IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PEOPLE

v.

SEANPAUL REYES

21-10215
Date: December 28, 2021

DEFENDANT'S MOTION TO DISMISS

Pursuant to 725 ILCS 5/114-1(8), Defendant SeanPaul Reyes ("Reyes"), proceeding pro se, respectfully moves this Court to dismiss the misdemeanor complaint filed against him in this matter on the ground that it fails to state an offense. In support of this Motion, Mr. Reyes contemporaneously files the attached Memorandum of Law in Support of Dismissal and references it as if fully stated herein.

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DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL

Defendant SeanPaul Reyes ("Reyes"), proceeding pro se, respectfully submits this Memorandum in support of his Motion to Dismiss pursuant to 725 ILCS 5/114-1(8).

INTRODUCTION

Mr. Reyes is an independent journalist who travels the country recording public officials for the purpose of promoting government transparency with the public. On November 8, 2021, Mr. Reyes entered the Berwyn Municipal Building, otherwise known as Berwyn City Hall. Upon his arrival, Mr. Reyes was approached by City Administrator Ruth Siaba Green who asked not to be recorded because "she's not elected," and further stated that state law prohibits recording in City Hall without prior approval. Thereafter, Detective Monaco of the Berwyn City Police Department informed Mr. Reyes that he was being detained "until we sort this matter out," and made several attempts to prevent Mr. Reyes from recording their encounter as well. Eventually, Sergeant Volanti of the Berwyn City Police Department arrived on scene and informed Mr. Reyes that, according to state law, "you can't video record private conversations." In doing so, Sergeant Volanti relied on a sign posted in the entrance to City Hall which stated that cameras or recording devices were prohibited without prior approval pursuant to 720 ILCS 5/14 which defines the criminal offense

of eavesdropping. On that basis, Sergeant Volanti placed Mr. Reyes under arrest. Notably, however, Mr. Reyes was never charged with eavesdropping; rather, he was charged with disorderly conduct in violation of 720 ILCS 5/26-1.

ARGUMENT

I. THE MOTION TO DISMISS SHOULD BE GRANTED

The applicable portion of 720 ILCS 5/26-1 provides that:

A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace;

Furthermore, the committee comments to section 26-1 state that the types of conduct intended to be proscribed under this section "almost defy definition." *See* Ill. Ann. Stat., ch. 38, par. 26-1, Committee Comments, at 149 (Smith-Hurd 1977). One enumerated example of such conduct is "indirectly threatening bodily harm (which may not amount to assault." *Id.* The comments further explain that culpability revolves not only around the type of conduct, but is equally dependent upon the surrounding circumstances. *Id.* As such, although "[d]isorderly conduct is "loosely defined" and "a highly fact-specific inquiry," *see People v. Cody L.*, No. 1-13-2305, 14 (Ill. App. Ct. 2013), there must at least be some relationship between the accused's conduct and the public order, or between the conduct and the right of others not to be harmed or molested, *see People v. Slaton*, 24 Ill. App. 3d 1062, 1063 (Ill. App. Ct. 1974).

A. The complaint signed by City Administrator Ruth Siaba Green is insufficient to charge Mr. Reyes with the offense of disorderly conduct.

To be convicted of "offenses such as … disorderly conduct, which can be committed in a variety of ways, a charging instrument merely in the language of the statute is insufficient because a wide variety of conduct might be included. *See People v. Bergeson*, 255 Ill. App. 3d 601, 603

