

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1084

September Term, 2015

JIOVANNI A. GALLINAT

v.

STATE OF MARYLAND

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: March 15, 2016

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Jiovanni A. Gallinat, appellant, seeks reversal of his conviction for failing to obey an order of a police officer, proscribed by Maryland Code, (2002, 2012 Repl. Vol.), Criminal Law Article, (“Crim. Law”), § 10-201(c)(3), which provides: “A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.” Perceiving no reversible error, we shall affirm the judgment of the Circuit Court for Allegany County.

QUESTIONS PRESENTED

Mr. Gallinat presents the following questions on appeal:

1. Did the trial court err in finding that probable cause existed to arrest the Appellant for the Failure to Obey a Reasonable and Lawful Order of a Police Officer?
2. Is the evidence sufficient to support Appellant’s conviction?
3. Did the trial court err in denying the Appellant’s Motion to Dismiss and enter a verdict when it lacked the jurisdiction to hear evidence?

FACTS AND PROCEDURAL HISTORY

At approximately 12:30 a.m., on October 12, 2014, multiple officers of the Frostburg City Police and Frostburg State University Police responded to a report that there was a disturbance and possible fight at the Bobcat Court Apartments, located at 212 Lower Console Road, Frostburg, Maryland. The responding officers observed an apparent party with approximately 100 persons in attendance. Because the officers believed the gathering was becoming unruly, the officers ordered everyone to leave. Patrolman Mike Nawrockyj of the Frostburg City Police heard Mr. Gallinat say: “I’m not leaving.” Patrolman Nawrockyj again ordered Mr. Gallinat to leave, but Mr. Gallinat again responded: “I am not leaving.” Patrolman Nawrockyj arrested Mr. Gallinat and charged him with willfully failing to obey

a reasonable and lawful order of a law enforcement officer in violation of Crim. Law § 10-201(c)(3). As a consequence of a minor scuffle that occurred when the officer placed hands on Mr. Gallinat, Patrolman Nawrockyj also charged Mr. Gallinat with willfully acting in a disorderly manner in violation of Crim. Law § 10-201(c)(2); resisting arrest in violation of Crim. Law § 9-408(b); and second degree assault in violation of Crim. Law § 3-203. (As we will explain below, the latter three charges were not pursued to judgment, and are not at issue in this appeal.)

Mr. Gallinat requested a jury trial, and the case was transferred to the circuit court. Prior to trial, Mr. Gallinat filed a “Motion to Dismiss and in the alternative Motion to Suppress Fruit of Illegal Arrest.” The memorandum filed in support of this pretrial motion urged the court to dismiss the charges “as a result of the State’s failure to properly charge the crimes of Failure to Obey and Disorderly Conduct, Criminal Law Article 10-210(c)(2) [sic].” The memorandum in support of the motion further asserted:

[T]he Charging Document fails the Constitutional Mandates of Notice and Due Process as the Defendant is unable to discern from the Statement of Charges (within its four corners) the conduct that the State believes is criminal and thus the Defendant cannot adequately prepare for trial.

. . . Moreover, as a result of this deficiency, the Defendant has no ability to defend against facts unknown to him to support a finding of probable cause other than those facts contained in the Statement of Probable Cause which in the light most favorable to the State, does not support such a finding. The State and the Defendant both agree that in the event the Court finds that the Defendant was unlawfully arrested, the charges of resisting arrest, disorderly conduct and second degree assault would be fruit of an unlawful arrest.

The Statement of Probable Cause signed by Patrolman Nawrockyj, which was referred to in Mr. Gallinat's memorandum, provided the following information about the arrest and charges:

On 10/12/14 at approximately 0050 hours, Frostburg City Police and [Frostburg State University] Police responded to the Bobcat Court Apartments located at 212 Lower Console Road[,] Frostburg, Maryland for a report of a disturbance and possible fight in progress. Upon arrival, I assisted Sgt. Grimm and other officers with dispersing a large group of people from the area of 212 Lower Console Road Apartment #1, which was determined to be an out of control party. Sgt. Grimm counted 97 people leaving the apartment which was filled with smoke. Police detected an overwhelming odor of burnt marijuana coming from inside the residence.

