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2013 IL App (3d) 110673-U

Order filed July 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-11-0673
)	Circuit No. 10-CM-1500
)	
CHAD A. TRAVELSTEAD,)	Honorable
)	Ronald J. Gerts,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove the defendant guilty of disorderly conduct beyond a reasonable doubt.

¶ 2 Following a bench trial, the defendant, Chad A. Travelstead, was found guilty of disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2010)) and was sentenced to two years' court supervision. The defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

FACTS

¶ 3

¶ 4 On November 10, 2010, the defendant was charged by information with disorderly conduct. The information alleged that on September 17, 2010, the defendant knowingly threatened Dean Dyer with a golf club in such a violent and unreasonable manner as to alarm and disturb Dyer, and to provoke a breach of the peace.

¶ 5 At trial, Dyer testified that on September 17, 2010, at about 6:30 p.m., he was driving to a football game with his son. As Dyer was driving, he noticed two men standing at the edge of the road waving their hands at him. Dyer kept driving, but when he looked into his side mirror, he observed an object fly at the back of his truck. Dyer stopped his vehicle and backed up. When Dyer exited his truck, he observed the defendant standing in the ditch on the edge of his property line with a golf club in his hand. Dyer asked the defendant why he threw something at his truck. The defendant responded that he was tired of people speeding past his house, because he had a baby on the way.

¶ 6 Dyer informed the defendant that he could not throw objects at vehicles. The defendant told Dyer that if he had a problem with it, he should come onto the defendant's property and the defendant would "take care of it." The defendant was standing six to eight feet from Dyer while holding a golf club with both hands like he was going to swing it at Dyer. Dyer then got into his truck and drove to the football game. Dyer also testified that he was a correctional officer and chief of police for the Village of Buckingham, but was off duty that day and did not announce himself as an officer to the defendant.

¶ 7 Dyer further testified that he felt scared and angry during the confrontation with the defendant and shocked that the defendant threw something at his truck. Dyer said he was driving

approximately 30 to 35 miles per hour, and that a sign across the street from the defendant's residence indicated that the speed limit was 55 miles per hour. Dyer reported the incident to the police on September 22, 2010, and made a written statement.

¶ 8 The defendant testified that on the date of the offense, he was hitting golf balls into a field with two of his friends. The defendant observed Dyer drive past his house at approximately 55 or 60 miles per hour. The speed limit near the defendant's house was 30 miles per hour, and it did not increase to 55 miles per hour until just past the defendant's property. The defendant yelled at Dyer to slow down because he was upset. Dyer stopped and backed up on the roadway to the defendant's house. Dyer exited his vehicle and approached defendant in an aggressive stance, but stayed on the roadway. Dyer asked the defendant if he had lost his mind. The defendant responded yes, because he was tired of people speeding past his house.

¶ 9 Dyer and the defendant argued back and forth about the speed limit sign. Dyer then displayed his badge and told the defendant he was the chief of police. The defendant told Dyer he was nothing but a correctional officer. Dyer mumbled something, and then returned to his vehicle and left. The defendant admitted that he had his golf club in his hand during the encounter, but stated that he did not wave it around or threaten Dyer with it. The defendant stated he was holding the club with one hand and leaning on it for support. The defendant also denied throwing anything at Dyer's vehicle.

¶ 10 In making its determination, the trial court told the defendant that if he was going to have an angry exchange with someone, he needed to put his golf club down. The court went on to state that when there is the type of argument that occurred in the instant case and someone is holding what could be a deadly weapon, it becomes disorderly conduct. The court ultimately

found the defendant guilty of disorderly conduct, noting that it had found Dyer's testimony credible. The defendant filed a motion for new trial, which the trial court denied. The defendant appeals.

¶ 11

ANALYSIS

¶ 12 The defendant argues that the State failed to prove his guilt beyond a reasonable doubt of disorderly conduct.

¶ 13 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011); *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009). Rather, in a bench trial, the trial court remains responsible for determining the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence, and this court will not substitute its judgment for that of the trial court on these matters. *Id.* A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 14 To convict defendant of disorderly conduct, the State must prove beyond a reasonable doubt that the defendant knowingly did any act that: (1) was unreasonable; (2) alarmed or disturbed another; and (3) provoked a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2010); *People v. McLennon*, 2011 IL App (2d) 091299. Disorderly conduct is loosely defined and is a highly fact-specific inquiry. *Id.* The offense is intended to guard against an invasion of the right

of others not to be molested or harassed, either mentally or physically, without justification.

People v. Davis, 82 Ill. 2d 534 (1980).

¶ 15 A. Unreasonableness

¶ 16 As to the first requirement, unreasonableness is determined by a defendant's conduct in relation to the surrounding circumstances. *McLennon*, 2011 IL App (2d) 091299. The defendant argues that his act of yelling at Dyer to slow down and maintaining possession of his golf club during the ensuing verbal dispute was not unreasonable. The defendant points to the ongoing speeding problem in the area and the fact that Dyer drove by his house going 55 miles per hour to justify his conduct.

