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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CM-3064
	)	
PATRICIA E. ROZSAVOLGI,	)	Honorable
	)	Joseph M. Grady,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The State proved defendant guilty beyond a reasonable doubt of disorderly conduct: in light of their history of animosity, defendant's threat to get a gun after the victim innocuously went onto her property, coupled with defendant's going into the house (where a gun would be kept), was sufficient; (2) in light of an incomplete agreed statement of facts, which was silent on the matter of defendant's jury waiver, defendant could not obtain reversal on the ground that the record did not show a valid waiver; instead we presumed that the waiver was valid..

¶ 2 Following a bench trial, defendant, Patricia E. Rozsavolgi, was convicted of disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2010)) and placed on court supervision. She appeals,

contending that (1) she was not proved guilty beyond a reasonable doubt; and (2) the record does not show that she knowingly waived her right to a jury trial. We affirm.

¶ 3 An agreed statement of facts shows that Richard Forrestal lives next door to defendant. On June 2, 2010, he was playing basketball with a boy from the neighborhood. He had lost his wife to cancer about six weeks before. At one point, the ball rolled into defendant's yard and Forrestal entered her yard to retrieve it. Defendant said, "Why did you do that? You know you're not supposed to be on my property." Forrestal and defendant began "yelling back and forth." The argument ended with defendant saying, "I'm glad I don't have to deal with your wife anymore." Defendant then said, "I oughta [*sic*] get my gun," and went inside her home. Forrestal returned to his yard.

¶ 4 Forrestal testified that he was devastated by these statements. He feared for his life and was alarmed and disturbed by defendant's behavior. He acknowledged, however, that he never saw defendant with a gun.

¶ 5 On cross-examination, Forrestal acknowledged that he and defendant had a "ban agreement," which prevented each from going on the other's property. He did not believe that the agreement prevented him from entering defendant's property to retrieve a basketball.

¶ 6 Kane County sheriff's deputy Velazquez (his first name does not appear in the record) responded to a call of a neighbor dispute. As he arrived, he saw defendant, holding a firearm, walking toward her front door. She told him she was putting it away. Velazquez acknowledged that defendant was not pointing the gun at anyone and that she had a valid Firearm Owner's Identification Card.

¶ 7 Defendant testified that when she saw Forrestal enter her property she confronted him about the trespass. She said that she was glad she did not have to deal with his wife any longer and that she “ought to get [her] gun.” She felt threatened by Forrestal due to prior encounters, so she went inside her home, called the police, and retrieved a gun. She took it out to her garage and placed it on a table. When the police arrived, she returned the gun to her home. She pointed the gun down and away from anyone while doing so.

¶ 8 The trial court found defendant guilty of disorderly conduct and placed her on court supervision. Defendant timely appeals.

¶ 9 Defendant contends that she was not proved guilty beyond a reasonable doubt of disorderly conduct. To convict defendant of disorderly conduct, the State had to prove that she did “any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.” 720 ILCS 5/26-1(a)(1) (West 2010). Defendant contends that the State failed to prove that she performed an unreasonable act that alarmed or disturbed Forrestal. Defendant reasons as follows. Although she went into her house to retrieve a gun, Forrestal testified that he never saw her with a gun. Thus, her act of retrieving the gun could not have “alarmed and disturbed” Forrestal. While her admittedly insensitive words may have alarmed and disturbed Forrestal, they were protected by the First Amendment and cannot themselves be the basis of a criminal conviction. Finally, defendant contends that the State did not prove that her conduct actually provoked a breach of the peace. Rather, the evidence showed that Forrestal quietly went home. Moreover, the incident took place in a residential neighborhood and there was no evidence that anyone else witnessed it. Therefore, there could not have been a breach of the peace.

¶ 10 While defendant's argument is not without appeal, we nonetheless reject it. Where a defendant challenges on review the sufficiency of the evidence, we ask whether, after viewing all the evidence in a light most favorable to the prosecution, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). We may not substitute our judgment for that of the factfinder on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 11 Disorderly conduct is broadly defined and “ ‘embraces a wide variety of conduct serving to destroy or menace the public order and tranquility.’ ” *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30 (quoting *In re B.C.*, 176 Ill. 2d 536, 552 (1997)). When Forrestal went onto defendant's property, she insulted his late wife, then said that she ought to get her gun, and walked toward the house. In light of the history of animosity between the two neighbors, and defendant's hostile reaction to Forrestal's innocent incursion onto her property, Forrestal could reasonably view the threat as credible. He evidently did so, as he testified that he feared for his life.

¶ 12 “True” threats are not entitled to First Amendment protection. *People v. Bailey*, 167 Ill. 2d 210, 227-28 (1995); *People v. Sucic*, 401 Ill. App. 3d 492, 503 (2010) (citing *Virginia v. Black*, 538 U.S. 343, 359-60 (2003) (plurality op.)). Indeed, the committee comments to section 26-1 list “ ‘indirectly threatening bodily harm’ ” as an example of disorderly conduct. *People v. Davis*, 82 Ill. 2d 534, 537 (1980) (quoting Ill. Ann. Stat., ch. 38, ¶ 26-1, Committee Comments, at 149 (Smith-Hurd 1977)).

¶ 13 In any event, we need not decide whether defendant's statement alone could subject her to a conviction of disorderly conduct, because she backed up the threat by walking toward her house

to retrieve the gun. Defendant's statement about getting a gun, when combined with her act of walking into the house, where a gun would likely be kept, supports her conviction of disorderly conduct free of any First Amendment concerns. That Forrestal—prudently, we think—returned home before defendant actually returned with the gun does not undermine the conviction.

