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IN THE
COURT OF APPEALS OF INDIANA

MARKEYTA ROSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0903-CR-118
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0809-CM-216482

September 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Markeyta Ross ("Ross") appeals her conviction of Disorderly Conduct, as a Class B misdemeanor. We affirm.

Issue

Ross raises the issue whether there was sufficient evidence that she committed Disorderly Conduct. She argues that her communications were political speech, protected by Article 1, Section 9 of the Indiana Constitution.

Facts and Procedural History

The following are the facts most favorable to the judgment. Four Indianapolis Metropolitan Police Department Officers were patrolling and stopped to speak with four males walking in the middle of Downey Street. Three of the males walked toward the officers' car; the fourth, Marquees Ross ("Marquees"), began walking away and then ran. Officer Chad Mann ("Officer Mann") found Marquees underneath a van in a driveway on Whittier Place; a bag of cocaine was also found under the van.

While Marquees was being detained on Whittier, his mother Ross and his brother Lamarque Ross ("Lamarque") approached; each was agitated. Ross was screaming and yelling profanity – "flailing her arms, yelling, screaming, and acting very upset and very loud," according to Officer Chris Duckworth ("Officer Duckworth"). Transcript at 53. Officer Mann later testified as follows regarding his communications with Ross:

> Initially she had calmed down and then when I explained to her that we found some cocaine laying next to her son, that he ran from us and what he was going to jail for, it kinda [sic] ignited her again and she started screaming and yelling and cussing again.

Id. at 14. Ross' loud communications addressed that she was Marquees' mother and that she disagreed with his arrest.

Officer Mann decided to transport Marquees back to Downey "just to get him away from the situation." Id. According to Officer Duckworth, "we wanted to separate Marquees from [Ross] and her other son Lamarque." Id. at 53.

Ross and Lamarque, who is deaf, followed after a brief period. By this time, Marquees was seated in the back of a police car on Downey. Officer Mann stated that Ross "had initially kinda calmed down again and she was just standing off to the side." Id. at 17. Standing on the sidewalk, Ross again started yelling loudly and profanely.

Officer Davis Wisneski testified:

> While [Ross] was yelling and screaming her profanity, the person in the backseat began to violently bang his head on the police car window and it was very tremendous and I was surprised, when I saw the window come out that it didn't shatter and break and it was a problem.

Id. at 32. Using a very calm voice, according to his training in crisis intervention, Officer Wisneski repeatedly asked Ross to calm down and attempted to explain that her conduct was causing her son to hit his head against the car window. Ross nonetheless continued screaming profanely. According to Officer Wisneski, "[i]t wasn't real conversation. I kept asking her to be quiet and calm down . . . ." Id. at 45. The officer then touched Ross' arm and attempted to escort her away from the police car; Ross resisted forcefully. While Officer Wisneski was trying to handcuff Ross, Lamarque grabbed the officer's arm. Ultimately, the officers gained control over and arrested Ross and Lamarque.

The State charged Ross with Resisting Law Enforcement, as a Class A misdemeanor, and Disorderly Conduct, as a Class B misdemeanor. In a bench trial, Ross testified that she was yelling because: (1) she perceived that one of the officers was attempting "to plant a gun on" her son Marquees; (2) the officers were grabbing Marquees, who had been shot in the leg just two weeks earlier; (3) "it didn't look right for three white cops to drive off with a black boy that just made them chase him"; and (4) "if they were going to arrest him that they needed to arrest him from where they apprehended him." Id. at 82, 85. Ross was convicted as charged.

Ross now appeals her conviction of Disorderly Conduct.[1]

Discussion and Decision

Ross argues that there was not sufficient evidence that she committed Disorderly Conduct, asserting that her communications were political speech, protected by Article 1, Section 9 of the Indiana Constitution. It provides as follows: "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." IND. CONST. art. 1, § 9.

A person who knowingly "makes unreasonable noise and continues to do so after being asked to stop" commits Disorderly Conduct. Ind. Code § 35-45-1-3(a)(2). For purposes of this statute, "noise is unreasonable if it is too loud for the circumstances." Yowler v. State, 894 N.E.2d 1000, 1003 (Ind. Ct. App. 2008) (citing Whittington v. State,

[1] Ross does not appeal her conviction of Resisting Law Enforcement.

669 N.E.2d 1363, 1367 (Ind. 1996)). "Whether the state thinks the sound conveys a good message, a bad message, or no message at all, the statute imposes the same standard: it prohibits context – inappropriate volume." Whittington, 669 N.E.2d at 1367 (emphasis in original).

On appeal, Ross acknowledges:

> her speech was loud and that she continued to be loud after being asked to stop. Thus, [Ross] does not contest she produced decibels of sound that were too loud for the circumstances, according to a straightforward application of [the Disorderly Conduct] statute.

Appellant's Brief at 10 n.4.

In Price v. State, our supreme court reversed the Disorderly Conduct conviction of a person who screamed at police and yelled obscenities in objecting to another person's arrest and then her own. Price v. State, 622 N.E.2d 954, 963 (Ind. 1993). Two years ago, however, our supreme court unanimously affirmed the Disorderly Conduct conviction of a juvenile delinquent who loudly protested her arrest. J.D. v. State, 859 N.E.2d 341, 344 (Ind. 2007). While J.D. testified that she did not raise her voice, the officer described the volume of J.D.'s voice as "breaking on the eardrums." Id. at 343. J.D. effectively denied the officer's repeated attempts to communicate with her. The J.D. court distinguished its decision in Price as follows:

> The present case is distinguishable from Price, where the defendant's speech did not obstruct or interfere with the police. Here, J.D.'s alleged political speech consisted of persistent loud yelling over and obscuring of Deputy Gibbons's attempts to speak and function as a law enforcement officer. Because it obstructed and interfered with Deputy Gibbons, J.D.'s alleged political speech clearly amounted to an abuse of the right to free speech and thus subjected her to accountability under Section 9.

> Because we find that J.D.'s abusive speech is not analogous to the relatively harmless speech in Price, and that her loud over-talking of the officer was not constitutionally-protected speech, we reject the claim of insufficient evidence.

Id. at 344.

Observing Marquees hitting his head against the car window, Officer Wisneski attempted, without success, to communicate with Ross and to calm her. Ross' conduct was similar to that in J.D. as her volume prevented Officer Wisneski from communicating with her. Therefore, Ross' speech was not protected by Article 1, Section 9 of the Indiana Constitution. There was sufficient evidence for the trial court to find that Ross committed Disorderly Conduct.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.