

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1728

September Term, 2014

IN RE: CECILIA F.

Kehoe,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: March 2, 2016

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Following an adjudicatory hearing on August 13, 2014, a juvenile master for the Circuit Court for Baltimore City determined that Cecilia F. was involved in the commission of acts that, if committed by an adult, would constitute disturbing the peace, failure to obey a lawful order of a police officer, and resisting arrest in violation of Md. Code (2002, 2012 Repl. Vol.) §§ 9-408 and 10-201(c)(2), (3) of the Criminal Law Article. (“Crim. Law”). A disposition hearing was held on September 9, 2014, after which the juvenile court affirmed the master’s finding and ordered continued commitment of Cecilia F. to the Maryland Department of Juvenile Services.

In this appeal Cecilia F. argues that the evidence was insufficient to sustain the juvenile court’s delinquency findings. We agree with her as to the adjudication of delinquency in regards to the charge of failure to obey a lawful order but disagree with her regarding the two other charges.

I. BACKGROUND

On July 2, 2014, the State’s Attorney for Baltimore City filed a delinquency petition against Cecilia F. The matter went before a juvenile master who heard testimony from one witness, *i.e.*, Courtney Moore, a Baltimore School Police Officer.

At the time of trial, Officer Moore had served as a police officer for over six years. He was patrolling the central district area in Baltimore City when, at about 6:45 p.m., on July 1, 2014, he saw a “male and female, assaulting each other.” The assault was taking place in front of the First Mariner Arena. A man had thrown a woman to the ground. Officer

Moore placed the man under arrest. His partner arrested the woman. Appellant then came from behind Officer Moore and, in Officer Moore's words, the following occurred:

A. [The male arrestee] was explaining what was happening. . . . [M]yself and my partner, Sgt. Ramsey, we're trying to assess the situation when [appellant] came, was behind me yelling F-the police, girl. I'm recording this s-h-i-t. And at which time I advised her for officer safety, because she was directly behind me, to leave the area. I didn't know what her intentions were. I really couldn't determine if she was with the two individuals [who had been engaged in a scuffle] and she refused. At which time, at one point in time she reached towards the male, my male suspect.

(Emphasis added.)

On cross-examination, Officer Moore explained once more what appellant did:

She [appellant] was directly behind me, I advised her, I said ma'am, get from behind me for officer safety. Because, like I said we have a domestic situation, which is a very dangerous situation in my line of work. And I have now had this third party, who I don't know her role, if any, in this situation. I advised her several times to leave and she did not.

Officer Moore added that while the male arrestee was handcuffed, appellant reached toward that arrestee's right arm.

After having been told to leave, appellant told Officer Moore that "you not locking me up." Officer Moore then arrested appellant. Officer Moore struggled with appellant as he attempted to place appellant's hands behind her back. Appellant kept "moving her hands away" until Officer Moore managed to "take her to the ground and then cuff both hands."

On cross-examination, Officer Moore explained his reason for arresting appellant as follows:

[APPELLANT’S COUNSEL:] Okay, what was she arrested for?

A. Disorderly conduct, failure to obey after I asked her several times to leave the area and she didn’t. Now she’s interfering in my investigation as far as the domestic assault which occurred.

Q. Tell me specifically how she interfered with your investigation.

A. Because I have two individuals in custody and you’re reaching towards one of my suspects. That’s how[.] She’s reaching towards him. I’m not sure if she could be attempting to pull him away, I don’t know what her intentions are. Right now you’re hindering my investigation, yes.

Q. Okay. Then she said once you grabbed her, she reached for this person sitting on the ground and you grabbed her arm?

A. And advised her she was under arrest.

Q. And she said f**ck no, right? You’re not arresting me.

A. Yes.

Q. All right. So her remarks were directed to you?

A. Yes.

Q. Fair enough?

A. Yes.

When asked how appellant’s conduct “affect[ed] . . . the entire scene overall” Officer Moore replied “it was just me and my partner. I had radioed for additional units because the majority of the people from the bus stop were irate and surrounding me and my partner.”

