ORIGINAL

20080279

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,	)	Supreme Court No. 20080279
	)	
Plaintiff/Appellee,	)	
	)	Morton Co. No. 30-08-K-0523
vs.	)	
	)	
Billie Corinne Maki,	)	
	)	
Defendant/Appellant.	)	

****

BRIEF OF PLAINTIFF-APPELLEE

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Appeal from Judgment of Conviction
Dated October 8, 2008,
And from Order Denying Rule 29 Motion for Judgment of Acquittal
Dated October 8, 2008
Honorable Bruce B. Haskell, Presiding District Judge

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STATEMENT OF THE FACTS RELEVANT TO THE ISSUES ON APPEAL

The State is generally satisfied with the defendant's statement of the case. The State also is generally satisfied with the defendant's statement of the facts relevant to the issues on appeal, as well as the statement of the proceedings in the court below, as those statements are in agreement with the testimony of witnesses in the transcript of trial.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

I. WHETHER THE JURY VERDICT OF GUILTY TO THE CRIME OF WILLFUL DISTURBANCE OF A SCHOOL WAS SUPPORTED BY SUFFICIENT EVIDENCE ADDUCED AT TRIAL?

II. WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S RULE 29 N.D.R.CRIM.P. MOTION FOR A JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE STATE'S CASE IN CHIEF?

ARGUMENT

I. THE JURY VERDICT OF GUILTY TO THE CRIME OF WILLFUL DISTURBANCE OF A SCHOOL IN THE COURT BELOW SHOULD BE AFFIRMED ON APPEAL AS BEING BASED UPON A SUFFICIENCY OF THE EVIDENCE.

The defendant on appeal challenges the sufficiency of the evidence supporting the jury's verdict of guilty to the crime of willful disturbance of a school in violation of Section 15.1-06-13 N.D.C.C.

When the sufficiency of the evidence to support a criminal conviction is

challenged, the Court on appeal merely reviews the trial record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction. State v. Igou, 2005 ND 16, ¶ 5, 691 N.W.2d 213. The defendant bears the burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. Id. "A conviction rests upon insufficient evidence only when no rational fact-finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor." Id.

The defendant was found guilty at trial of willful disturbance of a public school, as charged in the criminal complaint. Appendix of the Appellant, p. 3. [Opening Jury Instructions], (Tr. p. 10).

In the case on appeal, the jury's verdict of guilty was supported by competent evidence from several different sources. The State on appeal argues that the trial record shows a significant quantum of competent evidence to support the verdict of guilty to the crime of willful disturbance of a public school. The following is a brief summary of the evidence and testimony adduced at trial, supporting a finding by the court on appeal, and from which the jury could draw an inference reasonably tending to prove the defendant's guilt and fairly warranting a conviction on the offense charged.

As indicated in the Appellant's Brief on Appeal, the lower court's opening jury instruction regarding the essential elements of the offense in the case on appeal is reflected by the specific allegations in the criminal complaint. Appendix of the Appellant,

p. 3. Set forth at paragraph (12) of the Appellant's brief on appeal, the essential elements of the offense are laid out as follows:

12. [30]-08-K-523 [Willful Disturbance of a School]

1. On or about the 7th day of May, 2008;
2. In Morton County, North Dakota;
3. The defendant, Billie Maki;
4. Willfully,
5. Disturbed a public school while that school was in session; and
6. Insulted or threatened a teacher in the presence of five students.

Id. At paragraph (12). Also, Appendix of the Appellant, p. 10.

AMPLE EVIDENCE WAS ADDUCED AT TRIAL TO SUPPORT THE VERDICT

I. THREE (3) STATE'S WITNESSES PROVIDED ELEMENTS OF THE OFFENSE.

Testifying first during the prosecution's case in chief at trial, was special education aide, Norma Breimeier. Ms. Breimeier had been employed by the New Salem Public School District during the 2007-2008 school year as a special education teacher's aide in the resource room of the New Salem High School. (Tr. pp. 15-16). To qualify for the position she held at the school, Ms. Breimeier testified she had earned a Bachelor's of Education Degree at Concordia University in Seward, Nebraska. (Tr. p. 15). During the 2007-2008 school year, Ms. Breimeier testified that she was a licensed school teacher in the State of North Dakota as approved by the North Dakota Department of Public Instruction, and held that license on the date of the alleged offense, that being May 7, 2008. Id.

