UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0313

September Term, 2015

IN RE: MICAH M.

Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: April 29, 2016

The Circuit Court for Wicomico County, sitting as a juvenile court, found Micah M., Appellant, to be a delinquent child and involved in willfully disturbing the conduct of the activities, administration, or classes of a school and associated charges. The court committed Appellant to the Department of Juvenile Services (the "Department") for a non-community based placement. Appellant noted an appeal and raises one issue, which we have rephrased as follows:[1]

Did the trial court err in finding that Appellant committed the charged offenses?

For the reasons that follow, we conclude that the evidence was insufficient to sustain Appellant's adjudication under Maryland Code (1978, 2014 Repl. Vol.), Education Article ("Education"), § 26-101[2] and Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("C.L.") § 10-201.[3] Accordingly, we reverse the judgments of the juvenile court.

[1] Appellant's question presented, verbatim from his brief, is:

> Did the trial court err in finding that Appellant committed the charged acts based upon evidence that he engaged in a heated exchange with a school administrator and initially refused to stop walking away from a police officer?

[2] This statute provides: "A person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education."

[3] "Disorderly conduct" is defined as "willfully act[ing] in a disorderly manner that disturbs the public peace." C.L. § 10-201(c)(2).

C.L. § 10-201(c)(3) provides that "[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."

BACKGROUND

At the time of the events in this case, Appellant was 15 years old and a student at Parkside High School ("Parkside") in Salisbury. On the afternoon of February 23, 2015, James Purnell, the Dean of Students at Parkside, observed Appellant and another student walking in the hallway near the school cafeteria. As it was class time, "there really wasn't a whole lot of other students" in the hallway, according to Dean Purnell. Appellant was wearing a hooded sweatshirt with the hood up, which is a violation of school policy. Dean Purnell approached Appellant and asked him at least three times to remove his hood.

Appellant refused and "started getting vocal" and "cussing" at Dean Purnell. Dean Purnell attempted to speak with Appellant, but Appellant said, "[M]an, leave me alone, I don't give a bleep and I'll beat this if you say anything anyway, it don't matter to me." Appellant was "yelling" and "screaming," saying, "I don't give an F, I do what I want . . . . you ain't gonna do nothing, you can't do nothing, nobody can do nothing to me, I'll beat anything." Feeling "like maybe it was something with me," Dean Purnell withdrew from the situation, hoping another adult could resolve the problem and calm Appellant. Dean Purnell stated that Appellant yelled and screamed "for a few minutes" before another adult arrived.

Corporal Brian Donohoe, the school resource officer at Parkside from the Wicomico County Sheriff's Office, came in response to Dean Purnell's call for assistance. Corporal Donohoe heard Appellant from approximately fifty yards away prior to entering the main lobby area, whereupon he observed Appellant "loudly yelling profanity towards" Dean Purnell. Dean Purnell asked Corporal Donohoe to charge Appellant for being disorderly,

at which point Appellant looked at Corporal Donohoe and said, "[D]o what the fuck you want, nobody can do shit to me."

Appellant began walking away from the adults. Corporal Donohoe requested Appellant "exactly three times" to stop walking. Corporal Donohoe eventually caught up to Appellant after an approximately 40 yard pursuit. When Corporal Donohoe drew Appellant into the cafeteria, Appellant calmed down and walked with Corporal Donohoe to his office "without any further incident." Corporal Donohoe estimated that the entire interaction lasted "two minutes total."

Later, Assistant Principal Ronald Green met with Corporal Donohoe and Appellant to discuss the incident. Appellant refused to speak, and Assistant Principal Green asked Corporal Donohoe to charge Appellant with being disorderly.

The State charged Appellant with violating Education § 26-101(a), as well as disorderly conduct and failure to obey a lawful order, in violation of C.L. § 10-201(c)(2) & (3), respectively. Following a hearing, the court found Appellant involved as to all three offenses and subsequently committed him to the custody of the Department for a non-community based placement.

Additional facts will be presented as the discussion requires.

STANDARD OF REVIEW

The Court of Appeals has remarked: "In a juvenile delinquency matter, an appellate court will 'review the case on both the law and the evidence.' We review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact." *In re Elrich S.*, 416 Md. 15, 30 (2010) (internal citation omitted). This Court has noted that "[a]

delinquent act is an act which would be a crime if committed by an adult." *In re Lavar D.*, 189 Md. App. 526, 585 (2009) (citing Maryland Code (1973, 2006 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 3-8A-01(l)).

Accordingly, we apply to juvenile delinquency proceedings the same standard of review as in criminal trials:

> Appellate review of the [trial] court's judgment on the evidence is limited to determining whether there is a sufficient evidentiary basis for the court's underlying factual findings. [T]he appropriate inquiry is not whether the reviewing court believes that the evidence establishes guilt beyond a reasonable doubt, but rather, whether after reviewing 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.

