2015 IL App (2d) 141103-U
No. 2-14-1103
Order filed August 19, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CM-5298
VERNON PATTON,	)	Honorable Robert K. Villa,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty of disorderly conduct beyond a reasonable doubt. The trial court did not abuse its discretion by sentencing defendant to conditional discharge rather than court supervision. Affirmed.

¶ 2 Following a bench trial defendant, Vernon Patton, was convicted of disorderly conduct in violation of section 26-1(a)(1) of the Criminal Code of 2012 (720 ILCS 5/26-1(a)(1) (West 2012)), and he was sentenced to six months' conditional discharge. On appeal, defendant contends that (1) the State did not prove that he was guilty of disorderly conduct beyond a reasonable doubt; and (2) the trial court abused its discretion in sentencing defendant to

conditional discharge rather than court supervision. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record on appeal has been supplemented by an "Agreed Statement of Facts," which provides in relevant part: On August 23, 2013, Jamie Shaw left her office in the K building of Elgin Community College to use the restroom. Defendant, a male security guard, saw Shaw approach the unisex restroom and told her it was already occupied. Shaw then entered the women's restroom.

¶ 5 After she entered and was about 10 feet into the restroom, Shaw felt someone behind her and she turned around to see defendant staring at her. He was standing between Shaw and the closed restroom door, approximately four feet from the door. They were the only people in the restroom. Defendant said, "What would you say if I asked to be in here with you?" Shaw testified she felt scared, alarmed, and uncomfortable and replied, "No, that would be inappropriate." Defendant then stated, "I thought you would say something like that." Defendant continued to stare at Shaw until he eventually left the restroom. The incident lasted between one and two minutes. Shaw stated that, after she turned around and saw defendant, he did not move toward her any further. When Shaw was sure defendant had left, she used the facility and returned to her office. Shaw reported the incident to Marilyn Prentice, a coordinator and paralegal at the college.

¶ 6 Prentice met with defendant to talk about the incident. She asked defendant if he had entered the restroom and he said "no." Prentice asked defendant if he had a conversation with anyone approaching the restroom. He replied, "I think I know who you're talking about. I may have said something in jest because we all thought that she's gay." He then stated, "We have cameras all over the place, you really think I would have followed her in there?"

¶ 7 Prentice met with defendant a second time and, at that meeting, defendant told her, "If she says I did it, I did it. But I didn't do it, I'm not interested in her, if I said something it was just a stupid comment."

¶ 8 Defendant testified that he had been employed at the college since February 2000. He previously served in the U.S. Army beginning in 1979, after completing Officer Candidate School. Defendant spent three years in active duty before being honorably discharged in 2000.

¶ 9 Defendant testified that, at no time on August 23, 2013, did he enter the women's restroom and specifically, he did not enter when Shaw was in the restroom. Defendant further denied making the comments Shaw claimed he made. He stated that any comments he might have made were "made in jest" and "were a complete joke." Defendant testified that he sent an email to Prentice in an effort to apologize for his attitude at the meeting. Defendant explained that he was very surprised at being accused of sexual harassment, which caused him to exhibit what he believed was a bad attitude during his initial meeting with Prentice.

¶ 10 Following closing arguments, the trial court found defendant guilty of disorderly conduct. At the sentencing hearing, the State argued that defendant should be held to a higher standard based on the nature of his employment as a security officer. Defendant argued that his fine military service and lack of criminal history warranted the imposition of a sentence of supervision.

¶ 11 The trial court sentenced defendant to six months conditional discharge. Defendant filed motions for a new trial and to reconsider sentence, which were heard and denied on September 25, 2014. This timely appeal follows.

¶ 12 II. ANALYSIS

¶ 13 A. Sufficiency of the Evidence

¶ 14 Defendant contends that he was not proved guilty of disorderly conduct beyond a reasonable doubt. To prove defendant guilty of disorderly conduct, the State had to prove that he did "any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." 720 ILCS 5/26-1(a)(1) (West 2012).

¶ 15 Where a defendant challenges on review the sufficiency of the evidence, we ask whether, " 'after 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.' " (Emphasis omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We may not substitute our judgment for that of the factfinder on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 16 Disorderly conduct is broadly defined. As a highly fact-specific inquiry, it " 'embraces 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.*, 173 Ill. 2d 536, 552 (1997)). The main purpose of the offense is to guard against "an invasion of the right of others not to be molested or harassed, either mentally or physically, without justification." The activity that can constitute disorderly conduct:

> "is so varied and contingent upon surrounding circumstances as to almost defy definition. Some of the general classes of conduct which have traditionally been regarded as disorderly are here listed as examples: the creation or maintenance of loud and raucous noises of all sorts; unseemly, boisterous, or foolish behavior induced by drunkenness ***. In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative, but rather culpability is equally dependent

> upon the surrounding circumstances. *** [S]houting, waving and drinking beer may be permissible at the ball park, but not at a funeral." 720 ILCS Ann. 5/26-1, Committee Comments—1961, at 200 (Smith-Hurd 2010).

¶ 17 Defendant concedes that there was sufficient proof that he acted in an unreasonable manner and alarmed or disturbed the victim, but he attacks the sufficiency of the evidence concerning whether he provoked a breach of the peace. He asserts that "there is no construction of the meaning of the phrase 'breaching the peace' that can reasonably encompass [his] conduct." He argues that a man standing in the women's restroom for one to two minutes, making no threatening statements or gestures, and then leaving quietly does not constitute a criminal breach of the peace. Generally, to breach the peace, a defendant's conduct must threaten another or have an effect on the surrounding crowd. See *In re D.W.*, 150 Ill. App. 3d 729, 732 (1986). However, a breach of the peace can occur without overt threats or profane and abusive language. See *People v. Allen*, 288 Ill. App. 3d 502, 507 (1997). Although the context of the conduct is important in determining whether a breach of the peace took place, the act need not occur in public. See *People v. Davis*, 82 Ill. 2d 534, 538 (1980) ("A breach of the peace may as easily occur between two persons fighting in a deserted alleyway as it can on a crowded public street.").

¶ 18 *Davis* is instructive as to whether defendant's conduct breached the peace. In that case, the defendant had entered the home of an invalid, elderly neighbor. Apparently upset that the neighbor had sworn out a complaint against his brother, he waved some papers in her face and said that his brother was not going to jail or to court. He continued, "If he do, Miss Pearl, you know me.' " *Id.* at 536. Relying on the committee comments to section 26-1, the supreme court noted that the types of conduct intended to be included under the section almost defy definition

and culpability is equally dependent on the surrounding circumstances. *Davis*, 82 Ill. 2d at 537 (quoting 720 ILCS Ann. 5/26-1, Committee Comments—1961, at 200 (Smith-Hurd 1997)). The court further noted that the offense is intended to guard against an invasion of one's right not to be molested or harassed either mentally or physically without justification. The court held that the defendant breached the peace of the complainant and her granddaughter-in-law who were compelled to hear the defendant's indirect threat. *Id*. at 538.

¶ 19 Under the facts of our case, a rational fact finder could have found the breach of the peace element was satisfied beyond a reasonable doubt. While defendant harassed the victim while they were alone and it did not involve abusive language or overt threats, it is not unreasonable to find that Shaw was harassed without justification. A man following a female into the women's bathroom, where she is the lone occupant at the time, standing between the occupant and the door, and asking if he can stay in the bathroom with her provokes a breach of the peace. Similar to the conduct in *Davis*, such an act is harassing, can be viewed as an indirect threat, and disrupts the public order of a civilized society. Accordingly, we find defendant's argument meritless.

¶ 20 B. Sentencing

¶ 21 Defendant contends that the trial court abused its discretion in sentencing him to conditional discharge rather than court supervision. The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record. *Id.* at 212-213. Absent an abuse of

discretion by the trial court, a sentence may not be altered on review. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* See 730 ILCS 5/5-4.5-60 (West 2012) (Class C misdemeanor punishable up to 30 days imprisonment).

¶ 22 We find that the trial court did not abuse its discretion by sentencing defendant to conditional discharge rather than court supervision. Although mitigating factors such as defendant's military service and lack of criminal history were presented, the trial court could certainly find aggravating the fact that defendant was a security guard whose duty was to protect individuals like the victim from a criminal act such as the one committed by defendant.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 25 Affirmed.