No. 33814-2-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DENNIS WALLACE PATTERSON,

Appellant.

On Appeal from the Stevens County Superior Court
Cause No. 15-1-00005-0
The Honorable Allen Nielson & Patrick Monasmith, Judges

BRIEF OF RESPONDENT

Tim Rasmussen, Stevens County Prosecutor

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1. COUNTERSTATEMENT OF THE CASE

The business of the Stevens County District Court on Monday mornings is to dispose of traffic infraction matters. (RP 139, 149, 251-252) On Monday, January 5, 2015 at 8:30 a.m., Mr. Patterson was present in the courtroom gallery for the pre-planned purpose of reading a prepared written statement to Judge Gina Tveit in open court. (RP 173-174, 220-221, 225-226) He was not a party or witness in any action properly set on the docket. (RP 244) He was accompanied by several other people, some of whom were also holding sheets of paper. (RP 153, 165-166) There were also litigants present in the gallery waiting to have their traffic infraction matters heard. (RP 249) Mr. Patterson's prepared statement had been disseminated on the internet, in advance of the January 5, 2015 docket. (RP 220-222, 225, 232) The Stevens County Sheriff was notified by a recipient of Mr. Patterson's statement that there could be a disruption in District Court during that Monday's docket. (RP 220-222, 225, 232-233) Consequently, there was a Sheriff's Deputy placed in the courtroom and the Sheriff's office was monitoring the courtroom on closed circuit television. (RP 174, 218, 220, 223, 232-233) The courtroom feed provided video only, no audio was available. (RP 220, 234)

As the bailiff was bringing Judge Tveit into the courtroom and calling court into session, Mr. Patterson remained standing and began reading loudly from his prepared statement. (RP 151-152, 166-167, 242, 244) Mr. Patterson refused to comply with Judge Tveit's orders to stop disrupting court and her subsequent order to leave the courtroom. (RP 151-152, 161, 166-167, 171, 244, 247, 253-254) The judge was unable to begin the court's scheduled docket because of Mr. Patterson's loud voice, aggressive demeanor and defiant behavior. (RP 151-152, 244, 247) Judge Tveit ultimately had to leave the bench and wait for law enforcement to establish order in her courtroom. (RP 247, 248, 253-254) As Judge Tveit left the bench and law enforcement

approached Mr. Patterson, there was chaos in the courtroom. (RP 236, 258, 260-261) Law enforcement had to forcibly remove Mr. Patterson from the courtroom. (RP 167-169)

While Mr. Patterson was being removed from the courtroom, another male in the gallery remained standing and began reading loudly from a piece of paper. (RP 170, 235) After he was removed by law enforcement, the bailiff once again announced Judge Tveit into the courtroom. (RP 170) Simultaneously, a female stood and began reading loudly from the paper she was holding. (RP 170) Judge Tveit was able to regain control of her courtroom after the third reader was removed; and, there were no further disruptions from the members of the gallery. (RP 170)

2. ARGUMENTS

A. RCW 9A.84.030(1)(b) is not unconstitutionally overbroad and does not infringe on the free speech activities protected under the First Amendment of the US Constitution or Article 1, §5 of the Washington Constitution.

The Appellant recites the First Amendment of the United States Constitution which provides that freedom of speech cannot be abridged by Congress. He then offers a line of cases supporting that this fundamental right, which includes expressive conduct, is not absolute and can only be regulated or criminalized by the government under very limited circumstances. The State does not disagree with the Appellant's interpretation of the case law governing restrictions on the substantive content of protected speech and expressive conduct. However, the State contends that the Appellant relies on decisions that are not applicable to the case at bar. The State's position is supported by well-established legal principles regarding the effect of intermingling speech with conduct and the permissible regulation of unlawful conduct.

Washington's disorderly conduct statute regulates conduct, not pure speech. As such, the mere fact that Mr. Patterson's disruptive conduct included the act of speaking loudly does not

trigger the protections afforded to free speech under the U.S. or Washington Constitutions. "[F]reedom of speech does not carry with it a correlative right to exercise it in every circumstance, everywhere, every moment of every day." State v. Dixon, 78 Wn.2d 796, 803, 479 P.2d 931, 935 (1971). "'[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" Cox v. State of La., 379 U.S. 559, 563, 85 S.Ct. 476, 480, 13 L.Ed.2d 487 (1965) (citing Giboney v. Empire Storage & Ice Co., 336 U.S. 490 at 502, 69 S.CT. 684 at 691, 93 L.Ed. 834 (1949)).

