

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH,	:
Plaintiff	:
	:
vs.	: NO. SA-63-2012
	:
SHAWN CONNELLY,	:
Defendant	:

Date: December 14, 2012

**OPINION IN SUPPORT OF THE ORDER OF SEPTEMBER 27, 2012, IN
COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Shawn Connelly has appealed this Court’s sentence imposed pursuant to his de novo hearing in which he was found guilty on September 27, 2012. This Court sanctioned Mr. Connelly with a fine of three-hundred dollars (\$300.00) and the cost of prosecution. This sentence was imposed on September 27, 2012 for the charge of Disorderly Conduct, 18 Pa. C.S. § 5503 (a) (2).

In Mr. Connelly’s Concise Statement of Matters Complained of on Appeal, filed October 29, 2012, Mr. Connelly raised the issue of insufficient evidence by claiming:

- a. Defendant avers that the evidence presented at trial, considered in the light most favorable to the Commonwealth as verdict-winner, was insufficient to sustain a conviction of Disorderly Conduct, 18 Pa. Cons. Stat. Ann. § 5503 (a) (2)

- 1. There was no evidence that Defendant had an intent to cause public inconvenience, annoyance, or alarm.

2. There was no evidence that Defendant recklessly created a risk of public inconvenience, annoyance, or alarm.
3. There was no evidence that Defendant made unreasonable noise.

Additionally, in his Concise Statement of Matters Complained of on Appeal Defendant asserts that his speech was protected speech. Mr. Connelly's appeal should be denied and the verdict and sentence affirmed.

I. FACTS AND PROCEDURAL HISTORY

On Thursday, September 27, 2012 during a de novo hearing of *Commonwealth v. Connelly* the following facts were determined to have occurred.

On the morning of May 24, 2012 at approximately 9:20 a.m. Officer Jimmy Rodgers of the Williamsport Bureau Police was dispatched to the 500 Block of 7th Avenue in Williamsport, PA regarding a parking complaint. Officer Rodgers arrived on the scene in full uniform, driving a marked police car. Officer Rodgers exited his patrol vehicle and began running the registration of the vehicle involved in the parking complaint when he noticed an individual across the street from him who was with a baby carriage and was animated, yelling into a phone and pointing at him. Officer Rodgers heard the individual, who was later identified as the Defendant Shawn Connelly, yelling "there's a fucking police officer right here." Officer Rodgers approached Defendant to see what was going on and to see if he could be of assistance.

When Officer Rodgers made contact with Mr. Connelly the defendant was pointing and screaming at the officer and pointing down the street screaming about a dog running loose and declaring that Officer Rodgers needed to take immediate action. Officer Rodgers then explained to Defendant that unless the animal was vicious he was not the individual that handled dog calls that a dog law officer needed to be called. Officer Rodgers testified that after that point there was a total lack of communication. Defendant was irate due to the fact that he had called 911 regarding the dog that was loose in the direction he needed to walk with his child; he was told to call the dog law officer and when he did so he got an answering service. Being unsuccessful in his attempts to calm down Defendant Officer Rodgers called for a back up officer.

After becoming alarmed from hearing a radio transmission of Officer Rodgers' in which he overheard an individual in the background screaming over Officer Rodgers, Officer Williamson proceeded to the scene to provide assistance. Officer Williamson was pulling onto the scene when the request for back up was received.

Once on the scene, Officer Williamson observed Defendant waving his arms, yelling, screaming and generally causing a disturbance; a lady who he presumed was a neighbor; and Officer Rodgers. No dog was observed. Officer Rodgers requested Officer Williamson to take over. Officer Williamson took over but was unsuccessful in his attempts to calm and or quiet Defendant. Defendant continued to scream about a dog and use profane language. Defendant was rambling, screaming and not really making any sense. Officer Williamson testified that he had not seen a dog in the area therefore at that point there was no threat of harm from a dog and had no idea what Defendant was talking about. Officer

Williamson continued in his attempts to deescalate Defendant for a couple minutes until veteran detectives arrived on the scene and took over.

The encounter in entirety ended after approximately ten (10) to fifteen (15) minutes after it began and resulted in five (5) police officers and two detectives arriving on scene. One of the law enforcement officers had his taser out and ready as a result of Defendant's antics. There were also approximately eight neighbors observing the encounter. As a result of the encounter Defendant received a citation for disorderly conduct pursuant to 18 Pa. C.S. § 5503 (a) (2). On June 24, 2012 Defendant appeared before Magist3erial District Judge James G. Carn and was found to be guilty of disorderly conduct. Defendant appealed the guilty verdict and appeared before this Court on September 27, 2012 for a de novo hearing. After a de novo hearing Defendant was determined to be guilty of disorderly conduct as defined by 18 Pa. C.S. § 5503 (a) (2).

