

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Oneida Nation / Oneida Police Department,
PLAINTIFFS,

CASE NO: 23-CT-036

v.

Ronald J. House
DEFENDANT

DATE: August 25, 2023

FINAL ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in-person: Plaintiffs' Attorney, Kelly McAndrews, and Defendant, Ronald J. House.

Background

In accordance with 3 O.C. 309.6-1, Defendant was issued a citation for Disorderly Conduct, 1st Offense. This citation is the result of an incident that occurred on April 11, 2023. At a pre-trial hearing on June 15, 2023, Defendant plead not guilty to the alleged violation. The Court set this matter for trial on July 26, 2023.

Principles of Law

Black's Law Dictionary – Sixth Edition

Tend.

1. To have a leaning; serve, contribute, or conduce in some degree or way, or have a more or less direct bearing or effect; to be directed as to any end, object, or purpose; to have a tendency, conscious or unconscious, to any end, object or purpose. *Rodgers v. State*, 122 Tex.Cr.R. 331, 54 S.W.2d 1010, 1012.

Incite.

1. To arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion; as, to "incite" a riot. Also, generally, in criminal law to instigate, persuade, or move another to commit a crime; in this sense nearly synonymous with "abet."

Oneida Code of Laws Title 3. Public Peace – Chapter 309

309.6. Civil Infractions Against the Peace

309.6-1. *Disorderly Conduct.* A person commits the civil infraction of disorderly conduct if he or she engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. A civil infraction of disorderly conduct may include, but is not limited to, the

following behaviors:

- (c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;
 - (1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.
- (d) abuses or threatens a person on tribal property in an obviously offensive manner;
- (f) uses abusive, indecent, profane, or vulgar language in Tribal property, and the language by its very utterance tends to incite an immediate breach of peace.

Analysis

Pursuant to 3 O.C. 309.6-1, a person can be determined to exhibit disorderly conduct when two requirements are met. First, he or she must engage in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct. Second, the conduct must *tend* to cause or provoke a disturbance. The parties agreed the first requirement in determining whether disorderly conduct occurred was met; therefore, the Court must decide whether Plaintiffs proved by clear and convincing evidence that the second element was satisfied.

Plaintiffs argued that in order to substantiate the disorderly conduct violation, they needed to prove by clear and convincing evidence that Defendant's conduct on April 11, 2023, tended to cause or provoke a disturbance. Plaintiffs' presentation focused on Defendant's second interaction with Oneida Police Department Officer B. Davis. As a result, Plaintiffs argued Defendant's conduct during the exchange with Officer Davis met the following sub-sections in 309.6-1:

- (c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;
 - (1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.
- (d) abuses or threatens a person on tribal property in an obviously offensive manner;
- (f) uses abusive, indecent, profane, or vulgar language in Tribal property, and the language by its very utterance tends to incite an immediate breach of peace.

DISTURBING THE PEACE

Did Defendant make or cause to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities between the hours of 10:00 p.m. and 6:00 a.m.? No, Defendant did not make loud, disturbing or unnecessary sounds or noises that tended to cause or provoke a disturbance between 10:00 p.m. and 6:00 a.m.

First, Plaintiffs' alleged Defendant's yelling and argumentative behavior toward Officer Davis equated to loud and disturbing noises that would be disturbing to a person of ordinary sensibilities. Plaintiffs further argue this incident occurred on a public roadway at approximately 1:14 a.m., in proximity of neighbors.

Defendant does not deny his use of profanity during the exchange with Officer Davis. Defendant also does not deny that the incident occurred between the hours of 10:00 p.m. and 6:00 a.m. However, Defendant argued that his behavior did not tend to provoke or incite a disturbance.