The “crowd (which numbered 20-30 people) was yelling obscenities [at Moore and his partner].”

Officer Moore was asked whether appellant addressed the crowd or was trying to speak to the crowd. He answered:

That, to be honest it was so noisy, I knew that she was yelling obscenities. I really wasn't paying attention. After she was in custody I wasn't really focused on what she was saying. My attention now was at the crowd, at which time I radioed for additional units. And BPD [Baltimore Police Department] units came, even University of Maryland police officers came. I believe the signal 13 was dropped where any officer in the area, you know, is to respond at my location. And they did.

Officer Moore then clarified his testimony by saying that appellant was addressing both the officers and the crowd. When asked how the crowd reacted, “based on [appellant's] actions,” Officer Moore said that “they were angry. They were irate.”

One of the reasons Officer Moore called for assistance was because he “didn't know what their [the members of the crowd] intentions were[.]” The arrival of other police officers was helpful because the additional officers helped to control the scene. When asked whether there came a time when he was able to control the crowd, he answered:

The additional units, they did a good job with that. They came and, you know, created space and just moved the crowd along. Whoever wasn't, you know, getting on the bus stop or seemed, what I seen is they just moved them out of the area and it was pretty controlled after they arrived on scene.

Following the officer’s testimony, appellant moved for a judgment of acquittal and to dismiss for lack of jurisdiction. Defense counsel first asserted that Officer Moore, a school police officer, did not have the authority to arrest appellant. Counsel also maintained, with respect to the disorderly conduct charge, that appellant’s remarks were aimed at the police officer and one of the arrestees, and not towards the crowd. Appellant was, according to defense counsel, “directing her outrage” towards Officer Moore. Appellant stressed, as she does on appeal, that the use of profanity does not justify a conviction for disorderly conduct. In regard to the charge of resisting arrest, appellant argued that she had a right to resist arrest because the arrest was not justified.

The juvenile master rejected the jurisdictional attack, and concluded, with respect to the merits, that the evidence when viewed in the light most favorable to the State, was sufficient for the case “to move forward.” The defense then rested and appellant’s counsel renewed her motion for a judgment of acquittal as to all charges. The master denied her motion. In regard to the issue of whether appellant was involved in the crimes with which she was charged, the Master said:

All right, with respect to Count 1, Ofcr. Moore testified that he was on duty on July 1 near the Arena and he observed a domestic situation between a male and a female. He arrested the male, his partner, Ofcr. Ramsey, arrested the female. After the male suspect was under arrest, the Respondent came up behind him and began to use profanity. Presumably the Respondent was attempting to record the entire incident.

When the officer asked the Respondent to leave, not only did she refuse, she continued to use expletives and at some point reached around in an attempt to grab the arm of the male suspect that the officer had placed under arrest. The officer testified, and the Court does find his testimony quite credible, that the crowd did not begin to yell obscenities until the Respondent began her actions towards him and his partner.

The evidence is sufficient to find that the Respondent willfully acted in a disorderly manner to the disturbance of the public peace. Ofcr. Moore testified that the crowd, after observing the interactions between he and the Respondent, between him and the Respondent, became irate. Fact, Count 1 is sustained.

With respect to Count 2, after Ofcr. Moore gave the Respondent, or advised her several times to leave, the Respondent refused. In addition to her refusal, again, she attempted to grab the male suspect that Ofcr. Moore had under arrest. At that point Ofcr. Moore advised her that she was under arrest. The Respondent resisted to the point that he had to take her down, that was his testimony.

The Court finds that (a) the arrest was quite lawful in that the Respondent failed to obey several commands and that the Respondent, given the officer's actions and having to take her down to the ground did resist arrest. Count 2 is sustained.

With respect to Count 3, the officer, Ofcr. Moore testified that he responded to a domestic scene which it is well settled that domestic scenes can be quite volatile. Not only was there a domestic scene, there was a crowd of people around the domestic scene. The Respondent used profanity and according to the officer, again, her behavior caused the crowd to become irate.

