Circuit Court for Baltimore County
Case No. C-03-CR-22-6010

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 120

September Term, 2023

BRUCE H. EBERT

v.

STATE OF MARYLAND

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 29, 2024

*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).

This appeal arises from an incident on August 15, 2022, at the North Point branch of the Baltimore County Library, located in Dundalk. At trial, the evidence adduced that on August 15, 2022, Bruce H. Ebert ("Appellant") entered the library seemingly under the belief that a year-long ban from the premises had expired the day before. Library staff members, under the belief that the ban was still in effect, called police to report Appellant's presence as trespassing. The responding officer ordered Appellant to "come outside". The officer then arrested Appellant when he refused to comply. While being escorted from the library, Appellant yelled and struggled with the officer, disrupting library staff and patrons.

In a bench trial, the Circuit Court for Baltimore County found Appellant guilty of section 10-201(c)(2), disorderly conduct, and section 10-201(c)(3), failure to obey a reasonable lawful order, in violation of the Criminal Law Article ("CR") of the Maryland Code.[1] He was sentenced to two consecutive but suspended terms of 60 days, plus two years of unsupervised probation. Appellant timely appealed. Appellant presents the following issue for our review:[2] Whether the evidence is sufficient to sustain his convictions of sections 10-201(c)(2) and (3).

For the reasons to follow, we shall affirm Appellant's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

[1] Appellant was additionally charged with, and then subsequently found not guilty of, CR Section 6-403 trespass and CR section 9-408(b) resisting arrest.

[2] Rephrased from: Was the evidence insufficient to sustain Mr. Ebert's convictions for disorderly conduct disturbing the public peace and failure to obey a reasonable lawful order?

The following facts have been ascertained from testimony, body worn camera footage, and library ban letters admitted at trial.

The precursor to the events leading to his arrest began a year earlier in August of 2021, when Appellant was banned from the library for "[a]ggressive, threatening disruptive behavior." In a letter from the library, Appellant was notified that the ban covered the timeframe from August 14, 2021, through August 14, 2022, and that violating the ban could result in police being notified and criminal trespass charges being filed.

1. July 2022

On July 2, 2022, while this ban was still in effect, Appellant entered the library. Krystal Spradling ("Spradling"), a supervisor at the North Point branch, testified that she informed Appellant that he was not allowed to be in the library. Appellant raised his voice, yelled, began pacing between exits, and was asked to leave several times. The police were called to respond.

When Baltimore County Police Officer Terrell Mordaunt ("Officer Mordaunt") responded to the call for assistance from the library, Appellant was already outside of the library. Because Appellant's behavior inside the library was consistent with his behavior that initiated the original ban in August of 2021, Spradling extended Appellant's ban for another year, until July 2023.

Although Officer Mordaunt testified that during this encounter, he told Appellant that his ban was being extended for another year, body camera footage of this encounter shows the officer telling Appellant only that his ban would be in effect "until next month, the 14th[.]" Following that notification, another officer brought Spradling outside at which

point Officer Mordaunt and Spradling discussed extending the ban until July 2, 2023. Appellant did not appear to be in the nearby area at the time of that decision.

2. August 2022

On August 15, 2022, Spradling observed Appellant enter the library and alerted a manager, who called the police. The manager, Jarrett Farmer ("Farmer"), testified that he made that call. According to Farmer, the library had 15 to 20 "customers present that day." Neither Spradling nor Farmer engaged Appellant before police arrived.

Baltimore County Police Officer Matthew Pizza ("Officer Pizza") and his partner responded to the library's "call for a repeat trespasser" on August 15, 2022. Officer Pizza testified that before entering the building he reviewed police records from the July 2 police report, which detailed the incident and indicated that Appellant's ban had been extended for another year, into 2023.

The officer's body camera recorded the incident. As Officer Pizza entered the building and his partner waited outside, Spradling and Farmer met him and identified Appellant. Appellant was seated and reading at a table occupied by another person, next to several other tables occupied by at least five other library patrons. Other areas of the library are not visible in the video footage.

