FOURTH DIVISION
September 15, 2016

No. 1-15-1409

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 MC1 191768
	)	
DOROTHY BARRETT-TAYLOR,	)	Honorable
	)	Daniel J. Gallagher,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain her conviction for disorderly conduct.

¶ 2 Following a bench trial, defendant Dorothy Barrett-Taylor was found guilty of disorderly conduct. The court sentenced her to six months of conditional discharge and 100 hours of independent community service, and imposed a $500 fine. On appeal, defendant contends that

the evidence was insufficient to prove her guilty of disorderly conduct because the State did not prove beyond a reasonable doubt that she alarmed or disturbed another or provoked a breach of the peace. For the following reasons, we affirm.

¶ 3 Defendant's conviction arose from her June 2, 2014, statement to a Transportation Security Administration (TSA) agent at Midway Airport in Chicago, Illinois. Following her arrest, defendant was charged with disorderly conduct based upon a breach of the peace.

¶ 4 At trial, TSA agent James Toohey testified that he was working in the airport and screening passengers at the metal detector at around 2 p.m. on the day in question. After defendant passed through the metal detector, she was randomly selected for additional screening. Pursuant to the first phase of random selection protocol, Toohey tested defendant's hands for the presence of explosives by swabbing them with a piece of cloth and placing it into an "itemizer" for analysis. The analysis returned a positive reading, which could indicate any number of different types of explosives. Thus, a second phase of screening was required. In the second phase, a female TSA agent conducted a pat-down of defendant and Toohey began searching her bags. After the pat-down, the female agent started working on another bag.

¶ 5 At that point, defendant stated that "she wouldn’t mind blowing the place up." Defendant was standing 7 to 10 feet away from Toohey and made the statement in a regular tone of voice. There were approximately 10 TSA officials working in the area and 30 to 40 passengers present at the time. As a result of the statement, protocol required Toohey to notify a supervisor. Toohey completed his search of defendant's bag and notified his supervisor. The supervisor called the police and defendant was placed into custody.

¶ 6 On cross-examination, Toohey testified that defendant was cooperative and complied with his requests prior to the secondary screening. A crowd did not form as a result of her statement. At some point after initiating the second phase of screening, an "officer" tested defendant's hands and that test came out negative. On redirect examination, Toohey confirmed that defendant made the statement in front of himself and the female TSA agent as well as other passengers. On re-cross, Toohey testified that he did not receive any complaints regarding her statement.

¶ 7 The State rested, and defendant moved for a directed finding, which the court denied. Defendant rested without presenting evidence. The trial court found defendant guilty of disorderly conduct based upon a breach of the peace and subsequently sentenced her to six months of conditional discharge and 100 hours of independent community service, and imposed a $500 fine.

¶ 8 Defendant filed a "motion for judgment not withstanding the verdict or a new trial" and a "motion for reduction or modification of sentence," both of which the court denied.

¶ 9 On appeal, defendant maintains that the State presented insufficient evidence to prove beyond a reasonable doubt that her statement provoked a breach of the peace or disturbed another. Defendant argues that Toohey did not testify that he was disturbed by her statement, which was an indirect threat at most. Defendant further contends that the lack of evidence that anyone other than Toohey heard the statement shows no breach of the peace actually occurred and there was no clear connection between her statement and the public order.

¶ 10 Where, as here, a defendant challenges the sufficiency of the evidence, the relevant inquiry is whether, after 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. Woods*, 214 Ill. 2d 455, 470 (2005). In a bench trial, the trial court determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences, and resolves any conflicts in the evidence. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 62. Accordingly, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cardamone*, 232 Ill. 2d 504, 511 (2009)) and may not overturn defendant's conviction unless the proof is so improbable or unsatisfactory that a reasonable doubt exists as to her guilt (*People v. Williams*, 193 Ill. 2d 306, 338 (2000)).

¶ 11 To sustain defendant's conviction, the State was required to prove that defendant knowingly engaged in conduct "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 2014). The type of conduct that establishes culpability for disorderly conduct is highly variable and encompasses acts or words that serve to destroy or menace the public order and tranquility. *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30 (citing *In re B.C.*, 176 Ill. 2d 536, 552 (1997)). Whether the conduct at issue establishes culpability is a factual determination that depends upon the surrounding circumstances. *McLennon*, 2011 IL App (2d) 091299, ¶ 30.