(Ill. App. Ct. 1994). An arrest and conviction for disorderly conduct is justified when the defendant directly bothers or harasses other people. *See People v. Kolichman,* 218 Ill. App. 3d 132 (Ill. App. Ct. 1991). Conversely, "[v]ulgar language, however distasteful or offensive to one's sensibilities, does not evolve into a crime because people standing nearby stop, look, and listen." *See People v. Bradshaw,* 116 Ill. App. 3d 421, 422 (Ill. App. Ct. 1983); *see also City of Chicago v. Morris,* 47 Ill. 2d 226, 231 (1970) ("While it is true that an argument per se is not disorderly conduct, whether a violation has occurred is determined by the reasonableness of the conduct in relation to the surrounding circumstances"); *People v. Justus,* 57 Ill. App. 3d 164, 166 (Ill. App. Ct. 1978) ("Arguing with a police officer, even if done loudly, will not of itself constitute disorderly conduct"). "The State's concern becomes dominant only when a breach of the peace is provoked by the language." *See Bradshaw*, 116 Ill. App. 3d at 422. "Moreover, the offense of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community." *See Commonwealth v. Hock,* 556 Pa. 409, 418 (Pa. 1999); *see also Zwicker v. Boll,* 270 F. Supp. 131, 135 (W.D. Wis. 1967), aff'd, 391 U.S. 353 (1968) (recognizing that a city cannot threaten to prosecute protesters for disorderly conduct if such threats are "nothing more than a pretext for stopping unpopular, yet protected, speech"). Rather, "[i]t has a specific purpose; it has a definite objective, it is intended to preserve the public peace; it has thus a limited periphery beyond which the prosecuting authorities have no right to transgress any more than the alleged criminal has the right to operate within its clearly outlined circumference." *Id.*

In *People v. Davis,* 82 Ill. 2d 534, 413 N.E.2d 413, 45 Ill. Dec. 935 (1980), the Supreme Court of Illinois noted that the "offense [of disorderly conduct] is intended to guard against 'an invasion of the right of others not to be molested or harassed, either mentally or physically, without

justification.'" *Id.* (internal citation omitted). There, the defendant was convicted of disorderly conduct after allegedly entering the home of an 81-year-old wheelchair-bound woman, "point[ing] his finger at her and sa[ying] that his brother was not going to jail or to court." *Id.* at 536. In reversing the trial court's conviction of the defendant for disorderly conduct, the appellate court held that the defendant's acts didn't constitute disorderly conduct as a matter of law. *Id.* However, the Supreme Court of Illinois reversed the appellate court and affirmed the defendant's conviction. In doing so, the Court noted that the defendant had "in effect told her that the charge against his brother should not be prosecuted or some undefined threat would be carried out." *Id.* at 537-38. Such conduct, according to the Court, "falls squarely within the type of conduct intended to be proscribed by section 26-1(a)(1)." *Id.*

Thereafter, in *People v. Bradshaw*, *supra*, the Appellate Court of Illinois, Fourth District, reversed a defendant's conviction for disorderly conduct. *Id.* at 422-23. In doing so, it noted that "[u]nlike in *People v. Davis*, [*supra*], … defendant did not threaten anyone," and further that "[n]o group gathered around defendant … in a threatening manner as in *City of Chicago v. Morris* …, [*supra*]." *See Bradshaw*, 116 Ill. App. 3d at 422 ("That defendant's conduct was nothing more than annoying is indicated by the lack of evidence that anyone left the tavern as a result of defendant's conduct"). As such, after recognizing that "the general trend of the cases has been for courts to give a narrow construction to the offense of disorderly conduct," the court ultimately held that "[w]hen the conduct of a patron of a private establishment is merely annoying customers and that patron refuses the demand of the proprietor to leave the establishment, the charge of criminal trespass to land is the proper charge to make." *Id.* at 422-23 ("The existence of that offense affords protection to both the proprietor and the patrons of such an establishment").

Additionally, in *People v. Bergeson, supra*, a defendant was convicted of disorderly conduct for allegedly looking into a neighbor's apartment window. *Id.* at 602. In reversing the defendant's conviction, the Appellate Court of Illinois, Second District noted that:

> The most troubling aspect of this case is that defendant was a resident of the same apartment complex and was seen in a common area of the complex. Thus, defendant was where he had a right to be. Moreover, since he was not charged under section 26-1(a)(5), the State was not required to prove that defendant had a "lewd or unlawful purpose." The only requirement under section 26-1(a)(1) is that the conduct be "unreasonable." We see nothing unreasonable about looking from 10 feet away at a window which is completely covered except for a "crack" while standing in a common area of one's own apartment complex.

Id. at 604-605.

