

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIZABETH DEEDS,	§	
	§	No. 481, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
	§	for Kent County
v.	§	
	§	
STATE OF DELAWARE,	§	No. 0603001740
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: January 2, 2007  
Decided: March 5, 2007

Before **HOLLAND, BERGER, and RIDGELY**, Justices.

***ORDER***<sup>1</sup>

(1) Elizabeth Deeds appeals a Family Court decision adjudicating her delinquent of Disorderly Conduct. Deeds raises two issues on appeal. First, she contends that there was insufficient evidence to establish beyond a reasonable doubt that she was guilty of Disorderly Conduct. Second, Deeds contends that she should not have been adjudicated delinquent for violating a section of the Disorderly Conduct statute that the State did not expressly charge. We find no merit to her appeal and affirm.

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties pursuant to Supr. Ct. R. 7(d).

(2) On March 27, 2006, Jamie Jones and Ann Floyd were involved in a physical altercation at Caesar Rodney High School. Approximately 10 to 20 people gathered around the fight, including Deeds, Jamie's cousin. Ann accused Deeds of hitting her while she was fighting with Jamie. Specifically, Ann testified that Deeds "came from the side. . . . and hit [Ann] in the face" during the fight. Deeds denied hitting Ann and several witnesses confirmed Deeds' position.<sup>2</sup> When the fight ended, Ann's sister, Laura, tried to start a fight with Deeds.<sup>3</sup> Laura allegedly started "cussing" at Deeds. Deeds responded by calling Laura a "bitch."

(3) Deeds was subsequently arrested and charged with Offensive Touching and Disorderly Conduct for her alleged participation in the fight and her exchange of words with Laura. A Family Court Commissioner found Deeds delinquent of Disorderly Conduct but acquitted her on the Offensive Touching charge. A Family Court Judge affirmed, explaining that the commissioner did not abuse his discretion because "[a]ccording to the Defendant's own testimony, as well as to other witnesses, she yelled at another student several times, calling her a 'bitch.' This language is both offensive and abusive."

(4) Deeds contends that there was insufficient evidence to establish beyond a reasonable doubt that she was delinquent of disorderly conduct. "When

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<sup>2</sup> Walter Frank testified that he stood next to Deeds during the fight and that Deeds was not involved in any way. In addition, Jamie testified that Deeds was not involved in the fight.

<sup>3</sup> Deeds hypothesized that Laura started a fight with her because she is related to Jamie.

reviewing the sufficiency of the evidence, this Court must determine whether, after reviewing 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.”<sup>4</sup>

(5) The relevant portions of the disorderly conduct statute provide:

A person is guilty of disorderly conduct when:

- 1) The person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:
  - a. Engaging in fighting or in violent, tumultuous or threatening behavior; or
  - b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present;

(6) The use of profane language can, in certain situations, constitute disorderly conduct under § 1301(1)(b). For example, in *Walls v. State*,<sup>5</sup> the defendant’s “conduct of hurling a string of vulgar obscenities, in a loud voice, at two police officers, in the middle of the night, in the public courtyard of a garden apartment, and in the presence of a number of apartment residents, clearly fits within the conduct proscribed by 11 *Del. C.* § 1301(1)(b).”<sup>6</sup> In addition, in *State v. White*,<sup>7</sup> we explained that “the right of free speech is not absolute, and that the state may prohibit within narrow and well-defined limits certain classes of speech,

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<sup>4</sup> *Richards v. State*, 865 A.2d 1274, 1280 (Del. 2004) (citations omitted).

<sup>5</sup> 1998 WL 141174 (Del. Supr.).

<sup>6</sup> *Id.* at \*2.

<sup>7</sup> *State v. White*, 1989 WL 25818, at \*1 (Del. Super.).

including ‘fighting’ words—‘those which by their very utterance inflict injury or tend to incite [sic] an immediate breach of the peace.’”<sup>8</sup>

(7) Viewing the evidence in the light most favorable to the prosecution, it was reasonable for the Family Court to conclude beyond a reasonable doubt that Deeds’ conduct falls within the scope of § 1301(1)(b). By her own admission, Deeds was yelling at the group of girls, which included Laura. Deeds also admitted to calling Laura a “bitch.” A rationale trier of fact could conclude that this conduct, under the circumstances, would “incite an immediate breach of the peace.”

(8) Deeds also contends that the Commissioner erred because she was originally charged under 1301(1)(a), not 1301(1)(b). “A defendant may be convicted of an offense not charged in the indictment or information if that crime is included in an offense that is charged.”<sup>9</sup> Under 11 *Del. C.* § 206(b)(3), “[a]n offense is so included when . . . [i]t involves the same result but differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.”

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<sup>8</sup> *Id.* at \*1 (quoting *Chapinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942)).

<sup>9</sup> *Key v. State*, 463 A.2d 633, 641 (Del. 1983) (citations omitted).

(9) In this case, both the offense that Deeds was charged with and the charge that she was found delinquent of are subsections of 11 *Del. C.* § 1301. Furthermore, § 1301(1)(b) involves a less serious injury or risk of injury to the same person within the meaning of 11 *Del. C.* § 206(b)(3). As opposed to “engaging in fighting or violent, tumultuous or threatening behavior,” Davis was adjudicated delinquent of “making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language,” which involves a “less serious injury or risk of injury to the same person.” Because there was sufficient evidence to find Deeds delinquent of this included offense, her argument is without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice