



LGIT'S ROLL CALL REPORTER **FEBRUARY 2006**

DISTURBING THE PUBLIC PEACE AND SPEECH PROTECTED BY THE FIRST AMENDMENT

QUESTION: DOES MARYLAND'S DISTURBING THE PEACE AND DISORDERLY CONDUCT STATUTE AUTHORIZE A POLICE OFFICER TO ORDER AN INDIVIDUAL TO STOP TALKING OR TO NOT USE PROFANITY?

ANSWER: GENERALLY, THE ANSWER IS NO. HOWEVER, IF THE INDIVIDUAL IS EXCESSIVELY LOUD, THE STATUTE AUTHORIZES AN OFFICER TO ORDER THE PERSON TO LOWER HIS OR HER VOICE TO PREVENT A DISTURBANCE TO THE PUBLIC PEACE.

CASE: *Polk v. State*, No. 101, Sept. Term, 2002
Court of Appeals of Maryland, November 12, 2003

In *Polk v. State*, the Court of Appeals again balanced the First Amendment's guarantee of the right of free speech against a police officer's authority to arrest an individual for failing to obey an order made to prevent a disturbance to the public peace.

In the *Polk* case, the facts established that Rhonda Polk, accompanied by her nine-year-old daughter, went to the Peninsula Regional Medical Center in Salisbury to pick up her final paycheck. Polk had been employed as a secretary in the hospital's Heart Center, but recently had been terminated. Corporal Raymond Sperl, a special police officer stationed at the hospital for security, was assigned the task of delivering the paycheck to Polk.

When Corporal Sperl met Polk, she asked for her check. Corporal Sperl responded that he had to take it to Personnel. Polk responded, “[F]***k you, a***hole.” As Corporal Sperl continued towards Personnel, Polk began screaming, “[G]ive me my check!” A Human Resources employee then told Corporal Sperl to give the check to Polk. Polk snatched it from him, adding another, “[F]***k you, a***hole.” As Polk walked down a hallway toward a hospital exit, Corporal Sperl told her “just keep your mouth quiet and leave.” Polk again responded with her earlier expletive. Corporal Sperl then said that he felt sorry for Polk’s daughter. When Polk repeated the expletive again, Corporal Sperl told her to “keep her mouth quiet and leave” or he was “going to lock [her] up for disorderly conduct.” He also commanded Polk to “keep [her] mouth shut, stop [her] cursing, [and] just leave the property.” In the course of their exchange, Corporal Sperl stressed several times that Polk would be locked up for disorderly conduct if she didn’t stop her profanity. Two women at the end of the hallway heard the commotion, turned, and walked away down another

hallway. When Polk reached the exit, she turned toward Corporal Sperl and shouted “[F]**k you, a**hole” once again as she passed through the doors.

Once outside, Polk continued her tirade against the officer. She “startled” a group of ten or fifteen hospital employees standing nearby. As Corporal Sperl escorted Polk towards the hospital parking garage, she continued to be irate, yelling and cursing at him. When the “vulgarity . . . intensified,” Corporal Sperl announced that Polk was under arrest. When he attempted to apprehend her, she pulled away and bit his arm. Polk was eventually subdued and arrested.

Polk was charged with engaging in disorderly conduct in violation of Section 121(b)(3) of the Maryland Code’s Article 27 (now Section 10-201(c)(3) of the Criminal Law Article), resisting arrest, and second-degree assault. At the time of the arrest, Section 121(b)(3) stated that “[a] person may not willfully fail to obey a reasonable and lawful order of a law enforcement officer made to prevent a disturbance to the public peace.” A jury found Polk guilty of disorderly conduct and resisting arrest, but acquitted her of the assault charge. She was sentenced to 18 months incarceration, with all but 60 days suspended.

At her criminal trial, Polk maintained that her use of profanity toward the officer was speech protected under the First Amendment, and that Corporal Sperl had arrested her because she used profanity. She further argued that, because it was unlawful for Corporal Sperl to order her not to use vulgar language, she did not disobey a lawful police order, and, as a result, he had no right to arrest her. The Circuit Court rejected Polk’s arguments, concluding instead that the officer’s orders to “quiet down” constituted lawful orders to reduce the volume of her speech in order to prevent a disturbance in a public place. In the trial judge’s view, these orders were directed at the manner of Polk’s speech rather than its content. Polk appealed to the Court of Special Appeals which upheld her convictions. The Court of Appeals then agreed to hear the case.

The Court of Appeals affirmed Polk’s convictions. In doing so, the Court observed that although the U.S. Constitution protects individuals from government regulation of speech, “the First [Amendment has] never been thought to give absolute protection to every individual to speak whenever or wherever he [or she] pleases.” In this regard, the Court of Appeals, Maryland’s highest court, has identified three factors to be weighed in determining whether a government’s regulation of speech is constitutional: (1) whether the regulation is content-based or content neutral; (2) the circumstances surrounding the time and place where the speech occurred; and (3) whether there are less disruptive alternatives available to the speaker.

Applying these factors, an order such as Corporal Sperl’s, to “keep your mouth quiet”, may be lawful even if it restricts an individual’s right to free speech. For such an order to be lawful, however, all of the factors must be satisfied. In the *Polk* case, the Court of Appeals found that the factors were satisfied for the following reasons: (1) Corporal Sperl did not testify that he arrested Polk because of *what* she said, but rather because of the *way* she said it. As a result, his testimony that he told Polk to “just shut your mouth and leave or you’re going to be locked up for disorderly conduct” supported the conclusion that the order was a

lawful attempt to prevent Polk from violating Section 121 through her loud, disruptive behavior; (2) the speech occurred at a public place, namely a hospital. Hospitals share with residential areas a heightened need for protection from disorderly conduct. Thus, Corporal Sperl had a compelling interest in maintaining the peace and quiet of the hospital environment; and (3) there certainly were alternative and less disruptive means for Polk to express her feelings. For example, she easily could have lowered her voice. Since the three factors were satisfied, the Court of Appeals concluded that Corporal Sperl's orders under the statute were lawful, and, as a result, Polk's convictions were affirmed.

NOTE: This case highlights the tension between protected speech and the criminal statute governing disorderly conduct and/or disturbing the public peace. In fact, three judges of the Court of Appeals dissented from the majority's opinion. Perhaps the problem in the case could have been avoided if the officer had been clearer in his commands (for example, by saying, "You need to quiet down. This is a hospital and you're creating a disturbance"). In this way, his commands would unquestionably have been directed to the manner of Polk's speech rather than its content. In other words, his orders would have focused squarely on the disruptive way that Polk was speaking rather than on the vulgar words she was using. In this regard, if Polk had continued to curse at the officer, but lowered her voice to a normal tone, she should not have been arrested, and could not have been convicted of disorderly conduct. On the other hand, if she had stopped cursing but continued to yell and scream, she should have been arrested, and still could have been convicted. Thus, with a few narrow exceptions (for example, "fighting words" that have a direct tendency to provoke a violent reaction from the listener, or "obscene" language that is highly erotic and is intended to excite sexual desire), vulgar or offensive speech is protected by the First Amendment and cannot, unless spoken in a loud or disruptive manner, constitute disorderly conduct or a disturbance of the public peace. Finally, it is important to remember that the "fail to obey" language in Section 10-201 (the current disturbing the public peace and disorderly conduct statute) only allows an officer to make a reasonable and lawful order "*to prevent a disturbance to the public peace.*" The statute does not give an officer authority to issue orders unrelated to the preservation of the public peace. Consequently, for orders given under the statute to be lawful, members of the public must be present, and must be affected by, the disruptive behavior.

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