

TITLE LXII

CRIMINAL CODE

CHAPTER 644

BREACHES OF THE PEACE AND RELATED OFFENSES

Section 644:2

644:2 Disorderly Conduct. – A person is guilty of disorderly conduct if:

I. He knowingly or purposely creates a condition which is hazardous to himself or another in a public place by any action which serves no legitimate purpose; or

II. He or she:

(a) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or

(b) Directs at another person in a public place obscene, derisive, or offensive words which are likely to provoke a violent reaction on the part of an ordinary person; or

(c) Obstructs vehicular or pedestrian traffic on any public street or sidewalk or the entrance to any public building; or

(d) Engages in conduct in a public place which substantially interferes with a criminal investigation, a firefighting operation to which RSA 154:17 is applicable, the provision of emergency medical treatment, or the provision of other emergency services when traffic or pedestrian management is required; or

(e) Knowingly refuses to comply with a lawful order of a peace officer to move from or remain away from any public place; or

III. He purposely causes a breach of the peace, public inconvenience, annoyance or alarm, or recklessly creates a risk thereof, by:

(a) Making loud or unreasonable noises in a public place, or making loud or unreasonable noises in a private place which can be heard in a public place or other private places, which noises would disturb a person of average sensibilities; or

(b) Disrupting the orderly conduct of business in any public or governmental facility; or

(c) Disrupting any lawful assembly or meeting of persons without lawful authority.

III-a. When noise under subparagraph III(a) is emanating from a vehicle's sound system or any portable sound system located within a vehicle, a law enforcement officer shall be considered a person of average sensibilities for purposes of determining whether the volume of such noise constitutes a breach of the peace, public inconvenience, annoyance, or alarm, and the officer may take enforcement action to abate such noise upon detecting the noise, or upon receiving a complaint from another person.

IV. (a) Whenever a peace officer has probable cause to believe that a serious threat to the public health or safety is created by a flood, storm, fire, earthquake, explosion, riot, ongoing criminal activity that poses a risk of bodily injury, or other disaster, the officer may close the area where the threat exists and the adjacent area necessary to control the threat or to prevent its spread, for the duration of the threat, until related law enforcement, fire, and emergency medical service operations are complete, by means of ropes, markers, uniformed emergency service personnel, or any other reasonable means, to any persons not authorized by a peace officer or emergency services personnel to enter or remain within the closed area.

(b) Peace officers may close the immediate area surrounding any emergency field command post activated for the purpose of abating any threat enumerated in this paragraph to any unauthorized persons, whether or not the field command post is located near the source of the threat.

(c) Any unauthorized person who knowingly enters an area closed pursuant to this paragraph or who knowingly remains within the area after receiving a lawful order from a peace officer to leave shall be

guilty of disorderly conduct.

V. In this section:

(a) "Lawful order" means:

(1) A command issued to any person for the purpose of preventing said person from committing any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is about to commit any such offense, or when said person is engaged in a course of conduct which makes his commission of such an offense imminent;

(2) A command issued to any person to stop him from continuing to commit any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is presently engaged in conduct which constitutes any such offense; or

(3) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

(b) "Public place" means any place to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, schools, hospitals, government offices or facilities, and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.

VI. Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.

Source. 1971, 518:1. 1983, 200:1. 1985, 309:1. 2005, 192:1, 2, eff. June 30, 2005; 260:2, 3, eff. July 22, 2005.

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376 A.2d 124

STATE of New Hampshire

v.

John DOMINIC.

No. 7544.

Supreme Court of New Hampshire.

July 11, 1977

[376 A.2d 125]

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Decker & Hemeon, Laconia (Robert L. Hemeon, Laconia, orally), for defendant.

Wescott, Millham & Dyer, Laconia (Peter V. Millham, Laconia, orally), for prosecution.

David H. Souter, Atty. Gen., waived brief and oral argument for State.

LAMPRON, Justice.

Defendant was found guilty in the Laconia District Court (Snierson, J.) of disorderly conduct for his failure to comply with the lawful order of a police officer to move from a public place in violation of RSA 644:2 I. Defendant appealed his conviction to the superior court. The Superior Court (Batchelder, J.) reserved and transferred to this court the question "whether or not based upon the record and the facts as found in the decision of the District Court the Defendant could be found guilty of the offense."

According to the decree of the district court, the facts are as follows. The incident occurred in the course of a meeting of the selectmen for the town of Belmont at the town hall. Defendant was one of the three selectmen. The complainant in this case, Romeo Clairmont, was chairman of the board of selectmen. The third selectman was Louis Wuelper. Also present at the meeting were two highway department employees and two members of the general public. After Mr. Wuelper had been discussing an issue before the board at some length, defendant attempted to interrupt him. When Mr. Wuelper asked for a ruling as to whether he could continue to speak he was told by Chairman Clairmont to "go

ahead." Defendant continued to interrupt, although Clairmont announced that he was chairman of the meeting and that Mr. Wuelper had the floor. Defendant interrupted to request a ruling to limit a speaker's time. At that point a shouting argument developed between chairman Clairmont and defendant, during which Clairmont told defendant he would be ordered out of the meeting room if he did not quiet down and come to order. Clairmont then left the room and returned with Police Officer Bennett who asked defendant to "step out (of the room) for a minute, please." Defendant refused. Although Officer Bennett explained to defendant that he had been ordered by the chairman to leave, defendant answered that he had no intention of leaving unless he was arrested. At that point the meeting was recessed for approximately one-and-

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one-half hours. Defendant was not present when the meeting reconvened.

The initial complaint, signed by Mr. Clairmont, charged that defendant "did with a purpose to cause public inconvenience, annoyance or alarm, engage in tumultuous (sic) behavior" and that he refused to desist therefrom after being so ordered by the chairman. The district court found that defendant neither purposely nor recklessly created a risk of public inconvenience, annoyance, or alarm. In its decree the court further stated, "(h)owever abrasive and obtrusive he was, he was acting as a duly elected member of the Belmont Board of Selectmen and his remarks although clearly offensive both to Mr. Wuelper and to the chairman could be found to be consistent with the performance of his duties as a Selectman as he saw it." The court therefore found no basis for a conviction under any of the provisions of paragraph II of RSA 644:2. See *State v. Oliveira*, 115 N.H. 559, 347 A.2d 165 (1975).

By amendment to the complaint, defendant was also charged with refusal "to comply with the lawful order of James Bennett, a police officer, to move from a public place, to wit: the Belmont Selectmen's Office in the Belmont Town Hall . . ." in violation of RSA 644:2 I. Defendant was found guilty under this provision. The court found that "the disorder at the Selectmen's meeting . . . became so great that the Board ceased to be a deliberative body and could not at that time perform its [376 A.2d 126] proper function of a consideration of the affairs of the Town." The court considered the chairman's action in ordering defendant out of the room to be within his authority as chairman, seeking to conduct an orderly meeting. See P. Mason, *Manual of Legislative Procedure* § 120 (1970). The court further found that "(w)hen the defendant refused to leave and continued to deny the authority of the Chairman, the latter was left no reasonable alternative than to seek police assistance in the removal."

As Officer Bennett was acting under the direction of Chairman Clairmont at the time, the issue before us is whether Chairman Clairmont could lawfully order defendant's removal from the selectmen's meeting. As presiding officer of the board of selectmen, Chairman Clairmont had the responsibility of conducting the meeting in an orderly manner. 4 E. McQuillin, *Municipal Corporations* § 13.21 (3d ed. 1968). When defendant continued to interrupt Mr. Wuelper, who had the floor according to the chairman's ruling, and when defendant continued to argue with the chairman

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and refused to come to order, the chairman had the authority to order him from the room. See *Attorney-General v. Remick*, 73 N.H. 25, 29, 58 A. 871, 873 (1904); *Arrington v. Moore*, 31 Md.App. 448, 460-61, 358 A.2d 909, 916 (1976); *Doggett v. Hooper*, 306 Mass. 129, 27 N.E.2d 737 (1940). When defendant refused to leave, the chairman could properly ask for the assistance of Officer Bennett in removing him. See *Arrington v. Moore*, supra. Officer Bennett's order to defendant to step outside was therefore a lawful order and on the basis of these facts defendant could properly be found guilty of disorderly conduct in violation of RSA 644:2 I.

The actions of the chairman and of Officer Bennett in ordering defendant's removal from the meeting did not violate his right to freedom of speech under the United States and New Hampshire Constitutions. The district court found that defendant, by his conduct, had prevented the selectmen from continuing their meeting. The chairman was acting to maintain order, as was his duty, and to protect the rights of others to speak in an orderly manner as well as those of the defendant. Such reasonable regulation of the manner in which one may speak does not violate any right to freedom of expression. *State v. Albers*, 113 N.H. 132, 139, 303 A.2d 197, 202 (1973); *State v. Derrickson*, 97 N.H. 91, 93, 81 A.2d 312, 313 (1951); *Grayned v. City of Rockford*, 408 U.S. 104, 116, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Cox v. Louisiana*, 379 U.S. 536, 554, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).

We hold that the answer to the transferred question is "Yes." Based upon the record and the facts as found in the decision of the district court the defendant could be found guilty of the offense charged. RSA 644:2 I.

Remanded.

All concurred.

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