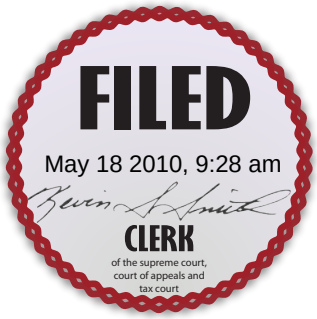

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IN THE
COURT OF APPEALS OF INDIANA

KEITH A. DICKERT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 32A01-0912-CR-584
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Karen M. Love, Judge
Cause No. 32D03-0903-CM-59

May 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Keith Dickert was convicted of Disorderly Conduct[1] as a class B misdemeanor. Dickert raises the following issue for review: Was the evidence sufficient to support Dickert's conviction for disorderly conduct?

We affirm.

The facts most favorable to the conviction follow. On February 27, 2009, Dickert who had consumed alcohol, fell into a glass cabinet at his parents' house and cut his arm and hand, causing significant blood loss. When paramedics from the Brownsburg Fire Territory arrived on the scene, Dickert was violent, uncooperative, and combative as they attempted to treat him. Dickert made "vulgar" remarks and told the paramedics "he knew where [they] all lived and he would come and kill [them.]" *Transcript* at 58. The paramedics had to restrain Dickert, and Deputy Joshua Nohren of the Hendricks County Sheriff's Department was dispatched to the house to follow the paramedics to the hospital. In the ambulance, Dickert yelled, screamed, and was belligerent, and the paramedics put an oxygen mask on Dickert because he tried to spit on them.

Once at the hospital emergency room, Dickert continued screaming, used "[v]ery rude profane language," and was "[v]ery loud", "extremely" disruptive, and aggressive toward paramedics and hospital staff. *Id.* at 25, 26, 46. Dickert "shout[ed] violent . . . threats towards the hospital staff, [paramedics] and whoever else was within ear shot." *Id.* at 66. Dickert refused to comply with Deputy Nohren's multiple requests to be quiet. Paramedics had to hold down Dickert's arms as the hospital staff attempted to put him in restraints. After hospital personnel were able to get the restraints on Dickert, he "sh[ot] out of bed with both

[1] Ind. Code Ann. § 35-45-2-1 (West, Westlaw through 2009 1st Special Sess.).

arms and was able to break free." *Id.* at 35. Dickert "came at" the doctors, hospital personnel, paramedics, and the deputy, and he swung his arms and "punched a saline bag off the bed", causing it to burst. *Id.* at 26. Deputy Nohren cleared the medical personnel to the side of the room and used his taser on Dickert. Even after being tased, Dickert continued being very loud and acting "belligerent" and "aggressive", and he tried to remove the taser probes from his body. *Id.* at 37. When Dickert refused to comply with Deputy Nohren's orders to stop, the deputy tased Dickert a second time.

The trial court found Dickert guilty as charged and ultimately sentenced him to 180 days with time served. Dickert now appeals his conviction.

Dickert contends the evidence was not sufficient to support his conviction for disorderly conduct. Specifically, Dickert argues the State presented insufficient evidence that he engaged in any of the disorderly conduct as charged in a reckless manner.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

A defendant commits disorderly conduct as a class B misdemeanor when he recklessly, knowingly, or intentionally: (1) engages in fighting or in tumultuous conduct; (2)

makes unreasonable noise and continues to do so after being asked to stop; or (3) disrupts a lawful assembly of persons. I.C. § 35-45-1-3.

The State charged Dickert with disorderly conduct as follows:

> [O]n or about February 27, 2009 at 1000 East Main Street (Hendricks Regional Hospital), in Hendricks County, State of Indiana, Keith Alan Dickert (Defendant), did recklessly
>
> (XX) Engage in fighting or in tumultuous conduct
> (XX) Make unreasonable noise and continue to do so after being asked to stop, or
> (XX) Disrupt a lawful assembly of persons,
>
> To Wit: Did attempt to fight medical and hospital staff to be unrestrained. Was loudly cursing and making threats to medical personnel and disrupting patrons at the hospital. This after being advised to not disrupt and act aggressively towards staff and patrons at the Hendricks Regional Hospital.

Appellant's Appendix at 5. Thus, in order to convict Dickert of class B misdemeanor disorderly conduct, the State was required to prove beyond a reasonable doubt that Dickert recklessly engaged in fighting or tumultuous conduct *or* made unreasonable noise after being asked to stop *or* disrupted a lawful assembly of persons. Because the State charged Dickert in the alternative, it was only required to prove one of these bases.