¶ 14 We likewise reject defendant's contentions that she was not guilty of disorderly conduct because her actions did not occur in public and did not actually create a breach of the peace. In *Davis*, the supreme court rejected similar contentions. There, the defendant entered the home of an elderly neighbor. Apparently upset that the neighbor had sworn out a complaint against his brother, he waved some papers in her face and said that his brother was not going to jail or to court. He continued, "If he do, Miss Pearl, you know me." *Davis*, 82 Ill. 2d at 536. The court observed that "[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." *Id.* at 538. Again citing the committee comments, the court further observed that the statute's intent was not to restrict the offense to acts occurring in public view. *Id.* (citing Ill. Ann. Stat., ch. 38, ¶ 26-1, Committee Comments, at 150 (Smith-Hurd 1977)). The court held that the defendant's conduct breached the peace of the two women who were compelled to hear the defendant's indirect threat. *Id.*

¶ 15 This court recently rejected arguments similar to defendant's in *McLennon*, 2011 IL App (2d) 091299. There, the defendant was combative with personnel in a hospital emergency room. Citing *Davis*, we rejected the defendant's arguments that he could not be guilty of disorderly conduct because the acts took place in a private setting and did not attract a crowd. Rather, the defendant's conduct violated the right of the hospital staff not to be harassed mentally and physically, and this was sufficient under the statute. *Id.* ¶ 36.

¶ 16 Here, similarly to the defendants in *Davis* and *McLennon*, defendant violated Forrestal's right not to be harassed and threatened. Of course, unlike in those cases, it was Forrestal who went onto defendant's property. However, nothing in the record indicates that he entered defendant's property for any purpose other than to retrieve the basketball, and defendant responded with an implied threat of violence that she began to carry out by walking toward home where, again, it is likely she would have kept the gun. This conduct alone was sufficient to constitute disorderly conduct.

¶ 17 In an attempt to forestall this result, defendant argues that there was a variance between the complaint and the proof at trial. Defendant notes that the complaint alleged that she "retrieved a firearm (handgun) from inside of [her] residence and returned outside." Of course, there was evidence, provided by Velazquez, that defendant did in fact return outside with the gun. However, putting that point aside, *Davis* once again dooms defendant's argument. There, the complaint charged the defendant with threatening harm to the victim's grandson, while no evidence of such a threat was produced at trial. In rejecting the argument that this variance was fatal, the court held that, when a complaint is attacked for the first time on appeal, a variance between the complaint's allegations and the proof at trial " 'must be material and be of such character as may mislead the accused in making his defense or expose him to double jeopardy.' " *Id.* at 539 (quoting *People v. Figgers*, 23 Ill. 2d 516, 518-19 (1962)).

¶ 18 Here, the variance was minor. Indeed, given that a threat alone may constitute disorderly conduct, the allegation that defendant "returned outside" with the gun could be viewed as surplusage rather than as an element of the offense. See *id.* In any event, defendant does not seriously contend that the variance prejudiced her in preparing her defense. Moreover, the complaint's allegations were sufficiently specific to preclude a subsequent prosecution based on the same conduct.

¶ 19 Defendant alternatively contends that the record does not demonstrate that she validly waived her right to a jury trial. Every criminal defendant has the right to a jury trial. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. A defendant may waive that right, but the waiver must be knowing. *People v. Frey*, 103 Ill. 2d 327, 332 (1984). Generally, for a jury waiver to be valid, there must be some discussion of the waiver in open court. *People v. Scott*, 186 Ill. 2d 283, 285 (1999).

¶ 20 Here, however, the record does not affirmatively show whether defendant's jury waiver was discussed in open court. The agreed statement of facts is simply silent on the matter. As the appellant, defendant was responsible for presenting a sufficiently complete record of the trial-court proceedings. *People v. Fernandez*, 344 Ill. App. 3d 152, 160 (2003). Where the record on appeal is incomplete, any doubts arising from that incompleteness will be construed against the appellant, and we will indulge every reasonable presumption in favor of the judgment below. *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007). "Moreover, a defendant cannot agree to a statement of facts, fail to obtain a more detailed alternative, and then argue on appeal that the record is insufficient." *Id.*

¶ 21 In *People v. Hart*, 371 Ill. App. 3d 470 (2007), the defendant made a nearly identical argument to the one defendant makes here. The appellate court rejected it, holding that a suitable record of the proceeding in which the waiver supposedly occurred was essential to review of that issue. There, the record showed only that the trial court scheduled a bench trial, the defendant executed a jury waiver, and the court eventually conducted a bench trial. *Id.* at 472. The appellate court held that, in the absence of a record affirmatively showing that the waiver was not discussed, it would assume that the waiver was valid. *Id.* We do the same here. Presumably, defendant participated in compiling the agreed statement of facts and could have included more detail about the discussion of a jury waiver (or lack thereof) if she deemed it necessary. We cannot simply

presume from the lack of a reference to it in the agreed statement of facts that no such discussion occurred. *People v. Ruiz*, 367 Ill. App. 3d 236 (2006), on which defendant principally relies, is distinguishable because the reviewing court was presented with a *verbatim* transcript.

¶ 22 The judgment of the circuit court of Kane County is affirmed.

¶ 23 Affirmed.