¶ 12 In determining whether the conduct alarmed or disturbed another, courts consider the effect of the words on the individual who receives them. See *People v. Barron*, 348 Ill. App. 3d 109, 114-115 (2004). In general, a breach of the peace requires conduct that threatens another or affects a surrounding crowd. *In re D.W.*, 150 Ill. App. 3d at 732. However, a breach of the peace does not require overt threats (*People v. Davis*, 82 Ill. 2d 534 537-38 (1980)), profanities, or abusive language (*McLennon*, 2011 IL App (2d) 091299, ¶¶ 34-35). A defendant's conduct need

not occur in public to disturb the public order. *People v. Allen*, 288 Ill. App. 3d 502, 506 (1997). Rather, a breach of the peace can just as easily occur between two people in a deserted alleyway or individuals in a residence. *Davis*, 82 Ill. 2d at 538.

¶ 13 In the instant case, Toohey testified that residue collected from defendant's hands, during a randomly conducted airport screening, tested positive for the presence of some kind of explosive. As a result, the TSA commenced the second phase of screening, which required a pat-down of her person and a manual search of her bags. As Toohey searched one of defendant's bags, she stated, "[I] wouldn't mind blowing the place up." He was 7 to 10 feet away from defendant and another TSA agent was present. In addition, approximately 10 TSA officials were working in the area, and about 30 to 40 passengers were undergoing airport screening. Her statement caused Toohey to alert his supervisor, which resulted in a call to the police and defendant's arrest. Drawing all reasonable inferences in a light most favorable to the State, a trier of fact could find that her statement, under the circumstance of a positive test for explosives during an airport screening, was unreasonable, alarmed TSA agent Toohey enough that he alerted his supervisor, and bore a clear relationship to the public order. Accordingly, the evidence was not so unreasonable or improbable as to create a reasonable doubt of defendant's guilt.

¶ 14 Defendant contends that the evidence was insufficient to establish her culpability for disorderly conduct beyond a reasonable doubt because Toohey did not testify that he felt threatened by her statement, which she argues was an indirect threat, at most. In making this argument, defendant asserts that the instant case is analogous to *People v. Trester*, 96 Ill. App. 3d 553 (1981). We disagree. The defendant in *Trester* told a police officer while in a court building,

that if the officer removed his gun and badge, he would punch the officer and they would fight. *Trester*, 96 Ill. App. 3d at 554. The court reversed defendant's conviction for disorderly conduct, noting, "An officer of the law must exercise the greatest degree of restraint in dealing with the public. He must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct." *Id.* at 555. In light of the circumstances, the court held that the defendant's statement was couched in terms of what might happen and could not be construed as an immediate threat. *Id.* at 556.

¶ 15 We find *Trester* distinguishable from the instant case. Unlike *Trestor*, in which the threat was contingent on the highly unlikely event that the officer would take off his gun and badge to fight with the defendant, here, as the trial court noted, defendant's threat was all too believable in a post-September 11th world. Based on the evidence in this case, the trial court was entitled to find that, under the circumstances of an airport screening wherein a preliminary test revealed the presence explosives, defendant's statement should, and did, alarm the TSA agent, provoking clear concern for the safety of the individuals in the airport as shown by the fact that he reported the incident to his supervisor. Furthermore, *Trester* has been called into question by the appellate district that rendered it. In *In re D.W.*, 150 Ill. App. 3d 729, 159 (1986), the Fourth District of this court noted that the Illinois Supreme Court's ruling in *Davis* that an "indirect threat" was sufficient to prove a breach of the peace (*Davis*, 82 Ill. 2d at 538) casts doubt on the continued validity of the *Trester* court's holding that disorderly conduct required an immediate threat. Therefore, defendant's argument fails.

¶ 16 Defendant maintains that the State did not establish a breach of the peace because there was no testimony that her statement had any effect on other individuals in the area or evidence

showing a clear connection between her statement and the public order. We find the defendant's contentions meritless in light of the surrounding circumstances in the instant case. While a clear effect on a surrounding crowd may be sufficient, conduct need not be public to establish a breach of the peace. See *Davis*, 82 Ill. 2d at 538 (holding that an indirect threat made in the presence of two individuals in a private residence was sufficient to provoke a breach of the peace and noting that such a breach could arise between two individuals in a deserted alley). We reject any notion that stating, "[I] wouldn't mind blowing the place up" in an airport after testing positive for the presence of some kind of explosive does not bear a clear relationship to the public order. See *Barron*, 348 Ill. App. 3d at 115 ("Just as the false cry of 'fire' in a crowded theater may cause panic and harm simply by its utterance, a false claim that a bomb or container holding a chemical, biological or radioactive agent is present in an airport may cause alarm and mass disruption."). Moreover, 30 to 40 passengers were undergoing screening when the TSA agent heard the statement from 7 to 10 feet away and reported it to his supervisor.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.