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No. 3-10-0088

Order filed May 20, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit Bureau County, Illinois
Plaintiff-Appellee,)	
v.)	No. 08-CM-445
DONNA J. CRAIG,)	Honorable Marc P. Bernabei
Defendant-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgement.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of the offense of disorderly conduct. Defendant's conviction and sentence affirmed.

Following a trial, a jury found defendant guilty of the offense of disorderly conduct. The trial court sentenced defendant on January 25, 2010, to six days in the county jail. Defendant appeals claiming that the State failed to prove her guilty of disorderly conduct beyond a

reasonable doubt because her conduct consisted of making verbal remarks to complainant, her supervisor, after defendant was advised she had been terminated from her employment. We affirm defendant's conviction and sentence.

FACTS

On September 19, 2008, the State filed a complaint against defendant alleging that on September 16, 2008, defendant committed the offense of disorderly conduct by yelling obscenities at Roi Ann Holt in such an unreasonable manner as to alarm and disturb Roi Ann Holt and provoke a breach of the peace in violation of section 26-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/26-1(a)(1) (West 2008)).

On January 19, 2010, defendant's jury trial began. The State called Roi Ann Holt as its first witness. Holt testified that she knew defendant for the past eight or nine years. Holt stated that she worked as the manager at the Casey's store in Depue, Illinois for the past two and one-half years, and defendant previously worked as assistant manager at the store.

At approximately 4 p.m. on September 16, 2008, Holt asked to speak with defendant in the back room, away from the public area of the store, when defendant arrived at the store to begin her work shift. Holt explained to the jury that she intended to terminate defendant's employment, as directed by individuals "higher up the chain," because defendant had violated the company's check cashing policy on several occasions. Once Holt informed defendant of the decision to terminate her employment and the basis for this termination, Holt testified that defendant "exploded" and stated, "This is bullshit." Defendant also told Holt that she did not write the checks, but her husband did, and left the back room while "yelling and screaming." As she entered the main part of the store, defendant once again shouted, "This is bullshit. You're

fucking firing me because I'm pregnant." At that point, defendant called her husband into the store and said that Holt was "fucking firing her [defendant]." According to Holt, after defendant walked out of the store, she approached Becky Stryker, the store supervisor, who was just arriving in the parking lot. Holt testified that once defendant saw Stryker, defendant began yelling again while using vulgarities about being fired, "over and over again."

Holt stated that the customers inside the store "just kind of stopped." She further described the customers with "their jaw open, their mouth open like they couldn't believe it, and nobody was really moving. They were just kind of waiting for it to clear." Holt saw outside customers near the gasoline pumps and children in the parking lot. While defendant continued shouting, those persons, located outside the store, stopped and turn toward defendant. She said that Stryker repeatedly told defendant to leave the property. Holt said that she ultimately called the police who arrived after defendant left.

Sheila Hall testified that on September 16, 2008, she worked at the Casey's store in Depue, Illinois, and that she was training to become second assistant manager. On that date at approximately 4 p.m., defendant arrived at the Casey's store while Hall was working at the cash register. She observed defendant and the manager, Holt, enter the back room of the store approximately 15 feet away from her location. She heard defendant cursing several times. Then, she saw Holt and defendant exit the back room and then she heard "a lot of screaming and yelling." Defendant was using vulgarities and repeatedly stated that she was being fired because she was pregnant. Hall remembered defendant calling Holt "several nasty names" and said that "Roi-Ann [Holt] would pay for it." Hall indicated that this incident lasted "five, ten minutes" inside the store. Hall said that she was shocked and embarrassed by the occurrence. She

observed customers in the store including children and said that “[j]aws dropped, mouths wide open, because it was not pretty.”

Hall testified that defendant walked outside the store, and she observed defendant using vulgarities at Stryker, who had just arrived in the parking lot. She explained that defendant was yelling so loud outside that she could hear her inside the store through the glass window when defendant was approximately 20 or 25 feet away from her. Hall said that she called the police at the suggestion of several customers. She stated, “The whole scenario was very violent. I was waiting for fists to start flying.”

Rebecca Stryker, area supervisor for Casey’s General Stores, testified that as part of her employment, she traveled to the store in Depue, Illinois, a few times per month. She stated that she arrived at the Depue, Illinois, store on September 16, 2008, at approximately 4 p.m. Stryker said that she was aware that defendant was being terminated that day for violating store check cashing policies. Initially, it was her decision to terminate defendant. Stryker said that she saw defendant “rushing out of the store with papers in her hand” as she walked toward Stryker’s vehicle. Defendant said, “That fucking bitch just fired me.” Defendant went on to say, “You can’t do this. She can’t do this.”

Stryker told the jury that at the time, there were customers in the parking lot and customers at the gasoline pumps. She said that the customers were “turning and looking.” Stryker said that defendant approached her, yelling and using vulgarities. Stryker testified that she asked defendant to stop yelling. Defendant continued to yell at Stryker, so Stryker told defendant to leave the property. Defendant said that she had no intention of leaving. She said that defendant left “when the door of the store opened, and I asked whoever opened it to please

call the police.” After defendant left, she spoke to Holt who she described as “extremely frightened by the situation.”

Brian Turpen testified that he previously served as an officer with the Depue police department before becoming assistant chief in Ladd, Illinois. On September 16, 2008, he responded to the Casey’s store at approximately 4 p.m. and met with Holt, Stryker, and Hall. Turpen described Holt as being “[v]isibly upset.” He said that Stryker and Hall did not appear to be “quite so upset.” He also stated defendant was no longer present when he arrived at the Casey’s store.

The State rested. Defense counsel moved for a directed verdict which the trial court denied.

Defense called Molly Marquez who testified that she was working in the kitchen as a cook on September 16, 2008, and overheard an argument between defendant and Holt. Marquez explained that “in the kitchen, the oven is really loud, and I can’t hear much.” Marquez testified that she heard the confrontation, but did not hear exactly what was said, and added, “I don’t like to get involved, so I don’t.”

Richard Craig, defendant’s husband, testified that he took defendant to work on September 16, 2008, and waited outside because sometimes defendant “brings money out and lets me know everything is okay.” Approximately five or ten minutes after defendant entered the store, he saw her leaving the store, upset and crying. He watched his wife walk toward a vehicle in the parking lot. He started approaching the vehicle and heard Stryker yell at him “to get away.” Craig said that he and defendant then went inside the store where defendant asked Holt why she was being fired. Craig testified that he became “mouthy” and started “letting loose

because I was already upset.” He told the jury that he was charged with disorderly conduct and pled guilty, but denied defendant used profanity that day.

Defendant testified in her own defense. She said that on September 16, 2008, she was eight months pregnant and reported to work at the Casey’s store in Depue, Illinois, where she was employed as the assistant manager. When she arrived at work, she saw Holt getting out of Stryker’s vehicle in the parking lot. Shortly thereafter, Holt asked defendant to go to the back room of the store where she learned she was being fired. Defendant testified that Holt did not tell her why she had been fired. Defendant said that she became upset, walked outside, knocked on the window of Stryker’s vehicle, and asked Stryker what was going on. Defendant explained that Stryker “was being ignorant” to her and said, “Give the keys back. You don’t need to know. Just give the keys back to Roi-Ann [Holt] and leave.”

At that point, defendant testified that she entered the store and asked Holt why she was being terminated. Defendant said that she knew why she was being terminated. She claimed that the store was trying to make her quit because she could not work as much and had submitted doctor’s excuses. Holt told defendant to give her the keys and leave. Defendant said that she wanted an explanation. Again, Holt told her to leave, so defendant left. Defendant denied using vulgarities and stated only two children were inside the store at the time.

The jury found defendant guilty of disorderly conduct on January 19, 2010. On January 25, 2010, defendant filed a motion for judgment notwithstanding verdict or alternatively for a new trial. Defendant claimed, in part, that the State failed to prove defendant guilty beyond a reasonable doubt. The trial court denied the motion, finding defendant’s behavior started in the back room of a public store and escalated out into the common customer area and then onto the

street. The court said that the incident involved multiple people and “very vulgar words” on the part of defendant. The court believed that under these circumstances, defendant’s words amounted to “fighting words.” The trial court then sentenced defendant to six days imprisonment in the county jail and ordered defendant to pay court fees and costs.

