2022 IL App (2d) 210337-U
No. 2-21-0337
Order filed May 26, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 20-CM-1388
JEREMY P. FELTON,	)	Honorable Monique N. O'Toole,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was proved guilty of disorderly conduct where he (1) left his lane while driving at a high rate of speed down a residential street and came within a foot of striking the victim as he worked on his truck; and (2) threatened the victim when he asked defendant why he drove in that manner. Also, the State's refiling of the charges was not vexatious where the State had dismissed the case because it could not contact the victim due to an incorrect phone number.

¶ 2 Following a bench trial, defendant, Jeremy P. Felton, was found guilty of disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2020)). He appeals, contending that the evidence was insufficient to prove him guilty beyond a reasonable doubt and that the trial court erred by permitting the State to refile charges after they had been nol-prossed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with assault (720 ILCS 5/12-1(a) (West 2020)), disorderly conduct, and reckless driving (625 ILCS 5/11-503(a)(1) (West 2020)). The disorderly conduct count alleged that defendant "drove towards" Michael LaGioia in an unreasonable manner. On September 15, 2020, the trial court called the case for trial via Zoom, but LaGioia was not present. The prosecutor told the court that his office had subpoenaed LaGioia and attempted to telephone him. However, LaGioia did not return calls. Unable to proceed without LaGioia's testimony, the prosecutor moved for a continuance, which the trial court denied. The prosecutor then moved to nol-pros the charges, and the trial court granted that motion.

¶ 5 When the State refiled the charges, defendant filed a written objection, contending that the refiling was vexatious. At a hearing on the objection, the prosecutor explained that he had had an incorrect phone number for LaGioia. As the trial date approached, LaGioia marked himself as available on a computerized system, but the prosecutor could not contact him. Fearing that LaGioia would not appear, the prosecutor nol-prossed the charges. Later that day, LaGioia contacted the prosecutor to determine if the case was going to trial. At that point, the prosecutor learned of the incorrect phone number. The trial court denied defendant's motion to dismiss the refiled charges and continued the case for trial.

¶ 6 At defendant's bench trial, LaGioia testified that on November 19, 2019, he was putting diesel additive in his truck. The truck, with an attached trailer, was parked facing east on Bennett Drive. The street runs through a townhouse community. The truck was parked in the street because it would not fit in the driveway without blocking access for neighboring residents.

¶ 7 LaGioia heard a vehicle approaching. LaGioia, who had raced cars and motorcycles, was familiar with an engine's noise while accelerating. According to LaGioia, "when a car is revving

very high, it has a very distinct sound," like "screaming." LaGioia could tell by the sound of its engine that the approaching vehicle was coming "at a high rate of speed." He looked over his left shoulder to see from where the vehicle was coming. The street was 20 feet wide, and LaGioia's truck was seven feet wide. The approaching vehicle was "smack-dab in the middle" of the street. It came within about a foot of hitting him. With no time to react, LaGioia stepped into his truck, spilling diesel additive as he did so. LaGioia feared that he was "going to get ran over or get sucked up underneath the car." The posted speed limit was 25 miles per hour, but LaGioia believed that the vehicle passed him at well over 60 miles per hour but less than 100 miles per hour.

¶ 8 LaGioia called 911 because he feared that the vehicle might kill someone in the neighborhood given its speed. LaGioia saw the vehicle, a white SUV, pull into a driveway down the street. Three small children got out. LaGioia and his friend, Guy Waybel, approached the SUV to attempt to get the license number. As the driver—defendant—got out, LaGioia asked him why he was driving like that. Defendant responded that LaGioia should mind his own business. Then, defendant said, "And if you keep talking, people like you don't wake up where I come from." LaGioia interpreted this as a threat on his life and became more fearful.

¶ 9 Carol Stream police officer Jason Egan responded to LaGioia's 911 call. He found LaGioia to be "very upset" and "flustered." He had trouble organizing his thoughts. He was upset because "somebody driving a white Bentley almost struck him." Egan spoke once by phone with defendant before obtaining a warrant for his arrest.

¶ 10 The trial court granted defendant's motion for a directed finding on the assault count but denied it as to the other counts. Defendant's aunt, Theresa Larry, testified that defendant took her, his son, and several other relatives to the arcade at Stratford Square Mall. On the way back from the mall, he turned west onto Bennett Drive to go back to his sister's house. Defendant was driving

properly on the right side of the road, was not swerving back and forth, and was going about 30 miles per hour.

¶ 11 The trial court found defendant not guilty of reckless driving but guilty of disorderly conduct. The court determined that defendant drove toward LaGioia, which was unreasonable conduct that alarmed or disturbed him and caused a breach of the peace. The court sentenced defendant to 12 months of court supervision, including 30 hours of public service. Defendant timely appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant first contends that he was not proved guilty beyond a reasonable doubt of disorderly conduct where the evidence showed that he drove carefully in his lane and happened to drive toward a pedestrian only because he was standing in the middle of the street.