According to Officer Pizza, Appellant "[i]nitially . . . appeared to be fine." While walking through the library toward Appellant, Appellant exclaimed "oh, come on[,]"

before Officer Pizza stated: "Come on, man, come outside."[3] When Appellant asked "why?" the officer answered, "Cuz." Appellant refused, stating "I'm not leaving". Following Appellant's objection and refusal to go outside, Officer Pizza informed Appellant that he was "under arrest." Appellant immediately proclaimed that he "wanted a supervisor right now."

When he reached Appellant, Officer Pizza stated, "Stand up. You're under arrest." While placing handcuffs on Appellant as he continued to object the officer said, "Don't do this in public. Stop." Although Appellant insisted that his ban ended the day before, the officer disagreed, stating that it continued until 2023.

Appellant then asked other patrons whether he had been bothering anyone. Officer Pizza responded, "You don't need to bother anybody. You've been trespassing."

As the officer escorted him through the library toward the exit, Appellant became louder, more profane, and increasingly agitated. Insisting that he was not trespassing, Appellant objected, "What the fuck is this?!" By the time they reached the glass door into the vestibule, Appellant was repeatedly screaming, "Fuck!" and "No!"

When Appellant then turned his body toward the officer, Pizza forced him to the ground. As Appellant continued to loudly yell profanities while struggling to pull away, Officer Pizza restrained him in the vestibule, in a manner that blocked ingress and egress. Officer Pizza repeatedly told him to stop and calm down or he would "get another charge."

[3] We note that there are discrepancies between the video footage, admitted into evidence as State's Exhibit 3, and the language in the transcript when it was played at trial. We rely on the video footage.

When those warnings were unsuccessful, the officer raised his voice, ordering Appellant to stop because he was "under arrest." Appellant continued to struggle and scream that he was not banned after August 14. After Officer Pizza's partner arrived to assist, they assisted Appellant to his feet. Appellant continued to scuffle and yell.

On cross-examination, Officer Pizza testified that he did not have and was not given a copy of the library letters regarding the bans against Appellant. He also testified that he did not speak to any staff that day about whether Appellant had been given notice of an extension. He indicated that he relied on the July 2 report by Officer Mordaunt. If he had known that Appellant was not notified of the ban extension, Officer Pizza testified that he would not have arrested Appellant because he would not have been trespassing.

After closing arguments on the remaining charges of disorderly conduct and failing to obey a police order in violation of CR § 10-201(c)(2)-(3),[4] the trial court ruled from the bench, explaining to Appellant why it was finding him guilty:

> THE COURT: Libraries are such an important part of our community. . . . Obviously, you agree, you like to use them as do other members of the community, children, as you have noted there are children's programming, the summer reading program, I saw Sneaks the Cat . . . with my children when they were young, it's made them lifetime readers. Okay, it's an important part of our community. And as are police officers.
>
> And I do want to say to the officers today that . . . it was a pleasure to watch your handling of a kind of volatile situation on the body worn camera footage. . . . And so I commend you for your tactful handling of a difficult situation.
>
> And Mr. Ebert, I understand, and I told you that earlier, why you were so upset, because I do believe that you believed you were allowed back in

[4] We note that at the close of evidence, the trial court granted judgments of acquittal on the trespass and resisting arrest counts.

that library on the 15th. I think it was just a miscommunication with the chaos on the second [of July]. Understandably, Ms. Spradling wanted to keep her distance. I don't have body cam of what happened before Officer Mordaunt arrived, but . . . he certainly was able to . . . de-escalate the situation and I understand Ms. Spradling wanting to keep her distance from Mr. Ebert. But, unfortunately, it kind of became a game of telephone. I think Ms. Spradling believed that Officer Mordaunt had told Mr. Ebert that the ban was extended to July of 2023 and that, in fact, we saw [that] didn't happen on the body cam and I don't fault the officer for that. He probably assumed another letter would be forthcoming from the library, which it did, but not until the 15th.

