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IN THE COURT OF APPEALS OF INDIANA

MIRIAM M. RUTHERFORD,	)	
Appellant-Defendant,	)	
vs.	)	No. 34A05-1106-CR-293
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Douglas A. Tate, Judge
Cause No. 34D03-1012-CM-1566

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Miriam Rutherford was convicted of Disorderly Conduct,[1] a class B misdemeanor. Rutherford challenges the sufficiency of the evidence supporting her conviction as the sole issue on appeal.

We affirm.

At approximately 5:00 a.m. on December 25, 2010, Officer Troy Hintz of the Kokomo Police Department was dispatched to 1520 North Purdum in response to a reported disturbance. Upon arrival, the homeowners requested Officer Hintz to remove Rutherford, who they claimed was an unwelcome guest. Officer Hintz observed that Rutherford had a strong odor of alcoholic beverage on her breath and that she exhibited signs of intoxication, including red and watery eyes and slurred speech. As Officer Hintz escorted Rutherford from the home, Rutherford began yelling and screaming obscenities back toward the house. Rutherford refused to comply with Officer Hintz's orders to stop yelling. Officer Hintz took Rutherford to the home of a relative. A short time later the same morning, she was arrested.

On December 28, 2010, the State charged Rutherford with public intoxication and disorderly conduct, both class B misdemeanors. A bench trial was held on March 10, 2011. At the conclusion of the evidence, the State conceded that there was insufficient evidence to convict Rutherford of public intoxication. The trial court agreed and found Rutherford not guilty of that offense. The trial court found Rutherford guilty of disorderly conduct and entered a judgment of conviction thereon. Rutherford was sentenced to one-hundred eighty days, with four days executed and the balance suspended to unsupervised probation. Rutherford now appeals.

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[1] Ind. Code Ann. § 35-45-1-3 (West, Westlaw current through 2011 1st Regular Sess.).

Rutherford argues that the evidence is insufficient to support her conviction for disorderly conduct.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State,* 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

To sustain a conviction for disorderly conduct, the State was required to prove beyond a reasonable doubt that Rutherford recklessly, knowingly, or intentionally made an unreasonable noise and continued to do so after being asked to stop. *See* I.C. 35-45-1-3(a)(2). Rutherford maintains that the evidence does not establish that she was making unreasonable noise. For purposes of disorderly conduct, a noise is unreasonable if it is too loud for the circumstances. *Whittington v. State*, 669 N.E.2d 1363 (Ind. 1996); *Yowler v. State*, 894 N.E.2d 1000 (Ind. Ct. App. 2008).

Contrary to Rutherford's argument, the State was not required to show that neighbors ventured outside at five o'clock in the morning to see what was going on to prove that Rutherford's volume was not unreasonable for the circumstances. Neighbors emerging from their homes in response to a raucous outside is merely an indication that the volume of the yelling was sufficient to establish disorderly conduct. *See Yowler v. State*, 894 N.E.2d 1000; *Blackman v. State*, 868 N.E.2d 579 (Ind. Ct. App. 2007).

Here, the State presented evidence that Rutherford was recklessly, knowingly, or intentionally yelling and screaming obscenities at a home from which she was being escorted

by a law enforcement officer at approximately five o'clock on Christmas morning. Officer Hintz told Rutherford several times to stop making noise, but she continued yelling obscenities back toward the home. When asked about the volume of Rutherford's yelling, Officer Hintz testified that he was "absolutely sure" Rutherford's yelling was loud enough that other neighbors would have heard it. *Transcript* at 5. In light of this evidence, Rutherford's argument is nothing more than a request that we reweigh the evidence and judge the credibility of the witnesses, a task in which we will not engage on appeal. The evidence is sufficient to support Rutherford's conviction for disorderly conduct.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.