¶ 14 When a defendant challenges on appeal the sufficiency of the evidence, we ask only whether, 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. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *Id.*

¶ 15 One commits disorderly conduct when he or she "knowingly *** [d]oes any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." 720 ILCS 5/26-1(a)(1) (West 2020). Disorderly conduct "embraces a wide variety of conduct serving to destroy or menace the public order and tranquility." *In re B.C.*, 176 Ill. 2d 536, 552 (1997). The offense's main purpose is to guard against "an invasion of the right of others not to be molested or

harassed, either mentally or physically, without justification." 720 ILCS Ann. 5/26-1, Committee Comments-1961, at 200 (Smith-Hurd 2010). The activity that can constitute disorderly conduct

> "is so varied and contingent upon surrounding circumstances as to almost defy definition. Some of the general classes of conduct which have traditionally been regarded as disorderly are here listed as examples: the creation or maintenance of loud and raucous noises of all sorts; unseemly, boisterous, or foolish behavior induced by drunkenness ***. In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative, but rather culpability is equally dependent upon the surrounding circumstances. *** [S]houting, waving and drinking beer may be permissible at the ball park, but not at a funeral." *Id.*

¶ 16 Generally, a defendant's conduct must threaten another or affect the surrounding crowd to breach the peace. See *In re D. W.*, 150 Ill. App. 3d 729, 732 (1986). But see *People v. Albert*, 243 Ill. App. 3d 23, 27 (1993) (upholding a conviction where the defendant shouted at 2 a.m. in a residential neighborhood, without a crowd or threats). However, a breach of peace can occur without overt threats or profane and abusive language. *People v. Devine*, 2022 IL App (2d) 210162, ¶ 43. Although the context of the conduct is important in determining whether a breach of the peace took place, the act need not occur in public. See *People v. Davis*, 82 Ill. 2d 534, 538 (1980) ("A breach of the peace may as easily occur between two persons fighting in a deserted alleyway as it can on a crowded public street."); *People v. McLennon*, 2011 IL App (2d) 091299, ¶¶ 30-31.

¶ 17 Here, defendant drove his vehicle at high speed down a quiet residential side street, nearly striking LaGioia, who was working on his truck. This so alarmed and disturbed LaGioia that he jumped into his truck with a can of additive in his hand, spilling some of the liquid. LaGioia and Waybel then confronted defendant, who responded with a threat that put LaGioia in fear for his

life. Under these circumstances, the trial court, which carefully considered the evidence, could reasonably find defendant guilty of disorderly conduct.

¶ 18 Defendant insists that he was driving lawfully and that LaGioia was in the middle of the street. He argues that LaGioia should have worked on his truck in his driveway rather than using the public street. However, LaGioia's reason for being in the street is irrelevant. A vehicle driver on a city street must exercise reasonable care to avoid collisions with other vehicles or pedestrians. *Moran v. Gatz*, 390 Ill. 478, 481 (1945).

¶ 19 Defendant, although disclaiming an intention to question LaGioia's credibility, nonetheless takes issue with his testimony that defendant was "smack dab" in the middle of the street. Defendant contends that, given LaGioia's testimony that the street was 20 feet wide and his truck was seven feet wide, it is impossible that defendant could have been driving in the middle of the street. LaGioia's testimony on this point was likely hyperbole to some extent. However, the trial court could reasonably credit his testimony that defendant was not driving within his lane and came within a foot of striking LaGioia.

¶ 20 Both parties cite *People v. Davis*, 291 Ill. App. 3d 552 (1997). There, the defendant was convicted of disorderly conduct based on evidence that, during a "long running feud" (*id.* at 553), he blocked the victim's car at an intersection, approached her, and told her to stop harassing him. The court affirmed the conviction, finding that the defendant knowingly committed an unreasonable act by essentially trapping the victim in her car while approaching her. *Id.* at 556. The court held that, in light of "the particular circumstances of the past history these two individuals had accumulated, any rational trier of fact could easily conclude that the complainant was alarmed or disturbed by defendant's actions." *Id.*

¶ 21 Defendant argues that, unlike in *Davis*, there is no evidence that the parties had an acrimonious relationship, as LaGioia testified that he had never met defendant before the incident. However, *Davis* does not indicate that the parties' relationship was the sole basis for upholding the conviction. In *McLennon*, the defendant "clenched his fists and began screaming and swinging at" hospital staff. *McLennon*, 2011 IL App (2d) 091299, ¶ 4. We upheld his disorderly conduct conviction, even though there was no evidence of a prior relationship between the defendant and the staff. *McLennon*, 2011 IL App (2d) 091299, ¶ 44. The evidence here was sufficient to prove defendant guilty of disorderly conduct.

¶ 22 Defendant also contends that the trial court erred by allowing the State to refile the charges. The State's Attorney has the discretion to commence a prosecution and nol-pros a charge. *People v. Matuck*, 174 Ill. App. 3d 592, 593 (1988). "The State should not be barred from proceeding on a refiled charge absent a showing of harassment, bad faith, or fundamental unfairness." *People v. DeBlieck*, 181 Ill. App. 3d 600, 606 (1989).

¶ 23 Here, the record shows no harassment or bad faith by the State but, rather, a simple miscommunication between the prosecutor and a witness. Once the prosecutor discovered that he had the wrong phone number for LaGioia, the prosecutor notified defendant and refiled the charges. While this undoubtedly caused some inconvenience to defendant, who was apparently staying in California at the time, refiling the charges did not rise to the level of "fundamental unfairness." Thus, the trial court reasonably allowed the State to proceed on the refiled charges.

¶ 24 II. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 26 Affirmed.