And so, all this to say, again, Mr. Ebert, I do not condone your behavior at all, but I understand it. And I would encourage you not to repeat your behavior as far as the yelling, the screaming and disruption at the library again. You . . . now . . . are aware because you saw the letter today in court that you are banned until August 15 of 2023, . . . at the very least. . . .

You are not to go back into any library branches before August 15 of this year. Do you understand me?

THE DEFENDANT: Yes, Ma'am. But what's wrong with being angry? A lot of things –

THE COURT: Okay. But libraries are places of peace and quiet and as someone who appreciates peace and quiet, I do find that . . . the word fascist and the F word may not be fighting words, but just like you . . . can yell fire in your house or maybe walking down the street, you can't do it in a crowded movie theater. All right. You can't be yelling anything, let alone cuss words and other words in a library. And that's the problem here. . . .

Sir, as to Count Three, which is the disorderly conduct (c)(2), wilfully acting in a disorderly manner that disturbs the public peace, this certainly disturbed the public peace of the library, and (c)(3), wilfully failed to obey reasonable and lawful order that a law enforcement officer makes to prevent a disturbance. All Officer Pizza asked you was, we got to go. You could have had a debate outside. Again, I understand why you were upset, you were of a different belief, but Officer Pizza had a different belief too based upon his reading of the July 2nd report and you two could have had a logical conversation outside and, unfortunately, it escalated to the point that it did and because you got upset.

So, I do find you guilty on Counts Three and Four, the disorderly conduct and failure to obey.

DISCUSSION

To determine whether the evidence was sufficient to support the conviction, this Court performs a "critical inquiry" which analyzes "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." *State v. Morrison*, 470 Md. 86, 105 (2020) (quoting *Smith v. State*, 415 Md. 174, 184 (2010)) (emphasis omitted). This "standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith*, 415 Md. at 185. When reviewing a conviction that resulted from a criminal bench trial, "we review 'the law and the evidence to determine whether in law the evidence is sufficient to sustain the conviction, but the verdict of the trial court shall not be set aside on the evidence, unless clearly erroneous.'" *Hammond v. State*, 257 Md. App. 99, 125 (2023) (quoting *Rivera v. State*, 248 Md. App. 170, 178–79 (2020)).

I. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION FOR SECTION 10-201(C)(2) DISORDERLY CONDUCT.

Appellant contends that the evidence is insufficient to support his conviction for disorderly conduct because "his reaction to the unreasonable order and arrest was justified" especially when considering his responses after Officer Pizza ordered him to "come outside[.]"[5] Appellant also asserts that while "quiet is expected" in a library, "this

[5] Appellant points to the following responses as evidence of his justified response:

- "This ain't right."
- "Was I bothering anybody?"
- "I'm not trespassing. The ban is off August 14, August 15. What the fuck is this?"
- "I gotta get my stuff."

interaction lasted no more than one minute inside the building walls[.]" Thus, the evidence was insufficient to support a conviction for disorderly conduct because "[a]ny 'disorderly manner' or disturbance to the public peace was de minimis[.]"

The State disagrees, asserting that the evidence was sufficient to sustain the conviction for disorderly conduct given that the encounter occurred "inside of an otherwise quiet library." In support, the State points to undisputed evidence from video footage and trial testimony by Officer Pizza and library workers detailing Appellant's shouting, cursing, and fighting with the officer while in the library and while he was being escorted out of the library.

To be convicted of disorderly conduct pursuant to section 10-201(c)(2), "the defendant must willfully, in a public place or public conveyance and in the actual presence of other persons, act in a disorderly manner to the disturbance of the public peace of those other persons." *Att'y Grievance Comm'n of Maryland v. Mahone*, 435 Md. 84, 104–05 (2013) (quoting *Drews v. State*, 224 Md. 186, 192 (1961), *vacated on other grounds and remanded*, 378 U.S. 547 (1964), *judgments reinstated and reaff'd*, 236 Md. 349 (1964), *appeal dismissed and cert. denied*, 381 U.S. 421 (1965) (emphasis added)).