Further, disorderly conduct is not a constitutionally protected form of expressive conduct. In Cox v. State of La., the US Supreme Court overturned a conviction for picketing near a courthouse, because the defendant conducted his protest in the location where city officials had previously told him it would be permissible. (Id. at 569). The Court found that the defendant, relying on the instruction of public officials, could not have reasonably been aware that his conduct would violate the statute. (Id. at 571). However, the Court rejected the constitutional challenge based on infringement of free speech, stating: "We hold that this statute on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." (Id. at 563).

As in the *Cox* case above, the disorderly conduct prohibited by RCW 9A.84.030(b) is subject to permissible government regulation. "Riot, rout, and unlawful assembly in essence constitute and are closely related to other forms of disturbance of the peace. In prohibiting these acts and similar conduct, neither the legislature nor the common law is denying or abridging those rights specifically enumerated in the constitutions; on the contrary, the statute is designed

to prohibit the very conduct which will abridge the rights of others to freedom of speech and peaceable assembly and their further rights to peace, safety and repose." State v. Dixon, at 806, 479 P.2d at 937 (citing 46 Am.Jur. Riots and Unlawful Assembly s 2 (1943)). The Courts have historically upheld the government's authority to regulate conduct when necessary to protect the rights of others and maintain social order. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." Cox v. New Hampshire, 312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049 (1941). "The deference due legislative determination of the need for restriction upon particular forms of conduct has found repeated expression in this Court's opinions." American Communications Ass'n, C.I.O., v. Douds, 339 U.S. 382, 401, 70 S.Ct. 674, 675, 94 L.Ed. 925 (1950).

The Appellant relies heavily on cases addressing constitutional challenges to laws specifically regulating the substance of expressive speech. For example, Terminiello v. City of Chicago, 337 U.S. 1, 5, 69 S.Ct. 894, 896, 93 L.Ed. 1131 (1949), in which the Court held that the city ordinance "permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand." However, the Appellant's convictions do not rest on any of the grounds discussed in Terminiello. Similarly, in Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), the Court reviewed the section of a state statute pertaining to "words or names addressed to another in a public place." Mr. Patterson's words were not at issue, as he was not convicted for violating RCW 9A.84.030(1)(a) which governs abusive language.

The Appellant's reliance on State v. Reyes, 104 Wn.2d 35, 700 P.2d 115 (1985), to support his argument that RCW 9A.84.030(1)(b) violates Article 1, §5 of the Washington Constitution is also misplaced. The Washington Supreme Court declined to apply the narrow standard in *Reyes* to an ordinance that "[b]y its very terms ... regulates behavior, not pure speech...." City of Seattle v. Eze, 111 Wash.2d 22, 31, 759 P.2d 366, 370 (1988). The Court held that such an ordinance would "not be overturned unless the overbreadth is 'both real and substantial in relation to the ordinance's plainly legitimate sweep." Id. (citing O'Day v. King Cy., 109 Wash.2d 796, 804, 749 P.2d 142 (1988)).

Mr. Patterson's arrest and conviction arose from how, when, and where he was speaking, not from what he said. The substantive content of his speech could not be heard by the Sheriff, who was monitoring a video only feed on closed circuit television (RP 234, 236); was not heard by Judge Tveit, as she was speaking simultaneously with Mr. Patterson and endeavoring to have her voice heard over his (RP 240-241); was not heard by the Sheriff's Deputy who was present and focused on Mr. Patterson's actions and the safety of others in the courtroom (RP 172). The substance of the statement Mr. Patterson was reading so loudly in court was ruled inadmissible and was not placed at issue for the jury (RP 81-84).

The Appellant references State v. Immelt, 173 Wn.2d 1, 10, 267 P.3d 305, 309 (2011), to support his argument that RCW 9A.84.030(1)(b) is unconstitutionally overbroad because it prohibits protected forms of expressive conduct. The statute at issue in *Immelt* banned all horn honking except for the purposes of public safety, authorized parades, and other public events. Id. at 13, 267 P.3d at 310-311. Without deciding if horn honking constitutes expressive conduct, the Court concluded "that some horn honking may constitute protected speech..." Id. at 10, 267 P.3d at 309. The Court held that the language in the ordinance did not contain a mens rea element or

specified purpose and therefore, "provides no basis for a sufficiently limiting construction to avoid an overbreadth problem." Id. at 13, 267 P.3d at 310-311. However, the Court noted that "a properly tailored ordinance prohibiting *disturbing* horn honking that is *intended* to annoy or harass would likely survive scrutiny." Id. at 12, 267 P.3d at 310 *(emphasis added)*. The Appellant's argument finds no support in the *Immelt* decision, as the Court used a freedom of speech analysis and declined to reach the issue of expressive conduct. Subsection (b) of Washington's disorderly conduct statute does not restrict the content of speech, nor does it prohibit all conduct but for a few exceptions. It prohibits only intentionally disruptive conduct and is not analogous to the *Immelt* horn ordinance.