According to the misdemeanor complaint signed by City Administrator Ruth Siaba Green, Mr. Reyes allegedly "used a devi[c]e to … record conversation[s] between city hall employees and Berwyn residents without their consent after being verbally advised to stop recording … thus alarming city hall employees." As an initial matter, however, this complaint is fatally flawed because it fails to accuse Mr. Reyes of engaging in any conduct which could conceivably be described as disorderly. *See Bergeson*, 255 Ill. App. 3d at 603 (recognizing that "a charging instrument merely in the language of the statute is insufficient"). At best, such allegations are consistent with eavesdropping, although the Illinois Supreme Court recently struck down the State's eavesdropping statute as unconstitutional in *People v. Clark*, 2014 IL 1097190, and *People v. Melongo*, 2014 IL 114852, issued simultaneously on March 20, 2014. Notwithstanding, merely accusing Mr. Reyes of engaging in conduct which happened to alarm others is insufficient to charge him with the offense of disorderly conduct. Rather, to be sufficient, the complaint must allege that Mr. Reyes knowingly acted so unreasonably as to provoke a breach of the peace.

As was the case in *People v. Bradshaw*, *supra*, here Mr. Reyes did not threaten or otherwise directly disturb anybody. Although it can be argued that, like the case in *City of Chicago v. Morris*,

supra, a "crowd" gathered around Mr. Reyes, in stark contrast to the circumstances before the Court in that case, this "crowd" was composed exclusively of Berwyn City Police Officers, as opposed to an unruly crowd of approximately 50 picketers, and further there is indisputable video evidence that Mr. Reyes remained calm, cool, and collected throughout the entire encounter. More importantly, however, unlike the defendant in *Morris, supra*, Mr. Reyes was detained by Detective Monaco and therefore did not disobey any orders to leave. In fact, Mr. Reyes obeyed an affirmative order not to leave. Moreover, as was the case in *People v. Bergeson, supra*, at the time that Mr. Reyes was charged with disorderly conduct, he was in a place that he had a lawful right to be, engaging in activity which cannot conceivably be described as "unreasonable." *Id.* at 422 (recognizing that conduct, "however distasteful or offensive to one's sensibilities, does not evolve into a crime because people standing nearby stop, look, and listen"). Thus, the allegations set forth by the complaint in this case are wholly insufficient to charge Mr. Reyes with the offense of disorderly conduct, and the Motion should therefore be granted on that basis alone.

B. <u>The State's disorderly conduct statute is unconstitutional as applied to Mr. Reyes under these circumstances.</u>

The First Amendment to the United States Constitution unequivocally demands that "Congress shall make no law ... abridging the freedom of speech, or of the press." *See* U.S. Const. amend. I; *see also Bates v. City of Little Rock*, 361 U.S. 516, 528 (1960) (Black, J., concurring) ("First Amendment rights are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or exposure by the government"). Furthermore, pursuant to the Fourteenth Amendment, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." *See* U.S. Const. amend. XIV, § 1.

Moreover, "[t]o satisfy due process, 'a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement.'" *See Skilling v. United States*, 561 U.S. 358 (2010) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).

The only conduct that Mr. Reyes is accused of engaging in is allegedly recording conversations between Berwyn residents and City Hall employees. As an initial matter, however, it's well settled that the public has the right to photograph, film, or audio record public servants executing their official duties in public places. *See* e.g., *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011); *Fields v. City of Philadelphia*, 862 F.3d 353, 360 (3d Cir. 2017). Furthermore, it's axiomatic that "what a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection," because the exposure withdraws any expectation of privacy. *See Katz v. United States*, 389 U.S. 347, 361 (1967)). As such, individuals conducting business in City Hall have no expectation of privacy in what they voluntarily expose to the public in the first place, especially not the public servants who work there. Thus, the State's application of its disorderly conduct statute to Mr. Reyes under these circumstances is unconstitutional, and the Motion should therefore be granted on that basis.

Lastly, it cannot be said that a reasonable person would have "'fair notice from the language' of the [statute] 'that the particular conduct which [Mr. Reyes] engaged in was punishable.'" *See United States v. Baldwin*, 745 F.3d 1027, 1031 (10th Cir. 2014) (quoting *Parker v. Levy*, 417 U.S. 733, 755, (1974)); *see also United States v. Harris*, 705 F.3d 929, 932 (9th Cir. 2012). As such, under these circumstances, the State's disorderly conduct statute is unconstitutionally vague as applied to Mr. Reyes, and the Motion should therefore be granted on that basis as well.