Circuit Court for Wicomico County
Case No.: C-22-CR-22-000213

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1506

September Term, 2022

ROBERT JACKSON

v.

STATE OF MARYLAND

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: December 7, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Robert Jackson was tried before a jury in the Circuit Court for Wicomico County and convicted under Md. Code Ann., Criminal Law ("CR") § 10-201(c)(3) of failing to obey an order made to prevent a disturbance to the public peace. On appeal, among the three questions presented by Mr. Jackson is the following:

> Was the evidence sufficient to sustain Mr. Jackson's conviction for failure to obey a lawful order?[1]

The State concedes that the evidence was not sufficient to sustain Mr. Jackson's conviction, and we agree. Because our resolution of this question is dispositive of Mr. Jackson's appeal, we need not consider his two remaining issues, and we thus reverse.

BACKGROUND

On February 7, 2022, police responded to a call from Rachel Taulton regarding a domestic dispute between her and her then-boyfriend, Mr. Jackson. During the call, Ms. Taulton indicated to dispatchers that Mr. Jackson had a gun, although police later clarified that "[t]here was no mention of it being displayed or used" during the dispute, only "that he had one." Nonetheless, upon arrival at the residence, police instructed Mr. Jackson and Ms. Taulton to come outside.

Once outside, Ms. Taulton was guided to the "right side of the house" with one responding officer, Officer Douglas. Mr. Jackson approached a different officer, Officer

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[1] As drafted, Mr. Jackson's two other issues presented are:

II. The court erred by refusing to ask the prospective jurors whether they believed that a person must always comply with the demand of law enforcement."

III. Did the court err in permitting the prosecutor to argue facts not in evidence?

Dill, who instructed Mr. Jackson not to re-enter the home. According to Mr. Jackson, Officer Dill was "making eye contact and speaking to" him, but he did not remember what was said. Mr. Jackson turned around and went back inside of the home "for a brief moment" before returning outside.[2]

Police interviewed Ms. Taulton. She indicated that during the dispute, Mr. Jackson grabbed her by the neck and threw her down onto a bed. Officers observed that Ms. Taulton "had two fresh scratch marks on the right side of her neck." Accordingly, Mr. Jackson was placed under arrest and charged with second degree assault, failure to obey an order made to prevent a disturbance, and resisting arrest.

On September 12, 2022, Mr. Jackson appeared for a jury trial. Officer Douglas testified at trial; Officer Dill did not. During the trial, the State asked Officer Douglas why Officer Dill had instructed Mr. Jackson not to re-enter the home, and Officer Douglas replied that he did not know:

> [THE STATE:] Was there a time when the defendant attempted to reenter the home on School[] Street?
>
> [OFFICER DOUGLAS:] That's correct.
>
> [THE STATE:] Was he told not to reenter that address?
>
> [OFFICER DOUGLAS:] That's correct.
>
> [THE STATE:] Who was he told that by?
>
> [OFFICER DOUGLAS:] Officer Dill.

[2] At trial, Mr. Jackson explained that he went back inside "to get [his] keys" because he was "afraid they weren't going to let [him] back in the residence."

> [THE STATE:] Do you happen to have personal knowledge of what the defendant [sic] was told to stay outside?
>
> [OFFICER DOUGLAS:] I do not, but I can only -- you know, I'm not going to make any assumptions. So I do not know why.

At the close of the State's case, Mr. Jackson made a motion for judgment of acquittal. As to the failure to obey an order to prevent a disturbance to the public peace charge he asserted that:

> The only testimony about the reason the order was made was that Officer Douglas didn't know why Officer Dill ordered it. He could have assumed, but he wasn't able to speculate, I believe, was the language was what he said. So we have a complete lack of evidence as to a whole element of that charge.

The circuit court denied the motion, explaining that:

> [T]he evidence is that the officers were telling the defendant not to reenter his home. There was shouting, loud voices of the officers because the inference is he wasn't listening to the officers.
>
> The houses that are in the video, I note are -- they look like they're about maybe 50 feet, less than 50 feet away on both sides of the house. You're in a neighborhood. It's in the daytime.
>
> Certainly, there could be a disturbance of the public peace if under all of those circumstance[s], on a domestic violence call where there could be an armed subject who -- with an individual who is not listening to the officers, if that's what he was doing, that certainly would be a situation that had the potential to disturb the public peace. And their reasonable and lawful[] orders were seemingly and ostensi[bly] made to prevent further disturbance of the public peace. So I'm going to deny your motion for judgment of acquittal as to that charge.

After resting his case, Mr. Jackson renewed the motion for judgment of acquittal, which was denied. The jury convicted Mr. Jackson of failure to obey an order made to prevent a disturbance to the public peace and acquitted him of the two remaining charges. This appeal of Mr. Jackson's sole conviction followed.