The Appellant cites to City of Houston, Tex v. Hill, 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987), to assert that Washington's disorderly conduct statute is unconstitutional on its face because it criminalizes constitutionally protected conduct. However, the *Houston* Court found that because the ordinance at issue allowed police to arrest people for words or behavior that annoyed or offended them, it was "not narrowly tailored to prohibit only disorderly conduct or fighting words, and in no way resembles the law upheld in *Colten.*" Id. at 465, 107 S.Ct. at 2511. In Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584 (1972), the U.S. Supreme Court held that the Kentucky disorderly conduct statute did not violate the defendant's First Amendment rights and was not unconstitutionally vague or overbroad. Id. at 110, 92 S.Ct. at 1957. The Court explained, "The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited. ...'We believe that citizens who desire to obey the statute will have no difficulty in

understanding it ...'" Id. at 110, 92 S.Ct. at 1957 (quoting Colten v. Commonwealth, 467 S.W.2d at 378).

"Fears that a statute might in one situation or another be misapplied provide little basis for holding it unconstitutional." State v. Dixon, at 803, 479 P.2d at 935. The Appellant argues that the language in the statute is unconstitutionally overbroad because it "could be applied to criminalize *any* type of speech or behavior for *any* purpose in *any* location that interrupts or disturbs *any* group of two or more people gathered for *any* reason." (Appellant's Brief at p. 14) The Appellant's extreme interpretation skews the statute's meaning too far beyond what is readily communicated and easily understood by its plain language. "Courts are inclined to adopt that reasonable interpretation of a statute which removes it farthest from possible constitutional infirmity." Kovacs v. Cooper, 336 U.S. 77, 85, 69 S.Ct. 448, 452, 93 L.Ed. 513 (1949) (citing Cox v. New Hampshire, 312 U.S. 569, 575-76, 61, S.Ct. 762, 765, 85 L.Ed. 1049(1941)).

RCW 9A.84.030(1)(b) states, "A person is guilty of disorderly conduct if the person: Intentionally disrupts any lawful assembly or meeting of persons without lawful authority." Subsection (b) does not criminalize speech. The only behaviors criminalized are acts that are intended to be disruptive. Such behavior is only criminalized in locations where people are lawfully assembled or lawfully meeting. The statute applies only to those people who are not legally authorized to disrupt the lawful assembly or meeting at issue. "Such expressions as breach of the peace, disturbance of the peace or the public peace, riotous assemblage and disorderly conduct, convey the legislative intention with sufficient clarity that a person of ordinary understanding should readily comprehend what is meant by them." State v. Dixon, at 803, 479 P.2d at 935.

A statute is not unconstitutionally overbroad because it fails to define every possible situation that could constitute a violation. "The legislation, in creating an offense, may define it by a particular description of the acts constituting it, or it may define it as an act which produces, or is reasonably calculated to produce, a certain defined or described result." State v Brown, 108 Wash. 205, 206-207, 182 P. 944, 944 (1919). Any person of ordinary understanding would have concluded from reading RCW 9A.84.030(1)(b) that he would be committing the crime of disorderly conduct if he intentionally disrupted a court of law by speaking so loudly that the judge could not conduct court.

B. The State presented sufficient evidence for the jury to find beyond a reasonable doubt that Mr. Patterson acted with the intent to disrupt a lawful assembly and interfere with court proceedings.

"In reviewing the sufficiency of evidence in a criminal matter, the critical inquiry is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Stearns, 61 Wash.App. 224, 228, 810 P.2d 41, 44 (1991) (citing State v. Green, 94 Wash.2d 216, 221, 616 P.2d 628 (1980)). "[T]he rule ... when the sufficiency of the evidence is challenged in a criminal case, [is that] all reasonable inferences from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant." State v. Partin, 88 Wash.2d 899, 906-907, 567 P.2d 1136, 1140 (1977) (citing State v. Woods, 5 Wash.App. 399, 404, 487 P.2d 624 (1971)).

The Washington State Supreme Court found insufficient evidence to support intent to violate Spokane City Ordinance No. C1377, §3, and reversed the defendant's conviction. City of Spokane v McDonough, 79 Wash.2d 351, 353, 485 P.2d 449, 450 (1971). The city ordinance

provided, in relevant part: "Every person who shall on any street, sidewalk, alley, or public place, ... act in a noisy, riotous or disorderly manner, or use any profane, obscene or abusive language, ... or do any act tending to disturb the public peace, shall be guilty of a misdemeanor." City of Spokane, at 352-353, 485 P.2d at 450. The defendant shouted the word "warmonger" at the speaker from a balcony during a political rally. Id. at 351, 485 P.2d at 449. The Court characterized the nature and purpose of the political rally in question as "a noisy and partisan event ... [with] banners and slogans and shouting ... where an open-air crowd is tacitly invited to demonstrate its approval ... through applause, cheers and friendly expletives, ... [and] those of opposing views in the audience are likely to convey vociferously their disapproval in an orderly but vocal way." Id. at 353, 485 P.2d at 450. The Court held that the defendant shouting one word at the speaker in an open-air political rally, "without more to indicate a further purpose or intention of breaking up the meeting, or to deprive the speaker of his audience, or to interfere with the rights of others to hear, or the speaker to speak – did not amount to a disturbance of the peace, in fact or in law." Id. The Court reasoned that the ordinance was not "intended to prohibit conduct which is customarily considered acceptable at events of the type at which it occurs, assuming the event itself is lawful." Id.

In Dempsey v. People, 117 P.3d 800 (2005), the Colorado State Supreme Court took a similar approach when it analyzed the sufficiency of evidence to prove intent. The defendant was convicted for violating Colorado's obstructing a lawful assembly statute by using a bullhorn at an open air assembly. Id. at 802. In determining whether there was sufficient evidence to prove intent to disrupt, the *Dempsey* Court first analyzed the "nature of the assembly" based on "'the implicit customs and usages or explicit rules germane to a given meeting.'" Id. at 806-807 (citing Kay,83 Cal.Rptr. 686, 464 P.2d at 151; State v. McNair, 178 Neb. 763, 135 N.W.2d 463,

465 (1965)). Then the Court considered "whether the defendant was aware that his conduct was inconsistent with the customs of the assembly and whether he thereby intended his conduct to disrupt the assembly significantly." Dempsey, at 808. The Court reversed the conviction finding that the evidence at trial was insufficient to support an intent to disrupt based on the following: there was no dispute that the object of the defendant's conduct was the primary speaker, whose speech was not interrupted because he had not yet taken the stage; and, the person introducing the speaker, during the defendant's bullhorn usage, did not hear the defendant or see any disturbance. Id. at 809-810.

The nature and purpose of court proceedings is undoubtedly the orderly administration of justice. "Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy." Cox v. State of La., at 559, 85 S.Ct. at 476 (referencing Wood v. Georgia, 370 U.S. 723, 727, 83 S.Ct. 1364, 1369, 8 L.Ed.2d 569). The Washington statutes underlying Mr. Patterson's convictions prohibit the type of conduct that is not customary or accepted in a court of law. Unlike the absence of evidence in *City of Spokane* and *Dempsey*, sufficient evidence was presented at trial to show that Mr. Patterson in fact interrupted his target speaker, Judge Tveit, depriving her of her audience and interfering with the rights of others to hear her speak.

By reading loudly and continuing to do so while Judge Tveit was speaking, Mr. Patterson deprived Judge Tveit of her ability to communicate with the others present in the courtroom and dispose of the court's business. Further, he interfered with the rights of the others present in the gallery to hear the court and to have their matters heard by the court. Mr. Patterson's refusal to

stop and leave the courtroom created an actual physical disruption, causing the judge to recess court and leave the bench while law enforcement forcibly removed Mr. Patterson. Mr. Patterson knew, or should have known, that he had no legal authority to speak over the judge in open court. However, if he had previously been unaware, the court directly informed him of that fact and ordered him to stop. At that point, Mr. Patterson had actual notice that his behavior was disruptive and was preventing the judge from conducting court.

Intent must "logically follow as a matter of probability from the evidence presented." State v. Davis, 79 Wn.App. 591, 594, 904 P.2d 306 (1995). On page 17 of his brief, the Appellant argues that his intent to "exercise his constitutionally protected right to petition the government for a redress of his grievances" was "clearly established" by the following:

1. Stevens County officials had foreknowledge of Mr. Patterson's "intent to simply read a statement."
2. Mr. Patterson "made this intent clear as he began to speak ..."
3. Mr. Patterson began speaking "...before Judge Tveit reached the bench."
4. Mr. Patterson "did not interrupt any of the other litigants during presentation of their cases ..."
5. Mr. Patterson "did not interrupt Judge Tveit's colloquies with any of the other litigants."

"Circumstantial evidence is not to be considered any less reliable than direct evidence, and specific criminal intent may be inferred where a defendant's conduct plainly indicates the requisite intent as a matter of logical probability." State v Stearns, at 228-229, 810 P.2d at 44 (citing State v. Delmarter, 94 Wash.2d 634, 638, 618, P.2d 99 (1980)). Mr. Patterson's evidence fails to prove his stated intent as a logical probability. A judge's legal authority to conduct court

is not suspended until she physically arrives at the bench; and, the court's authority cannot be lawfully usurped by any person who begins speaking before the judge takes her seat. The undisputed evidence proved that Mr. Patterson had to be forcibly removed from the courtroom before Judge Tveit was able to conduct the docket. When considered in a light favorable to the state and interpreted strongly against the defendant, the most logical probability that can be reasonably inferred from Mr. Patterson's own allocution of the evidence is that his conduct was purposefully directed to prevent Judge Tveit from conducting court.

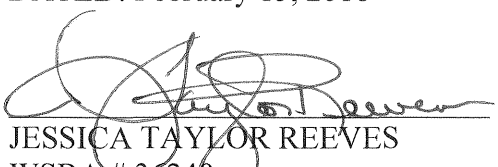
"An appellant claiming insufficiency of the evidence admits the truth of the State's evidence and all inferences reasonably drawn from it." State v. Raliegh, 157 Wn. App. 728, 736-737, 238 P.3d 1211, 1215 (2010) (citing State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). Both parties presented witness testimony regarding the disruption in District Court on the morning of January 5, 2015. Although Mr. Patterson's witness, Ms. MacKowiak, testified that she heard him read his initial statement of intent to peacefully redress a grievance, her testimony also detailed "melee" and "chaos" in the courtroom. (RP 256-258) The jury heard the audio recording multiple times and also viewed the video. (RP 147, 162, 241) After weighing all of the evidence presented at trial, which included testimony of Mr. Patterson's statement of subjective intent, the jury concluded that Mr. Patterson intended to disrupt and interfere with the court's proceedings. "Circumstantial and direct evidence are equally reliable, and we defer to the trier of fact on conflicting testimony, witness credibility, and the persuasiveness of the evidence." State v. Raliegh, at 736-737, 238 P.3d at 1215.

3. CONCLUSION

The Appellant has endeavored to create a constitutional dilemma where none exists. As applied to the facts of the Appellant's case, RCW 9A.84.030(1)(b) does not trigger the constitutional protections for freedom of speech and expressive conduct. The government's authority to regulate unlawful conduct has been consistently and historically upheld. The statue is narrowly tailored to prohibit only intentionally disruptive conduct; and, its meaning is clear enough that a reasonable person can readily understand what type of conduct would constitute a violation. Thus, Washington's disorderly conduct statute is not unconstitutionally overlybroad on its face.

The Appellant's behavior was so far askew of the well-established social norms and commonly held public expectations of acceptable courtroom behavior, that the Appellant's intent to disrupt the people gathered in the courtroom and interfere with court proceedings was plainly indicated by his conduct. The State's evidence at trial was sufficient for the jury to find that the required elements for both of the crimes charged, including intent, were proved beyond a reasonable doubt. The State respectfully requests that Mr. Patterson's appeal be denied and his convictions be upheld.

DATED: February 15, 2016



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COURT OF APPEALS, DIVISION III
THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. DENNIS WALLACE PATTERSON, Appellant.	)	APPEAL NO. 33814-2--III CERTIFICATE OF SERVICE

I, Michele Lembcke, Legal Assistant for Tim Rasmussen, certify that I provided copies of the RESPONDENT'S BRIEF and this CERTIFICATE OF SERVICE, as follows:

To: Stephanie C. Cunningham, Attorney for Appellant, via USPS First Class Mail at 4616 25th Avenue NE, No. 552, Seattle, WA 98105 and via email attachment to sccattorney@yahoo.com.

To: Dennis Wallace Patterson via email attachment at berrybestfarm@yahoo.com.

This method of service is by prior agreement of the parties.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 16th day of February, 2016.

Michele Lembcke

Michele Lembcke, Legal Assistant
for Tim Rasmussen