Whether or not her speech is protected, the Court must look at the totality of the circumstances. An irate crowd, a domestic scene, and a respondent coming up behind an officer

and attempting to reach around to a suspect who is in custody. The officer testified he did not know who she was, or what her intentions were. The Respondent refused to leave, shouting expletives and telling the officer you are not arresting me, I am not going anywhere.

The Respondent's actions in failing to obey a lawful command, her actions in attempting to touch the male suspect who was under arrest clearly interfered with and hindered the officer's investigation. As he had a suspect in custody there was no way, no way that the Respondent was justified in attempting to touch a male suspect in custody.

The Respondent, the Court does find beyond a reasonable doubt that the Respondent did willfully fail to obey a reasonable and lawful order by Ofcr. Moore. That count is sustained.

On September 9, 2014, this matter went before the juvenile court for an exceptions hearing, following which the court overruled the exceptions and sustained the Master's findings as to all three charges. This timely appeal followed.

II. DISCUSSION

A. Standard of Review

When faced with a challenge to the sufficiency of the evidence, Maryland courts have applied the test set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Smith v. State*, 415 Md. 174, 184 (2010). We must determine “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.” *Jackson*, 443 U.S. at 319. *Accord, Allen v. State*, 402 Md. 59, 71 (2007). “This same standard of review applies in juvenile

delinquency cases. In such cases, the delinquent act, like the criminal act, must be proven beyond a reasonable doubt.” *In re Timothy F.*, 343 Md. 371, 380 (1996) (citation omitted). We review the juvenile court’s findings of fact for clear error. *In re Shirley B.*, 419 Md. 1, 18 (2011) (citing cases). Md. Rule 8-131(c). We will not overturn the judgment of the court on the evidence absent clearly erroneous fact finding and ““will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”” *Elderkin v. Carroll*, 403 Md. 343, 353 (2008) (quoting Rule 8-131(c)).

B. Disorderly Conduct - Disturbing the Peace

Appellant maintains that her disorderly conduct – disturbing the peace - adjudication, cannot stand because the charge was based on her use of profane or vulgar language, and that the use of such language is protected conduct under the First Amendment. The State contends that appellant’s conviction was not based on the content of her language, but on appellant’s crowd-directed language, and her overall conduct and its intended effects.

Crim. Law, section 10-201 governs the first count in the petition. That section reads, in relevant part:

§ 10-201. Disturbing the public peace and disorderly conduct.

* * *

(c) *Prohibited.* ... (2) A person may not willfully act in a disorderly manner that disturbs the public peace.

“The gist of the crime of disorderly conduct ... as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area.” *Drews v. State*, 224 Md. 186, 192 (1961) (citation omitted), *vacated on other grounds*, 378 U.S. 547 (1964); *Livingston v. State*, 192 Md. App. 553, 570 (2010) (citing cases). In *Reese v. State*, 17 Md. App. 73 (1973), this Court vacated a conviction for disorderly conduct based on Reese’s use of profanity because, under the circumstances of that case, the defendant’s speech was protected by the First Amendment. The *Reese* Court observed that the statute proscribes “conduct of such a nature as to affect the peace and quiet of persons actually present who may witness the conduct or hear the language and who may be disturbed or provoked to resentment thereby.” *Id.* at 80. *See also Drews*, 224 Md. at 192.

Officer Moore testified that the majority of the people that had gathered were “irate and surrounding [him] and [his] partner” after appellant said: “F**k the police” and that appellant was addressing both him and the crowd when she yelled that and other profanities. This is shown by the following exchange:

[PROSECUTOR]: And when Ms. F. was yelling, was she addressing the police officers, was she addressing the crowd, if you recall?

A. Both. She was continuing yelling obscenities towards myself and my partner ... to the F– the law and just things of that nature.

