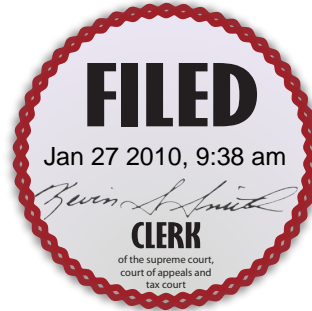


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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LADONNA THOMAS,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A04-0905-CR-281

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda Brown, Judge  
Cause No. 49F10-0812-CM-278981

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**JANUARY 27, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Ladonna Thomas appeals her conviction of disorderly conduct, a Class B misdemeanor. We affirm.

## ISSUES

Thomas raises two issues for our review, which we restate as:

- I. Whether Thomas's conviction was supported by the evidence.
- II. Whether the noise caused by Thomas was political speech protected by Article 1, Section 9 of the Indiana Constitution.

## FACTS AND PROCEDURAL HISTORY

On December 8, 2008, Indianapolis Police Officer Morton Gallagher observed Thomas make a turn in a vehicle without using the vehicle's turn signal. Officer Gallagher made a stop and asked Thomas why she had not used her turn signal. Thomas responded that the signal was not functioning properly, and Officer Gallagher explained that Thomas's explanation did not excuse the violation. Thomas became argumentative, and Officer Gallagher pointed out other violations, including failure to illuminate the vehicle's license plate and failure to maintain a working driver's side mirror. Officer Gallagher informed Thomas that he was not going to issue a ticket, but she continued to argue with him. Thomas's voice kept "getting louder and louder," and she continually interrupted Officer Gallagher when he was talking. Eventually, Officer Gallagher stated, "Ma'am, I'm not going to write you a ticket. I'm done. [A]re you done, because I'm done. I'm leaving." (Tr. at 9).

As Officer Gallagher began walking away, Thomas began complaining to Officer Scott Streitmeier, who had just arrived at the scene. Officer Streitmeier told her that she should speak to Officer Gallagher. Thomas stated that she wanted Officer Gallagher's badge number to make a complaint, and Officer Gallagher informed her that if she were going to file a complaint, he would have to write a ticket to document the reason for the stop. Thomas began yelling and jumped out of her vehicle. Thomas stood in the street and continued yelling in an "extremely loud" manner.

Because it was midnight and they were in a residential area, the officers ordered Thomas to return to her vehicle because her yelling was disruptive to the neighborhood. Thomas got into her vehicle, continued to yell, and began to honk the vehicle's horn. Thomas's behavior attracted the attention of her mother, who lived a half block away. Eventually, after blowing her horn at least two dozen times and refusing five requests to stop making noise, Thomas was arrested and charged with disorderly conduct. After a bench trial she was found guilty of the charged offense.

## DISCUSSION AND DECISION

### I.

Thomas contends that the evidence is insufficient to support her conviction. Our standard of review for sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Davis v. State*, 791 N.E.2d 266, 269 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence most favorable to the judgment, together with all reasonable

and logical inferences drawn therefrom. *Id.* at 269-70. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* at 270.

To support a conviction of disorderly conduct, the State must prove the defendant recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. Ind. Code § 35-45-1-3. Unreasonable noise includes decibels of sound that were too loud for the circumstances. *Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 1996). Our supreme court has stressed that unreasonable noise is criminalized to prevent the harm that flows from the volume of the noise. *Id.*

Here, the evidence shows that Thomas was yelling loudly and was repeatedly honking her horn at midnight in a residential area. We cannot say that repeatedly honking her horn and yelling at a time when residents are trying to sleep is reasonable noise. Indeed, it appears to be an epitome of noise that is too loud for the circumstances.

## II.

Thomas contends that her conviction violates Article 1, Section 9 of the Indiana Constitution because it penalizes her for political speech.<sup>1</sup> Political speech is expressive activity that constitutes commentary on government action, including criticism of

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<sup>1</sup> This provision states: “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.”

conduct of an official acting under color of law. *Shoultz v. State*, 735 N.E.2d 818, 826 (Ind. Ct. App. 2000), *trans. denied*.

Even assuming for the sake of argument that Thomas's yelling was political speech, her conviction does not contravene our constitution. Thomas escalated the unreasonable noise by repeatedly honking her vehicle's horn. We have carefully read both Thomas's brief and reply brief, and we find no claim that her horn honking was political speech. A trial court "need not engage in speculation as to what a 'speaker' might have meant by an 'expressive' action." *Whittington*, 669 N.E.2d at 1370. If the "expression," viewed in context, is ambiguous, this court should not find that it was political. *Id.*

Affirmed.

DARDEN, J., and BROWN, J., concur.