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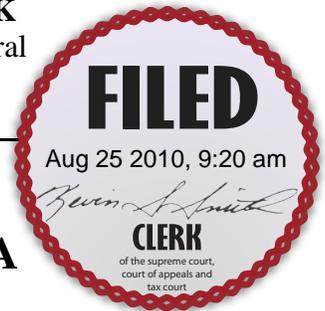
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**IN THE
COURT OF APPEALS OF INDIANA**

FERNANDO B. EGUIA, SR.,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 01A02-1001-CR-157

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0903-CM-0077

August 25, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Fernando B. Eguia, Sr., appeals his conviction for Disorderly Conduct¹, a class B misdemeanor. Specifically, Eguia argues that the evidence is insufficient to prove beyond a reasonable doubt that he was the perpetrator who engaged in the disorderly conduct. Finding sufficient evidence, we affirm the judgment of the trial court.

FACTS

On August 4, 2008, Eguia was at the home of his brother, Frank Eguia, located across the street from the home of Esperanza Rivas's parents. On the same evening, Rivas was at her parents' home when the three heard loud yelling coming from Frank's home across the street. Some of the loud threats and obscenities were directed at Rivas's father. Rivas and her parents called the police. Officer Kriss Affolder responded to the complaint, spoke with Eguia, and warned him to stop. Eguia assured Officer Affolder that the yelling would cease, and the police left the scene.

The ruckus coming from Frank's home did not cease, however, and the police responded to a complaint about loud music at the residence less than an hour later. The officers heard the music coming from Frank's home when they arrived at the scene; the music could be heard at least 100 yards from its source. Officer Affolder found Eguia on the porch of Frank's home, and Eguia apologized, personally lowered the volume of the stereo, and assured Officer Affolder that there would be no more problems.

¹ Ind. Code § 35-45-1-3(a)(2).

Nevertheless, the music remained loud after the police left Frank's home for the second time. Less than an hour later, Rivas and her parents called the police again to report the loud music. When Officer Affolder arrived at the scene for a third time, the music was the same volume it had been before. Officer Affolder accompanied Eguia into the home, where Eguia again reduced the volume of the music. After receiving another warning, Eguia again assured Officer Affolder that he would make sure the music was kept at a lower volume.

Approximately an hour later, however, police received yet another complaint about loud music, and officers were dispatched to Frank's home a fourth time. The loud music coming from the home was heard upon arrival. Eguia was arrested for disorderly conduct, and after his arrest, the loud music ceased for the remainder of the night.

On August 11, 2008, the State charged Eguia with disorderly conduct. On January 7, 2010, the State filed an amended information for disorderly conduct, a class B misdemeanor, and the jury found Eguia guilty on January 20, 2010. Eguia now appeals.

DISCUSSION AND DECISION

Eguia contends that there is insufficient evidence to prove beyond a reasonable doubt that he committed the offense of disorderly conduct. Eguia contends that none of the State's witnesses observed him turn up the volume of the music and that others were present in or around Frank's home that evening. Essentially, Eguia argues that it is not reasonable to assume he is the perpetrator.

In a claim of insufficient evidence, this Court will affirm the conviction unless "no rational fact-finder" could have found the defendant guilty beyond a reasonable doubt.

Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000). In making this determination, our Court does not reweigh the evidence or judge the credibility of the witnesses and instead examines only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Drane v. State, 867 N.E.2d 144, 147 (Ind. 2007).

To convict Eguia of class B misdemeanor disorderly conduct, the State was required to prove beyond a reasonable doubt that he recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. I.C. § 35-45-1-3(a)(2). Eguia’s sole argument on appeal is that the evidence was insufficient to prove his identity as the perpetrator.

Whether Eguia was the perpetrator causing the disorderly conduct can be proved by circumstantial evidence. See Samson v. State, 562 N.E.2d 58, 59 (Ind. Ct. App. 1990) (“[I]dentity, like other facts, may be proven by circumstantial evidence as well as by direct testimony.”). “Circumstantial evidence immediately establishes collateral facts from which the main fact may be inferred.” Jackson v. State, 758 N.E.2d 1030, 1036 (Ind. Ct. App. 2001).

Eguia’s argument is based on the fact that others were present with him at Frank’s home and that no one testified to seeing him increase the volume of the music. However, the evidence and testimony in this case establishes the following collateral facts: Eguia repeatedly reduced the volume of the music when asked to do so by the police; Eguia repeatedly assured the police that he would keep it quiet; and the music ceased after

Eguia was arrested. Further, Eguia apparently lived in Frank's home. Tr. p. 137. All of this supports the reasonable inference that Eguia was responsible for the loud music. Whether the State disproved every reasonable theory of innocence is not applicable to appellate review for sufficiency of evidence. Ogle v. State, 698 N.E.2d 1146, 1149 (Ind. 1998). In sum, the State presented sufficient evidence to allow Eguia's conviction for disorderly conduct.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.