

2012 IL App (1st) 113629-U

FIRST DIVISION  
DATE: DECEMBER 21, 2012

No. 1-11-3629

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 MC1 262441
	)	
JERMAINE WARE,	)	Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant refused to perform tasks in inmates' work program and used profanities in arguing with supervising officer, evidence was sufficient to establish elements of disorderly conduct; the judgment of the trial court was affirmed.
- ¶ 2 Following a bench trial, defendant Jermaine Ware was convicted of disorderly conduct and was sentenced to 15 days in jail. On appeal, defendant contends that his argument with the deputy sheriff who was supervising his participation in the Sheriff's Work Alternative Program (SWAP) did not rise to the level of disorderly conduct. We affirm.

¶ 3 At trial, Cook County Sheriff's Deputy Olumide Martins testified that on the morning of November 7, 2010, he and two other deputies were supervising defendant and about 48 other SWAP participants who were cutting down trees and performing landscaping tasks in the 5900 block of South Cicero near a portion of Chicago Transit Authority (CTA) property.

¶ 4 At about 9 a.m., Martins was advised that defendant and another person were not working. Martins approached defendant and asked why he was sitting down, "if he was tired." Defendant responded, "F— you." Martins told defendant "that I can't have him sitting down while the other offenders are working, that he has to go help them out." Defendant then told Martins: "I'm not doing sh—. I'm not doing sh—. This is a slave labor. The city workers will work with CTA. The city workers are supposed to be working with doing that job." Martins testified that defendant complained loudly in the presence of other SWAP workers, who watched defendant and then returned to their tasks. Defendant went back to work but "he was still complaining."

¶ 5 After the next head count of workers, Martins could not locate defendant, and he found defendant hiding between a fence and a tree. When Martins approached defendant to ask his name, defendant "just blew up." Defendant told Martins, "F— the police, f— the sheriff, f— SWAP. I'm not doing sh—." When defendant made those statements, the SWAP workers stopped their tasks and defendant "disrupt[ed] the whole process." Defendant was "foaming at the mouth."

¶ 6 Martins testified the incident occurred near a roadside with "a lot of traffic" and "a lot of civilians" walking to a nearby bus station. He stated that "everybody had stopped" to watch defendant because he was trying to climb the fence but kept slipping off. Martins placed defendant in custody. Martins had called for backup, and about 20 squad cars responded to the scene.

¶ 7 On cross-examination, Martins stated defendant was at the site for about 30 minutes before Martins saw him sitting down. Martins denied that he shouted at defendant to get back to work; he stated he told defendant he and the other person they had to "go help out." Martins denied raising his voice when he spoke to defendant. Martins said he gave defendant "two chances" but he called for backup officers after defendant "had started acting up." According to Martins, defendant was jeopardizing "the safety of everybody involved" and "[e]verybody stopped working and moved over to where we were at." On redirect examination, Martins said the tree defendant hid behind was not near the work area.

¶ 8 Defendant testified he was 35 years old and agreed to participate in SWAP. Regarding the day in question, defendant said he was "one of the first guys working." The tasks included raking leaves, picking up branches, and cutting down trees. Defendant said the workers used tools from a nearby truck; he was using a tool for cutting long weeds. Defendant said he worked for 20 or 30 minutes and then moved to a different job, setting the tools to the side.

¶ 9 Defendant testified he and another person were "just sitting down and talking" near a fence where the truck and a van were parked. Martins shouted at them to get back to work, from a distance of about 10 feet away. Defendant responded to Martins that they were some of the first workers to arrive that morning and "did the majority of the job." Martins told them to "shut up and get back to work." Defendant said Martins gave that order in a normal voice without shouting.

¶ 10 Defendant said he told Martins, "Man, you ain't got to be talking to me like that, you know." Defendant described the encounter as being "over with right there" and he got "out of [Martins'] face." Several minutes later, Martins approached defendant on the other side of a fence and told defendant to give him his ID. Defendant testified he walked around the fence to comply with Martins' request. Defendant denied hiding behind a tree.

