IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Williams, 2006 NSPC 37

Date: 20060906
Docket: 1604811
Registry: Bridgewater

Between:

R.

v.

David Harold Williams

Judge:	The Honourable Judge Anne E. Crawford
Heard:	June 29, 2006, in Bridgewater, Nova Scotia
Charge:	175(1)(a) of the *Criminal Code*
Counsel:	Paul Scovil, for the Crown Bob Chipman, for the defence

By the Court:

[1] David Williams is charged under section 175(1)(a) of the *Criminal Code* as follows:

> on or about the 18th day of December, 2005 at or near New Germany, Nova Scotia did, not being in a dwelling house, cause a disturbance in or near a public place, to wit, by swearing, using insulting and obscene language. . .

FACTS

[2] On December 18, 2005 at 3 p.m. Cst. Wendy Sparrow of the Bridgewater R.C.M.P. was on patrol in her police vehicle in New Germany, N.S. She had just left the gas pumps at the Irving station and was at a stop sign at the intersection of the Varner Road and Highway #10 when the defendant approached her vehicle and knocked on her window. He angrily demanded to know why she had not towed two snowmobiles that were parked at the service station as she had previously done to his snowmobile. She said that he called her a "fucking bitch" and a "whore". She said that she rolled up the window and drove away, leaving the defendant in the middle of the road yelling and making hand gestures. She said that she was disturbed by the confrontation and found his words offensive.

[3] The defendant testified that when he approached her about the two snowmobiles she told him she would charge him again, and he replied, "You're fucking cruel." He denied making the other comments she attributed to him and denied gesturing at her.

[4] Cst. Sparrow said that there were at least three males outside a nearby store who were watching the confrontation. The defendant said that there was no one else around.

ISSUE

[5] Did the defendant's conduct cause "an externally manifested disturbance of the public peace, in the sense of interference with the ordinary and customary use of the premises by the public", as required by *R. v. Lohnes*, [1992] 1 S.C.R. 167; [1992] S.C.J. No. 6?

“CAUSE A DISTURBANCE”

[6] Section 175 of the *Criminal Code* states in part:

> 175. (1) Every one who
>
> (a) not being in a dwelling-house, causes a disturbance in or near a public place,
>
> > (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language, . . .
>
> is guilty of an offence punishable on summary conviction.
>
> (2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) or an obstruction described in paragraph (1)(c) was caused or occurred.

[7] The leading case on the interpretation of this section is *R.v. Lohnes*, [1992] 1 S.C.R. 167, a case which arose in Milton, Queens County, N.S. when Mr. Lohnes subjected his neighbour to, in the words of McLachlin, J., “a string of epithets revealing an impressive command of the obscene vernacular.”

[8] After a thorough analysis of the law, she states:

> 30 The weight of the authorities, the principles of statutory construction and policy considerations, taken together, lead me to the conclusion that the disturbance contemplated by s. 175(1)(a) is something more than mere emotional upset. There must be an externally manifested disturbance of the public peace, in the sense of interference with the ordinary and customary use of the premises by the public. There may be direct evidence of such an effect or interference, or it may be inferred from [page182] the evidence of a police officer as to the conduct of a person or persons under s. 175(2). The disturbance may consist of the impugned act itself, as in the case of a fight interfering with the peaceful use of a barroom, or it may flow as a consequence of the impugned act, as where shouting and swearing produce a scuffle. As the cases illustrate, the interference with the ordinary and customary conduct in or near the public place may consist in something as small as being distracted from one's work. But it must be present and it must be externally manifested. In accordance with the principle of legality, the disturbance must be one

> which may reasonably have been foreseen in the particular circumstances of time and place.

[9] Counsel referred to several cases which have applied *Lohnes* to various fact situations.

[10] In *R. v. Peters* (1982), 33 B.C.L.R. 343, 27 C.R. (3d) 246, 65 C.C.C. (2d) 83 (B.C.C.A.) Taggart, J.A. for the court held that, where the accused uttered obscenities in a loud voice, calling police officers, “fucking pigs”, in a public place but in the presence of only the officers, his actions did not cause a disturbance. This was one of the cases cited in *Lohnes*.

[11] In *R. v. Trabulsey* [1994] O.J. No. 4325 (O.C.J.(P.)), Budzinsky, J. held that, where there was no evidence that people in the vicinity were disturbed or obstructed in their actions, he could not find beyond reasonable doubt that the defendant’s actions of shouting profanities, ranting and raving caused a disturbance.

[12] In *R. v. Terrigno* (1995), 175 A.R. 100, 101 C.C.C. (3d) 346, 1995 CarswellAlta 1030 (Alta P.C.), Fradsham, J. dealt with a situation in which police attended at a bar to deal with a fight involving a friend of the defendant. When that matter was not dealt with to the defendant’s satisfaction, he became irate, and swore at the officers, calling them “a disparaging name.” The reactions of other people in the vicinity varied from watching the entire scenario, to simply continuing on their way. Fradsham, J. quoted *Lohnes* as establishing that there must be an “externally manifested disturbance” . . . “in the sense of interference with the ordinary and customary use of the premises by the public,” and concluded:

> The activity of Mr. Terrigno did not force members of the public to change their use of the public place nor did it interfere with that use, though it may have attracted their curiosity resulting in them voluntarily choosing to satisfy that curiosity. In my view, that does not constitute an "interference with the ordinary and customary conduct in or near the public place" (to use the words of Lohnes). There is nothing out of the ordinary in people in a queue looking at something as they wait for their place in the queue to advance. There is nothing out of the ordinary for people proceeding through a parking lot to watch an interesting event. Doubtless there can be situations in which the sheer number of people who choose to stop and look may result in blocked passages or traffic patterns with a resultant disturbance. However, that was not the case here.

[13] In *R.v. Julian* [2004] ONCJ 226; 2004 CarswellOnt 4123, Sparrow, J. concluded that a fight on a busy sidewalk at noon in downtown Toronto which blocked the sidewalk and obstructed an off-duty police officer in his daily exercise run caused a disturbance within the meaning of s. 175, although there was no evidence that anyone else in the area was similarly inconvenienced. Sparrow, J. stated:

> 14 With regard to [the police officer's] comment that the pedestrians "couldn't care less," it should be noted that in *Lohnes*, McLaughlin, J. distinguished between emotional upset, which does not constitute a disturbance, and impeded conduct, which does. In that case there was clear upset, but no obstruction of conduct. Here there was obstruction, but, apparently, no emotional upset.

[14] In the present case I find it unnecessary to resolve the conflicts in evidence between the complainant officer and the defendant. On the evidence of both it is clear that the defendant shouted and swore, in the modern sense of using at least one obscenity. It is also clear that, if there were onlookers at all, they were not impeded or obstructed in their normal activities, but that the police officer was disturbed and upset by the defendant's actions and words, which she quite naturally found personally offensive.

[15] However, *Lohnes* establishes that it takes more than emotional disturbance to constitute an offence under this section; there must also be an interference with the ordinary and customary use by the public of the place in question. The Crown argued that there was such an interference in that the police officer was distracted from her duties by the accused; however, it seems to me that it was part of her duty that day as an officer on patrol to deal with the concerns and inquiries of the public. When she rolled down her window, I find that, like the bar staff in *Terrigno* (at para 30-32), she was not distracted from her duty; she was carrying it out.

[16] I can find no interference with the customary use of the premises by the public here, although there is no doubt that the defendant's attitude, tone and words were rude and that the police officer had every right to be offended by them. Under other circumstances they might well have caused a disturbance; but at that time and place they did not.

CONCLUSION

[17] I find the defendant not guilty of the offence charged.