MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Timothy J. Burns
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Van Pui,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

October 18, 2022

Court of Appeals Case No. 22A-CR-1065

Appeal from the Marion Superior Court

The Honorable Clayton Graham, Judge
The Honorable Steven Rubick, Magistrate

Trial Court Cause No. 49D33-2110-CM-33220

Pyle, Judge.

Statement of the Case

[1] Van Pui ("Pui") appeals, following a bench trial, his conviction for Class B misdemeanor disorderly conduct.[1] Pui argues that there is insufficient evidence to support his conviction. Concluding that there is sufficient evidence to support Pui's conviction, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support Pui's conviction.

Facts

[3] In October 2021, an employee at Community South Hospital sent out a red flag report due to an issue with Pui's identity not matching his documents. Officer Landon Jackson ("Officer Jackson") responded to the red flag report and also called Community Health Network Police Department Officer Marlena Auberry ("Officer Auberry") for assistance.

[4] When Officer Auberry arrived at the hospital lobby, she asked Pui if he was the person on his identification cards. Initially, Pui said that he was. However, when Officer Auberry continued to ask, Pui became agitated and gave several different responses. Pui raised his voice and loudly said "I'm not f***ing lying" to the officers as he "thr[ew] out" multiple identification cards on the table to

---

[1] IND. CODE § 35-45-1-3.

present to the officers. (Tr. Vol. 2 at 17). Pui began to start yelling and cursing, and Officer Jackson and Officer Auberry asked Pui to lower his voice and stop yelling "at least three to five [times], minimum." (Tr. Vol. 2 at 18). Pui's cursing and yelling drew the attention of seven to ten patients and employees who were also in the hospital lobby.

[5] Officer Auberry left the hospital lobby to contact another detective for instructions on how to verify Pui's statements. When Officer Auberry returned to the lobby, Pui continued to raise his voice, and officers asked multiple times for him to stop. Pui was loud enough to make it difficult for the officers to "get out what [they] w[ere] trying to tell [Pui] because [Pui] would not stop talking." (Tr. Vol. 2 at 20). Pui continued to draw the attention of everyone in the hospital lobby and an additional security officer arrived to assist Officer Jackson and Officer Auberry. As Pui left the hospital, he screamed "f*** this place" as he exited the lobby area. (Tr. Vol. 2 at 21).

[6] The State charged Pui with Class B misdemeanor disorderly conduct. In April 2022, the trial court held a bench trial. At the bench trial, the trial court heard the facts as set forth above. At the conclusion of the bench trial, the trial court found Pui guilty of Class B misdemeanor disorderly conduct.

[7] Pui now appeals.

Decision

[8] Pui argues that there is insufficient evidence to support his conviction. Our standard of review for sufficiency of the evidence claims is well settled. We

consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[9] INDIANA CODE § 35-45-1-3(a)(2) 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[.]" "'[T]o support a conviction for disorderly conduct, the State must prove that a defendant produced decibels of sound that were too loud for the circumstances.'" *Blackman v. State*, 868 N.E.2d 579, 584 (Ind. Ct. App. 2007) (quoting *Johnson v. State*, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999)), *trans. denied.* The Indiana Supreme Court has explained that loud noise can be considered unreasonable when it "agitate[s] witnesses and disrupt[s] police investigations," "make[s] coordination of investigations . . . more difficult," or when it is "quite annoying to others present at the scene." *Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 1996). However, a fleeting annoyance is not enough to support a conviction for disorderly conduct. *Price v. State*, 622 N.E.2d 954, 964 (Ind. 1993).

[10] Pui argues that there was insufficient evidence that he had made unreasonable noise. We disagree. Our review of the record reveals that Pui was agitated and yelling at officers who were questioning him in a hospital lobby. Pui was

talking loudly enough so that the officers had trouble talking over him and expressing what they were trying to say. Additionally, Pui's outbursts drew the attention of at least seven to ten patients and employees in the hospital lobby. Pui continued to be loud and disruptive despite multiple officers asking him at least three to five times to stop. There is sufficient evidence of unreasonable noise because Pui clearly disrupted police investigations and was more than a fleeting annoyance at the scene. *See Johnson v. State*, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999) (holding that speaking over police officers constituted disrupting their investigation and was sufficient evidence of unreasonable noise).

[11] Affirmed.[2]

Bradford, C.J., and Crone, J., concur.

[2] Pui also argues that his speech was clearly protected under the United States and Indiana Constitutions. However, Pui provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).