While people were exiting the apartment, multiple subjects were observed gathering in the adjacent parking lot area, several of whom were visibly intoxicated. Loud screaming and profanity was overheard by police. As officers entered the parking area, several individuals appeared to be provoking a physical altercation. Police immediately gave lawful orders for everyone to leave the area. While dispersing the crowd, Police detained an unidentified subject who was inciting further disruptive behavior.^[1] I immediately overheard a subject identified as Jiovanni Gallinat say "I'm not leaving." I approached Mr. Gallinat and advised him 3 times to keep moving and leave the area. Gallinat acknowledged hearing my request to leave and again stated that he wasn't leaving. Gallinat's actions provoked several individuals to ignore police requests to leave the scene. Several subjects returned to the area which provoked further disturbances that required additional police intervention. When Mr. Gallinat refused to comply with my lawful orders, I attempted to escort him from the area to obtain identification information. As I reached for Mr. Gallinat's arm, he attempted to pull away. I advised Mr. Gallinat that he was under arrest and to not resist. Mr. Gallinat tried multiple times to pull away from police. I attempted to restrain Mr. Gallinat to the ground to [e]ffect the arrest. Mr. Gallinat jumped up from the ground and attempted to flee while I maintained a hold on his arm and person. At this

¹Although it is not clear upon first reading, the "unidentified subject who was inciting further disruptive behavior" was not Mr. Gallinat, but was another individual whom police detained after they observed that individual make a motion that caused the police to suspect he might possess a weapon.

time, additional officers assisted with the arrest while I struggled with Gallinat. During the course of the struggle, I was shoved and kicked by Gallinat while trying to restrain him. Sgt. Grimm advised Mr. Gallinat that he would be [T]asered if he continued to resist police. Shortly after, Gallinat complied with orders and was not [T]asered. Gallinat was handcuffed and placed into a nearby police vehicle without further incident. During the arrest, I received bruises and abrasions to both legs and knees.

Mr. Gallinat was subsequently transported to FPD headquarters and charged with failure to obey a lawful order, disorderly conduct, resisting arrest and second degree assault. All violations occurred in Frostburg City-Allegany County, Maryland.

Mr. Gallinat's pretrial motion was heard immediately before the bench trial, on May 27, 2015. At the hearing on the motion, the State called the arresting officer (Patrolman Nawrockyj), who was the sole witness. He testified in pertinent part:

Q. [BY STATE'S ATTORNEY] Okay, and describe for the Court what you saw.

A. [BY PATROLMAN NAWROCKYJ] When we, when I arrived on the scene, it seemed like the area of concentration was right around apartment number one. Our original call that we received was for a disturbance, umm, of some sort of a possible fight in progress at that location. **When I arrived on scene it appeared it was a large, out of control type of party that was taking place at apartment number one.**

Q. Well, how large is large.

A. Umm, it was pretty big. When we made contact with the residents, umm, the, the front door was opened and you couldn't see from one end to the other in there. It was shoulder to shoulder with people inside, and also heavy smoke was, was present.

Q. So are we talking, ten, twenty, thirty, forty, or fifty? You need to be, give us an approximate number of what you think you saw.

- A. **To me it looked like probably about one hundred people**, umm, by the time we dis[pe]rsed the party and the crowd Sgt. Grimm had counted ninety-seven people leaving the apartment.
- Q. Okay, and just so we can kind of picture this in our minds, this apartment obviously isn't a high rise apartment. What, is it on a ground floor entry apartment?
- A. Yes, it is a ground floor apartment.
- Q. Okay, and then umm, you arrived. These things occurred. What happened after that?
- A. Umm, **it was determined that the, not only was the party out of control**, but a large amount of marijuana smoke was detected. At that point in time when **Sgt. Grimm made contact with the resident there, he advised them that the party, we were going to shut the party down.**
- Q. Okay.
- A. At that point **people began to exit and immediately flowed into the adjacent parking lot**, that if you were looking at the residence from Lower Consol Road, the parking lot would be to right hand side, which actually splits Bobcat Court, so you have apartments on both sides of Bobcat Court.
- Q. Okay.
- A. Ninety-seven, **ninety-seven or so people then pretty much entered the parking lot area.**
- Q. Okay, were these people, were they generally old people, young people, intoxicated people, non-intoxicated people? Just give us a . . .
- A. Generally college-aged people.
- Q. All right.
- A. I venture to say umm, you know, educated guess between eighteen and probably twenty-five years of age. They entered the parking lot area

and for the most part, umm, the majority of them kept on walking and left.

Q. Okay.

A. It was probably at that time **while we were still kind of disbursing [sic] and making sure, making sure they weren't going to be problems, that we noticed a small contingency or a small group of people there begin to act disorderly.**

Q. Okay. And can you be specific with regards to small contingency and acting disorderly?

A. Maybe about **a dozen or so.**

Q. Okay.

A. Umm, and in that group, umm, we heard multiple, multiple uses of profanity, people yelling and screaming. At one point **there were several subjects that were lifting up their shirts as if to, you know, posture and try to start some kind of physical altercation.**

Q. With whom?

A. Amongst each other.

Q. Okay.

A. Not with police, but amongst each other.

Q. All right.

* * *

A. At that point we decided to go ahead and enter the parking lot and begin to verbally disburse [sic] people by giving lawful requests for them to leave.