II. DISCUSSION

A claim challenging the sufficiency of the evidence is a question of law. *Commonwealth v. Sullivan*, 820 A.2d 795, 805 (Pa. Super. 2003). When reviewing a challenge to the sufficiency of the evidence, the following standard of review is employed:

The standard for reviewing the sufficiency of the evidence is whether the evidence admitted at trial and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as the verdict winner, is sufficient to support all the elements of the offenses beyond a reasonable doubt.

Commonwealth v. Greenberg, 885 A.2d 1025, 1026 (Pa. Super. 2005) (*quoting Commonwealth v. DeJesus*, 787 A.2d 394, 398 (Pa. 2001)).

a. *Disorderly Conduct*

18 Pa. C.S. § 5503 (a) (2) states: “A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise.” Determining whether an individual is guilty of disorderly conduct is a two step process. First, the Court must determine whether the *mens rea* requirement that appellant through their actions intentionally or recklessly created a public inconvenience, annoyance, alarm or risk of. *Commonwealth v. Maerz*, 879 A.2d 1267, 1270 (Pa. Super. 2005) (quoting *Commonwealth v. Gilbert*, 449 Pa. Super. 450, 674 A.2d 284 (Pa. Super. 1996)). Second, the Court must evaluate the *actus reus* of unreasonable noise; this encompasses the volume of speech not the content of the speech. *Id.*

18 Pa. C.S. § 302 defines the *mens rea* element of the test:

b) *Kinds of culpability defined.*

(1) A person acts intentionally with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

.....

(3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

In this case, Defendant through his actions demonstrated both intent and recklessness. His intent to create a public inconvenience, annoyance or alarm was evidenced by the fact that Officer Rodgers attempted to calm and or quiet Defendant down for an unknown period of time to no avail. N.T., September 27, 2012, p. 6. Defendant continued to be loud. Defendant was loud enough that Officer Williamson overheard Defendant yelling in the background when Officer Rodgers was on the radio with dispatch. N.T., September 27, 2012, p. 13. Officer Williamson was so alarmed by what he had heard that he proceeded to the scene to provide assistance when the call for backup was received. N.T., September 27, 2012, pp. 13-14. Upon arrival Officer Williamson took over for Officer Rodgers and unsuccessfully attempted to quiet and or calm down Defendant until eventually some more experienced officers took over. N.T., September 27, 2012, p. 18. This episode with Defendant ended approximately ten (10) to fifteen (15) minutes after it began and resulted in five (5) Williamsport Police Officers and two (2) detectives being on the scene. N.T., September 27, 2012, p. 7. One of the law enforcement officers had his taser out and ready. *Id.* In addition to the officers, neighbors had congregated to see

and watch the scene that was taking place. *Id.* Officer Rodgers estimated that at least eight (8) neighbors had come out and were standing on their porches watching. *Id.*

As the officers tried to quiet and calm down Defendant he consciously continued to engage in conduct that created a public inconvenience, annoyance and alarm. 18 Pa. C.S. § 302 (b) (1) (i); 18 Pa. C.S. 5503. The evidence is sufficient to fulfill the intent requirement. In addition, Defendant's actions that morning are the pure definition of reckless. "The specific intent requirement of this statute 'may be met by a showing of a reckless disregard of the risk of public inconvenience,' annoyance or alarm, even if the appellant's intent was to send a message to a certain individual, rather than to cause public inconvenience, annoyance, or alarm." *Id.* (quoting *Commonwealth v. Kidd*, 296 Pa. Super. 393, 442 A.2d 826 (Pa. Super. 1982)). Defendant exhibited "... a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation." 18 Pa. C.S. 302 (b) (3). Officer Rodgers testified that the screaming, hollering and animated yelling that Defendant was engaging in was not the norm. N.T., September 27, 2012, p. 9. This Court finds Defendant's behavior to be a gross deviation from the standard of conduct a reasonable person would portray. Generally when a citizen comes into contact with law enforcement it does not require ten (10) to fifteen (15) minutes and approximately 7 law enforcement officers to deescalate the situation. In addition to meeting the intent portion of the *mens rea* the evidence supports a finding that the Defendant recklessly created a risk of public inconvenience, annoyance, or alarm.

Unreasonable noise has been defined as "not fitting or proper in respect to the conventional standards of organized society." *Commonwealth v. Gowan*, 1990 Pa.

