



LGIT'S ROLL CALL REPORTER JULY 2010

Lawful Police Orders Under Maryland's Disturbing the Peace and Disorderly Conduct Law

QUESTION: What are the requirements of a lawful police order made in the context of a disturbance of the public peace?

ANSWER: To be lawful, the order must be made to prevent a disturbance of the public peace. Also, if the order is intended to stop the noise being made by the subject, then the order must be limited to the loudness of the subject's speech ("Stop shouting.") rather than its content ("Stop cursing or I will arrest you.").

CASE: *Andre Devon Arthur v. State, Court of Special Appeals*
Decided July 2, 2010

In this case, the Court of Special Appeals revisited the lawfulness of police orders given to prevent disturbances of the public peace. The facts established that shortly before midnight on July 4, 2007, Corporal Eric Stanley of the Frederick Police Department was on patrol driving northbound on Market Street approaching its intersection with Third Street. Corporal Stanley observed a group of three people near the intersection, walking northbound. There was no one else around. One of the individuals was Andre Arthur. As he neared the individuals, Corporal Stanley observed Arthur reach down and pick up a newspaper that was on the sidewalk. As he drove past the three, Corporal Stanley heard the "thump" of something hitting his patrol car. He looked in his side view mirror and saw that Arthur was no longer holding the newspaper. Assuming that Arthur had thrown the newspaper, Corporal Stanley stopped his car, got out, and yelled to Arthur, "Hey, let me talk to you." Arthur answered with a string of profanity. He essentially was telling the officer to keep moving and to leave him alone. Corporal Stanley told Arthur to calm down and to lower his voice but Arthur refused. Instead, he kept walking toward the Market Tavern, which was a short distance away, and continued his stream of profanity. A number of tavern patrons were entering and exiting through the front door. Several of the patrons looked to where Corporal Stanley and Arthur were standing. Corporal Stanley continued to tell Arthur to calm down and lower his voice, but Arthur persisted to curse in a loud voice. When Arthur continued to walk towards the tavern, Corporal Stanley told him that he was under arrest. When Corporal Stanley tried to handcuff him, Arthur physically resisted, prompting Corporal Stanley to call for backup. Other officers arrived and they were eventually able to get Arthur to the ground and handcuffed. Arthur was then transported from the scene.

Arthur was charged with failure to obey the lawful order of a police officer and resisting arrest. He defended on grounds that he had not failed to obey a lawful order, and, as such, Corporal Stanley had no right to arrest him. When the officer tried to, Arthur contended that, under Maryland law, he was entitled to resist. In his defense, Arthur said that he had thrown the newspaper not at the officer's car, but rather to a friend who lived in an apartment across the

street and who had been throwing the paper back and forth to Arthur. Arthur testified that when the officer saw him throw the paper, he jumped out of his car and ran over. Arthur asked if he were under arrest and when the officer said, “No,” continued walking. Arthur said that he didn’t use any loud profanity until the officers threw him to the ground and placed him in handcuffs. Arthur also testified that he was struck multiple times with a police baton. The jury found Arthur guilty. He was sentenced to sixty (60) days for failure to obey a lawful order and one year (consecutive) for resisting arrest. Arthur appealed.

The Court of Special Appeals first said that the trial court probably should have instructed the jury, as Arthur had asked that, in Maryland, a person retains the right to reasonably resist an unlawful warrantless arrest. However, the court ruled that the more general instruction given by the trial court was sufficient to cover the issue.

That left the issue of the validity of the arrest itself. Under Maryland law, to convict a person of resisting arrest, the State first has to prove that the arrest was lawful. Here, the arrest was made under Maryland’s disturbing the public peace and disorderly conduct statute (Criminal Law Article § 10-201). This statute states, in part, 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.*” (Emphasis added). The statute further prohibits a person from making “*unreasonably loud noise*” to “*willfully disturb the peace of another . . .*” (Emphasis added). Here, the court determined that Corporal Stanley’s order to Arthur to lower his voice was not based on Arthur’s use of profanity; it was based on the *volume* of Arthur’s voice. It was Arthur’s loudness, not his profanity that was attracting the attention of others and causing them to gather and watch. The court also noted that Arthur’s loudness occurred late at night in an area that was at least partly residential. The court said that the people in nearby residences “were entitled to be free from unreasonably loud noise.” In sum the court found that Corporal Stanley’s order was reasonable, lawful, and designed to prevent further disturbance of the peace. When the order was ignored, Corporal Stanley rightfully arrested Arthur, and when Arthur resisted, he was rightfully charged with resisting arrest.

NOTE: The intersection of the First Amendment’s guarantee of freedom of speech and the disturbing the peace statute can be troublesome. In general, profanity is protected speech. If Corporal Stanley had issued his order simply because of Arthur’s use of profanity, his order would have been unlawful. Orders directed solely at the content of speech generally will be deemed unlawful. On the other hand, orders designed to prevent a disturbance of the public peace (which usually are based on the subject’s loudness or other disruptive behavior), generally are upheld. When the order is based on loudness, officers should always make note of the time, place and area in which the order is made. Is it late at night? Are there other people nearby? Is it a residential area? As this case illustrates, loud speech even in a public place, including a public sidewalk, may be sufficient to amount to disorderly conduct.

By John F. Breads, Jr., Director of Legal Services, 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 this 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.