



LGIT'S ROLL CALL REPORTER
FEBRUARY 2007

AN OFFICER IS NOT REQUIRED TO IMMEDIATELY ARREST AN INDIVIDUAL WHO FAILS TO OBEY A LAWFUL ORDER INTENDED TO PREVENT A DISTURBANCE OF THE PUBLIC PEACE.

QUESTION: CAN AN OFFICER DELAY THE ARREST OF AN INDIVIDUAL FOR FAILING TO OBEY A LAWFUL ORDER INTENDED TO PREVENT A DISTURBANCE OF THE PUBLIC PEACE UNTIL AFTER THE PUBLIC DISTURBANCE HAS BEEN RESOLVED?

ANSWER: YES. QUELLING A PUBLIC DISTURBANCE TAKES PRECEDENCE OVER ARRESTING AN INDIVIDUAL PERPETRATOR.

CASE: SPRY V. STATE, Maryland Court of Appeals, Decided January 16, 2007

The facts in *Spry v. State* established that at approximately 7:20 p.m. on April 19, 2004, Officer Pennell Jester and Officer Brian McNeill responded to a 911 call regarding a fight at Garden Court Apartments involving forty to sixty people. When the officers arrived the fight was over but there were still numerous people loitering in the parking lot, including George Spry. The loiterers were standing in the roadway and parking lot screaming, yelling loudly, and carrying on. Officers Jester and McNeil, along with two other officers and a deputy sheriff, ordered everyone who did not live at the apartments to leave the premises immediately. Spry, who was not a resident of Garden Court Apartments, refused to leave. Officer Jester then personally ordered Spry to leave. Spry responded by yelling "Fuck you bitch", and refused to move. Officer Jester then ordered Spry to leave a second time. Spry responded with more profanity and refused to move. Over the next five to ten minutes, Officer Jester ordered Spry to leave several more times. Each time, Spry disobeyed the order. Eventually, Spry left.

The day after the incident, Officer Jester filed a statement of charges against Spry. He was charged with failure to obey a lawful order of a law enforcement officer intended to prevent a disturbance of the public peace, in violation of § 10-201 (c) (3) of the Criminal Code, as well as other offenses. An arrest warrant was issued. Spry was arrested on April 21, 2004.

Spry requested a jury trial. At the close of the State's case, Spry moved for judgment of acquittal. The court granted the motion as to some of the charges, but allowed the jury to consider whether Spry failed to obey the lawful order of a law enforcement officer. Spry was found guilty. The verdict was affirmed by the Court of Special Appeals.

The Court of Appeals affirmed the lower court's decision. In doing so, it rejected Spry's contention that an officer must arrest an individual immediately after he disobeys an order made to prevent a disturbance of the public peace. Focusing on the discretionary powers given to police officers, the Court recognized that, under certain circumstances, officers responding to a public disturbance must concern themselves with "quelling the disturbance", not arresting the perpetrators. After the public disturbance has been resolved, officers, as an exercise of their discretionary powers, can arrest an individual for his role in the public disturbance.

The Court also discussed the requirement that a warrantless arrest for a misdemeanor "must be made within 'due time' of the offense . . ." The Court determined that, under the circumstances presented, it did not need to determine whether Spry was arrested in due time. The Court found that because Officer Jester secured a warrant for Spry's arrest, any due process concerns that might have arisen had Officer Jester simply waited two days to arrest without securing a warrant had been eliminated.

NOTE: In the *Spry* case, the Court held that the circumstances surrounding a public disturbance allow an officer to exercise his discretionary powers to arrest. Consequently, an officer is not required to arrest an individual for failing to obey a lawful order intended to prevent a disturbance of the public peace immediately after that order is disobeyed. An officer can wait until after the public disturbance has been resolved to arrest. If an officer decides to wait, he must be cognizant of the requirement that an individual must be arrested for any misdemeanor in "due time". Therefore, an officer must either make the arrest soon after the disturbance is resolved, or secure a warrant before making the arrest.

Prepared by Matthew Peter, Esquire, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although the publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.