The Supreme Court of Maryland has explained conduct that is disorderly 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*, 224 Md. at 192; *see, e.g., Briggs v. State*, 90 Md. App. 60, 69 (1992) (finding that the appellant's conduct was "sufficient to invoke

- "I want a supervisor."

the statute's sanctions" where the conduct constituted "shout[ing], grabb[ing] back the money he lost, and slam[ing] the dice into the table" at a crowded carnival where people complained to the individuals running the game, and the individuals themselves called the police because "their own attempts to discourage his disruptive behavior were unsuccessful.")

Importantly, whether the conduct, identified as the "doing or saying[,]" constitutes behavior that disturbs the public peace has been consistently interpreted to be dependent on the context, content, and consequences of the defendant's behavior and the environment in which it occurred. *Mahone*, 435 Md. at 105. However, this Court has found that "in either its 'doing' or 'saying' proscriptions" based on the statute, it "may not punish acts or spoken words, although vulgar and offensive, which are protected by the first and fourteenth amendments." *Reese v. State*, 17 Md. App. 73, 80 (1973).

Preliminarily, we note that the library where this encounter occurred constitutes a public place for purposes of section 10-201(c)(2). *See* CR § 10-201(a)(3) ("'Public place' means a place to which the public . . . has access and a right to resort[,]" including "a public building"). Thus, our analysis focuses on whether Appellant's conduct was disorderly in such a manner that it disturbed the "public peace of th[e] other persons." *Mahone*, 435 Md. at 105.

Viewing this record in the light most favorable to the State as the prevailing party, we conclude that the evidence of Appellant's conduct supports his disorderly conduct conviction. *See Morrison*, 470 Md. at 86. Here, the trial court correctly focused on the critical factor of context, giving significant weight to where and when the incident

occurred–in a public library while it was open to patrons–and who was present to witness it – library users and staff. The undisputed evidence presented at trial demonstrated that after being arrested Appellant's verbal objections escalated in volume and profanity as he physically struggled with Officer Pizza.

Further, by the time the officer reached the front door, Appellant was *screaming* epithets and profanities. In addition, his physical aggression toward the officer resulted in him being restrained in the vestibule to regain control until the officer's partner arrived to assist. Even if the language used was constitutionally protected, the *volume* of such language disturbed the peace of the library. In support of this point, we note the library manager's testimony that Appellant's "screaming" and aggressive behavior violated the "library's reasonable rules to keep it a safe and welcoming place . . . for other customers and staff."

To be sure, as the trial court explained, Appellant had the right to explain his perspective and dispute that he was unlawfully in the library by complying with the order and having a discussion with Officer Pizza outside of the library. Yet, as the trial court found, he was not entitled to escalate his opposition into loud epithets and profanity that disrupted library patrons and staff in a manner that disturbed the quiet environment in the library and obstructed public ingress and egress. *See Baynard v. State*, 318 Md. 531, 539 (1990) (noting that the statute which was repealed and replaced by section 10-201, and which 10-201 was derived from without substantive change, "proscribes . . . noise that is not only loud but that is inappropriately loud under the circumstances").

Because a rational trier of fact could conclude that Appellant's conduct while Officer Pizza was removing him from the library caused a public disturbance, we affirm his conviction for disorderly conduct in violation of section 10-201(c)(2).

II. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION FOR SECTION 10-201(C)(3).

Appellant challenges his conviction for willfully disobeying Officer Pizza's order in violation of section 10-201(c)(3), on the ground that the order was not made "to prevent a public disturbance," but instead to enforce the library's ban against him. Appellant thus asserts that the evidence was insufficient to prove the offense of failure to obey the order because "a sufficient nexus between the police command and the probability of disorderly conduct" cannot be established. *Dennis v. State*, 342 Md. 196, 201 (1996), *judgment vacated*, 519 U.S. 802, (1996), *judgment reinstated*, 345 Md. 649 (1997). The State disputes this characterization of the order, asserting that Appellant's "previous disruptive behavior at the library" established "a sufficient nexus" between Officer Pizza's "command and the probability of disorderly conduct[.]"