On January 27, 2010, defendant filed an amended motion for judgment notwithstanding verdict or alternatively for a new trial. In addition to those allegations contained in the original motion, defendant alleged that the facts presented at trial did not constitute the offense of disorderly conduct as a matter of law and that defendant was entitled to an acquittal. On that same day, defendant filed a motion to reconsider sentence and a motion to stay execution and enforcement of sentence pending ruling from the appellate court.

On January 27, 2010, the trial court conducted a hearing on all pending motions. The court denied defendant’s amended motion for judgment notwithstanding verdict or alternatively for a new trial, motion to reconsider sentence, and motion to stay execution and enforcement of sentence. At defendant’s request, the court appointed the appellate defender’s office to represent defendant on appeal and directed the clerk of the court to file a notice of appeal on defendant’s behalf. The clerk filed a notice of appeal that same day.

ANALYSIS

On appeal, defendant challenges the sufficiency of the State’s evidence claiming that the vulgarities uttered by defendant did not constitute fighting words, and therefore, her conviction for disorderly conduct cannot stand. The State responds that the jury heard sufficient evidence to find that defendant’s profane language disturbed complainant and provoked a breach of the peace, thereby justifying the jury’s verdict.

First, we address the standard of review on appeal. Defendant requests this court to review the sufficiency of the State's evidence *de novo* because defendant does not contest the facts in this case. We note that defendant and her husband testified before the jury that defendant did not use any vulgar language, contrary to the testimony of the State's witnesses. Thus, we conclude the facts were not undisputed as defendant now contends on appeal. Therefore, we must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A reversal is warranted only when the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt regarding a defendant's guilt. *People v. Flowers*, 306 Ill. App. 3d 259, 266 (1999).

A person commits the offense of disorderly conduct when he or she knowingly does any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2008). The case law recognizes that “[t]he offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others.” *People v. Allen*, 288 Ill. App. 3d 502, 506 (1997). Whether or not a defendant's particular act provokes a breach of the peace depends upon the accompanying circumstances, and therefore, the setting or location must be “considered in deciding whether the act offends the mores of the community.” *Id.* It is not necessary that the act occur in public, but only that defendant's actions disturb public order. *People v. Davis*, 82 Ill. 2d 534, 538 (1980).

Language that is vulgar or offensive does not necessarily breach the peace. See *People v. Bradshaw*, 116 Ill. App. 3d 421, 422 (1983). However, fighting words are “personally abusive

epithets which, when addressed to an ordinary citizen, as a matter of common knowledge, are inherently likely to provoke violent reaction.” *People v. Heinrich*, 104 Ill. 2d 137, 146 (1984) (citing *Cohen v. California*, 403 U.S. 15, 20 (1971)); *People v. Redwood*, 335 Ill. App. 3d 189, 192 (2002). Thus, “fighting words by definition provoke a breach of the peace, such that they satisfy a necessary element of disorderly conduct.” *People v. Allen*, 288 Ill. App. 3d at 507. However, “words need only be *likely* to incite violence, not actually produce violence, to qualify as fighting words.” *People v. Allen*, 288 Ill. App. 3d at 507 (Emphasis in original).

Defendant cites numerous cases in support of her contention that her actions did not constitute disorderly because she did not utter fighting words. We disagree.

In this case, the jury heard evidence defendant repeatedly used obscene, vulgar and derogatory language both inside and outside the store in the presence of customers. The jury also heard testimony from Hall that defendant said “Roi-Ann [Holt] would pay for it.” Holt testified that she called the police while defendant was present at the scene. Stryker requested that someone call the police when defendant would not leave the property. Further, Hall testified that she called the police at the suggestion of several customers in the store.

The jury heard Holt testify that she found defendant’s conduct to be “very disturbing.” When the police officer arrived, he observed Holt was “[v]isibly upset.” In addition, Hall told the jury, “The whole scenario was very violent. I was waiting for fists to start flying.”

When viewing the evidence in a light most favorable to the prosecution, we conclude that the barrage of words selected by defendant including the comment that Holt “ would pay,” presumably for the decision to fire defendant, constituted fighting words if the jury believed defendant made these comments as described by the State’s witnesses. When considering those

words combined with defendant's conduct on the date in question, a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. Accordingly, we affirm defendant's conviction.

CONCLUSION

The judgment of the circuit court of Bureau County is affirmed.

Affirmed.