* * *

BY THE COURT: . . . I would be interested in hearing the, what you heard from this group of people, these possibly twelve people.

* * *

A. There were, there were several uses of the word fuck. I can distinctly remember hearing the group of people saying [“]get the fuck out of here,[”] [“]you want to fucking do this,[”] umm, everything that would, that would lead a reasonable person to believe that it was a . . .

[BY THE COURT]: Well, I am not asking you that, I am just asking you what was said.

* * *

Q. [BY STATE’S ATTORNEY] Okay. And when you heard this from this crowd, how far were you away?

A. Umm, initially we were still up by the residence, so we were probably a good maybe two hundred feet away, and the language became more inflammatory, the yelling and the screaming became louder[;] **it was evident through the use of profanity and the posturing that a fight was about to take place.**

Q. And I just want to be clear, you, the fight that you felt was going to take place was amongst the group, not with the officers?

A. Yes, that’s correct.

* * *

Q. Okay. Now, at some point you and who else, what do you do?

A. Umm, I believe it was myself, Cpl. Pirolozzi with the University Police, Officer Alan Zapf, and probably other officers, but they were the three that I distinctly remember going down into the parking lot with.

* * *

Q. You just gave orders for people to disburse [sic]?

A. Yes.

- Q. And now you go down to this crowd and **when you are giving, giving an order to disburse [sic], what do you say?**
- A. **[“]Everybody needs to leave.[”]**
- Q. Okay.
- A. **[“]The area, immediately.[”]**
- Q. And in that tone of voice?
- A. Yes.
- Q. Okay, not louder?
- A. Probably for the people right around there, they heard that.
- Q. Okay.
- A. Umm, and I venture to say probably the majority of them started to accept our commands and were leaving.
- Q. Okay.
- A. As we made our way through the parking lot, we kind of more or less tried, tried to fan out and make ourselves visible. The group that initially drew our attention down there started to break up.
- Q. Okay.
- A. While we were disbursing [sic] that crowd, umm, there was another unidentified subject that University Police had actually come in contact with and had briefly detained. That subject began to umm, to demonstrate or I guess, he had made reference to having a potential weapon or a firearm on them. Umm, he lifted his shirt up and stuck his hand down in his waistband and began directing his attention to Officer Zapf.
- Q. Okay.

A. Officer Zapf, at that point, yelled to, I believe, it was Officer Condradit (Phonetic) and Officer Pirolozzi with the University Police and they went over there and they detained that subject.

Q. Okay.

A. It turns out later that we did not have accurate information on him to proceed with any type of follow-up charges, but while police were subsequently dealing with him, that's when **I had the occasion to come in contact with the Mr. Gallinat, the defendant.**

Q. And do you see him here today?

A. I do.

Q. And all of these events took place in Allegany County?

A. They did.

Q. All right, when you came in contact with the Defendant, what occurred?

A. Umm, as we were moving through the crowd and we could see now that the bulk of this was concentrated on one person that was being detained, umm, we noticed that people started to gather.

Q. Gather where?

A. Umm, in the parking lot, there in the public area.

BY THE COURT: Okay, you are talking about, when you say the person being detained, you are referring to this other gentleman who had his hands in his waistband?

A. Yes, Your Honor. He was unidentified at that point in time.

BY THE COURT: All right.

A. Umm, it appeared that by his actions, it was causing everybody else to stop, regather and come back.

BY THE STATE: Okay.

A. Against our instructions.

Q. Okay.

A. And umm, at that point in time when we started, **we started to move towards that group that began to gather and congregate, that's when I had contact with Mr. Gallinat.**

Q. And what happened?

A. Umm, **I specifically said to the group and the people that he was standing around, I said everybody needs to leave.**

Q. How many people are there?

A. **There was probably two or three that were standing along side Mr. Gallinat.**

Q. Okay.

A. At the time. Umm, I am not sure if they were acquaintances, or if he just happened to be very close to them.

* * *

Q. How far are they away from our Mr. Unidentified?

A. Probably seventy-five feet.

Q. Okay.

A. At that, at that point in time **I had instructed that group everybody needs to leave and Mr. Gallinat said [“I am not going anywhere, I am not leaving.”]**

Q. Okay, and how did he say that? Just like that or did he say it loudly?

A. Just, that's exactly how he said it, just like that.

Q. And then what happened?

A. He didn't scream or yell it, he just said [“I am not leaving[”].

Q. Okay.

A. **And I said [“]no, you need to leave. You are being told to leave, I am directing you to leave,[”] and he acknowledged me. He, he, he looked right at me, he nodded his head.** I believe at that point in time he understood my second request.