Section 10-201(c)(3) mandates that "[a] person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to *prevent* a disturbance of the public peace." CR § 10-201(c)(3) (emphasis added). Conduct that constitutes a disturbance of the public peace under section 10-201(c)(3) is interpreted in the same manner as conduct in violation of section 10-201(c)(2). *See supra* Section I.; *see also Mahone*, 435 Md. at 104–05. Therefore, the evidence must be sufficient such that a rational trier of fact could find beyond a reasonable doubt that the police officer's order was made

to prevent "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*, 224 Md. at 192; *see Morrison*, 470 Md. at 105.

The Supreme Court of Maryland has held that to be guilty of disorderly conduct pursuant to section 10-201(c)(3), "there must be a sufficient nexus between the police command and the probability of disorderly conduct." *Mahone*, 435 Md. at 105 (quoting *Dennis*, 342 Md. at 201). Such a nexus does not exist when the command is "purely arbitrary and . . . not calculated in any way to promote the public order." *Id.* (internal quotation marks omitted).

Here, the evidence is sufficient for a reasonable fact finder to conclude beyond a reasonable doubt that Officer Pizza's order was made "to prevent a disturbance to the public peace." CR § 10-201(c)(3). Appellant's previous aggressive and loud interactions with the library staff, which were known to Office Pizza, established a sufficient nexus between Officer Pizza's order to "come outside" and the "probability of disorderly conduct." *See Dennis*, 342 Md. at 201. Officer Pizza testified that he reviewed Officer Morduant's report and based on that report, originally planned to give appellant a "criminal citation if he was going to get up and just walk out under his own power." As such, it was reasonable for a rational fact finder to conclude that Officer Pizza's order to "come outside" was not "purely arbitrary" and was instead "calculated" to prevent a disturbance in the library based on the review of a report documenting Appellant's prior disturbance in the library under almost identical circumstances. *Mahone*, 435 Md. at 105.

Appellant further alleges that section 10-201(c)(3) only applies "where there is in fact evidence of a burgeoning disturbance that a police order could prevent." While Appellant was sitting quietly at a table when Officer Pizza arrived, and not engaging in a burgeoning disturbance, that does not destroy the nexus between Appellant's prior recorded aggressive and loud behavior and the high probability of a public disturbance Officer Pizza's order was meant to prevent. *See United States v. Lee*, 432 Fed. Appx. 232, 233 (4th Cir. 2011) (affirming a defendant's conviction for 10-201(c)(3) where defendant had been reported to have been causing a disturbance but was not doing so when the officers arrived and made a reasonable lawful order).

As Officer Morduant's testimony and the testimony of the librarians indicated, the July disturbance commenced when Appellant was approached by the library staff regarding his trespassing. As a result, in August of 2022, when Appellant arrived the library staff immediately contacted the police instead of attempting to engage Appellant, because the library staff, based on the July interactions with Appellant, believed there was a significant likelihood of Appellant reacting aggressively to any request that he exit the library. Therefore, the circumstance identified as the triggering event of Appellant's prior disturbance had not yet occurred when Officer Pizza arrived and ordered him to "come outside." Thus, the evidence supports Officer Pizza's reasonable belief, calculated on the basis of Appellant's specific past behavior in similar circumstances, that a high probability of a public disruption existed upon Appellant being informed that he was allegedly trespassing. *Dennis*, 342 Md. at 201 ("[T]here must be a sufficient nexus between the police command and the *probability* of disorderly conduct[.]" (emphasis added)).

Consequently, a sufficient nexus exists between an order and a "probability of disorderly conduct" when, as occurred here, documented previous disturbances resulting from the same circumstances by the same individual in the same place serve as the foundation for the officer's order. We conclude that the evidence was sufficient for a reasonable fact finder to conclude beyond a reasonable doubt that Appellant violated section 10-201(c)(3) when he failed to comply with Officer Pizza's order to "come outside."

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED COSTS TO BE PAID BY APPELLANT.