We conclude that the evidence supports Dickert's conviction under the making unreasonable noise basis.[2] "[T]he criminalization of unreasonable noise [is] aimed at

[2] Because we affirm Dickert's conviction on this basis, we need not review the alternative bases. Dickert makes no argument based on a right to speak under the Indiana Constitution.

preventing the harm which flows from the volume of noise." *Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 1996) (citation and internal quotations omitted). "Therefore, in order to support a conviction for disorderly conduct [based on making unreasonable noise], the State must prove that a defendant produced decibels of sound that were too *loud* for the circumstances." *Johnson v. State*, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999) (emphasis in original) (citations and internal quotations omitted). A loud noise could be found unreasonable where it distracts medical personnel tending to injured persons, makes medical treatment more difficult, or annoys others present at the scene. *Whittington v. State*, 669 N.E.2d 1363.

Here, the State presented evidence that Dickert continually yelled and screamed while medical staff attempted to treat his injury and that he continued to do so despite requests to stop. When paramedics arrived at Dickert's father's house, Dickert was uncooperative as they attempted to treat him and made "vulgar" remarks, telling the paramedics "he knew where [they] all lived and he would come and kill [them.]" *Transcript* at 58. Dickert yelled and was belligerent in the ambulance and continued screaming once at the hospital. While at the hospital emergency room, Dickert was "[v]ery loud" and used "[v]ery rude profane language". *Id.* at 25, 26. Dickert "shout[ed] violent . . . threats towards the hospital staff, [paramedics] and whoever else was within ear shot." *Id.* at 66. Dickert was "extremely" disruptive, and hospital staff was concerned about the disruption and level of noise because other patients, including children, were in the emergency room at the time. *Id.* at 46. Even after being tased the first time, Dickert was still "very loud[]". *Id.* at 27. One of the paramedics testified that from the time the paramedics arrived on the scene until the time

they left the hospital after Dickert was twice tased and restrained, Dickert "never once talked in a normal tone" and that he was "just constantly screaming, yelling and cursing". *Id.* at 73. Finally, the evidence shows that Dickert refused to comply with multiple requests to be quiet.

Although Dickert argues that his noise was not unreasonable, his claim on this point is merely an invitation to reweigh the evidence, which we decline to do. Because the State presented evidence that Dickert produced decibels of sound too loud for the circumstances, we conclude that probative evidence exists from which the trial judge, as finder of fact, could have found Dickert guilty beyond a reasonable doubt of disorderly conduct as a Class B misdemeanor. *See, e.g.*, *Whittington v. State*, 669 N.E.2d 1363 (noting that a noise could be found unreasonable if it, among other things, distracts medical personnel tending to injured parties or is annoying to others present at the scene).

We also reject Dickert's assertion that the evidence was insufficient to show that he acted recklessly. A person engages in conduct "recklessly" if he engages in the conduct in "plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct." Ind. Code Ann. § 35-41-2-2(c) (West, Westlaw through 2009 1st Special Sess.).

Dickert contends that a reasonable trier of fact could not have concluded his actions were "conscious" because of the amount of blood he lost and the pain he was suffering and that any disregard of harm was not "unjustifiable" given his injury. The State, on the other hand, argues that Dickert cannot use his physical pain as a "scapegoat" for his disorderly conduct and that Dickert "behaved recklessly by acting with plain and unjustifiable disregard of the harm that he could have caused those trying to help him and of the certain disruption

that he caused other hospital patrons" and that his "aggressive and vulgar behavior was clearly reckless as it substantially deviated from the acceptable standards of conduct of a normal hospital patient." *Appellee's Brief* at 3, 4, 5. We agree with the State.

The evidence presented during the bench trial does not support Dickert's contention that his blood loss from his injury or his pain level rendered his actions unconscious or justifiable. While Dickert testified at trial that he was in pain, he never told paramedics or medical staff that he was experiencing any level of pain. Indeed, testimony from the deputy and a paramedic reveal that Dickert did not seem to be in pain but that his actions were more a result of his anger and just being belligerent. One of the two paramedics who testified indicated that Dickert's behavior was not consistent with someone who had lost a significant amount of blood, while the other paramedic testified that Dickert was more disruptive than the average patient. Additionally, both paramedics testified that Dickert was not suffering from any sort of shock.

Dickert consumed alcohol and fell through a glass cabinet, sustaining a laceration to his arm and causing blood loss. From the time paramedics tried to treat him at the scene and in the ambulance to the time hospital staff tried to treat him in the emergency room, Dickert screamed at and was aggressive with those around him. While in the hospital's emergency room, he shouted threats at medical personnel and was physically combative to the point he needed to be restrained and even twice tased. The evidence supports the trial court's determination that Dickert acted recklessly and that Dickert was guilty of disorderly conduct as charged. Dickert's argument to the contrary is nothing more than a request to reweigh the evidence, which we cannot do. *McHenry v. State*, 820 N.E.2d 124.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.