¶ 11 Defendant approached Martins and handed him his ID, and Martins handcuffed defendant, told defendant he was under arrest, and put him in the van. Martins called for backup officers.

¶ 12 On cross-examination, defendant said all of the other SWAP participants were working while he and another man were seated. When Martins approached him and told him to go back to work, no other SWAP members approached them. Defendant again denied hiding from the officer, stating that he "never hid at all" but instead sat on a railing near a gate and the van. Defendant said he sat down for two or three minutes because the job was almost completed, and he and the other workers were returning tools to the truck. Defendant described the encounter with Martins as "an argument between two men," and he said no SWAP members were gathered nearby when he was arrested.

¶ 13 At the close of evidence, the trial court found defendant guilty of disorderly conduct. After hearing evidence in aggravation and mitigation, the trial court sentenced defendant to 15 days in the Cook County jail, with credit for one day served.

¶ 14 On appeal, defendant contends his verbal encounter with Martins did not constitute disorderly conduct and therefore, the State failed to prove the elements of the offense beyond a reasonable doubt. We initially note the parties' disagreement as to the standard of review. The usual standard of review in a criminal case is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). Although defendant argues that *de novo* review is appropriate here because the facts are undisputed, this court has applied the reasonable doubt standard to challenges to the sufficiency of the evidence. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 12 (even if facts are not in dispute,

the trier of fact should resolve the matter if reasonable persons could draw different inferences from those facts). We therefore observe that standard in this case.

¶ 15 Defendant contends that even if the testimony offered by the State is taken as true, his actions did not rise to the level of disorderly conduct. He asserts that even though bystanders stopped to watch his argument with Martins at the SWAP work site, those circumstances do not meet the definition of that offense.

¶ 16 To prove a defendant guilty of disorderly conduct, the State had to prove he knowingly did 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 2010). Therefore, the State is required to establish that defendant knowingly engaged in conduct that (1) was unreasonable, (2) alarmed or disturbed another, and (3) provoked a breach of the peace. *Id.* This court has described disorderly conduct as a "loosely defined" offense subject to a fact-specific inquiry that encompasses a "wide variety of conduct serving to destroy or menace the public order and tranquility." *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30, quoting *In re B.C.*, 176 Ill. 2d 536, 552 (1997).

¶ 17 As to the first requirement, reasonableness is determined by a defendant's conduct in relation to the surrounding circumstances. *McLennon*, 2011 IL App (2d) 091299, ¶ 31. Here, by defendant's own account, he argued with Martins and sat down while other SWAP workers were laboring. According to Martins' testimony, defendant swore at him and refused to go back to work when directed to do so. Defendant's actions were unreasonable in the context of the SWAP setting.

¶ 18 As to the second requirement of disorderly conduct, Martins's testimony established that defendant disturbed others at the job site. Martin testified that defendant's protests jeopardized

the safety of those at the work site and that defendant's actions disturbed the remaining SWAP workers to the point that they stopped working to watch the argument.

¶ 19 The final element of disorderly conduct requires that a defendant provoke a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2010). A breach of the peace can occur without overt threats or acts that have an effect on a surrounding crowd. *McLennon*, 2011 IL App (2d) 091299, ¶ 36-37 (and cases cited therein). Although the acts in question need not occur in public or involve abusive language, we note that both of those circumstances did occur here: the evidence showed that defendant voiced profanities at Martins while refusing to perform the work he was directed to complete.

¶ 20 Defendant directs us to cases in which a person's argument with a police officer, even when loud and profane, has not been deemed to constitute disorderly conduct. See, e.g., *People v. Justus*, 57 Ill. App. 3d 164 (1978). Here, however, defendant's conduct exceeded mere verbal argument, as defendant refused to perform work as directed by the officer, caused the SWAP participants to stop their activities, and placed Martins in fear for the continued safety of the work site. For these reasons, we conclude that the evidence, viewed in a light most favorable to the State, is sufficient to support defendant's disorderly conduct conviction.

¶ 21 Accordingly, the judgment of the trial court is affirmed.

¶ 22 Affirmed.