The 7th day of May, 2008, was a Wednesday, and the school was in session, beginning at 8:30 a.m. when the first bell had just rang. (Tr. p. 17). Ms. Breimeier was at her duty station in the resource room and was looking through The Bismarck Tribune newspaper in preparation for the afternoon current events session later that day. At that time, there were five other pupils in the resource room with Ms. Breimeier, and they were all sitting at one big table. Id. Shortly after the first bell rang at 8:30 a.m., signaling the beginning of the school day, two adult women entered the resource room. One of the two women was the Appellant, Billie C. Maki, the defendant at trial. (Tr. p. 18).

Ms. Breimeier recounted the events of that day by remembering, "Well all of a sudden Mrs. Maki and her niece Bethany came in – and J.M. and Mrs. Maki came in and put her hands right up on the table, leaned towards me, and then she pointed and told me that I shouldn't F-word her son down on the floor again. (Tr. p. 19). Ms. Breimeier testified that she protested that she had not touched the Appellant's son or even talked to him and that there was some type of mistake going on. (Tr. p. 21). Ms. Breimeier testified that the Appellant continued to carry on in a very loud voice, using the "F" word in the presence of the other students, and telling Ms. Breimeier "that she [the Appellant] could take me [Ms. Breimeier] – beat me up and I said well I'm not scared of you and she said well if you're not scared of me, let's go off the school grounds and I'll f___ [expletive deleted] you across the street, and everything else like that." Id. [parentheticals provided]

Ms. Briemeier testified that in her response to the Appellant's threatening behavior and challenge to a fight, Ms. Breimeier told the Appellant she was not going to

fight and was just trying to get the Appellant out of the resource room because there were five boys in the room, witnessing this disturbance, and Ms. Breimeier felt that it was just not the right thing [for the children to be witnessing]. (Tr. p. 22). [parenthetical added]

The Appellant's angry outburst at Norma Breimeier in the school's resource room had a profound effect on the five boys who were present in the room at the time. When asked whether they [the boys] were disturbed at the sight of the altercation between Ms. Breimeier and the intruding Appellant, Ms. Breimeier testified "Yeah, you could see they were high strung and that it did bother them that they saw an adult go after one of their teachers." (Tr. p. 28).

So disturbing was the Appellant's tirade in the school's resource room, that the direct object of that tantrum, Norma Breimeier herself, was movingly affected. When queried by the State at trial, Ms. Breimeier was recalling her reaction to the Appellant's affront right after the Appellant collected up her son, and left the premises with her niece, Bethany Johnson and the boy, by recalling "My adrenalin was real high and I went and told Mr. Dick [the principal] about the incident and he called [police] dispatch. He had to wait until Mrs. Maki was done talking to dispatch before he could talk to them and he told me that I should write a statement – go back up to the room and write a statement. Then I did go up and as I left I broke down. My adrenalin was just gone, [I was] actually crying. (Tr. p. 26) [parentheticals provided]. As it turned out, Norma Breimeier thought she could finish out the school day, but ended up going home after fulfilling her recess duty at lunch break. (Tr. pp. 26-27).

Meanwhile, another teaching paraprofessional at the school, Ms. Bonnie Toepke,

was returning to the resource room after having gone to another room to place a phone call. (Tr. p. 40). As she arrived by the entrance to the resource room, Ms. Toepke heard a bunch of yelling and something going on in the resource room, so she hurried there only to find the Appellant and her niece, Bethany Johnson yelling at Mrs. Beiemeier. (Tr. p. 41). As soon as Ms. Toepke walked in the doorway, she proclaimed to everyone this [commotion] has to stop or we have to stop [all this yelling], with the Appellant still speaking in a loud voice. (Tr. p. 42). [parentheticals added]

During her time on the witness stand, Ms. Toepke testified that Ms. Breimeier appeared clearly upset. (Tr. p. 43). The five boys who were in the room at the time of the disturbance were visibly shaken up. Bonnie Toepke's specific recollection of the event was told at trial as follows: "They were sitting there just wondering what they were supposed to do – like what's going on. Everybody is yelling at each other." Id.

