STATE OF MINNESOTA
IN COURT OF APPEALS
A09-380

State of Minnesota,
Respondent,

vs.

Vanessa Jean Grinde,
Appellant.

Filed January 19, 2010
Affirmed
Toussaint, Chief Judge

Crow Wing County District Court
File No. 18-CR-07-1520

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Matthew R. Mallie, Brainerd City Attorney, Brainerd, Minnesota (for respondent)

Edward R. Shaw, Brainerd, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Minge, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Vanessa Jean Grinde challenges her conviction for unlawful assembly, arguing that (1) the evidence was insufficient, (2) the district court erred in finding

probable cause to allow the charge to proceed to trial, and (3) her conviction violated her constitutional rights of free speech and assembly. Because the evidence is sufficient to sustain the conviction and appellant's First Amendment challenge is inadequately briefed, we affirm.

D E C I S I O N

When reviewing the sufficiency of the evidence, appellate courts "view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008) (quoting *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005)). "The verdict will not be overturned if, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense." *Leake*, 699 N.W.2d at 319.

Appellant was convicted of unlawful assembly under Minn. Stat. § 609.705, subd. 3 (2006), which provides that when three or more persons assemble, each is guilty of unlawful assembly if the assembly is "[w]ithout unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace." Appellant was charged based on allegations that she and others engaged in a demonstration inside a KFC restaurant. At trial, appellant testified that she entered the restaurant with four others and that, while others handed out flyers, appellant stood on a bench, honked a horn, and then addressed customers for over a minute. A restaurant employee testified that appellant yelled and that customers were disturbed.

Appellant argues that the evidence did not show that she or other demonstrators were disorderly because the evidence did not show conduct as severe as that present in another unlawful-assembly case, *State v. Hipp*, 298 Minn. 81, 91-93, 213 N.W.2d 610, 617 (1973). *Hipp* concerned multiple convictions under section 609.705, subdivision 3, that arose out of demonstrators' conduct at a restaurant. 298 Minn. at 82-83, 213 N.W.2d at 612. During the demonstration, over 100 people crowded into the restaurant's dining area, pasted signs on the windows, blocked the entrance, bent frames on two doors, and took the restaurant keys from a manager and threw them into the crowd. *Id.* at 83, 213 N.W.2d at 612. After demonstrators were persuaded to leave the building, 75 to 80 picketed, blocking a sidewalk and making noise by beating on lawn chairs and shouting. *Id.* at 83-84, 213 N.W.2d at 612-13.

Appellant fails to establish that conduct must be as severe as that in *Hipp* to amount to unlawful assembly. *Hipp* defined as disorderly for purposes of section 609.705, subdivision 3, conduct that threatens or disturbs the public peace "by unreasonably denying or interfering with the rights of others to peacefully use their property or public facilities without obstruction, interference, or disturbance." 298 Minn. at 87, 213 N.W.2d at 614. Prohibited behavior is "that which disturbs or threatens the public peace, that is, that tranquility enjoyed by a community when good order reigns amongst its members." *Id.* at 87-88, 213 N.W.2d at 615. Here, the evidence is sufficient to show that the demonstration disturbed or threatened public peace, and the jury could reasonably have found appellant guilty of the charged offense.

Because the evidentiary standard to sustain a conviction is much higher than the

evidentiary standard to sustain a probable-cause determination, a challenge to probable cause becomes irrelevant where there is sufficient evidence to sustain a conviction. *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1985), *review denied* (Minn. Mar. 21, 1995). Because the evidence is sufficient to sustain the conviction, we will not address appellant's probable-cause argument.

Appellant's final argument is that her conviction violates her First Amendment rights. Appellant cites *Hipp* in support of her argument but then merely repeats her argument about the relative severity of the conduct in *Hipp* and in this case. While *Hipp* did address a First Amendment challenge, 298 Minn. at 89, 213 N.W.2d at 615, appellant fails to explain how *Hipp* supports her claim that her conviction violated her rights. Appellant does not provide other authority or analysis in support of her argument that her conviction violates her rights. We therefore reject the claim of error as inadequately briefed. *See State Dep't of Labor Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue in absence of adequate briefing); *see also State v. Hurd*, 763 N.W.2d 17, 32 (Minn. 2009) (citing *Wintz Parcel Drivers* in criminal case).

Affirmed.