LEXSEE 14 A.L.R.4TH 1252

American Law Reports 4th

Annotation

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Insulting words addressed directly to police officer as breach of peace or disorderly conduct

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14 A.L.R.4th 1252

This annotationn1 collects and analyzes the state and federal cases in which the courts have considered the propriety of a conviction for breach of the peacen2 or disorderly conduct based on insulting wordsn3 spoken by the defendant directly to a police or law enforcement officern4 or his partner.

Cases which have turned exclusively on the question of the constitutionality of the applicable breach of the peace or disorderly conduct statute, either as written or as construed, are outside the scope of this annotation.n5

Since statutes and other enactments are stated or discussed only to the extent that they are reflected in the reported cases within this annotation, the reader is advised to consult the latest enactments in his jurisdiction.

[*1b] Related matters

18 U.S.C.A. §§ 2101 et seq.

Validity, Construction, and Application of State Statutes and Municipal Ordinances Proscribing Failure or Refusal to Obey Police Officer's Order to Move On, or Disperse, on Street, as Disorderly Conduct, *52 A.L.R.6th 125*

Validity, and Standing to Challenge Validity, of State Statute Prohibiting Flag Desecration and Misuse, *31 A.L.R.6th 333*

What constitutes obstructing or resisting officer, in absence of actual force, *66 A.L.R.5th 397*

Validity and construction of state statute or ordinance prohibiting picketing, parading, demonstrating, or appearing in public while masked or disguised, *2 A.L.R.4th 1241*

Use of vulgar or profane language as bar to claim for unemployment compensation, *92 A.L.R.3d 106*

Larceny as within disorderly conduct statute or ordinance, *71 A.L.R.3d 1156*

What constitutes obstructing or resisting an officer in the absence of actual force, *44 A.L.R.3d 1018*

Validity of blasphemy statutes or ordinances, *41 A.L.R.3d 519*

Right of telephone or telegraph company to refuse, or discontinue, service because of use of improper language, *32 A.L.R.3d 1041*

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly or similar offense, *32 A.L.R.3d 551*

Validity of vagrancy statutes and ordinances, *25 A.L.R.3d 792*

Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct, *12 A.L.R.3d 1448*

Misuse of telephone as minor criminal offense, *97 A.L.R.2d 503*

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct, *65 A.L.R.2d 1152*

Peace officer's delay in making arrest without a warrant for misdemeanor or breach of peace, *58 A.L.R.2d 1056*

Civil liability for insulting or abusive language not amounting to defamation, *15 A.L.R.2d 108*

Validity, Construction, and Operation of Federal Disorderly Conduct Regulation (*36 C.F.R. § 2.34*), *180 A.L.R. Fed. 637*

Bailey & Rothblatt, Handling Misdemeanor Cases §§ 308, 315, 316, 320

Torcia, Wharton's Criminal Procedure § 64 (12th Ed)

Federal Procedural Forms, L. Ed. §§ 10:41, 10:47, 10:48, 10:50

[*2] Summary and background
[*2a] Generally

Although cases which turn exclusively or predominantly on the question of the constitutionality of the statute or ordinance proscribing such conduct are not within the scope of this annotation,n6 a reference to these constitutional principles is useful for a better understanding of the subject matter.

In the case of *Chaplinsky v New Hampshire (1942) 315 US 568, 86 L Ed 1031, 62 S Ct 766*, the landmark case in this area of the law, the Supreme Court of the United States upheld the conviction of a defendant under a state statute prohibiting any person from addressing "any offensive, derisive or annoying words to any person lawfully in any street or other public place." Reiterating that the right of free speech is not absolute, the court noted that there are certain well-

defined and narrowly limited classes of speech, including the utterance of "fighting words," the prevention and punishment of which have never been thought to raise any constitutional problem. The court defined "fighting words" as those which by their very utterance inflict injury or tend to incite an immediate breach of the peace, and it observed that such words are not an essential part of any exposition of ideas and are of such slight social value that any benefit derived from them is clearly outweighed by the social interest in order and morality.

Later, in *Gooding v Wilson (1972) 405 US 518, 31 L Ed 408, 92 S Ct 1103,* the Supreme Court defined the necessary characteristics of statutes or ordinances proscribing the use of offensive words in public if such legislation is to pass constitutional muster. Enactments punishing the use of words or language, said the court, must be carefully drawn or authoritatively construed to punish only unprotected speech and must not be susceptible of application to speech protected by the First and Fourteenth Amendments.

Thus, a state's attempt to proscribe behavior amounting to a breach of the peace or disorderly conduct must punish only "fighting words" and must do so in such a way as to avoid infringing at the same time upon constitutionally protected speech.