Q. And based on her actions, how did you observe the crowd react to what she was doing?

A. Well they were, they were angry. They were irate. They were –

[DEFENSE COUNSEL]: Same objection [to conclusion that crowd was irate].

THE COURT: All right. Overruled.

Appellant contends that the principles set forth in *Diehl v. State*, 294 Md. 466 (1982) should govern this case. In *Diehl*, a police officer stopped an automobile in which Diehl was a passenger. *Id.* at 468. The officer, who had observed a traffic violation, was approaching the car when Diehl exited the vehicle. When the officer ordered Diehl to get back inside, the latter yelled “‘F**k you, Gavin [the officer];’ ‘I know my rights;’ ‘you can’t tell me what to do;’ and ‘things like that.’” *Id.* at 468. Diehl was arrested for “screaming obscenities and . . . drawing a crowd.” *Id.* at 468. He appealed after he was convicted.

The Court of Appeals reversed. *Id.* at 478-79. The *Diehl* majority rejected the State’s argument that the defendant’s conviction should stand because he had violated Art. 27, § 121 (the disorderly conduct statute then in effect) “by making loud and unseemly noises in refusing ‘to obey [the officer’s] proper order.’” *Id.* at 470. The majority reasoned that the State’s rationale effectively centered on the content of Diehl’s speech, and thus the enforcement of the disorderly conduct statute in Diehl’s case was justified. *Diehl*, 294 Md. at 471-72. The Court explained:

Diehl’s oral communication in this situation clearly constituted speech. Our examination of the record indicates that Gavin ordered Diehl to get back into the car; however, the officer did not have any right to make this demand on Diehl. Only then did Diehl begin to address Gavin. Diehl’s communication expressed his outrage with this unlawful police conduct, it was addressed only to Gavin (he was not trying to disturb others or exhort them to breach the peace), and his words were chosen to emphasize his outrage (not to offend others). Gavin’s order precipitated the entire episode; Diehl’s speech was merely a response. Even the time and decibel level of this response was a communication that, although distasteful, should not have been surprising to Gavin.

Once this communication has been defined as speech, it is clear that the statute does not apply in light of Diehl’s First Amendment rights in this communication. Section 121 proscribes conduct when the offender: (1) “wilfully disturb[s] any neighborhood by loud and unseemly noises,” or (2) “profanely curse[s] and swear[s] or use[s] obscene language” at a place within the hearing of persons passing by.

Diehl’s speech does not meet the elements of the first possible proscription. Diehl did not wilfully disturb anyone. Diehl was speaking to Gavin. His actions were motivated solely as a response to Gavin’s order. The evidence simply does not indicate that Diehl intended to disrupt the quiescence of the neighborhood. People might have begun to stop, look and listen, forming a crowd; however, there also is no evidence showing that any of the observers was disturbed – they probably were mere curiosity seekers. Based on the evidence we cannot conclude that Diehl wilfully caused a disturbance.

Id. at 471-72.

Diehl is inapposite. From the words used by appellant, *i.e.*, “F**k the police” it could be legitimately inferred that the words were directed at the crowd - not the police officer.

Moreover, the testimony of Officer Moore provided direct evidence that the profanities were directed, in part, at the crowd. Therefore, taking the evidence in the light most favorable to the State, there was evidence that appellant directed her words at the crowd.

Appellant’s words and conduct (grabbing the arm of one of the arrestees) were sufficient to permit a trier-of-fact to infer properly that appellant’s conduct and words were “of such a nature as to affect the peace and quiet of persons actually present [at the bus stop]” who observed the conduct and heard the inflammatory language and who were evidently disturbed or provoked to resentment thereby. *Drews*, 224 Md. at 192. To be found guilty, the “effect of [her] conduct need only be that the peace was disturbed.” *Dziekonski v. State*, 127 Md. App. 191, 201 (1999). If “a citizen goes beyond the bounds of the protest and seeks to enlist the crowd to interfere with the police officer and consequently precipitates public disorder amounting to a breach of the peace, the police officer may, under such circumstances, take steps to quell the disorder, even to the extent of arresting the citizen.” *Diehl v. State*, 294 Md. at 472. We therefore hold that the evidence was sufficient to find appellant “involved” as to Count 1.

