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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1249

State of Minnesota,
Respondent,

vs.

Duane Charles Hansen,
Appellant.

Filed May 6, 2013
Affirmed
Hudson, Judge

Clay County District Court
File No. 14-CR-11-3385

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Jenny M. Samarzja, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Timothy H. Dodd, Detroit Lakes, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Hooten, Judge.

U N P U B L I S H E D   O P I N I O N

HUDSON, Judge

Appellant challenges his conviction of disorderly conduct, arguing that the offensive content of his speech was protected under the First Amendment. Because appellant's manner of shouting his speech disrupted county offices, constituted

unprotected "boisterous or noisy conduct," which does not raise First Amendment concerns, and because the evidence shows that appellant knew or had reason to know that his conduct would tend to alarm or disturb others, we affirm.

FACTS

The state charged appellant with disorderly conduct, in violation of Minn. Stat. § 609.72, subd. 1(3) (2010), as a result of an incident occurring at the Clay County courthouse. Appellant waived his right to a jury trial, and the district court held a bench trial. C.E., a Clay County employee, testified that while she was working, appellant entered the county offices and requested a phone number for a county commissioner. Appellant had briefly gone to another office, where nobody was present, and had been unable to obtain the correct number. C.E. testified that appellant began to swear loudly, that he became agitated and "worked up," and that she was "glad that there was a counter between us" and that other employees were present. She testified that she would have been concerned for her safety had she been working alone. G.W., a Clay County human resources assistant, testified that when appellant came to the county offices, he was loudly using inappropriate language and stating that people were not giving him the correct phone numbers. She testified that although she did not really feel intimidated, she called court security and stood by the counter in case C.E. needed assistance.

The county human resources director testified that he heard appellant speaking loudly and walked out of his office to investigate. He testified that as he walked up to the counter, appellant looked at him and said, "Who the f—k are you and what the f—k do

you want?" Another employee who works in the county planning office testified that he heard appellant's conversation with the other employees, including appellant's swearing.

A Clay County court security officer, Deputy David Sunde, testified that he received a call from the human resources department informing him that appellant was "screaming and causing a commotion." Deputy Sunde went to the office, told appellant that he had to leave, and began to escort appellant down the stairs while appellant continued to swear. Another court security officer, Deputy Jason Hicks, testified that he also responded to the incident and walked appellant out of the building, with appellant "yelling the entire time." He testified that as he escorted appellant from the building with the aid of a third deputy, who was working by the front door, appellant kicked the front door. The third deputy, Deputy Barry Halvorson, testified that as appellant first walked into the building, appellant said, "F—k you, you c—ksucker," and that as the deputies escorted appellant out of the building, he kicked both entrance doors hard.

Appellant testified that he entered the courthouse because he had been given incorrect phone numbers for two county commissioners and that he became upset because he thought that the county coordinator's office should be open, but it was not. He testified that he spoke to two employees and "had to get . . . a little more stern" and that he was "probably" swearing, but he was not being intimidating.

The district court found appellant guilty of disorderly conduct. The district court found that the employee who initially waited on appellant felt threatened, that appellant's conduct was unprovoked, and appellant knew that his conduct would tend to alarm or disturb the employees. The district court also found that appellant kicked the glass doors

open with his foot, which he knew or had reasonable grounds to know could reasonably provoke an assault by the officers escorting him from the building. The district court sentenced appellant to 90 days in jail, staying all but 18 days, and imposed a $300 fine. This appeal follows.

D E C I S I O N

This court reviews the sufficiency of the evidence to support a conviction by determining whether the facts in the record and the legitimate inferences drawn from those facts would permit the fact-finder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008). We view the evidence in the light most favorable to the conviction and assume that the fact-finder believed the state's witnesses and disbelieved contrary evidence. *Id.* The fact-finder is in the best position to weigh witness credibility. *Id.* The same standard of review applies to bench trials, in which the district court is the trier of fact, and to jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Appellant argues that the evidence is insufficient to sustain his conviction because his speech, although offensive, was protected by the First Amendment. In reviewing a First Amendment challenge to a disorderly conduct conviction, "[t]his court will review the evidence in the light most favorable to the state and then determine, as a matter of law, whether the defendant's language under that set of circumstances falls outside the protection of the First Amendment." *In re Welfare of M.A.H.*, 572 N.W.2d 752, 757 (Minn. App. 1997).

A conviction of disorderly conduct requires proof beyond a reasonable doubt that a person "engage[d] in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others." Minn. Stat. § 609.72, subd. 1(3). The person convicted must know or have reasonable grounds to know that the speech or conduct "will, or will tend to, alarm, anger, or disturb others or provoke an assault or breach of the peace." Minn. Stat. § 609.72, subd. 1 (2010). An appellate court measures a defendant's words and conduct "as a package against the controlling statute." *State v. Klimek*, 398 N.W.2d 41, 43 (Minn. App. 1986).

The fact that words are vulgar, offensive, or insulting does not make them criminal "unless they fall outside the protection afforded to speech by the First Amendment." *In re Welfare of S.L.J.*, 263 N.W.2d 412, 416 (Minn. 1978); *see also M.A.H.*, 572 N.W.2d at 759–60 (reversing disorderly conduct juvenile adjudication when juveniles swore loudly at police officers). Appellant argues that his use of offensive language to the county employees did not rise to the level of "fighting words" and was therefore protected by the First Amendment. But we have held that, although "the disorderly conduct statute prohibits only 'fighting words' as applied to speech *content*, the disorderly shouting of otherwise protected speech or engaging in other 'boisterous or noisy *conduct*' may still trigger punishment under the statute without offending the First Amendment." *In re Welfare of T.L.S.*, 713 N.W.2d 877, 881 (Minn. App. 2006). Under those conditions, "it is not the speech itself that triggers punishment; the statute may be applied to punish the manner of delivery of speech when the disorderly nature of the speech does not depend

on its content." *Id.* Therefore, appellant's conviction may be upheld if his conduct in delivering profane speech was "offensive, obscene, abusive, boisterous, or noisy" and if he knew or had reason to know that his conduct would "tend to alarm, anger, or disturb others." Minn. Stat. § 609.72, subd. 1; *see, e.g.*, *T.L.S.*, 713 N.W.2d at 881 (upholding probable-cause determination for delinquency petition alleging disorderly conduct when a juvenile disrupted a school by shrieking profanities inside a school-administration office).

Here, the record is undisputed that appellant entered the county courthouse, went upstairs to the county offices, and, without provocation, uttered loud, profane remarks to two county employees, which caused one employee to exit his office to investigate the commotion and another employee to call court security. We conclude that under these circumstances, apart from the content of appellant's speech, his disorderly manner of delivering that speech had the effect of disrupting the county offices, so that his language and conduct fell outside First Amendment protection. *See T.L.S.*, 713 N.W.2d at 881.

Appellant maintains that, because he made no physical or oral threats, and the county employees did not testify that they felt personally threatened, he had no reason to know that his statements would tend to alarm or disturb them. Appellant testified that he was not being intimidating. But C.E. testified that she was "glad that there was a counter between [herself and appellant]" and that she would not have felt safe if she had been working alone. And G.E. testified that appellant's language was sufficiently disruptive that it caused her to call court security. The district court found appellant's testimony to be less credible than that of the state's witnesses. We defer to the fact-finder's credibility

determinations. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). We conclude that, taken in the light most favorable to the verdict, the evidence is sufficient to sustain appellant's conviction of disorderly conduct.

Affirmed.