Elrich S., 416 Md. at 30 (quoting *In re Anthony W.*, 388 Md. 251, 261 (2005)). *See also In re Kevin T.*, 222 Md. App. 671, 676-77 (2015).

DISCUSSION

Appellant contends that the evidence was insufficient to find him involved in the three offenses. Specifically, Appellant argues that he cannot be found involved of disturbing school operations because there was no disturbance. No one complained, classes were not halted, and there was no disruption of the school day. Accordingly, Appellant contends, because there was no actual disturbance, he cannot be found involved of disturbing school activities. Assuming *arguendo* that the evidence was insufficient to establish that Appellant disturbed school activities, then Appellant asserts that the evidence was also insufficient to demonstrate that he was disorderly or failed to obey an order of a law enforcement officer. Surely, Appellant argues, if the evidence was insufficient to

demonstrate he disturbed school activities, then there was no public disturbance, which is a requirement of involvement in the other two offenses.

State contends that there was sufficient evidence of Appellant's involvement because he created a significant disturbance. State argues that classes were disturbed due to Appellant's profanity-laced tirade, and that school administrators had to spend time responding to the situation, which disturbed their activities. Additionally, State contends, Appellant's behavior was disorderly, and belated compliance with Corporal Donohoe's request does not overcome the fact that he disobeyed the request initially.

Education § 26-101(a) provides that "[a] person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education." The General Assembly enacted and modified this statute in the 1970s in response to riots and vandalism at schools in Prince George's County and Annapolis. *In re Jason W.*, 378 Md. 596, 601-03 (2003). During debate in the legislature, the "fear was raised that, if read literally, the [statute] 'could be applied to a kindergarten pupil throwing a temper tantrum.'" *Id.* at 603 (quoting Michael Parks, *Pupil-Jailing Bill is Sent to Governor*, Baltimore Sun, Apr. 1, 1970, at C24). As Judge Wilner, writing for the Court of Appeals, pointed out, however, "[t]he focus in 1970, which remained unchanged in 1977, was on riots and organized demonstrations and disturbances that **actually impeded the schools from carrying out their administrative and educational functions**." *Id.* at 604 (emphasis added).

The Court of Appeals reasoned, therefore, that "[t]he words 'disturb or otherwise willfully prevent,' as used in [Education] § 26-101(a), cannot be read too broadly or too

literally." *Id.* at 606. Accordingly, "[t]he only sensible reading of the statute is that there must not only be an 'actual disturbance,' but that **the disturbance must be more than a minimal, routine one. It must be one that significantly interferes with the orderly activities, administration, or classes at the school**." *Id.* (emphasis added). The statute must be read this way, the Court concluded, because

> [a] typical public school deals on a daily basis with hundreds – perhaps thousands – of pupils in varying age ranges and with a variety of needs, problems, and abilities, scores of teachers, also with varying needs, problems, and abilities, and a host of other employees, visitors, and occasional trespassers. The "orderly conduct of the activities, administration, or classes" takes into account and includes within it conduct or circumstances that may momentarily divert attention from the planned classroom activity and that may require some intervention by a school official. Disruptions of one kind or another no doubt occur every day in the schools, most of which, we assume, are routinely dealt with in the school setting by principals, assistant principals, pupil personnel workers, guidance counselors, school psychologists, and others, as part of their jobs and as an aspect of school administration. Although, undoubtedly, some conduct is serious or disruptive enough to warrant not only school discipline but criminal, juvenile, or mental health intervention as well, there is a level of disturbance that is simply part of the school activity, that is intended to be dealt with in the context of school administration, and that is necessarily outside the ambit of [Education] § 26-101(a).

Id. at 604-05 (internal citation omitted).

Elaborating further, the Court noted examples of conduct that may be a disturbance in common parlance, but not significant enough to constitute a violation of Education § 26-101(a):

> A child who speaks disrespectfully or out of turn, who refuses to sit down or pay attention when told to do so, who gets into an argument with another student, who throws a rolled-up napkin across the room, who comes to class late, or even one who violates the local dress code in some way, may well disturb the class and, if sent to the principal,

> may divert the teacher or the principal from other duties for a time, but surely that conduct cannot be regarded as criminal because it is temporarily disruptive.

Id. at 606.