STANDARD OF REVIEW

Appellate courts "review sufficiency of evidence rulings by whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. McGagh*, 472 Md. 168, 194 (2021) (cleaned up). Accordingly, when reviewing the sufficiency of the evidence, "[w]e do not measure the weight of the evidence[.]" *Taylor v. State*, 346 Md. 452, 457 (1997). Instead, "our concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Id*.

DISCUSSION

Mr. Jackson asserts that the evidence was insufficient to show that Officer Dill's order was made to prevent a disturbance to the public peace, and accordingly, that his conviction should be reversed. Specifically, he asserts that the State "failed to establish that the order not to return to the house was made to prevent a disturbance to the public peace[,]" and that the evidence failed to "indicate[] a nexus between the lawful order and the possibility of a public disturbance." The State agrees. Specifically, the State asserts that "[CR] § 10-201(c)(3) only reaches disobedience of orders 'ma[de] to prevent a disturbance to the public peace'" and that based upon the evidence at trial, "[a] reasonable factfinder could not find that Officer Dill's orders were made for this purpose." (quoting CR § 10-201(c)(3)). We agree with Mr. Jackson and the State.

Several disorderly conduct offenses are codified at CR § 10-201. Specifically, CR § 10-201(c)(3) prohibits a person from "willfully fail[ing] to obey a reasonable and lawful

order that a law enforcement officer makes to prevent a disturbance to the public peace." A disturbance to the public peace "signifies disorderly, dangerous conduct" or "an affray, actual violence, or conduct tending to or provocative of violence by others." *Spry v. State*, 396 Md. 682, 691 (2007) (cleaned up). It has been described as "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." *Id*. at 692 (cleaned up).

It follows that evidence of disorderly conduct "requires the actual presence of other persons who may witness the conduct or hear the language and who may be disturbed or provoked to resentment thereby." *In re Nawrocki*, 15 Md. App. 252, 258 (1972) (cleaned up); *see also Spry*, 396 Md. at 685 (affirming disorderly conduct conviction where witnessing officer testified that there were "forty to fifty people" nearby); *Hallengren v. State*, 14 Md. App. 43, 46 (1972) (affirming disorderly conduct conviction where the evidence indicated the presence of a "crowd"); *Luthardt v. State*, 6 Md. App. 251, 260 (1969) (same); *Bacheller v. State*, 3 Md. App. 626, 630 (1968), *rev'd on other grounds*, 397 U.S. 564 (1970) (same).

Nonetheless, the mere presence of another person is not in itself sufficient to support a conviction under CR § 10-201(c)(3). *See Lamb v. State*, 141 Md. App. 610, 640 (2001) (reversing failure to obey lawful order conviction where two other people were present, but evidence failed to indicate that order was made to prevent a disturbance of the public peace). Instead, the evidence must indicate that the order was given "to prevent someone from inciting or offending others." *Okwa v. Harper*, 360 Md. 161, 185 (2000). In other words, there must also be "a sufficient nexus between the police command and the

probability of disorderly conduct." *Dennis v. State*, 342 Md. 196, 201 (1995), *cert. granted, judgment vacated on other grounds*, 519 U.S. 802, (1996), *reaffirmed* 345 Md. 649 (1997).

Here, the evidence does not establish that Officer Dill's order to Mr. Jackson was made to prevent a disturbance to the public peace. There is no evidence in the record that any other person, much less a crowd, was nearby. Indeed, the evidence indicates that, apart from Mr. Jackson and the officers, the only other person present was Ms. Taulton, and there was no allegation that the order was made to prevent inciting, offending, or provoking her. Nor did testimony establish a sufficient nexus between Officer Dill's order and the probability of disorderly conduct; Officer Dill did not testify, and Officer Douglas testified that he did not know why the order was made.

In denying Mr. Jackson's motion for judgment of acquittal, the circuit court determined that the evidence indicated "a situation that had the potential to disturb the public peace[,]" noting that there were houses "less than 50 feet away on both sides[,]" that the interaction occurred "in a neighborhood[,]" and that it was "daytime." While true, these facts do little to indicate the "actual presence" of other people nearby. *In re Nawrocki*, 15 Md. App. at 258. Nor do they provide any support for the assertion that the order was made due to the "probability of disorderly conduct." *Dennis*, 342 Md. at 201. Accordingly, we agree that the conviction was not supported by evidence sufficient to "fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]" and we reverse. *Taylor*, 346 Md. at 457.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY REVERSED. COSTS TO BE PAID BY WICOMICO COUNTY.