiable private interests. Id. To demonstrate such particularized harm, the State must show that the expression caused actual discomfort to persons of ordinary sensibilities or that it interfered with an individual’s comfortable enjoyment of his or her privacy. Id. “Evidence of mere annoyance or inconvenience is not sufficient.” Id.

Dixon argues, “[t]his factual scenario is quite clear that Jason objected, by yelling and cursing, to the conduct of the police. The evidence produced at trial did not overcome his political free speech activity.” Appellant’s Br. p. 7. Even if we were to assume Dixon’s speech was political because he, in part, was objecting to the arrest of a pregnant woman, his conviction is constitutionally sound. See Martin v. State, 908 N.E.2d 285, 288 (Ind. Ct. App. 2009) (affirming a disorderly conduct conviction where a defendant’s disturbance was more than a fleeting annoyance and interfered with the duties of the employees of the work release center where the defendant was being held).

When Officer Walters arrived at the scene, Dixon was on the porch yelling obscenities at another police officer. Dixon eventually came off the porch and yelled at the police officers. At that point, Dixon was very agitated, aggressive, rude, insolent, and

belligerent, and his behavior was escalating. Officer Walters told Dixon he was under arrest, and Dixon did not comply with Officer Walters's commands. Dixon continued to yell obscenities at Officer Walters and said, "you can't f***** arrest me." Tr. p. 8. Dixon forcefully pulled away from Officer Walters and attempted to release several large pit bulls on Officer Walters. Dixon's speech, even if political, obscured Officer Walters's attempts to function as a law enforcement officer and clearly amounted to an abuse of his right to free speech. See J.D. v. State, 859 N.E.2d 341, 344 (Ind. 2007) (concluding that persistent loud yelling over and obscuring a law enforcement officer's attempts to speak amounted to an abuse of the right to free speech). Because Dixon aggressively yelled obscenities and prevented Officer Walters from effectively doing his job, Dixon was not engaged in constitutionally protected speech. See id. The State proved that Dixon recklessly, knowingly, or intentionally made unreasonable noise and did so after being asked to stop.

Conclusion

There is sufficient evidence to support Dixon's Class B misdemeanor disorderly conduct conviction. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.