Super 477, 483 (quoting *Commonwealth v. Mastrangelo*, 489 Pa. 254, 411 A.2d 54 (1980), appl. Dismissed 449 U.S. 894, 101 S.Ct. 259) (*see also Commonwealth v. Gilbert*, 449 Pa. Super. 450, 674 A.2d 284 (Pa. Super. 1996)). The Superior Court of Pennsylvania has further defined the definition of unreasonable noise by giving examples of what does not constitute unreasonable noise. In *Commonwealth v. Maerz*, the trial court convicted the defendant of disorderly conduct stemming from an incident when at 9:45 p.m. she yelled profanities at her neighbor who was across the street. 2005 Pa. Super 267, 879 A.2d 1267, 1268 (Pa. Super. 2005). On appeal the sentence of the trial court was vacated; the Court held that the public peace was not jeopardized by the noise generated by appellant. *Id.* at 1271. The Court characterized the outburst as “brief, only as loud as a person of presumably ordinary physical abilities can shout, occurred in the evening prior to ordinary sleeping hours, and prompted neither civil unrest nor a single neighbor to seek police intervention.” *Id.* The outburst in *Maerz* is distinguishable from that of the Defendant in the fact that the outburst in this instance was not brief. The approximate length of the outburst was between ten (10) to fifteen (15) minutes in length. The time of day was different, as the incident in this case occurred in the morning hours. As for the noise level Officer Williamson testified to hearing Defendant screaming in the background over Officer Rodger’s voice as he talked on the radio. Additionally, unlike in *Maerz* where no civil unrest occurred, approximately eight (8) neighbors came outside to see what was going on.

Similarly the instant case is also distinguishable from *Commonwealth v. Gilbert*. 449 Pa. Super. 450, 674 A.2d 284 (Pa. Super. 1996). In *Gilbert* the Superior Court

vacated appellant's conviction of disorderly conduct that arose from an incident in which appellant yelled across the street to his neighbor telling him that the police were wrong for trying to tow his car; subsequently after three requests that the appellant quiet down he failed to do so and was arrested. *Id.* The Court held that the evidence did not show that appellant was loud, boisterous, or unseemly. *Id.* at 287. The facts in Defendants case vary again in duration and volume. Law enforcement attempted to calm and or quiet Defendant down for ten (10) to fifteen (15) minutes; and Defendant was characterized as screaming, hollering, yelling and animated. Additionally, the case at hand is distinguishable from both *Maerz* and *Gilbert* in the fact that Defendant is not and was not at the time a resident of the neighborhood in which the incident occurred.

On May 12, 2012, the behavior that Defendant displayed was unreasonably loud. Defendant was in a residential neighborhood carrying on in a volume that was not fitting or proper in respect to the conventional standards of organized society. *Gowan* at 483. Defendant's outburst not only caused approximately eight (8) neighbors to come out of their homes to see what was going on it also caused seven (7) law enforcement officers to arrive on the scene. Defendant's behavior generated actual noise and jeopardized the public peace. The evidence supports the finding that Defendant was causing unreasonable noise. The evidence supports a finding that Defendant is guilty of disorderly conduct because he acted with intent to cause public inconvenience, annoyance or alarm, or recklessly created a risk thereof, by making unreasonable noise. 18 Pa. C.S. § 5503 (a) (2).

Through his Concise Statement of Matters Complained of on Appeal Defendant asserts that the conviction of disorderly conduct was not appropriate because his outburst was protected speech. Defendant's defense is flawed.

In finding that the Defendant was guilty of disorderly conduct the Court bases the ultimate determination on the volume of speech not based on the content. *Maerz* at 1269. The Superior Court has held that "the prohibition against unreasonable noise is directed at volume of speech not its content." *Id.* at 1270 (quoting *Gilbert* at 287). When making the case, the Commonwealth did not focus on the words of Defendant but the conduct, noise level and consequences of Defendant's actions. The Court found that the Commonwealth met their burden of proving Defendant was exhibited the unreasonably loud element of 18 Pa. C.S. 5503 (a) (2). Officer Williams did repeat some of the conversation with Defendant, the Court, however, viewed that conversation as laying foundation and painting the scene rather than for the actual words. During Defendant's testimony he tried to focus on the content of his words that day. He testified that he was not being disorderly or unreasonably loud that Officer Rodgers was just upset because Defendant called him a useful idiot and a dummy. Defendant's testimony and his characterization of his actions on May 24, 2012, lacked credibility. Finding Defendant guilty of Disorderly Conduct was not an error based on protected speech because it was the volume of Defendant and not his words that were determinative of his conviction.

CONCLUSION

Whether it is direct, circumstantial, or a combination of both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004). Again addressing his Concise Statement of Matters Complained of on Appeal, there was more than sufficient evidence to prove that Defendant was guilty of disorderly conduct on the morning of May 24, 2012. Despite attempts of law enforcement to calm him, Defendant continued to be unreasonably loud causing neighbors to congregate. Given the overwhelming evidence of Defendant's guilt, the Court's verdict and sentence of September 27, 2012 should be affirmed and Defendant's appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge