

COMMONWEALTH OF PENNSYLVANIA
v. HENRY C. AMIS, JR., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 521 of 2004

Disorderly conduct; Bench trial acquittal; 18 Pa.C.S.A. §5503

1. Whether a defendant's words or acts rise to the level of disorderly conduct hinges on whether they cause or justifiably risk causing a public disturbance.
2. The offense is not intended to be used as a catch-all for every act which might disturb or annoy people; it is intended solely to preserve the public peace.
3. Although the defendant used profane language toward police during a traffic stop, his words did not rise to the level of obscenity because they were not sexual or prurient in nature.
4. The defendant's profane language did not in itself constitute fighting words, and police should expect to encounter verbal insults and vulgar language as part of their duties, even though the court does not condone the use of such language directed at police officers.

Appearances:

David W. Rahouser, Esq., *Assistant District Attorney*

Karl E. Rominger, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., March 3, 2005

Henry Amis has been charged with the crime of disorderly conduct, 18 Pa.C.S.A. §5503. On February 27, 2004, Mr. Amis intervened with a traffic stop and used obscene language towards the police officers involved in the stop. Disorderly conduct requires that the person charged act,

with intent to cause public inconvenience, annoyance or alarm, or recklessly create 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.A §5503.

Whether a defendant's words or acts rise to the level of disorderly conduct hinges upon whether they cause or unjustifiably risk a public disturbance. Commonwealth v. Greene, 410 Pa. 111, 115, 189 A.2d 141, 144 (1963). However the offense is not intended to be used as a catch-all for every act which may disturb or annoy people; it is solely intended to preserve the public peace. Id. at 117, 189 A.2d at 145.

Although the record is not explicit, it is clear from the Commonwealth's argument that Mr. Amis has been charged under subsection 3 of the statute, which involves using obscene language or gestures.

Pennsylvania has adopted the Miller test to determine what is obscenity.

18 Pa C.S.A. §5903 (b). Under that test the definition of obscenity is:

- (a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15, 24 (1973). The Courts also recognize fighting words to fall under the disorderly conduct statute. United States v. McDermott, 971 F.Supp. 939, 941 (1997). Fighting words are words that by their very nature tend to inflict injury or incite an immediate breach of the peace. Chaplinsky v. New Hampshire, 315 U.S. 586, 571-72 (1942).

The language that Mr. Amis used towards the police officers was not obscene under the statute because it was not sexual or prurient in nature. Mr. Amis was expressing his anger with the police and may have been trying to offend them, but his words, standing alone, do not rise to the level of obscenity.

As for Mr. Amis's language being fighting words, profane or vulgar language by itself does not constitute fighting words. Brockway v. Shepard, 942 F.Supp. 1012, 1017 (M.D.Pa. 1996). It is also important to note that Mr. Amis's words were directed at police officers in the middle of an empty street. Police officers must expect, as part of their duties, that they will encounter verbal insults and vulgar language. Commonwealth v. Hock, 556 Pa. 409, 417, 728 A.2d. 943, 947 (1999). It is extremely unlikely that a police officer would respond to insults with unlawful violence, so no immediate breach of the peace is likely. Id.

While the Court does not condone Mr. Amis's behavior on the night in question, it did not rise to the level of disorderly conduct.

ORDER OF COURT

March 3, 2005, the court having reviewed the record, letter memoranda and the relevant law, finds that Mr. Amis's behavior on the night in question did not rise to the level of disorderly conduct. The court finds the defendant not guilty of disorderly conduct.