Q. Okay.

A. **But he did not leave.** Umm, I believe one person that was standing along side of him actually tried to get him to leave, and umm, **again, he said [“]I am not leaving.[”] That’s when I gave him the third command to leave.**

Q. All right, you gave him the third command. What was that?

A. **I said [“]you need to leave now or you are going to be placed under arrest.[”]**

Q. Okay. Then what happened?

A. **And he continued to stand there.**

Q. Okay.

A. As if, **as if to be defiant.**

Q. And . . .

A. So at that point I had approached and made contact with Mr. Gallinat, I actually reached out and I grabbed his arm and I said [“]I need you to come with me,[”] and he started to pull away. I said [“]don’t do that,[”] I said [“]you are now under arrest. Umm, don’t pull away from me.[”]

Q. Okay.

A. And at that point in time Mr. Gallinat became very aggressive, very physically aggressive and he’s . . .

Q. Be as specific as possible, Officer.

A. He started to pull away vigorously.

Q. Okay.

A. At that point in time the only course of action that we had to gain control was to try and restrain Mr. Gallinat on the ground.

(Emphasis added.)

On cross-examination, Patrolman Nawrockyj reiterated that he arrested Mr. Gallinat because of his failure to comply with multiple orders to leave:

BY [DEFENSE COUNSEL]: Well, what was the basis [for probable cause to arrest Gallinat] other than his physical refusal to leave? Did he make any statements?

A. Well, he said I am not leaving. That was after he was told by police to leave.

Q. What . . .

A. Then he also did not move. Umm, I took that as he is disregarding my request to leave.

* * *

Q. So it is not the volume, it is the content of the phrase I am not leaving?

A. Right, he was ignoring police commands.

Q. **Why did you tell him that he had to leave?**

A. **Because our goal at that point was to clear the parking lot. That was a problem area. People were starting to fight and they needed to leave.**

* * *

Q. Okay, so according to your report, you say that several subjects returned to the area, which provoked further disturbances and required police intervention. But that had nothing to do with Mr. Gallinat, correct?

- A. That actually did have everything to do with Mr. Gallinat.
- Q. Okay, so now we are getting somewhere. **So you are saying that his refusal, his verbal statement to you of ["I am not leaving"] caused other people to return to the scene.**
- A. **That's correct.**
- Q. Is that your . . .
- A. Yes.
- Q. . . . **Your testimony was that those people returned for him [Mr. Gallinat] and not for the [unidentified] person that was threatening Cpl. Zapf?**
- A. **That's my testimony because they came back right to the area where we were standing, that's correct.**
- Q. Okay, now you previously . . . testified that people were returning because of the [other] person detained. Are you now changing your testimony?
- A. I am not changing, I am not changing any of my testimony. People, people started to gather when that gentleman became, or was detained by University Police. Umm, and also **when I made contact with Mr. Gallinat, through his actions and his demeanor, it caused additional people to stop and come back.** They actually, they actually turned around and started to come back. . . .

* * *

- [Q.] What is, what was the disturbance of the peace that you were attempting to prevent?
- A. Initially?
- Q. No, when you gave the lawful order, . . . **What was the disturbance of the peace you were trying to prevent by telling him to leave?**

A. Further fights, further altercations, further obstruction of the roadway, further trespassing on private property. There is a whole host of things that we were trying to prevent that night.

(Emphasis added.)

On redirect, the State elicited the following testimony relative to Patrolman Nawrockyj's assertion on cross-examination that Mr. Gallinat's refusal to leave had "caused additional people to stop and come back":

Q. [BY STATE'S ATTORNEY] And where are the other people that you later see coming in? Where are they coming from.

A. They were walking through the parking lot, leaving.

* * *

Q. . . . And **they came back with your discussions with, your confrontation with the Defendant?**

A. **Turned around and came right back.**

Q. **How many?**

A. **Umm, probably about a dozen or so.**

* * *

Q. Okay, so your group has now gone from three to over twelve that you are dealing with?

A. Yes.

* * *

Q. What else is going on around, if anything? . . . That you can see and are aware of.

A. **I am seeing and I am hearing profanity, I am seeing people starting to gather and congregate, umm . . .**

Q. This is while you are dealing with . . .

A. This is while I am dealing with Mr. Gallinat. . . . I am seeing more and more people kind of surround us.

(Emphasis added.)