¶ 17 In finding the defendant guilty, however, the trial court expressly found Dyer's testimony more credible than the defendant's. It was for the trial court to assess Dyer's credibility, and we find nothing in the record that would require us to substitute our judgment for the trial court's. See *Siguenza-Brito*, 235 Ill. 2d 213. Dyer's testimony established that he was driving 35 miles per hour past the defendant's house when he observed the defendant waving his hands at him and an object fly at the back of his truck. When Dyer confronted him, the defendant challenged Dyer to a fight and acted as if he would swing a golf club at him. In light of the surrounding circumstance established by Dyer's testimony, we find the defendant's conduct unreasonable.

¶ 18 B. Alarmed or Disturbed Another

¶ 19 As to the second requirement, defendant argues that his conduct did not alarm or disturb Dyer because there was no evidence that the defendant actually threatened Dyer with the golf club or even swung at him. Regardless of whether the defendant actually swung at Dyer, he confronted Dyer while only six to eight feet from him and holding the golf club like he was going

to swing it at Dyer. Dyer testified that he felt scared and angry during the confrontation. This evidence was sufficient to support the finding that the defendant's conduct alarmed or disturbed Dyer. See, e.g., *People v. Albert*, 243 Ill. App. 3d 23 (1993) (affirming disorderly conduct conviction where the defendant yelled and screamed for several minutes in residential neighborhood late at night because she knew or should have known that such unreasonable noise was likely to disturb people).

¶ 20

C. Breach of the Peace

¶ 21 As to the final element, an act that involves a threat to another will support a finding of a breach of the peace. See *McLennon*, 2011 IL App (2d) 091299. A breach of the peace is determined by the specific facts and circumstances of the case. *Id.* While it includes acts and words likely to produce violence in others, overt threats or profane or abusive language are not required. See *Davis*, 82 Ill. 2d 534; *People v. Allen*, 288 Ill. App. 3d 502 (1997).

¶ 22 The defendant relies on *People v. Trester*, 96 Ill. App. 3d 553 (1981), to argue that telling Dyer to come onto his property to "take care of it" did not rise to the level of a threat. The defendant further contends that arguing with a police officer alone does not constitute disorderly conduct. In *Trester*, the defendant swore at a police officer in a court building and challenged the officer to a fight if he removed his gun and badge. The court found that the defendant's conduct did not constitute a breach of the peace because his remarks about fighting the officer were not immediate, but instead were couched in terms of what might happen. *Id.*

¶ 23 We find *Trester* distinguishable. As *Trester* noted, an officer of the law should exercise the greatest degree of restraint in dealing with the public and may not conceive every threatening or insulting word or gesture as amounting to disorderly conduct. *Trester*, 96 Ill. App. 3d 553.

However, since Dyer was not on duty and testified that he did not announce himself as an officer, we do not find this analysis applicable. Additionally, the supreme court's decision in *Davis*, 82 Ill. 2d 534, was not addressed by the court in *Trester* and casts doubt on whether an immediate threat is required to constitute a breach of the peace. In *Davis*, the court found the defendant guilty of disorderly conduct when he entered the home of an 81-year old woman who had previously sworn out a complaint against the defendant's brother, pointed his finger at her, and said that if his brother went to jail, "you know me." *Id.* at 536. The court held that this type of undefined and indirect threat constituted a breach of the peace. See also *People v. D.W.*, 150 Ill. App. 3d 729, 730 (1986) (finding a breach of the peace, even when threat was not immediate, where a minor threatened his schoolmate to pay \$5 by lunch or he would "kick [his schoolmate's] butt").

¶ 24 Furthermore, unlike the defendant in *Trester*, the defendant in the instant case did more than merely threaten Dyer to fight. The defendant also held a golf club as if he were going to swing it at Dyer. We acknowledge that in making its finding of guilt, the trial court incorrectly stated that having an argument with another person while holding what could be a deadly weapon constituted disorderly conduct. The proper standard for determining a breach of the peace, as we have noted, is whether the defendant's conduct threatened another. See *McLennon*, 2011 IL App (2d) 091299; *People v. Hale*, 326 Ill. App. 3d 455 (2001) (reviewing court may affirm the trial court's judgment on any basis supported by the record).

¶ 25 Under this analysis, the defendant argues that his conduct did not constitute a threat because he did not retrieve the club to use as a weapon. Regardless of whether the defendant intended to use the club as a weapon, he effectively threatened Dyer with it when he held it as if

he were going to swing it at Dyer while standing only six to eight feet away from him. In looking at the defendant's threatening use of the golf club in combination with his earlier threat to fight Dyer, who was merely driving by the defendant's house before this offense occurred, we find the defendant's conduct sufficient to support a breach of the peace. See *Davis*, 82 Ill. 2d 534 (guarding the right of others not to be molested or harassed without justification).

¶ 26 Therefore, viewing the evidence in the light most favorable to the State, we conclude that the trial court could have found the essential elements of disorderly conduct beyond a reasonable doubt. See *Beauchamp*, 241 Ill. 2d 1.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 29 Affirmed.