

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE ROBERT CHESTER,

Defendant-Appellant.

UNPUBLISHED

August 6, 2002

No. 231588

Macomb Circuit Court

LC No. 99-003002-AR

Before: Fitzgerald, P.J., and Holbrook, Jr. and Griffin, JJ.

PER CURIAM.

Defendant appeals by leave granted the December 4, 2000, opinion and order of the Macomb Circuit Court affirming the October 1999 order of the Macomb District Court denying defendant's motion for a directed verdict. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with violating two misdemeanor provisions of the City Ordinances: trespassing, Warren Ordinances, § 22-71,¹ and disturbing the peace, Warren Ordinances, § 22-107.² The incident from which the charges arose occurred at J. Edgar's Bar in Warren.

Robert Crass, an off-duty police officer, was at the bar that evening. He testified that he first noticed defendant when defendant entered the bar appearing angry, hostile, and intoxicated.

¹ Warren Ordinances, § 22-71 provides in pertinent part:

Any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant, the agent or servant of either, who without lawful authority neglects or refuses to depart therefrom, shall be guilty of a misdemeanor.

² Warren Ordinances, § 22-107, provides in pertinent part:

No person shall make, aid, give countenance to, or assist in making any improper noise, disturbance, breach of the peace or diversion tending to a breach of the peace, in any place within the city.

Defendant was stumbling and pushed past several people while shouting. Defendant was apparently angry because his friend, Lisa Murray, had been asked to leave the bar because she was intoxicated and belligerent. Defendant confronted the bartender, Carmelina Biscarner, shouting at her and using profanities. Crass noticed that defendant had a dark object in his hand, and he feared that defendant had a gun. Crass therefore approached the area where defendant was standing. Crass heard Biscarner ask defendant to leave, but defendant refused and began to get angrier. Defendant then threatened to kill everyone in the bar. Defendant lifted his hand, and Crass noticed that defendant was holding a video recorder. Crass then asked defendant to leave. Defendant spun around toward Crass, striking him with his elbow as he turned. Crass escorted defendant out of the bar.

Crass was friends with Robert Cody, the owner of the bar, who was not present on the night of the incident. Cody testified that he felt comfortable leaving the bar when there were off-duty police officers present. He indicated that the officers, including Crass, had the authority to take care of problems in his absence.

Robert Vires was a witness to the incident. He testified that defendant argued with Biscarner over the fact that Biscarner cut Murray off from drinking. Defendant started yelling at Biscarner and raised his hand. At this point, Crass stepped in and escorted defendant out of the bar. Vires testified that “his peace was disturbed.”

Defendant testified that he and Biscarner were friendly and that he felt comfortable speaking to her in the manner he did when the incident occurred. He discussed Biscarner’s decision to ban Murray from the bar and asked if she could come in if she drank Coke. According to defendant, Biscarner never told him to leave and not return. Defendant testified that as he was speaking to Biscarner, two or three individuals grabbed his camcorder out of his hand, pushed him down the bar into the outside door, smashed him into a telephone booth and kicked him outside. Crass never told him to leave the bar and did not talk to him until he got outside. Defendant denied ever threatening anyone.

Defendant was convicted of the ordinance violations and was sentenced to four days in jail.

Before trial, defendant moved to dismiss the disturbing the peace charge, arguing that the ordinance was unconstitutionally vague. The district court denied this motion. Following trial, defendant moved for directed verdict of acquittal and/or new trial. He argued that Crass’ statements regarding what Biscarner said to defendant were inadmissible hearsay, the admission of which denied him his right to cross-examination and fair trial. The trial court denied defendant’s motion. On appeal, the circuit court affirmed the district court’s decision. This Court granted leave to appeal.

Defendant first argues that the ordinance prohibiting disturbing the peace is unconstitutionally vague because it does not contain an element of intoxication. In support of this argument, defendant has merely referenced his oral arguments and his argument set forth in his written motion before the lower court. Defendant has failed to properly brief and argue the issues before this Court and, therefore, appellate review is denied. *American Transmission, Inc v*

Channel 7, 239 Mich App 695, 705; 609 NW2d 607 (2000); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).³

Defendant next argues that he was denied a fair trial by the erroneous admission of hearsay testimony to establish the element of “notification to depart” in the trespass ordinance. Assuming that the evidence was improperly admitted, defendant must demonstrate that it is more probable than not that the erroneous admission of the hearsay testimony was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). In other words, whether erroneously admitted evidence requires reversal depends on the nature of the error and its effect in light of the weight of the properly admitted evidence. *People v Smith*, 456 Mich 543, 555; 581 NW2d 654 (1998).

In addressing this argument on appeal, the circuit court found that Crass had authority, through Cody, to eject defendant from the bar. Thus, according to the court and the prosecution, Crass properly acted as Cody’s agent. Defendant fails to attack this aspect of the circuit court’s decision. Therefore, even if the court erroneously admitted Crass’ testimony as hearsay, there remains a basis upon which to find defendant guilty of trespass. By failing to challenge Crass’ own authority to order defendant to leave the bar, defendant has failed to demonstrate that the arguably erroneous admission of testimony was not harmless.

Last, defendant argues that the evidence was not sufficient to support the violation of disturbing the peace because the complaining witness did not testify. Once again, defendant has merely referenced his oral arguments and his argument set forth in his written motions in the lower court. However, the exhibits to which defendant direct this Court do not set forth any relevant arguments on this issue. Therefore, he has failed to properly brief and argue the issues before this Court and appellate review is therefore denied. *American Transmission, supra*; *Prince, supra*.⁴

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin

³ We note, however, that defendant’s argument below was premised on this Court’s review of this state’s disorderly person statute that is not relevant to the ordinance at issue in this case.

⁴ We note, however, that defendant’s argument is without merit. Viewed in a light most favorable to the prosecution, *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000), the evidence was sufficient to establish beyond a reasonable doubt that defendant made an improper noise and disturbance that breached the peace.