After Patrolman Nawrockyj’s testimony concluded, the court heard argument on Mr. Gallinat’s pretrial motion to dismiss/suppress. Defense counsel argued, inter alia: “The law in Maryland is clear. That absent fighting words, [Mr. Gallinat] is allowed to do what he did and therefore not only was the order [from Patrolman Nawrockyj] unlawful, but his arrest was and all charges flowing from that arrest should be suppressed for fruit of an illegal . . . arrest.”

The judge disagreed, and denied the appellant’s motion. The court explained:

I am not really seeing much in the way of . . . probable cause to arrest for acting in a disorderly manner to the disturbance of the public peace. I am not really getting that, but this other issue of willfully failing to obey a reasonable and lawful order of a law enforcement officer, Nawrockyj, made to prevent a disturbance to the public peace, I think there is a probable cause for arrest for that. Because the, in my judgment, this was kind of the tail end of a continuing issue that if not disbursed [sic], would not, could not, or excuse me, was intended to prevent a disturbance of the public peace and I think it was reasonable to do that. The return of a certain number of individuals suggests that they weren’t willing to disburse [sic] and the, the, Mr. Nawrockyj [sic] stated that he was not willing to disburse [sic]. . . . This is not a [F]irst [A]mendment issue, this is the reasonableness of the police to prevent a disturbance and we have had, I don’t need to repeat all the evidence we have had about how there was, it appeared reasonable to the police, and to the Court as the fact finder, that a number of these people intended to duke it out with each other and no one wanted that to happen with this number of people. So I am going to deny the Motion to Suppress.

After a recess, the parties reconvened and advised the court that they had come to an agreement regarding the manner in which the case would proceed. The State then nol

crossed the count charging disorderly conduct pursuant to Crim. Law § 10-201(c)(2). The State also placed on the stet docket the charges of resisting arrest and second degree assault.

With respect to the sole remaining count — failure to obey an order of a law enforcement officer pursuant to Crim. Law § 10-201(c)(3) — the parties agreed to proceed to a bench trial upon a not guilty plea and an agreed statement of facts. Defense counsel clarified that “we don’t agree that these are accurate facts[,] but these are the facts the State would have presented consistent with the statement of probable cause, as well as the testimony provided by Officer Nawrockyj on the record.” The prosecutor then presented the trial court with the following statement of facts.

BY THE STATE: Your Honor, I will just[,] **recognizing that the other facts are in the record that the Court has previously heard, including the charging document**, I will go through a brief additional, brief set of facts that are corroborated by that off of the statement of probable cause then. In Allegany County on 10/24/14, a little bit after midnight, Frostburg Police Officers and Frostburg State University officers responded to Bobcat Court Apartments for a report of a disturbance. Upon arrival and assisted by Officer Grimm, Officer Nawrockyj and others were disbursing [sic] a large group of people, approximately ninety-seven. As the group began to disburse [sic], umm, there were several subjects that were gathered in an area of a parking lot who appeared to be in the process of creating an altercation between themselves. Several people were asked to leave. During the period of time that police were detaining an unidentified subject, he overheard an individual he identified as Jiovanni Gallinat, say he was not leaving. He approached Mr. Gallinat and advised him three times to keep moving and leave the area. Mr. Gallinat acknowledged, the officer believed that he acknowledged his request and at that point he did not leave and was placed under arrest for the charge of failure to obey a lawful order. The officer testified previously that the other people were in the general area some had begun to return to that area of the general disturbance upon the refusal to leave of the Defendant in this matter, and that would be the State’s evidence, Your Honor.

BY THE COURT: Okay, and those are the facts that the State would present?

BY [DEFENSE COUNSEL]: Those are, Your Honor.

(Emphasis added.)

The trial judge commented that the facts were “[c]ertainly not the most egregious example of failure to obey a reasonable or lawful order that I have ever seen,” but the court nevertheless ruled that “the elements have been proved, so I would enter a verdict of guilty.”

After the prosecutor acknowledged that the State was “inclined to go with probation before judgment” (either before or after any appeal), defense counsel advised the court of the defendant’s preference to exercise his right of appeal. The court stated: “I see this as a P.B.J. case, but if you don’t want it now, that’s fine. That’s your call. I will impose a fine of one hundred dollars, plus court costs.” Mr. Gallinat noted this appeal.

STANDARD OF REVIEW

The standard for appellate review of a ruling on a motion to suppress was summarized as follows by the Court of Appeals in *Thomas v. State*, 429 Md. 246, 259 (2012):

Our review of a grant or denial of a motion to suppress is limited

to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party. We “undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.”

State v. Tolbert, 381 Md. 539, 548, 850 A.2d 1192, 1197 (2004)
(internal citations omitted).

In a case that had been tried upon an agreed statement of facts, the Court of Appeals described the standard for appellate review of a challenge to the sufficiency of evidence as follows:

When reviewing a sufficiency of the evidence challenge, it is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case. Rather, the standard of review regarding the sufficiency of evidence to support a criminal conviction is “whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” In other words, we review the evidence in the light most favorable to the prosecution and will reverse the judgment only if we find that no rational trier of fact could have found the essential elements of the crime.

Winder v. State, 362 Md. 275, 325 (2001) (citations omitted). On appeal, we decide whether, “after viewing the evidence in the light most favorable to the prosecution, any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Coleman*, 423 Md. 666, 672 (2011) (internal quotations omitted).

Appellate review of the sufficiency of a charging document is an issue of law we review *de novo*. See *Schisler v. State*, 394 Md. 519, 535 (2006) (“where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court’s conclusions are ‘legally correct’ under a *de novo* standard of review”).

DISCUSSION

1. Probable cause to arrest.

In ruling on Mr. Gallinat’s motion to suppress for lack of probable cause, the court focused on the count charging willful failure to obey a reasonable and lawful order of a law enforcement officer. As set forth in more detail above, after hearing extensive testimony

from the arresting officer (Patrolman Nawrockyj), the court was persuaded that, under the circumstances confronting the officer during the early morning hours of October 12, 2014, it was reasonable for the officer to order Mr. Gallinat to leave the area because there was an imminent risk of a public disturbance if the partygoers did not fully disperse from the area. Accordingly, the court ruled that there was probable cause to arrest Mr. Gallinat after he defiantly refused to comply with multiple orders to leave.

Probable cause has been defined as a “reasonable ground for belief of guilt.” *Haley v. State*, 398 Md. 106, 132 (2007). Considered in a light most favorable to the prevailing party — here, the State — Patrolman Nawrockyj’s testimony at the suppression hearing was sufficient to support the motion court’s conclusion that there was probable cause to arrest Mr. Gallinat for an infraction of Crim. Law § 10-201(c)(3). After hearing Patrolman Nawrockyj’s testimony, the suppression court found: “[I]t appeared reasonable to the police, and to the Court as fact finder, that a number of these people intended to duke it out with each other and no one wanted that to happen with this number of people.” The testimony supported the suppression court’s finding that the order to disperse was reasonable to prevent a disturbance, and Mr. Gallinat’s apparent refusal to budge, combined with his verbal insistence that he was not leaving, provided sufficient basis for concluding that there was a willful refusal to comply.

Counsel for appellant places great emphasis upon *Diehl v. State*, 294 Md. 466 (1982), and contends that the order to leave was an unlawful impingement upon Mr. Gallinat’s First Amendment rights to freedom of expression and assembly. *Diehl* was convicted of

disorderly conduct, under the precursor to Crim. Law § 10-201(c)(2), for refusing to comply with a police officer’s command for Diehl to wait in his cohort’s vehicle while the officer completed a traffic stop. At that point in time, police officers did not have the right to detain passengers during a traffic stop. Accordingly, because Diehl — a passenger — was protesting an unlawful order, the Court of Appeals held that any disturbance created by Diehl’s verbal protests did not constitute disorderly conduct. *Id.* at 478.²

The Court of Appeals’s decision in *Polk v. State*, 378 Md. 1 (2003), is more analogous to the present case than the *Diehl* case is. In *Polk*, the defendant was convicted of violating the precursor of Crim. Law § 10-201(c)(3), namely, Md. Code (1957, 1999 Repl. Vol., 2001 Supp.), Art. 27, § 121(b)(3), which provided, in relevant part, that “[a]

² The holding in *Diehl* has been called into question in a subsequent case decided by the Court of Appeals. In *Polk v. State*, 378 Md. 1 (2003), the Court of Appeals noted:

It is not at all clear that, on its facts, *Diehl* would be decided today as it was in 1982. The *Diehl* majority observed that Officer Gavin “did not have any right to make his demand on Diehl” that Diehl re-enter the vehicle following the traffic stop. In classifying Diehl’s response as protected speech, the majority’s analysis depended to a great extent on the conclusion that the officer’s conduct in ordering Diehl back into the car was “unlawful,” constituted “police misconduct,” and “exceed[ed] the bounds of [the officer’s] authority[.]”