After thoroughly reviewing all the evidence and testimony, specifically the second exchange between Defendant and Officer Davis, the Court finds Defendant did use profanity when speaking to Officer Davis. The Court also finds that, at times during the second exchange, Defendant did raise his voice to the officer, but the Court did not find that Plaintiffs proved by clear and convincing evidence that Defendant's conduct tended to cause or provoke a disturbance. On April 11, 2023, Defendant consistently communicated three areas of concern to Officer Davis; 1) he expressed his rights, 2) he voiced his wrist hurt from Officer Davis placing the handcuffs on Defendant too tight, and 3) he wanted Officer Davis to give him a ride home because he was intoxicated, therefore, unable to drive himself. In talking to Officer Davis about these concerns, Defendant's conduct was not loud, nor did Defendant make disturbing or unnecessary sounds or noises that tended to cause or provoke a disturbance. At times, Defendant raised his voice to Officer Davis regarding the concerns he tried to address with Officer Davis. The Defendant elevating his voice out of frustration did not satisfy the second element of disorderly conduct. The evidence showed that Officer Davis did exactly what he intended to do, which was to not escalate the situation. He should be commended for that. However, as a result, Defendant's conduct and actions did not tend to cause or provoke a disturbance.

ABUSIVE OR THREATENING BEHAVIOR

Did Defendant abuse or threaten a person on tribal property in an obviously offensive manner? No, Defendant did not abuse or threaten a person on tribal property in an obviously offensive manner.

Plaintiffs contend Defendant's use of "fighting words" in demanding Officer Davis take Defendant home as threatening, which resulted in a tendency to cause or provoke a disturbance.

Defendant admits to using profanity in the form of an adjective when talking to Officer Davis during the second exchange, but did not admit to threatening Officer Davis, nor does he believe his conduct tended to incite or provoke a disturbance. Defendant also argued the alleged disorderly conduct occurred on a public roadway, not on tribal property, a requirement of 309.6-1(d).

Evidence and testimony reveal Defendant was clearly annoyed, alleging Officer Davis put the handcuff's on too tight; therefore, eventually demanding at the very least, the Officer take him home. Evidence shows, Defendant did use profanity during his exchange with Officer Davis, but the evidence does not show that Defendant's behavior constituted a threat to Officer Davis.

As a result, Plaintiffs did not prove by clear and convincing evidence that Defendant's alleged abuse or threatening conduct to Officer Davis on tribal property was in an offensive manner.

INAPPROPRIATE CONDUCT TENDED TO BREACH PEACE

Did Defendant use abusive, indecent, profane, or vulgar language on Tribal property, and was the language by its very utterance such that it tended to incite an immediate breach of peace? No, Defendant did not engage in abusive, indecent, profane, or vulgar language on Tribal Property, and the language by its very utterance did not tend to incite an immediate breach of peace.

Plaintiffs presented two arguments regarding section (f). First, Plaintiffs argued Defendant's use of profanity and argumentative behavior resulted in a tendency to provoke or incite a disturbance amongst Defendant's brother, Johnnie House, who was in close proximity of Defendant during the second exchange with Officer Davis.

Second, Plaintiffs alleged that during the personal service of Johnnie House's citation, the exchange between Johnnie House and Officer Davis support Plaintiffs' claim that Defendant's behavior was disorderly in nature by Johnnie stating, "things could have been worse, especially how my brother was acting."

Defendant responded to Plaintiff's first argument by stating that he unknowingly walked into a chaotic situation. Defendant contended his language or conduct by its very utterance did not tend to incite an immediate breach of peace, but instead, this situation was already escalated.

In reviewing the evidence, Plaintiffs did not prove by clear and convincing evidence that Defendant's actions or conduct during the second exchange with Officer Davis tended to incite or provoke Johnnie House to cause a disturbance. In fact, not only did Plaintiffs fail to present evidence that showed Defendant's actions or conduct *tended* to incite or provoke a disturbance, Plaintiffs also did not present any case precedent, whether binding or persuasive, showing the type of actions and conduct Defendant engaged in was found to cause or tended to cause a disturbance. Black's Law Dictionary defines "incite" as to arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion; as, to "incite" a riot. In this case, video evidence did not support the alleged argument that Defendant's conduct tended to cause or provoke a disturbance from his brother, Johnnie House. Instead, Johnnie House was civil and complied with law enforcement while being detained in handcuffs. As a result, Plaintiff's did not prove by clear and convincing evidence that Defendant's actions or conduct tended to result in Johnnie House exhibiting conduct that could arouse, urge, provoke, encourage, instigate, or set in motion a disturbance or riot.