After the Appellant departed the school and after Ms. Briemeier returned from reporting the incident to the principal's office, Ms. Toepke recalled the emotional state Ms. Breimeier was in as a result of the disturbance occasioned by the Appellant. Bonnie Toepke remembered seeing Ms. Breimeier and that "She was crying and said that they accused me of pushing him down and sitting on him or whatever it was and she just couldn't believe what was going on. (Tr. p. 45). Ms. Toepke also recalled that Norma Breimeier had become upset by the disturbance with the Appellant that "she just couldn't keep it together and she had to go home after lunch." (Tr. p. 46).

During the 2007-2008 school year, Rhonda Mosset served as a special education instructor for the New Salem Public School District who split her days with mornings

spent at the elementary school and afternoons spent mostly at the high school. (Tr. p. 49). Ms. Mosset supervised the teaching activities of her colleague paraprofessionals, Norma Beimeier and Bonnie Toepke. (Tr. p. 54).

On May 7, 2008, Ms. Mosset was at the elementary school that morning, and was told that she needed to go to the high school to provide some assistance. When she arrived at her classroom, she observed the five students there "were all talking and had looks of complete shock. They didn't really know what was going on and I found Mrs. Breimeier, she was behind one of our partitions and had been crying profusely. She had – I mean her face was just a mess, all red and blotchy. She continued to cry for at least an hour." (Tr. p. 49). Ms. Mosset testified that the police were called, and efforts were undertaken to try to calm down Ms. Breimeier to a level of comfort. (Tr. p. 50).

Ms. Mosset went on to say that "I'd worked with her for two years, so she can withhold a lot. You almost have to within the special ed, you know, the things that we see and go through each day. But I'd never seen her actually shaken up over an event and she was very shaken up for over an hour. Id. Both Ms. Breimeier's daughter and husband came to the school to help her deal with the situation. Id.

Based upon the testimony of the three prosecution witnesses called by the State at trial, there was a substantial body of credible evidence upon which the finder of fact in the court below could have found that on the 7th day of May, 2008, in Morton County, North Dakota, the Appellant willfully disturbed a school that was in session, and insulted or threatened a teacher in the presence of five students.

II. THE DEFENDANT TESTIFIED AS TO THE ELEMENTS OF THE OFFENSE.

After the prosecution had rested its case in chief at trial, the Defendant/Appellant, Billie C. Maki, testified in her own right as to the events that occurred on the morning of May 7, 2008. (Tr. p. 67). The Appellant went into the New Salem High School resource room because "that's where the teacher was that I needed to talk to and I even asked J.M. [my son] three times, is this the teacher that did this [to you] today and he kept on saying yes. (Tr. p. 71) [parenthetical provided].

The Appellant was asked by defense counsel what happened when she and her niece, Bethany Johnson, entered the resource room where Norma Breimeier and the other five students were sitting. Q: So you went into the classroom and what happened after that? A: Well I confronted her about why she held him down and she says that she didn't and I just. . . I just told her after she put her hands on me that I was going to kick her ass. (Tr. p. 72, ll. 2-4, 21-22) [points of suspension provided for context and continuity].

The Appellant admitted on direct examination that she had insulted Ms. Breimeier when asked by defense counsel the following question: "Q: Did you ever say anything that would insult her? A: Just after she touched me." (Tr. p. 73).

On cross examination by the prosecution, the Appellant was asked to explain her intentions when she told Ms. Breimeier she was going to kick her [in the] behind:

Q: And you actually wanted her to go off the school grounds to do that?

A: Yes.

Q: What would make that any better than doing it in the school?

A: Not in front of the kids.

Q: So you were actually intending on doing that?

A: Yes.

Q: You were mad enough to actually do that?

A: Well, she was laying her hands on my son. Why doesn't she pick on somebody that's an adult?

(Tr. pp. 77-78).

The Appellant was asked why her niece, Bethany Johnson, had accompanied the Appellant to the New Salem High School on May 7, 2008, when the Appellant went to the school to confront the teacher who she believed had touched her son at school that morning. The response given was "Well I wanted somebody else as an adult with me so in case the teachers did something, she'd be like a witness." (Tr. p. 79).