* * *

Today, there is no question as to the lawfulness *vel non* of an officer’s order, following a traffic stop, to the passenger of the stopped vehicle either to remain in or exit the vehicle. For this reason, a major premise of the *Diehl* majority’s analysis no longer is valid.

378 Md. at 10 n.4 (internal citations omitted).

person may not willfully fail to obey a reasonable and lawful order of a law enforcement officer made to prevent a disturbance of the peace.” Polk, whose employment at a hospital had been terminated, returned to that hospital to pick up her final paycheck. While doing so, she encountered Raymond Sperl, a special police officer stationed at the hospital for security purposes. *Polk*, 378 Md. at 4. Sperl advised Polk that he had been directed not to give her the check but, instead, was to take it to the human resources offices. She responded with obscenities. An employee in the human resources office eventually authorized Sperl to give Polk her check, and he did so. Sperl then followed Polk to a hospital exit, and the two engaged in an exchange that involved Polk saying “fuck you, asshole,” and Sperl saying he felt sorry for the child who was with her. Sperl told Polk to keep quiet, stop cursing, and leave, or else he was going to lock her up for disorderly conduct. Evidence was presented that two women in the hospital heard the commotion and walked away from Polk and Sperl.

Once outside the hospital, “Polk’s continuing tirade” startled a group of ten or fifteen hospital employees standing nearby. *Id.* at 5. Polk continued to yell and curse at Sperl, and, when the vulgarity intensified, Sperl announced that he was placing Polk under arrest. A scuffle ensued, additional security officers arrived, and Polk was arrested. *Id.*

Polk was convicted of failing to obey a lawful order and resisting arrest. On appeal, both this Court and the Court of Appeals affirmed, concluding that, because Sperl’s orders were directed toward the volume of Polk’s voice, they were reasonable and lawful orders. *Id.* at 6-7. In reaching that conclusion, the Court of Appeals recognized that the First and Fourteenth Amendments to the United States Constitution ““have never been thought to give

absolute protection to every individual to speak whenever or wherever he [or she] pleases, or to use any form of address in any circumstances that he [or she] chooses.” *Polk*, 378 Md. at 9 (quoting *Eanes v. State*, 318 Md. 436, 446 (1990)).

As in *Polk*, there was evidence in the present case to support the suppression court’s conclusion that Mr. Gallinat’s arrest was based upon his *conduct* — the refusal to depart the scene of the out-of-control partygoers — and *not* based upon any opinion expressed by Mr. Gallinat. See also *Spry v. State*, 396 Md. 682, 696 (2007) (affirming conviction for failure to obey a lawful order under Crim. Law § 10-201(c)(3) where police had “arrived at the Garden Court Apartments . . . during a volatile and heated situation with ‘forty to fifty people standing in the middle of the roadway and parking lot, screaming, yelling . . . [and] carrying on,’” and the police officer “ordered those present, who did not live at the Garden Court Apartments, to disperse, which included Spry.”).

The circuit court did not err in denying appellant’s motion to dismiss/suppress.

2. Sufficiency of evidence.

As noted above, we apply a deferential standard of review to a judgment entered following a bench trial. Maryland Rule 8-131(c). We consider the evidence and all reasonable inferences therefrom in a light most favorable to the prevailing party, here, the State. When we apply this standard of review to the facts presented to the court in this case, we conclude that there was sufficient evidence for the trial court to find appellant guilty of willful failure to obey a police officer’s reasonable and lawful order that was made to prevent a disturbance to the public peace.

The facts of this case bear many similarities to the facts in *Spry*, although there are distinctions as well. In *Spry*, the arresting officer testified: “[I]t appeared that there was going to be an immediate altercation [with] . . . a whole bunch of people just acting completely out of control,’ and that he ‘thought a riot was ensuing’ because ‘there was enough people there’ and it ‘was getting way out of control, way too fast.’” 396 Md. at 684–85. The officer testified that *Spry* refused to leave the scene after four or five orders to move along, and that the officer was met with curses and defiance in response to these requests. *Spry* eventually left the area, but was later charged with failure to obey several orders to leave. Affirming *Spry*’s conviction for violating Crim. Law § 10-201(c)(3), the Court of Appeals explained:

In the present case, Officer Jester, after a tumultuous series of events, arrived at the Garden Court Apartments on April 19, 2004, during a volatile and heated situation with “forty to fifty people standing in the middle of the roadway and parking lot, screaming, yelling . . . [and] carrying on.” To squelch the disturbance, he ordered those present, who did not live at the Garden Court Apartments, to disperse, which included *Spry*. Instead, *Spry* refused to leave, acted menacingly and loudly. Although *Spry* eventually left, it was at the insistence of a colleague and after Officer Jester had repeated his order at least four or five times. *Spry*’s noncompliance until that point is not negated by his eventual and untimely decision to leave.

Id. at 696.

There was evidence in the record in the present case from which the trial judge could have found that Officer Nawrockyj reasonably believed that, in the midst of ongoing efforts of the police to fully disperse a volatile crowd, Mr. Gallinat’s refusal to leave the parking lot constituted a willful failure to obey a police officer’s reasonable and lawful order made to prevent a disturbance to the public peace, in violation of CL § 10-201(c)(3). The State

presented evidence that, when the police arrived at the Bobcat Court Apartments, they found “people yelling and screaming.” The police observed that, in the parking lot, “there were several subjects that were lifting up their shirts as if to, you know, posture and try to start some kind of physical altercation.” There was evidence that, as a result of Mr. Gallinat’s refusal to obey the orders to leave, some of the partygoers who had begun to depart returned to the scene where Mr. Gallinat was standing. At the point when Patrolman Nawrockyj made the decision to place Mr. Gallinat under arrest, the number of individuals surrounding him had swelled from three to twelve. Viewing the evidence in the light most favorable to the prevailing party, it was not unreasonable for Patrolman Nawrockyj to conclude that the situation remained volatile, and that dispersing the crowd was necessary to prevent a disturbance to the public peace.

3. Sufficiency of charging document.

Appellant contends that the Statement of Charges was defective, and that all charges should have been dismissed. In his brief, appellant argues:

On its face, the Statement of Charges does not provide adequate notice as to what criminal conduct was the basis for the Appellant’s arrest. Consequently, the Statement of Charges should have been dismissed for violating the due process clause of [the] United States Constitution, the Maryland Declaration of Rights, and the Maryland Rules of Criminal Procedure. The Statement of Charges further fails to state what the lawful and reasonable order was and what conduct constituted a breach of the peace.

In the instant case, the Statement of Charges merely alleged that appellant “did wilfully fail to obey a reasonable and lawful order of a law enforcement officer, to wit Ptr. M. Nawrockyj made to prevent a disturbance to the public peace.” The Statement of

Charges tracks the language of CL § 10-201(c)(3), which states: “A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.” The contention made in this appeal is that the charging document failed to comply with Maryland Rule 4-202(a) because the Statement of Charges did not provide any details regarding the order Mr. Gallinat failed to obey.

But the suggestion that the Statement of Charges was the only description provided to appellant regarding the details of the alleged offense is belied by the acknowledgment in the memorandum defense counsel filed in support of the motion to dismiss asserting that, as a result of the deficiency in the Statement of Charges, “the Defendant has no ability to defend against facts unknown to him to support a finding of probable cause **other than those facts contained in the Statement of Probable Cause** which in the light most favorable to the State, does not support such a finding.” (Emphasis added.) It is clear that appellant received both the Statement of Charges and the supporting Statement of Probable Cause. When we consider both of those documents, we are satisfied that he received sufficient details of the charges to properly prepare a defense. The Statement of Probable Cause clearly identifies the alleged orders “to keep moving and leave the area,” and clearly identifies the alleged refusal to comply with the orders to leave the area. *See Spry, supra*, 396 Md. at 696.

The motion judge observed that this case was filed in the District Court, and the uniform criminal citation utilized “combines a [S]tatement of [P]robable [C]ause with a [S]tatement of [C]harges to one piece of paper.” The court concluded that due process was

satisfied “[w]hen you consider the narrative in the [S]tatement of [P]robable [C]ause, which goes on for . . . two full pages,” and informs the individual of the basis of the charges listed on the accompanying Statement of Charges.

As the motion judge alluded to, because this case was originally filed in the District Court, the rule addressing the requisite format of the charging document is Maryland Rule 4-211(b). Subsection (2) of that rule is applicable to charges filed after arrest of a defendant, and provides:

(2) After Arrest. When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

It appears that Patrolman Nawrockyj complied with Rule 4-211(b)(2) by preparing a statement listing the four charges against the defendant, as well as a detailed narrative Statement of Probable Cause setting forth the material facts that led to the arrest and the filing of the charges. In our view, the motion court correctly ruled that, in this case, the details provided in the Statement of Probable Cause satisfied the requirement for a charging document to give a defendant adequate notice of the charges against him. We conclude that the motion court properly denied the motion to dismiss for inadequacy of the charging documents.

**JUDGMENT OF THE CIRCUIT
COURT FOR ALLEGANY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**