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IN THE COURT OF APPEALS OF INDIANA

DOMINIQUE CHATMAN,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A05-0909-CR-505
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0904-CM-42721

April 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Dominique Chatman appeals his conviction, following a bench trial, of disorderly conduct, a Class B misdemeanor. For our review, Chatman raises one issue, which we restate as whether sufficient evidence supports his conviction. Within that issue is the question of whether Chatman's loud speaking was an abuse of his right to speak as guaranteed by Article 1, section 9 of the Indiana Constitution. Concluding the evidence is sufficient, and the trial court could reasonably conclude Chatman's loud speaking was an abuse of his right to speak, we affirm.

Facts and Procedural History

In the early morning of April 24, 2009, Chatman engaged in a shouting argument with his friend, Danita Key, in the parking lot of a public housing complex. At around 1:30 a.m., Indianapolis Metropolitan Police Officers Weir and Miller responded to the scene. Officer Weir observed Chatman with his fists clenched, yelling at and "in a very angry stance on top of" Key. Transcript at 7. Officer Weir approached, handcuffed Chatman for safety purposes, and asked him basic questions. Chatman was "cursing at the officers and being extremely loud in general for the time and place." Id. at 14. The officers asked Chatman to lower his voice, but Chatman continued to yell "at the top of [his] voice." Id. at 15. Officer Weir testified Chatman was handcuffed ten to twenty feet away from the nearest apartments.

Also upon handcuffing Chatman, Officer Weir noticed him displaying signs of intoxication and asked him to submit to a portable breath test. Following a reading of 0.04, Officer Weir placed Chatman under arrest for public intoxication and called for a

police van to transport Chatman from the scene. Between his arrest and the van's arrival approximately forty-five minutes later, Chatman continued, on and off, to curse and yell loudly, despite requests from the officers to quiet down. Regarding the content of Chatman's speech, Officer Weir testified

> [a] lot of it wasn't making much sense. It was kind of rambling. Again, a lot of cussing. Some of it was directed towards the events of that night and other things were just completely random that didn't make any sense at all. About police stopping him and towing his car for having license [sic] and about his job and things.

Id. at 17-18. Officer Weir understood Chatman's speech to express he was "upset he was going to jail and was under arrest," as well as complaints about his treatment by law enforcement on prior occasions. Id. at 23. Chatman testified he was questioning Officer Weir regarding the history of law and the source of the officer's authority to arrest him. During the time between Chatman's arrest and the arrival of the police van, Officer Weir observed some people in the neighboring apartments turn their lights on and look out their windows.

The State charged Chatman with public intoxication and disorderly conduct, both Class B misdemeanors. The trial court held a bench trial on August 8, 2009, at which it granted Chatman's motion to dismiss the public intoxication charge but convicted him of disorderly conduct. Chatman was sentenced to 180 days in jail with credit for time served and the remainder suspended to probation. Chatman now appeals.

Discussion and Decision

I. Standard of Review

In reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. Martin v. State, 908 N.E.2d 285, 287 (Ind. Ct. App. 2009). We neither reweigh the evidence nor judge the credibility of witnesses, and when confronted with conflicting evidence, we must consider it most favorably to the trial court's ruling. Id. "We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt." Id.

II. Disorderly Conduct

To convict Chatman of disorderly conduct as a Class B misdemeanor, the State must prove beyond a reasonable doubt Chatman recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. See Ind. Code § 35-45-1-3(a)(2). Chatman does not dispute the sufficiency of the evidence under the statute itself, but rather argues his conduct constituted speech protected by the Indiana Constitution and therefore cannot serve as a basis for his conviction.

Article 1, section 9 of the Indiana Constitution provides: "No law shall be passed . . . 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." Article 1, section 9 "contemplates a broad notion of expressive activity" which "includes, at least, the projection of any words in any manner." Whittington v. State, 669 N.E.2d 1363, 1368 (Ind. 1996). Thus, the right to speak clause is implicated "when the state imposes 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. The right to speak clause, however, is tempered by the responsibility clause, which "expressly recognizes the state's prerogative to punish expressive activity that constitutes an 'abuse' of the right to speak." Id. Thus, reviewing the constitutionality of an application of the disorderly conduct statute requires a two-step inquiry: "First, a reviewing court must determine whether state action has restricted a claimant's expressive activity. Second, if it has, the court must decide whether the restricted activity constituted an 'abuse' of the right to speak." Id. at 1367.

A. Restriction on Expressive Activity

The first prong of this test, restriction on expressive activity, may be satisfied by a person's conviction for making unreasonable noise based solely on his or her loud speaking during a police investigation. Id. at 1370; see also Johnson v. State, 719 N.E.2d 445, 449 (Ind. Ct. App. 1999) (holding a delinquency adjudication based upon making unreasonable noise during a police investigation is also State action restricting expressive activity). Chatman's conviction was based upon evidence he was yelling at Key when the police officers arrived on the scene and he continued to yell and curse at the officers after being handcuffed and following his arrest for public intoxication. The conviction cannot be sustained absent evidence Chatman continued to yell after the officers arrived. See Whittington, 669 N.E.2d at 1370 (noting the disorderly conduct statute "requires proof of 'unreasonable noise' both before and after an official warning"). Therefore, Chatman's conviction is a restriction on his expressive activity, and we proceed to the second step of the analysis.

