

STATEMENT OF THE CASE

Maurice F. Williams, Sr. appeals his conviction for disorderly conduct as a class B misdemeanor.¹

We affirm.

ISSUE

Whether Williams' speech constituted political speech under the Indiana Constitution.

FACTS

At approximately 9:00 p.m. on February 5, 2009, Fort Wayne Police Officer Dale Llewellyn initiated a traffic stop of a vehicle being driven without its headlights on. The driver eventually stopped on a residential street. Officer Llewellyn identified the driver as Clarence Toodle and the passenger as Williams. Once Officer Llewellyn determined that Toodle had a warrant, several officers responded to assist him. Officer Llewellyn placed Toodle under arrest and arranged to have Toodle's vehicle towed because either "Williams['] license] was suspended or Mr. Toodle just did not want to give him permission" to drive the vehicle. (Tr. 129).

After Williams exited the vehicle, Officer Shane Pulver patted him down for weapons, "explain[ing] to him why [he] was patting him down[.]" (Tr. 142). Williams "immediately began raising his voice, saying that it was harassment" (Tr. 142). After patting down Williams, Officer Pulver took him to the back of the vehicle.

Williams then began asking "what he was gonna [sic] do, how he was gonna [sic] get home." (Tr. 144). "He stated he lived somewhere up north, that he didn't like being

¹ Ind. Code § 35-45-1-3.

down there.” (Tr. 144). When Officer Pulver directed him to “several locations in the area where there’s [sic] gas stations where he could call for help,” Williams “continued to shout, ‘Well, what am I supposed to do? How am I supposed to get there?’” (Tr. 144).

Officer Pulver “repeatedly asked him several times to just quiet down” (Tr. 147). He became concerned that Williams was “waking up the neighborhood,” (Tr. 149), as he observed “at least two (2) people that were opening the doors to see what was happening outside”; “saw more drapes being pulled open”; and “lights in the windows[.]” (Tr. 148).

Williams then asked Officer Pulver for a ride home. Officer Pulver declined because of the distance to Williams’ home; however, he “gave him plenty of other options . . . he could contact for help to have a ride come to him.” (Tr. 146). Williams therefore asked for money from Toodle, which Toodle refused.

At some point, Officer Pulver asked Officer Llewellyn to “speed up his investigation so [they] could remove the disturbance in the area.” (Tr. 151). When Officer Llewellyn indicated that he was finished, Officer Pulver informed Williams that he was free to leave. Williams, however, remained at the scene and “began shouting again for money from the driver,” which Toodle refused. (Tr. 151). Officer Pulver “informed him a second time . . . that he was free to leave.” (Tr. 151). Instead of leaving the scene, Williams “raised his arms in the air and screamed at the top of his lungs . . . , ‘I have no place to go’ or ‘nowhere to go.’” (Tr. 152). Williams’ shouting at this point was loud enough to “startle” another officer, who was standing on the opposite side of the street. (Tr. 176).

At that point, Officer Pulver placed Williams under arrest. He first grabbed Williams by his left wrist, as Williams was wearing “a thick wide bracelet on his left hand that had metal pointed studs,” and Officer Pulver wanted to protect himself from the metal studs. (Tr. 140). Williams, however, stiffened his arm and “locked his elbow out so it was one straight line.” (Tr. 155). Despite being admonished to relax, Williams “continued to have his hands locked out[.]” (Tr. 155). Officer Pulver then “directed him to the ground.” (Tr. 155). After Williams continued to refuse to place his hands behind his back, Officer Pulver used a distraction technique to get Williams to relax his arms.

On February 6, 2009, the State charged Williams with Count I, resisting law enforcement as a class A misdemeanor; and Count II, disorderly conduct as a class B misdemeanor. The trial court held a jury trial on April 2, 2009, after which the jury found Williams guilty of disorderly conduct as a class B misdemeanor and not guilty of resisting law enforcement. That same day, the trial court sentenced Williams to ninety days in the Allen County jail.

DECISION

Williams asserts that the evidence was insufficient to support his conviction for disorderly conduct. Specifically, he argues that his speech was political, and therefore, protected speech under Article 1, Section 9 of the Indiana Constitution.

Indiana Code section 35-45-1-3 provides that a person who recklessly, knowingly, or intentionally “makes unreasonable noise and continues to do so after being asked to stop” commits disorderly conduct as a class B misdemeanor. Article 1, Section 9 of the Indiana Constitution 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 reviewing 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 (Ind. Ct. App. 2007), *trans. denied*. It is the State’s “prerogative to punish expressive activity that constitutes an ‘abuse’ of the right to speak.” *Whittington v. State*, 669 N.E.2d 1363, 1368 (Ind. 1996).

1. Restriction of Expressive Activity

Williams first must show that the State restricted his expressive activity. Whether the State had restricted a person’s opportunity to engage in expressive activity is governed by Article 1, Section 9 of the Indiana Constitution, which provides that “[n]o law shall be passed . . . restricting the right to speak, write, or print, freely, on any subject whatever.” “[S]peaking, writing, or printing, freely, on any subject whatever, includes, at least, the projection of any words in any manner.” *Whittington*, 669 N.E.2d at 1368. Thus, Article 1, Section 9 is implicated by the State’s imposition of “a direct and significant burden on a person’s opportunity to speak his or her mind, in whatever manner the speaker deems most appropriate.” *Id.*

Here, the record shows that Officer Pulver placed Williams under arrest for disorderly conduct when Williams began screaming that he had no place to go. Clearly, the State restricted Williams’ expressive activity. Williams therefore has satisfied the first prong of the analysis. *See Blackman*, 868 N.E.2d at 585 (finding that the State

restricted the defendant's expressive activity by placing her under arrest for disorderly conduct after she shouted and swore at officers).