The Appellant provided an ample amount of testimonial evidence as to her angry state of mind on the date of the offense, and corroborated the testimony of the two prosecution witnesses as to the Appellant's aggressively disturbing outburst in the school and the close range, insulting tirade the Appellant unleashed on the paraprofessional special education teacher, Norma Breimeier, in the presence of five students.

II. BASED UPON THE SUFFICIENCY OF THE EVIDENCE, THE TRIAL COURT WAS CORRECT IN DENYING THE APPELLANT'S MOTION FOR A JUDGMENT OF ACQUITTAL AFTER THE STATE RESTED ITS CASE IN CHIEF AT TRIAL.

After the prosecution rested its case in chief at trial, defense counsel made its

motion for a judgment of acquittal pursuant to Rule 29 of the North Dakota Rules of Criminal Procedure. (Tr. p. 63). After an informed discussion with counsel on the issue of whether the prosecution had presented a prima facie case for the finder of fact to decide, the trial court denied defense counsel's motion for a judgment of acquittal. (Tr. pp. 63-64).

As a general rule, a motion for a judgment of acquittal is addressed to the court at the close of the prosecution's case in chief at trial. In the well-seasoned North Dakota Supreme Court case of State v. Holy Bull, 238 N.W.2d 52 (N.D. 1975), the high court discussed, among other issues, the trial court's denial of the defendant's Rule 29 motion for a judgment of acquittal at the close of the prosecution's case in chief in the larger context of the trial court's subsequent denial of the defendant's motion for a new trial after the defendant had been found guilty of murder. Id. 238 N.W.2d at 54-55.

In stating the general rule regarding the factors a trial court must consider in deciding the merits of a Rule 29 N.D.R.Crim.P. motion for a judgment of acquittal, the Court in State v. Holy Bull, went on to state:

> We also observe that on a motion for judgment of acquittal under Rule 29, N.D.R.Crim.P., the trial court is required to approach the evidence from a standpoint most favorable to the prosecution, and is required to assume the truth of the evidence offered by the prosecution. If on this basis there is substantial evidence justifying an inference of guilt the motion for judgment of acquittal must be denied. Also citing generally, 2 Wright, Federal Practice and Procedure, § 553, p. 486.

State v. Holy Bull, 238 N.W.2d 52, 57.

Applying the general rule from State v. Holy Bull, above, to the issue presented for appeal, regarding the trial court's inquiry as to a motion for a judgment of acquittal,

the Appellee argues that the trial testimony of school faculty members, Norma Breimeier and Bonnie Toepke were in agreement in several aspects as applied to the essential elements of the offense the Appellant was proven to have committed on May 7, 2008. Additionally, the insulting, threatening words and actions spoken by the Appellant and directed at the teacher, Norma Breimeier, in the presence of five students while the school was in session, are components of the substantial body of evidence from which the jury could draw its inferences of guilt. Therefore the Appellee argues that the trial court acted properly in denying the Appellant's Rule 29 N.D.R.Crim.P. motion for a judgment of acquittal.

The State on appeal argues that the Appellant has brought forth nothing to bear, either in law or in fact, for the reviewing court to find that the trial court abused its discretion in denying defense counsel's motion for a judgment of acquittal at trial. The State on appeal urges the court to find likewise, that the verdict of guilty in the court below was based upon a sufficiency of the evidence for the jury to make that finding.

CONCLUSION

Based upon the points and authorities cited and argued in the State's brief on appeal, the State urges the Court on appeal to affirm the Defendant's conviction on one count of willful disturbance of a school.

Dated this 17th day of February, 2009.

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STATE OF NORTH DAKOTA

State of North Dakota,	)	Supreme Court No. 20080279
	)	
Plaintiff/Appellee,	)	Morton Co. No. 30-08-K-0523
	)	
v.	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Billie Corinne Maki,	)	
	)	
Defendant/Appellant.	)	

I hereby certify that on the 19th day of February, 2009, I served a true and correct copy of the attached:

BRIEF OF PLAINTIFF/APPELLEE

upon the following named party by _____ personal delivery to said party or, __X__ by depositing the documents in the United States mail at Mandan, North Dakota, postage prepaid, to:

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