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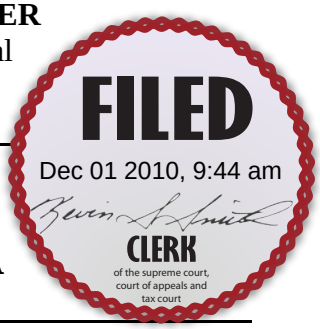

IN THE COURT OF APPEALS OF INDIANA

ELIZABETH LITTLEFIELD,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1003-CR-266
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0912-CM-98878

December 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Elizabeth Littlefield appeals her conviction following a bench trial of disorderly conduct, a Class B misdemeanor, raising two issues for our review: whether the conduct leading to her arrest and conviction was constitutionally protected speech making the evidence insufficient to support her disorderly conduct conviction, and whether her arrest was "inappropriate." Brief of Appellant at 1. Concluding the evidence was sufficient to support the conviction and Littlefield has not made a cognizable claim regarding her arrest, we affirm.

Facts and Procedural History[1]

On December 3, 2009, Indianapolis Metropolitan Police Department officers were dispatched to investigate a disturbance reported by a woman who said she was arguing with an intoxicated man who was armed first with a stick and then with a knife and was threatening to kill the first person through the door of their house. Officer Brian Mack testified he parked approximately 100 feet away from the scene of the disturbance and was able to hear a female screaming as he approached the house. He and his partner announced their presence and entered the house, where they saw a man walking down the stairs followed by a woman. The parties were identified as Littlefield and her husband, Corey Smock. Littlefield and Smock continued to argue as they came down the stairs. The officers took the parties onto the front porch and handcuffed Smock, as he "was being more of a belligerent problem" than Littlefield at that time. Transcript at 7. Smock and Littlefield were seated in chairs on the porch, and the officers began "information

[1] We heard oral argument on this case on October 26, 2010, at DePauw University in Greencastle, Indiana. We thank the faculty, staff, and students for their hospitality and the attorneys for their capable presentations.

gathering, . . . trying to figure out what had caused the disturbance . . . ." Id. Littlefield kept getting out of her chair, "arguing with [Smock], yelling at him at the things that he was saying" to the officers. Id. Because Littlefield was interfering with the investigation, Officer Mack attempted to handcuff her, but she took a quick step toward her husband and Officer Mack grabbed her arm to turn her around. He testified that as he did that "she began pulling away very, very forcefully, very violently, trying to get away . . ., [she] took a step back, dropped her center of gravity and her weight to prevent me from placing her into handcuffs . . . ." Id. at 9. Once Officer Mack was able to handcuff Littlefield, he walked her away from the house toward the patrol car.

Littlefield continued "to yell things at her husband saying that . . . 'it was all your fault,' 'you're the one who pushed me,' 'you're the one who drank the whole bottle,' she continued and continued and continued after being told several times not to . . . continue arguing with her husband . . . ." Id. at 10. Officer Mack described Littlefield as being "very loud" and said a small crowd of people began gathering on the corner. Id. at 11. As the officers talked to Littlefield at the patrol car, she "continued to yell over and over and over again" that "she was wanting to kill herself, that she had a long history of mental illness and . . . that she wanted to talk with her therapist right now . . . ." Id. at 15.

For her part, Littlefield testified that after she and her husband were taken to the front porch of the house and asked to sit down, one of the officers repeatedly called her "retarded," id. at 21, and she kept getting out of her chair to ask him to please stop calling her that, id. at 23. She admitted the officers asked her to stop yelling but she continued to be "fairly loud." Id. at 24. Littlefield also testified that as Officer Mack was handcuffing

her, he called her a derogatory term and she turned toward him. "I wasn't trying to pull away I was trying to ask him again to please stop calling me retard." Id. When asked if she made a quick or forceful movement toward the officer, she said, "I guess you could say so, when I turned towards him," id. at 25, but also testified she kept her hands behind her back when she turned. Officer Mack denied calling Littlefield a name at any time during their encounter, and did not testify to any speech directed toward him or his partner.

Littlefield was charged with disorderly conduct, a Class B misdemeanor, for making unreasonable noise and continuing to do so after being asked to stop. She was also charged with resisting law enforcement for forcibly resisting Officer Mack. The trial court found Littlefield guilty of disorderly conduct, but not guilty of resisting law enforcement, finding she engaged in only passive resistance rather than forcible resistance. Littlefield now appeals her conviction.

Discussion and Decision

I. Disorderly Conduct

A. Standard of Review

Our standard of review of a claim of insufficient evidence is well-settled: we do not reweigh the evidence or judge the credibility of the witnesses and we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). When confronted with conflicting evidence, we must consider it in the light most favorable to the conviction. McHenry v. State, 820 N.E.2d

124, 126 (Ind. 2005). We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id.

