

[J-230-98]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 23 M.D. Appeal Dkt. 1998
	:	
Appellee,	:	Appeal from the Order of the Superior
	:	Court entered July 1, 1997 at 914HBG95,
	:	reversing the order entered October 23,
v.	:	1995 and remanding the case to the Court
	:	of Common Pleas of Lebanon County,
	:	Criminal Division, at No. 95-10404.
KELLY JO HOCK,	:	
	:	
Appellant.	:	
	:	ARGUED: NOVEMBER 16, 1998
	:	
	:	
	:	

DISSENTING OPINION

MR. JUSTICE CASTILLE

DECIDED: MAY 3, 1999

I believe that directing profanities in a public place at a police officer who is attempting to perform his lawful duty constitutes disorderly conduct. Accordingly, I respectfully dissent.

The disorderly conduct statute provides:

(a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, **annoyance** or alarm, or recklessly creating a risk thereof, he: 1) **engages in fighting or threatening, or in violent or tumultuous behavior**; (2) makes unreasonable noise; (3) uses obscene language, or makes an obscene gesture; or 4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

18 Pa.C.S. § 5503(emphasis added).¹

This Court has held that a violation of section 5503 (a) may occur when a person utters "fighting words." Commonwealth v. Mastrangelo, 489 Pa. 254, 262, 414 A.2d 54, 58 (1980). "Fighting words" are "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." Id. at 262, 414 A.2d at 58, (quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942)). In Mastrangelo, this Court upheld the appellant's conviction for disorderly conduct where the appellant followed a metermaid down the street calling her a host of foul and insulting names.

Similarly, in Commonwealth v. Pringle, 304 Pa. Super. 67, 73, 450 A.2d 103, 107 (1982), the Superior Court held that the words "godd--n f---ing pigs" were fighting words when directed at police officers on a public street while the officers attempted to carry out their lawful duties. In Pringle, police were attempting to arrest an unruly person in front of a tavern. The subject of the arrest was violently resisting attempts to subdue him. A crowd of people gathered to watch. The appellant joined the crowd and repeatedly shouted the epithets at the officers. The Superior Court stated that "one may

¹ Appellant's words, while certainly obscene according to common parlance, do not fit the definition of "obscene" under section 5503 (a)(3) of the disorderly conduct statute. For purposes of the disorderly conduct statute, language is obscene if it meets the test set forth in Miller v. California, 413 U.S. 15 (1973): whether the average person would find that the language appealed to prurient interests, whether the language depicted or described, in a patently offensive way, sexual conduct specifically defined by any applicable state law, and whether the language lacked serious literary, artistic, political, or scientific value. See Commonwealth v. Bryner, 438 Pa. Super. 473, 652 A.2d 909 (1995) ("go to hell Betsy" not obscene); see also United States v. McDermott, 1997 U.S. Dist. LEXIS 11298 (noting that Pennsylvania General Assembly adopted Miller test to define obscene in 18 Pa. C.S. § 5903 (b); "this is bull--", "I'm not f---ing going anywhere" not obscene). Accordingly, this Court analyzes appellant's behavior in this matter under section 5503 (a)(1).

be convicted of disorderly conduct for engaging in the activity of shouting profane names and insults at police officers on a public street while the officers attempt to carry out their lawful duties.” Id. at 71-72, 450 A.2d at 105-06. I am persuaded by the reasoning of the Superior Court and find it applicable to the matter sub judice, where appellant directed the profanity at a police officer who was engaged in the line of duty.

The Superior Court correctly concluded in the matter herein that the fact that Officer Shank was the only person who had the displeasure of hearing petitioner's remarks does not support the trial court's finding that petitioner could not have intended to cause and could not have recklessly created a risk of public inconvenience, annoyance, or alarm. As used in section 5503,

the word public means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

18 Pa.C.S. § 5503 (c).

One who exhibits disorderly behavior in a public place is guilty of disorderly conduct even if that behavior is directed at a single individual. Commonwealth v. Young, 370 Pa. Super. 42, 45, 535 A.2d 1141, 1143, alloc. denied, __ Pa. __, 544 A.2d 961 (1988). Although in Mastrangelo, supra, other persons on the street observed the appellant's conduct, this fact was not crucial to this Court's determination that the appellant had, in fact, engaged in disorderly conduct. Rather, this Court determined that the appellant had uttered fighting words despite the fact that none of the bystanders testified in court or were incited to violence by the appellant's words. See Mastrangelo, at 257, 414 A.2d at 56. Likewise, the fact that other persons were present to hear the profanity uttered

by the appellant in Pringle, supra, as opposed to the instant matter, does not make Pringle less persuasive. The disorderly conduct statute is clear that a person violates the statute if they engage in fighting behavior with the intent to cause public annoyance. Here, appellant uttered her words on a public street for the sole purpose of antagonizing the officer performing his duty.

Nor is it controlling that the words in Mastrangelo were shouted. Here, appellant said the words loud enough for her intended target, the police officer, to hear. I agree with the Superior Court's determination in the instant case that appellant's statements fall within the category of "fighting words" in violation of section 5503 (a).

In addition, appellant chose highly offensive words which showed blatant disrespect and hostility. Had appellant's words been addressed to a layman, the words would have had a direct tendency to incite him to acts of violence. The Superior Court correctly concluded that there is no reason why a police officer or other public official responsible for maintaining law and order should have to be the object of obscenities and vulgarities of the type which would create a breach of the peace if directed at a layman. The statute specifically states that recklessly creating a risk of public annoyance is sufficient. Here, appellant uttered "F--- you, a--hole," to a police officer, on a public street, loud enough for the officer to hear. This behavior falls squarely within the ambit of section 5503 (a). Therefore, the Superior Court properly concluded that fighting words directed at a police officer have as much legal significance as those directed against any other citizen of this Commonwealth.

Finally, I point out that the fact that appellant uttered these words, did, in fact, result in violence. Although the officer remained admirably calm, he attempted to place

appellant under arrest following her execration, and she responded by curling into a ball and repeatedly kicking the officer. Had appellant chosen to refrain from vilifying the officer, she could have proceeded peacefully into her apartment, because the officer had concluded the business in relation to her latest driving offense.²

For these reasons, I would affirm the Superior Court.

² Appellant's driving record reveals that her operating privileges had been suspended over thirty times.