C. Failure to Obey a Lawful Order

Appellant contends her delinquency adjudication for failure to obey a lawful order must be reversed because, *inter alia*, Officer Moore’s order that she leave the scene “was neither lawful, nor made to prevent a breach of the peace.”

Crim. Law, section 10-201(c)(3) 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.

When Officer Moore told appellant to leave the area, his concern was for his own safety and because he suspected that appellant might have been involved with the original two combatants. The order to leave was made after appellant, while yelling, reached towards the suspects that was in Officer Moore’s custody. On this record, we are unable to conclude that there was sufficient evidence that Officer Moore’s order was made to “prevent a breach of the peace.” In *Dennis v. State*, 342 Md. 196, 201 (1996), the Court of Appeals noted that it “has found there to be a ‘police command’ aspect of disorderly conduct.” The *Dennis* Court explained that “[t]o be guilty of disorderly conduct on this basis, however, there must be a sufficient nexus between the police command and the probability of disorderly conduct.” It is true, as the State emphasizes, that the “crowd became irate and surrounded Officer Moore and his partner” at one point and that the crowd reacted to appellant’s conduct. But Officer Moore’s order, according to his testimony, was prior to the actions of appellant that provoked a reaction from the crowd. Officer Moore did not indicate that his command was given to protect against the crowd becoming disorderly. To be sure, appellant’s later actions of yelling, inciting the crowd and related conduct constituted disorderly conduct under Crim. Law § 10-201(c)(2), but the sequence of events as explained by Officer Moore undermines the State’s argument that appellant, with some of this same behavior, also violated Section 10-201(c)(3). The juvenile court erred by upholding the juvenile master’s finding that

appellant was involved, as to Count 2, due to the refusal to obey a lawful order in violation of Crim. Law § 10-201(c)(3).

D. Resisting Arrest

Appellant’s claim that her adjudication for resisting arrest must be reviewed is effectively foreclosed by our disposition of the first issue and our holding that the evidence was sufficient to sustain her adjudication under Crim. Law § 10-201(c)(2). Section 9-408(b) of the Criminal Law Article provides that “[a] person may not intentionally: (1) resist a lawful arrest[.]” To obtain a conviction for resisting arrest, the State must prove intent, and the following:

- (1) that a law enforcement officer arrested or attempted to arrest the defendant;
- (2) that the officer had probable cause to believe that the defendant had committed a crime, *i.e.*, that the arrest was lawful; and
- (3) that the defendant refused to submit to the arrest [and] resists the arrest by force.

Rich v. State, 205 Md. App. 227, 240 (2012).

The record contains sufficient evidence to sustain the finding that appellant was involved in the delinquent act of resisting arrest. Officer Moore attempted to arrest appellant, and as already demonstrated had probable cause to arrest her for disorderly conduct. Appellant does not contest the fact that she refused to submit and resisted the officer’s attempt to arrest her. Therefore, the juvenile court did not err in rejecting appellant’s

exception to the juvenile master's finding that appellant was involved in the commission of resisting arrest.

CONCLUSION

The juvenile court properly concluded that the evidence was sufficient to sustain the juvenile master's findings with respect to the charges that appellant engaged in the commission of acts that, if the acts had been committed by an adult, would be sufficient to convict her of disorderly conduct and resisting arrest. The evidence was insufficient, however, to sustain the charge that appellant willfully failed to obey a reasonable and lawful order of a police officer.

FINDING OF DELINQUENCY AS TO THE CHARGE OF FAILURE TO OBEY THE LAWFUL ORDER OF A POLICE OFFICER REVERSED; REMAINING FINDINGS OF DELINQUENCY OTHERWISE AFFIRMED. APPELLANT TO PAY 2/3 OF THE COSTS; REMAINING 1/3 OF THE COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY.