STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
January 25, 2024
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State of West Virginia,
Plaintiff Below, Respondent

vs.) No. 22-790 (Wood County 21-M-AP-4)

Richard Matthew Dillon,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Richard Matthew Dillon appeals the order of the Circuit Court of Wood County, entered on September 13, 2022, affirming Mr. Dillon's magistrate court convictions of disorderly conduct (*see* W. Va. Code § 61-6-1b) and obstruction (*see* W. Va. Code § 61-5-17(a)).[1] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate. See W. Va. R. App. Proc. 21.

Patrolman Mark Edward Stewart of the City of Parkersburg Police Department directed Mr. Dillon to stop his car after the patrolman saw Mr. Dillon driving on a public roadway in the early hours of a morning in May 2021. It is undisputed that Mr. Dillon's registration tag light was not working at the time. They were near Mr. Dillon's home when Patrolman Stewart turned on his siren and emergency lights, and Mr. Dillon pulled into his own driveway. The two men had a tense exchange, leading the patrolman to file a criminal complaint charging Mr. Dillon with the misdemeanor crimes of disorderly conduct and obstructing an officer.

Mr. Dillon was tried by a jury in the Magistrate Court of Wood County. Patrolman Stewart testified that Mr. Dillon was frustrated by the traffic stop and that, when the stop was first initiated, Mr. Dillon left his vehicle after twice having been asked to remain in the car. The officer testified that Mr. Dillon "was turning the radio up and down to very loud volumes" even after being asked to stop, and that Mr. Dillon "continued his disgruntled boisterous behavior [and] used the term f--k you multiple times. . . ." He further testified that Mr. Dillon "was screaming, drawing a lot of attention to the stop. . . . [H]is behavior would definitely command attention." Later, after Patrolman Stewart informed Mr. Dillon that he was subject to arrest, Mr. Dillon refused the patrolman's "numerous" verbal commands to exit the vehicle. After the presentation of this and other evidence, Mr. Dillon was found guilty of the charged crimes.

[1] Mr. Dillon appears by counsel Matthew Brummond of West Virginia Public Defender Services Appellate Advocacy Division. Respondent State of West Virginia appears by Attorney General Patrick Morrisey and Assistant Attorney General Mary Beth Niday.

On appeal, Mr. Dillon asserts a single assignment of error. He argues that his conviction of disorderly conduct should be reversed because he was in his personal driveway and not a "public place" when the offensive conduct occurred. The statute at issue provides:

> Any person who, in a public place, any office or office building of the State of West Virginia, or in the State Capitol complex, or on any other property owned, leased, occupied or controlled by the State of West Virginia, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturbs the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his or her lawful capacity, is guilty of disorderly conduct, a misdemeanor and, upon conviction thereof, may be confined in jail for twenty-four hours or fined not more than $100: *Provided,* That nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

W. Va. Code § 61-6-1b(a). Mr. Dillon's assignment of error is squarely centered on statutory interpretation. "'Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.' Syl. pt. 1, *Chrystal R.M. v. Charlie A. L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995)." Syl. Pt. 1, *State v. Gamble*, 211 W. Va. 125, 563 S.E.2d 790 (2001). Furthermore, Mr. Dillon's arguments turn wholly on the meaning of a statutory term, and we are mindful that "'[u]ndefined words and terms in a legislative enactment will be given their common, ordinary and accepted meaning.' Syl. Pt. 6, in part, *State ex rel. Cohen v. Manchin*, 175 W.Va. 525, 336 S.E.2d 171 (1984)." Syl. Pt. 4, *State v. Soustek*, 233 W. Va. 422, 758 S.E.2d 775 (2014).

The circuit court considered this issue when Mr. Dillon appealed his conviction. It noted that a public place, under its common and ordinary meaning, is "a place accessible or visible to the public" or "exposed to general view." Because Mr. Dillon's offensive conduct occurred in an area "feet away from a public highway with an unobstructive view" and because "his car, his person, and his activity could be seen and heard from the sidewalk and the [road]way" of a residential area, the circuit court found that Mr. Dillon was, in fact, in a public place. The circuit court further emphasized that the statute requires that the conduct occur in a "public place" but not necessarily on "public property."

We agree with the circuit court's interpretation that a "public place" may be privately owned when "violent, profane, indecent or boisterous conduct or language or . . . the making of unreasonably loud noise" originating there is capable of causing "annoyance or alarm to another person." We find support in this interpretation by the legislature's inclusion of privately-owned facilities, such as apartment buildings, mobile home parks, and public parking areas. There is no indication that the legislature intended that a person should be shielded from prosecution when standing in the driveway of a single-use dwelling in a residential area, but subject to prosecution for the same conduct done inside a mobile home located inside a mobile home community. The

focus of West Virginia Code § 61-6-1b is the preservation of the "peace of others," and the State presented substantial evidence that Mr. Dillon's boisterous conduct threatened that peace.

Here, the traffic stop was initiated immediately after the patrolman observed Mr. Dillon's vehicle make a "little bit quick" movement that caused the tires to squeal at approximately 1:30 a.m. on a public roadway. When tasked to stop his automobile, Mr. Dillon—fortunate to be so near his home—pulled into his personal driveway, adjacent to the public roadway, and began his tirade. It is apparent that the conduct occurred so near the roadway because, according to the testimony of Patrolman Stewart, the patrolman's car remained partially on the roadway when he stopped behind Mr. Dillon. It is further clear from the testimony that the disturbance was capable of perception outside of Mr. Dillon's domestic space. Where an individual commits an act leading to a lawful traffic stop, the individual cannot find refuge from prosecution by stepping across a private line of demarcation to engage in abusive and disorderly behavior. In a case such as this, any otherwise disorderly conduct that occurs adjacent to the street, where it is capable of causing annoyance and alarm to others in that area, must be considered as happening in a public place.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton

DISSENTING:

Chief Justice Tim Armstead
Justice C. Haley Bunn

Armstead, Chief Justice and Bunn, Justice, dissenting:

We dissent to the majority's resolution of this case. We would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, we believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, we respectfully dissent.