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2015 IL App (3d) 140705-U

Order filed June 25, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0705
	)	Circuit No. 13-CF-323
NICHOLAS A. LANE,	)	Honorable
Defendant-Appellant.	)	Richard A. Zimmer, Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justice Schmidt concurred in the judgment.  
Presiding Justice McDade specially concurred.

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**ORDER**

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of disorderly conduct for communicating a false alarm that a bomb was concealed inside Walmart.

¶ 2 Defendant, Nicholas A. Lane, was charged with disorderly conduct after a Walmart employee informed police that defendant had made a comment about a bomb. The cause proceeded to a bench trial, after which the court found defendant guilty and sentenced him to 24 months' probation. Defendant appeals, claiming the evidence was insufficient to prove him

guilty beyond a reasonable doubt. We affirm.

¶ 3

### FACTS

¶ 4

Defendant was charged with disorderly conduct (720 ILCS 5/26-1(a)(3) (West 2012)) for allegedly making a false alarm that a bomb was concealed in the Kewanee Walmart. The cause proceeded to a bench trial.

¶ 5

At the bench trial, Amie Mannella testified that she was working at the Kewanee Walmart customer service desk on November 19, 2013. That evening, defendant brought a digital video disc (DVD) home theatre system to the desk, seeking to return it. Mannella and another Walmart associate, Rebecca Thompson, looked through the system's box and noticed that the remote control was missing. Mannella told defendant that she could not accept the return without the remote.

¶ 6

Defendant said he would go home and retrieve the remote. As defendant walked away from the desk, Mannella told him that he would have to take the box with him for "liability" reasons, citing Walmart policy. Defendant replied, "How would I leave my bombs here?" Mannella did not think defendant was joking. He took the box and left the store. Mannella told a manager what defendant had said and then took a 15-minute break. When Mannella returned from break, she saw defendant at the service desk again. Later that evening, Mannella gave a recorded interview to Kewanee police

¶ 7

On cross-examination, Mannella admitted that during her interview she stated that defendant may have been joking when he asked the question referencing bombs. In the interview, Mannella said "I'm not saying that maybe he wasn't joking." But Mannella clarified that she did not take his comment as a joke. On the recording, Mannella initially states that defendant said, "Really? Well, how would I leave my bombs here?" Later, Mannella quotes

defendant as having said, "Well, how would I leave my bombs here, then?"

¶ 8 Thompson testified that she was working in the electronics department of Walmart on November 19, 2013, when she was called to the service desk by Mannella to check on a return. Thompson checked the contents of the DVD system box and discovered it was missing the remote. She informed Mannella that the system could not be returned without the remote. Mannella relayed that information to defendant. As defendant walked away from the service desk, Mannella told him that he would have to take the system with him. Defendant appeared irritated by Mannella's statement. According to Thompson, defendant then said, "What I [*sic*] going to do with my bomb?" or "[W]here would I put my bomb?" Thompson could not remember the exact words defendant used. Defendant's statement made Thompson uncomfortable. She did not think he was joking. Although Thompson looked through the theatre system box, she did not take apart the components. After defendant left the store, Thompson returned to the electronics department. She later gave a recorded interview to police.

¶ 9 Austin Majeske testified that on November 19, 2013, he was working as a retail theft investigator for Walmart. That evening he received a report that a customer had mentioned a bomb. After speaking with Mannella, he contacted the Kewanee police department. Kewanee police officer Stephen Kijanowski responded, and Majeske informed him about the report concerning defendant. In response to defendant's alleged comments about a bomb, the Walmart store was evacuated from 6 to 10 p.m.

¶ 10 Kijanowski testified that he was dispatched to Walmart on the evening of November 19, 2013, in response to an alleged bomb threat. He spoke with Majeske, who identified defendant as the person who made the threat. Defendant was standing at the service desk. Kijanowski questioned defendant. Defendant stated that he did not have any weapons or bombs. Kijanowski

also spoke to Mannella and Thompson. Based on the employees' reports, Kijanowski arrested defendant and transported him to the police station. At the station, defendant gave a recorded interview. In the statement, defendant recalled that he said, "I understand because of a bomb." According to defendant, he was merely commenting that he understood the rationale behind Walmart's policy requiring him to take his merchandise with him. No bomb was found in the Walmart store or the DVD system box.

¶ 11 The trial court found that defendant made a comment about how or where he could leave his bomb, rather than merely commenting on the rationale behind Walmart's return policy. The court found defendant guilty and sentenced him to 24 months' probation.

¶ 12 ANALYSIS

¶ 13 Defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt of disorderly conduct, as charged under section (a)(3) of the Criminal Code of 2012 (720 ILCS 5/26-1(a)(3) (West 2012)). Under section (a)(3), a person commits disorderly conduct when he or she knowingly:

[t]ransmits or causes to be transmitted in any manner to another a false alarm to the effect that a bomb or other explosive \*\*\* is concealed in a place where its explosion or release would endanger human life, knowing at the time of the transmission that there is no reasonable ground for believing that the bomb \*\*\* is concealed in the place." 720 ILCS 5/26-1(a)(3) (West 2012).

Specifically, defendant contends that his statement did not constitute a false alarm.

¶ 14 The standard of review upon a challenge to the sufficiency of the evidence is whether, considering the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*,

106 Ill. 2d 237, 261 (1985). It is not the role of the reviewing court to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The weight to be given the evidence, the credibility of witnesses, resolution of inconsistencies in the evidence, and the reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Id.*

¶ 15 Section (a)(3) provides that "an individual cannot transmit to another person the false comment that an explosive device is concealed in such a place as to endanger human life, knowing that comment to be false." *People v. Barron*, 348 Ill. App. 3d 109, 113 (2004). "[A]n individual may be found guilty of felony disorderly conduct upon transmission of a false alarm, regardless of the intention of the speaker or the effect the words have upon the person receiving them." *Id.* at 114.

¶ 16 In the present case, Mannella testified that defendant said something similar to "How would I leave my bombs here?" Her testimony at trial and her statements during the recorded interview all quote defendant as asking essentially the same question. Thompson testified to a similar statement. Defendant, on the other hand, claimed that he was merely commenting on the rationale behind Walmart's policy.

¶ 17 It was for the fact finder to determine the witnesses' credibility and resolve conflicts in the evidence. *Sutherland*, 223 Ill. 2d at 242. The trial court found Mannella and Thompson's recollection more believable than defendant's version. We will not disturb the trial court's credibility determination on appeal.

¶ 18 Likewise, it was the role of the trial court to draw reasonable inferences about the meaning of defendant's words. The court reasonably found that defendant's question comment communicated a false statement that there was a bomb located within the theatre system box. Defendant's claim that he was joking or being sarcastic is irrelevant, as the speaker's intent to

threaten is not an element of the crime. *Barron*, 348 Ill. App. 3d at 114.

¶ 19 Viewing the evidence in the light most favorable to the State, we find the evidence sufficient to prove defendant guilty beyond a reasonable doubt of disorderly conduct. In reaching that conclusion, we reject defendant's argument that the evidence was insufficient because Mannella and Thompson did not have an immediate, strong reaction to his statement. First, we disagree with defendant's reading of the facts. Mannella and Thompson both stated that they were scared by defendant's comment, and Mannella reported the comment to her supervisor. More importantly, their reaction is irrelevant to whether defendant committed disorderly conduct because "the crime of felony disorderly conduct is complete upon the transmission of a false alarm to another person, regardless of the effect the false alarm has upon the individual who receives it[.]" *Barron*, 348 Ill. App. 3d at 113.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Henry County is affirmed.

¶ 22 Affirmed.

¶ 23 PRESIDING JUSTICE McDADE, specially concurring.

¶ 24 I concur with the majority decision because (1) I believe our standard of review compels concurrence with the trial court's decision and (2) my objection actually questions the State's Attorney's exercise of his discretion in charging and prosecuting this "offense." I do not dissent because I recognize and acknowledge the nearly absolute unassailability of the exercise of prosecutorial discretion. However, I find it troubling that, as a result of his decision, Nicholas Lane stands convicted of a felony—with all of its negative consequences on the rest of his life—for expressing a frustration with WalMart's policy with a comment that even the reporting witness conceded might have been a joke.

¶ 25 As a matter of established fact, defendant was in the Kewanee WalMart to return a home theater system. When he was told that the remote control was missing and the return could not be processed without it, he said he would retrieve it from his home and turned to leave the store. He was told that he could not leave the box at the service counter because WalMart could not be liable for it. The service clerk reported that Lane said something along the lines of "how would I leave my bombs here?" A second employee thought he said, "What I going to do with my bomb?" or "[W]here would I put my bomb?" Lane then acceded to WalMart's rule, took the box containing the home theater system with him when he went to retrieve the missing remote, and came back to the store within 15 minutes to complete the return. Lane told police that what he actually said was, "I understand because of the possibility of a bomb."

¶ 26 After the report was made by the service clerk and Lane had returned to the store, the box and equipment were examined and no evidence of a bomb was found. Lane exhibited no suspicious or threatening behavior in any of his contacts with store security or the police and none of those persons found it reasonable to handcuff or otherwise restrain him. Still the State's Attorney found it appropriate to charge him with felony disorderly conduct.

¶ 27 The statute under which he was charged states:

"(a) A person commits disorderly conduct when he or she *knowingly*:

\*\*\*

(3) Transmits or causes to be transmitted in any manner to another a *false alarm* to the effect that a bomb or other explosive of any nature \*\*\* is concealed in a place where its explosion \*\*\* would endanger human life, knowing at the time of the transmission that there is no reasonable ground for believing that the bomb \*\*\* is concealed in the place."

(Emphasis added.)

¶ 28 Even using the clerks' versions of Lane's comments, I find it a major stretch to characterize them as "*knowingly*\*\*\*transmitt[ing]\*\*\*a false alarm" that there is a bomb concealed in the home theater system. It seems so clearly to be not a joke but a flip or sarcastic expression of frustration or annoyance at having to lug a presumably heavy and awkward box from the store and back again to retrieve a small missing part.