B. Protected Speech

To prove Littlefield committed Class B misdemeanor disorderly conduct, the State was required to show that Littlefield knowingly, recklessly, or intentionally made unreasonable noise and continued to do so after being asked to stop.[2] Ind. Code § 35-45-1-3(a)(2). Littlefield contends her speech was political expression which is protected under the Indiana Constitution, and therefore, the evidence is insufficient to support her conviction.

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." We employ a two-part analysis to determine whether the State has violated these free speech protections: "[f]irst, 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.

Littlefield was arrested, charged, and convicted of disorderly conduct, establishing the State restricted her expressive activity under the first prong of our analysis. See Shoultz v. State, 735 N.E.2d 818, 825 (Ind. Ct. App. 2000) ("The first prong of this

[2] At oral argument, Littlefield advanced the argument that the State failed to prove she was asked to stop making noise. This is not an argument Littlefield made in her appellate brief, however, and we do not address it at length herein, other than to note Officer Mack testified Littlefield continued to make noise after being asked to stop yelling at her husband. See Tr. at 10.

inquiry may be satisfied by a person's conviction for making unreasonable noise based solely on his loud speaking during a police investigation."), trans. denied. Under the second prong, we generally review the State's determination that a defendant's expression was an abuse of the right of free speech only for whether that determination was rational. Blackman, 868 N.E.2d at 585. However, if the speech was political in nature, the State must demonstrate that it did not materially burden the defendant's opportunity to engage in political expression. Id. "Expressive activity is political if its aim is to comment on government action, including criticism of an official acting under color of law." Id. If an individual's expression focuses on the conduct of a private party, including the speaker herself, it is not political. Id. In the context of confrontations with police officers, a speaker's defense of her own conduct generally is not political. Shoultz, 735 N.E.2d at 826.

The defendant bears the burden of proving her speech was political. Blackman, 868 N.E.2d at 585. If the defendant successfully demonstrates her speech was political, the State must prove that it did not materially burden the defendant's opportunity to engage in political expression. Id. The State can do so by introducing evidence that the expression inflicted particularized harm analogous to tortious injury on readily identifiable private interests; that is, the expression caused actual discomfort to persons of ordinary sensibilities or interfered with an individual's comfortable enjoyment of his or her privacy. Id.

In this case, Officer Mack testified that throughout his encounter with Littlefield, she was yelling at her husband, and then yelling about her mental illness and desire to see

her therapist. Littlefield does not dispute she was yelling at her husband, and she concedes that because he is a private person, her speech to him cannot be construed as political. See Br. of Appellant at 7. However, she testified she was also yelling at Officer Mack because he was calling her derogatory names, and she contends that as this speech was directed at the appropriateness of Officer Mack's conduct toward her, it was political in nature and was not an abuse of her right to free speech.

We address first the State's argument that Littlefield has waived this constitutional argument by failing to raise it to the trial court. In general, a party may not raise a claim on appeal that was not presented to the trial court. Chest v. State, 922 N.E.2d 621, 624 (Ind. Ct. App. 2009). However, a claim of insufficient evidence in a criminal case can be raised for the first time on appeal. See Ind. Trial Rule 50(A)(5); Harrison v. State, 469 N.E.2d 22, 24 (Ind. Ct. App. 1984). Although Littlefield did not specifically describe her speech as political during the bench trial, she presented testimony during the trial supporting that position. Therefore, we address Littlefield's claim on the merits.

The next question is whether Littlefield engaged in political speech at all. She acknowledges the facts are in dispute: she testified Officer Mack called her a derogatory name but Officer Mack denied doing so; she testified she protested Officer Mack's treatment of her but Officer Mack testified only to statements she made directed at her husband and in explanation of her own conduct. Littlefield contends, however, that in light of the not guilty finding as to the resisting law enforcement charge, the trial court must have credited some of her testimony over Officer Mack's. Even assuming the trial court believed Littlefield's version of her actions when Officer Mack tried to handcuff

her for purposes of the resisting law enforcement charge, it is not necessary to also assume the trial court believed her version of what caused her to take those actions. In fact, considering the trial court's finding of guilt as to disorderly conduct, and recognizing that trial courts are presumed to know the law and apply it correctly, see H.M. v. State, 892 N.E.2d 679, 682 (Ind. Ct. App. 2008), trans. denied, we can assume the trial court did not believe Littlefield's version of Officer Mack's dialogue with her and did not find her to be engaged in constitutionally protected political speech. Moreover, if the speech is ambiguous, "a reviewing court should find that the claimant has not established that it was political . . . ." Whittington v. State, 669 N.E.2d 1363, 1370 (Ind. 1996). Littlefield's request that we find otherwise is a request to reweigh the evidence in her favor and this we cannot do. See Drane, 867 N.E.2d at 146.