In re Nahif A., 123 Md. App. 193 (1998), *overturned on other grounds by In re Antoine M.*, 394 Md. 491 (2006), provides an example of when a student's disruptive behavior rises to the level of a violation of Education § 26-101(a). In that case, a school worker brought Nahif a lunch, which he thought contained pork. *Nahif*, 123 Md. App. at 199-200. As consuming pork was against his religion, Nahif asked the cafeteria worker for another lunch, and, when the worker declined to give him another, he stole one. *Id.* When Nahif admitted to the vice principal that he had not paid for the lunch, the vice principal attempted to bring Nahif back to his office. *Id.* at 200. Nahif, however, "used lots of profanity in the hallway," was so loud that other students could not learn, and threatened to kill staff members and police officers. *Id.* This Court affirmed Nahif's involvement in disturbing school activities. *Id.* at 206.

Jason W., on the other hand, is an example of disruptive behavior that prompted a routine administrative response and was, therefore, outside of the ambit of Education § 26-101(a). In that case, a teacher observed Jason scribbling something on a wall outside his classroom. 378 Md. at 598. When the teacher investigated, he discovered that Jason had written "There is a bomb," but scratched out the word "bomb" as the teacher approached. *Id.* The teacher took Jason to the principal's office. *Id.* The principal called Jason's mother and questioned him about the incident. *Id.* Notably, the principal did not alert the fire marshal or bomb squad or take any action that would "otherwise disrupt the

normal operation of the school." *Id.* at 599. Because there was no actual disturbance of school activities, the Court overturned Jason's involvement in this offense. *Id.* at 606.

In this case, taking the evidence in the light most favorable to the State, we are not persuaded that the State presented evidence that Appellant's behavior, although highly inappropriate and unacceptable, created the level of disturbance contemplated by the statutes under which Appellant was charged. There was no evidence that classes were disturbed. Corporal Donohoe testified that Appellant's voice carried for "probably fifty yards" in the school building, but he did not observe any other students or administrators in the hallway, besides Dean Purnell and the other student. The incident lasted "probably about two minutes total," according to Corporal Donohoe.

We note that Appellant's argument that no other students complained about a disturbance is not dispositive. Indeed, students may be afraid to complain about another student who acts out violently. Clearly, the school has every reason not to, and should not, tolerate the behavior described in this record. However, this case turns on the fact that the State did not present evidence that warranted charges under Education § 26-101(a) and C.L. § 10-201(c)(2) & (3).

Here, the juvenile court indicated that in responding to Appellant's behavior, *Dean Purnell and Corporal Donohoe* were disturbed in their normal operations. Dean Purnell testified, however, that part of his duties include "walk[ing] around the school quite often, just to make sure students are in the classrooms, try to check on teachers, see how things are going in the classes . . . basic monitoring[.]" Assistant Principal Green stated that Dean Purnell is "definitely supposed to enforce school policy[.]" Accordingly, Dean Purnell was

engaged in his normal routine; indeed, Dean Purnell testified he was "walking, doing what I typically do," when he saw Appellant with his hood up.

Although the school administrators had to respond to Appellant, the Court of Appeals noted in *Jason W.*, "[d]isruptions of one kind or another no doubt occur every day in the schools, most of which, we assume, are routinely dealt with in the school setting by principals, assistant principals, pupil personnel workers, guidance counselors, school psychologists, and others, as part of their jobs and as an aspect of school administration." 378 Md. at 605. This situation, therefore, was a school administrative response, and the State failed to produce sufficient evidence to demonstrate that Appellant disturbed the normal operation of the school.

Having concluded that the State failed to provide sufficient evidence that Appellant disturbed school operations, that necessarily leads us to conclude that the State failed to produce sufficient evidence that Appellant was involved in disorderly conduct and failing to obey a lawful order. C.L. § 10-201(c) requires a public disturbance. *See Spry v. State*, 396 Md. 682, 691-92 (2007) ("'[T]he 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.'" (quoting *Drews v. State*, 224 Md. 186, 192 (1961), *vacated by* 378 U.S. 547 (1964))); *Okwa v. Harper*, 360 Md. 161, 185 (2000) (noting that in order for disobeying an order of a law enforcement officer to be actionable under the statute, "[t]he police officer's request [] must be intended to prevent someone from inciting or offending others"); *Briggs v. State*, 90 Md. App. 60, 68 (1992); *In re Nawrocki*, 15 Md. App. 252, 258 (1972) ("We

think it patent that disorderly conduct within the contemplation of *Drews* 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.'"). Because there was insufficient evidence of a "public" disturbance the court erred in finding Appellant involved of disorderly conduct and failing to obey a lawful order.

We conclude, therefore, that the State failed to produce sufficient evidence that Appellant created a disturbance at Parkside such that a rational trier of fact could find that Appellant violated either Education § 26-101(a) or C.L. § 10-201(c)(2) & (3). *See In re Timothy F.*, 343 Md. 371, 380 (1996). Accordingly, we reverse.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY, SITTING AS A JUVENILE COURT, REVERSED. COSTS TO BE PAID BY WICOMICO COUNTY.