B. Abuse of the Right to Speak

Under the second step, the claimant bears the burden of proving the State could not reasonably conclude the restricted expression was an abuse of the right to speak, and thus, the State could not properly proscribe the conduct. Johnson, 719 N.E.2d at 449. One way a claimant can meet this burden is to show his or her expressive activity was political. Whittington, 669 N.E.2d at 1369. Expressive activity is political, for the purpose of this analysis, if its point is to comment on government action, including criticism of the conduct of an official acting under color of law. Id. at 1370. When an individual's expression focuses on the conduct of a private party, including the individual's own conduct, it is not political. Id. In determining whether the expressive activity is political, we judge the nature of the expression by an objective standard, and the burden of proof is on the claimant to demonstrate that his or her activity would have been understood as political. Id. If the expression is ambiguous, the claimant has failed to prove it was political, and we evaluate the constitutionality of any restriction imposed on the expression under standard rationality review. Id. If, however, the claimant successfully demonstrates that his or her expression was political, the State must demonstrate its restriction did not "materially burden the claimant's political expression." Id. There is no material burden on expression if the expression "threatens to inflict particularized harm analogous to tortious injury on readily identifiable private interests." Id. (quotation omitted). To demonstrate the requisite level of harm, there must be evidence the claimant's speech caused actual discomfort to persons of ordinary

sensibilities or interfered with an individual's comfortable enjoyment of his or her privacy. Shoultz v. State, 735 N.E.2d 818, 825-26 (Ind. Ct. App. 2000), trans. denied.

Chatman argues his speaking was political. In Price v. State, 622 N.E.2d 954 (Ind. 1993), our supreme court held Price's speaking was political when she screamed profanities at police officers while objecting first to a third person's arrest and then to her own. Id. at 957, 961. Similarly, in Shoultz, this court held the defendant's speaking was political when he questioned a police officer regarding why the officer was "hassling" another person, demanded to know whether the officer had a warrant, and requested the officer leave if he did not have a warrant. 735 N.E.2d at 827. In U.M. v. State, 827 N.E.2d 1190 (Ind. Ct. App. 2005), this court concluded the defendant's speaking was political when, for two to three minutes, the defendant objected to police officers' order that his companion keep his hands up, while screaming curses at the officers and calling them racists. Id. at 1191, 1192-93. In other cases, this court has concluded a defendant's speaking was ambiguous rather than political when, despite some element of protest against police activity, the defendant's speaking was ultimately focused equally or more on his or her own conduct or predicament. See Martin, 908 N.E.2d at 288 (defendant's demand he be freed from a holding cell "was rooted in the fact that he had violated a rule of the work release facility," such that "[h]is protesting of his confinement appears to be related to his own conduct"); Blackman v. State, 868 N.E.2d 579, 586 (Ind. Ct. App. 2007) (noting the "dual nature of [defendant's] outbursts," which focused on defending her own conduct as much as on criticizing the police officers' actions), trans. denied; Wells v. State, 848 N.E.2d 1133, 1150 (Ind. Ct. App. 2006) (defendant's speech was

ambiguous when, despite alleging impropriety in conduct of certain public officials, his diatribe was ultimately "only about himself and his predicament" during a traffic stop), aff'd on reh'g, 853 N.E.2d 1143, trans. denied, cert. denied, 549 U.S. 1322 (2007).

Here, some of Chatman's speech could be considered political because Chatman objected to the legality of his arrest and commented critically upon past instances of his treatment by the police. However, Chatman's loud speaking included a range of other matters, as is apparent from Officer Weir's testimony his speech was rambling, at times incoherent, and included "other things [that] were just completely random." Tr. at 17-18. Chatman's loud speaking continued on and off for forty-five minutes, and we find it difficult to believe that during the entire time his speech remained focused on questioning the officers' basis for their authority. Chatman bears the burden of demonstrating his speech was political, yet his testimony reflects few specifics of what he said, affording only a general summary that he was questioning the officers regarding the source of their authority.[1] In these circumstances, we conclude the content of Chatman's speaking is ambiguous, being more analogous to the circumstances in Martin, Blackman, and Wells than to the clearly political speech at issue in Price, U.M., and Shoultz. Therefore, Chatman has not met his burden of demonstrating his speaking was political, and we review under a rationality standard whether the State could reasonably conclude his conduct was an abuse of his right to speak. See Whittington, 669 N.E.2d at 1370.

[1] Chatman testified he asked Officer Weir questions about:

> The history of law; the history of enforcement of law. Where did you get your authority from? Where has your authority been derived from? Did some type of you know corporation my family or my people was involved in give you this authority over me? I'm asking . . . these type of questions.

Tr. at 30.

In Whittington, our supreme court observed that "abating excessive noise is an objective our legislature may legitimately pursue" and stated the rationality inquiry as whether there was some conceivable basis for concluding the defendant's expressions were "a threat to peace, safety, and well-being." Id. at 1371 (quotation omitted). Our supreme court concluded the defendant's loud speaking during a police investigation could be found an abuse of the right to speak on a number of grounds, including that "the volume of the speech undoubtedly made it highly annoying to all present." Id. Here, Chatman's cursing and loud speaking – indeed, yelling – continued for forty-five minutes, at night, and in the immediate vicinity of an apartment complex. Some residents of the apartments looked out their windows to see what was going on. Under these circumstances, the State could reasonably conclude Chatman produced a degree of noise that interfered with the public's right to peace and tranquility and therefore was an abuse of his right to speak. Because Chatman's conduct was an abuse of his right to speak, and Chatman does not dispute the State otherwise proved the elements of disorderly conduct, we conclude sufficient evidence supports his conviction.

Conclusion

The trial court could reasonably conclude Chatman's loud speaking was an abuse of his right to speak under Article 1, section 9 of the Indiana Constitution, and thus, sufficient evidence supports his conviction of disorderly conduct. The judgment of the trial court is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.