Assuming for the sake of argument, however, that Littlefield did demonstrate her speech was at least in part political, we next consider whether she abused her right to free speech. In Price v. State, 622 N.E.2d 954 (Ind. 1993), the defendant loudly and profanely objected first to the arrest of another person and then to a police threat to arrest her. Our supreme court reversed her disorderly conduct conviction, concluding that her protest about the police officer's conduct toward another person constituted political speech, that any harm suffered by others was a fleeting annoyance, and that, given it was New Year's Eve and a large number of officers and civilians were assembled and there was considerable commotion even before the defendant began her protests, there was no link between her expression and any harm that was suffered. Id. at 964-65. Both Officer Mack and Littlefield described her protests as loud, and Officer Mack testified she was

interfering with his investigation of what had occurred inside the house. Officer Mack further testified six to seven people gathered on the street as he was attempting to investigate. Conduct which obstructs and interferes with a police officer's ability to "speak and function as a law enforcement officer" is an abuse of the right to free speech. J.D. v. State, 859 N.E.2d 341, 344 (Ind. 2007). Moreover, when speech is loud enough to draw a crowd, disrupting traffic flow and impairing the safety and security of others, it is an abuse of the right to free speech. See Madden v. State, 786 N.E.2d 1152, 1157 (Ind. Ct. App. 2003), trans. denied. This is true even if the speech is political in nature. See J.D., 859 N.E.2d at 344 (holding defendant's alleged political speech amounted to an abuse of the right to free speech and therefore her disorderly conduct conviction was affirmed); Madden, 786 N.E.2d at 1157 (defendant was engaged in political expression but because it impaired the safety and security of others, it was not a material burden to restrict her speech).

"Whether the state thinks the sound conveys a good message, a bad message, or no message at all, the [disorderly conduct] statute imposes the same standard: it prohibits context-inappropriate volume." Whittington, 669 N.E.2d at 1367 (emphasis in original). Here, Littlefield's speech interfered with the officers' investigation and was loud enough to draw a crowd. Littlefield admitted she did not stop yelling even after being repeatedly asked to do so. She argues, however, that unlike the defendant in J.D., who continued to loudly protest her treatment despite police attempts to calm the situation, 859 N.E.2d at 343-45, her continued protestations were prompted by Officer Mack's continued provocation in calling her a derogatory name. "The right to speak is undeniably a right of

paramount importance under our Constitution. That said however, individuals who have expressed opinions, even protected opinions, must quiet down thereafter to enable police officers to do their work." Blackman, 868 N.E.2d at 588. Under the facts of this case, even if events unfolded as Littlefield claims, her conduct obstructed and interfered with the officers' attempts to function as law enforcement officers and with others' peaceable enjoyment of the neighborhood, thereby constituting an abuse of the right to speak. The State restriction on Littlefield's speech was not a material burden on her opportunity to engage in political expression.

II. "Inappropriate" Arrest

Littlefield also contends her arrest was "inappropriate in light of [Officer Mack's] incendiary conduct which was in direct contradiction to his specialized Crisis Intervention Team training." Br. of Appellant at 9. She cites to the Indianapolis Metropolitan Police Department Crisis Intervention Team ("CIT") Handbook, included as an Addendum to her Brief, as providing the techniques and procedures by which specially trained police officers are to recognize and act in response to those exhibiting signs of mental illness. Officer Mack testified that he was CIT trained.

Even assuming we accept Littlefield's version of events that Officer Mack called her a derogatory and inappropriate name, she has not stated any grounds for relief. Her arrest was not illegal. Nothing in the CIT Handbook or an officer's actions in following or not following the procedures therein mitigates the elements of the crime or provides an affirmative defense. The only evidence that the procedures of the CIT Handbook were appropriate in this situation is Littlefield's own assertion to Officer Mack that she had a

history of mental illness and her testimony at trial that she had been at her therapist's prior to this incident. Littlefield essentially asks her conviction be reversed not based on any legal theory, but as a policy statement to police officers, which is outside the scope of our authority. If there is any right to relief under the CIT Handbook, it is not through an appeal of a criminal conviction.

Conclusion

Littlefield's conviction for disorderly conduct did not contravene her right to speak as guaranteed by the Indiana Constitution nor was her arrest inappropriate. Her conviction is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.