Regarding the second argument, Defendant challenged the relevancy of the exchange between Officer Davis and Johnnie House, during Officer Davis' personal service of Johnnie House. Plaintiffs presented video evidence that alleged Johnnie House observed Defendant's behavior on April 11, 2023, to be disorderly in nature. The Defendant also asserted Plaintiffs' claim that disorderly conduct occurred once Defendant was on a public roadway days earlier, not during personal service of a citation to Johnnie House. Overall, Defendant disagreed that his conduct

and actions tended to incite or provoke a disturbance from Defendant's brother, Johnnie House, but instead, the situation was already escalated.

In addition, body cam video showed Johnnie House did make an observation as to the behavior of his brother, Defendant, Ronald J. House during the early morning hours of April 11, 2023. Johnnie House did state to Officer Davis that "things could have been worse, especially how my brother was acting." The Court viewed this as an observation Johnnie House made in relation to how he believed his brother, the Defendant, behaved. For the disorderly conduct requirements to be met, an individual must first exhibit specific behaviors. Second, those actions or behaviors must then tend to cause or provoke a disturbance. This argument does not satisfy the second element of a disorderly conduct. A statement that, "things could have been worse, especially how my brother was acting," does not prove by clear and convincing evidence that Defendant's actions tended to cause or provoke a disturbance.

Black's Law Dictionary defines "tend" as to have a leaning; serve, contribute, or conduce in some way, or have a more bearing or effect; to be directed as to any end, object, or purpose. Plaintiffs alleged Defendant exhibited behaviors that tended to cause or provoke a disturbance in accordance with 3 O.C. 309.6-1(c), (d), and (f). After thoroughly reviewing the evidence and sworn testimony, Plaintiffs did not prove Defendant's behavior tended to contribute to a disturbance, nor did Defendant's actions have more of a bearing or effect on a possible disturbance nor was it the result to an ending Defendant was attempting to orchestrate. Therefore, based on the evidence and sworn testimony, Plaintiffs did not prove by clear and convincing evidence that Defendant's behavior or actions *tended* to result in a disturbance.

Finding of Facts

1. The Court has subject matter and personal jurisdiction over this matter.
2. The parties received proper notice of this hearing.
3. Defendant was issued a citation for Disorderly Conduct, 1st Offense, as a result of an incident that occurred on April 11, 2023.
4. Defendant, after acknowledging his rights, entered a plea of not guilty to Disorderly Conduct, 1st Offense.
5. The parties agreed at trial that Defendant used profanity during a second exchange with Officer Davis on April 11, 2023, satisfying the first element of Disorderly Conduct.
 - a. The Court finds that, at times, Defendant did raise his voice to Officer Davis.
 - b. Video evidence showed Defendant on multiple occasions, demanding that Officer Davis take him home. On one occasion, Officer Davis expressed to Defendant, "I will see if I can work on that." On another occasion, Officer Davis stated, "the faster you talk to me, the faster I can get you home."
 - i. Officer Davis did not drive Defendant home, due to his conduct during the second exchange with Officer Davis.
 - c. The Court finds the statement by Officer Davis that "the faster you talk to me, the faster I can get you home," led Defendant to believe that Officer Davis would drive

him home.

- d. Plaintiffs did not present clear and convincing evidence that Defendant's alleged use of "fighting words" equated to threatening Officer Davis, resulting in a tendency to cause or provoke a disturbance.
6. Plaintiffs did not prove by clear and convincing evidence that Defendant's conduct during a second exchange with Officer Davis tended to provoke or cause a disturbance.

Order

1. Plaintiffs did not satisfy their burden that Defendant committed the offense of Disorderly Conduct, 1st Offense; therefore, the citation is dismissed, and this case shall be closed.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council this Order is signed on August 25, 2023.



John E. Powless III, Trial Court Judge