2. Abuse of the Right to Speak

Williams next must show that “the State could not reasonably conclude that the restricted expression was an ‘abuse.’” *Whittington*, 669 N.E.2d at 1369. Article 1, Section 9 “expressly recognizes the state’s prerogative to punish expressive activity that constitutes an ‘abuse’ of the right to speak.” *Id.* at 1368. “Abuse” constitutes “any expressive activity that ‘injures the retained rights of individuals or undermines the State’s efforts to facilitate their enjoyment.’” *Id.* (quoting *Price v. State*, 622 N.E.2d 954, 959 (Ind. 1993), *reh’g denied*).

Williams asserts that the State could not reasonably conclude that the restricted expression was abuse because his expressive activity was political. If he successfully demonstrates that his speech was political, the State then must “show that it did not materially burden [his] opportunity to engage in political expression.” *See Blackman*, 868 N.E.2d at 585; *but cf. J.D. v. State*, 859 N.E.2d 341, 344 (Ind. 2007) (finding only that the defendant’s alleged political speech was not constitutionally-protected speech because it “clearly amounted to an abuse of the right to free speech” when she loudly “over-talk[ed]” the officer).

Speech is considered political “if its aim is to comment on government action, including criticism of an official acting under color of law.” *Id.* Expression focusing on the conduct of a private party, “including the speaker himself,” is not political. *Id.* “We apply an objective standard when we review the nature of expression.” *Id.* “If the

expression is ambiguous, we must find that the expression was not political and must review the State's restriction of expression under standard rational review." *Id.* Again, Williams bears the burden of proving that his expression was political. *See id.*

Williams argues that his statements constituted political speech because he was commenting on the police officer's actions of patting him down and refusing to give him a ride home. We agree that Williams' outbursts regarding harassment due to his being patted down were political in nature as he was commenting on and criticizing a government action. *See id.* at 585-86 (finding that the defendant's comment that being patted down and asked to leave the scene was "unconstitutional" was political in nature "because she was criticizing the conduct of the officers"). Williams' arrest, however, was not due to his initial protestations of harassment.

According to the record, Williams began asking Officer Pulver "what he was gonna [sic] do, how he was gonna [sic] get home." (Tr. 144). After Officer Pulver directed him to several gas stations, Williams began shouting, "Well, what am I supposed to do? How am I supposed to get there?" (Tr. 144).

Despite receiving several warnings from Officer Pulver to stop yelling and "raising a . . . disturbance," Williams continued shouting after Toodle refused to give him money for a ride home. At least two households, located "approximately fifty (50), seventy-five (75) feet away" and "across the street," opened their front doors and several other residents in surrounding homes turned on their lights. (Tr. 151; 148). Officer Pulver also observed "more and more drapes being pulled over, saw more and more people looking out their windows to see what was happening outside." (Tr. 153).

After Officer Pulver informed Williams that he was free to go, Williams began shouting at Toodle for money. After being told that Toodle refused and that he was free to leave, Williams “screamed at the top of his lungs . . . ‘I have no place to go’ or ‘nowhere to go.’” (Tr. 152). Officer Pulver then placed Williams under arrest for disorderly conduct.

We do not find this expression to be political as Williams was not criticizing or commenting on the conduct of the officers. Rather, his expression focused on himself—in not having anywhere to go—and on Toodle—in refusing to give him money. *See Blackman*, 868 N.E.2d at 586 (finding that expression focused on the conduct of a private party cannot be construed as political).

Having determined that Williams’ speech was not political, “the constitutionality of his conviction for disorderly conduct is evaluated ‘under standard rationality review.’” *Wells v. State*, 848 N.E.2d 1133, 1150 (Ind. Ct. App. 2006) (quoting *Whittington v. State*, 669 N.E.2d 1363, 1370 (Ind. 1996)), *trans. denied, cert. denied*, 546 U.S. 1322 (2007). “A conviction for disorderly conduct that does not involve political speech is constitutional if it is reasonable to conclude that the defendant’s expressive activity ‘was an “abuse” of the right to speak or was, in other words, a threat to peace, safety, and well-being.’” *Id.* (quoting *Whittington*, 669 N.E.2d at 1371).

Here, Williams’ shouting clearly posed a threat to peace, safety, and well-being; it diverted officers’ attention from their investigation and attracted the attention of several residents during a late hour. Williams also continued to cause a disturbance despite several warnings to calm down and being told twice to leave the scene. Thus, he abused

his right to speak. Accordingly, we find the evidence sufficient to support his conviction for disorderly conduct.²

Affirmed.

ROBB, J., and MATHIAS, J., concur.

² We note that Williams does not assert that the evidence was insufficient to show that the volume of his speech was unreasonable. Nonetheless, we find that the evidence was sufficient to support his conviction, where Officer Pulver testified that residents across the street and several feet away opened their doors and turned on their lights in response to the commotion. *See Hooks v. State*, 660 N.E.2d 1076, 1077 (Ind. Ct. App. 1996) (finding that the defendant made unreasonable noise where he could be heard across the street), *trans. denied*. We will neither reweigh this evidence nor assess the officer's credibility. *See 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."). Furthermore, the evidence is sufficient as "an inference may reasonably be drawn from it to support the verdict." *Id.* at 147 (quoting *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).