Recognizing these constitutional parameters, the American Law Institute stated in § 250.1, Comment 4, of Tentative Draft No. 13 to its Model Penal Coden7 that altercations with police constitute an important and criminologically distinct class of cases arising under the disorderly conduct laws. It noted that at least three factors have been suggested which distinguish cases involving disagreements with policemen from the ordinary situation in which one citizen makes himself obnoxious to another citizen: (1) where the policeman's own peace and quiet are literally disturbed, and his role in the situation is that of victim and "judge." In this situation, the police officer would have to be more than human to take the same detached and tolerant view of insults loudly addressed to him as he might take towards two strangers insulting one another. It is suggested that in this instance the policeman's exercise of discretion to arrest takes on the character of a final disposition, since the arrest itself is a sanction and conviction is quite likely to follow arrest if the officer presses the matter; (2) Where the policeman's official duties are especially likely to involve him in disputes where the other party is provoked to engage in profane, abusive, and loud remonstrance. It has often been noted that one of the hazards of the policeman's trade is being in disturbing situations, with which he is paid and trained to cope. Arrests made on reasonable cause or suspicion will necessarily involve him in situations where innocent people are outraged, however proper the policeman's actions may be. Moreover, the police officer frequently must deal with the most unruly and unrefined members of the population, whose customary standards of communication may well include loud, coarse language and abuse which are acceptable manifestations of behavior within their peer group; (3) To the extent that the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, it has been suggested that policemen employed to maintain order should be the least likely to be provoked by disorderly responses.

The offenses of breach of the peace and disorderly conduct, although closely related, are technically distinguishable.n8 The gravamen of the offense of breach of the peace is a disturbance of public order and tranquility by acts or conduct not merely amounting to unlawfulness, but tending also to create public tumult and incite others to break the peace. It is not necessary in laying the foundation for a prosecution for the offense of breach of the peace that the peace actually be broken; commission of an unlawful and unjustifiable act, tending with sufficient directness to breach the peace is sufficient.n9

On the other hand, it is generally agreed that disorderly conduct is a broader term than breach of the peace, so that a person who commits a breach of the peace is necessarily guilty of disorderly conduct, but all disorderly conduct is not necessarily a breach of the peace.n10 A misdemeanor only by virtue of statute or ordinance since it did not exist at common law,n11 disorderly conduct is generally defined as an act which tends to breach the peace or disturb those people who see or hear it, or endanger the morals, safety, or health of the community or of a class of persons or a family, although the specific definition varies from jurisdiction to jurisdiction.n12

An offense may involve a breach of the peace even though no violence is involved; it is enough that the offender's conduct tends to incite others to violence. Thus, a breach of the peace may be occasioned by the offender's use of profane or abusive language toward another on a public street and in the presence of others.n13 At common law, however, abusive and insulting language was not a breach of the peace unless it produced a threat of immediate violence.n14

In determining whether insulting remarks directed toward a police officer constitute a breach of the peace or disorderly conduct, the courts have considered a variety of factors and circumstances. Naturally, the tendency of the insulting words to incite an immediate breach of the peace, to provoke a violent reaction, or retaliation by the officer to whom the words were addressed is of the utmost importance. n15 This risk of retaliatory violence underlying society's concern in punishing the offenses of breach of the peace and disorderly conduct provides a basis for understanding the different views adopted by jurisdictions with regard to the effect of insulting words spoken directly to an officer of the law. Viewing the police officer as no less immune than the ordinary citizen from the anger produced by such epithets, some courts have stated that such words, without more, may constitute a breach of the peace or disorderly conduct since the officer, being human, is as likely to retaliate as anyone else when stung by insults, hence creating a risk of public disorder (§ 3, infra). Courts adopting this view generally express sympathy concerning the officer's plight in such situations and seek actively to discourage the notion that officers should have to endure more abuse than other members of society.

Other courts, citing the law enforcement officer's special training to deal with such situations and affirmative duty under the law not to react to, or retaliate following, the communication of insults to him, have adopted the rule that more than insulting words must be shown to support a breach of the peace or disorderly conduct offense (§ 4, infra).

A number of other jurisdictions seem to have applied each of these rules under various circumstances in an unpredictable manner (§§ 5-8, infra).

The presence (§§ 9-14, infra) or absence (§§ 15-18, infra) of onlookers at the scene of the incident when the words are uttered is normally of considerable interest to the courts, which are more likely to take a dim view of words spoken under circumstances likely to attract, or produce a reaction in, a crowd, and which therefore represent a greater threat to community tranquility.

As might be expected, many cases involving disorderly conduct or breaches of the peace arising from angry confrontations with a police officer attracting the attention of onlookers occur after the officer's arrest or detention of the speaker or his companion on traffic offenses (§ 9, infra), parking violations (§ 10, infra), offenses in connection with intoxication or controlled substances (§ 11, infra) or public demonstrations or protests (§ 12, infra), or other miscellaneous or unspecified offenses or violations (§ 13, infra), the courts reaching different results in such cases depending upon the particular circumstances.

Other cases have arisen under circumstances unrelated to separate offenses or suspicious behavior by the speaker or his companion, for example, where the officer is subjected to verbal abuse simply by virtue of his presence or his uniform, and the outcomes of these cases have depended upon the particular facts leading up to each incident, including the presence (§ 14, infra) or absence (§ 18, infra) of spectators at the scene.

In cases where the words spoken have not attracted the attention of third persons, for example, where the words were in response to an arrest or detention of a suspect (§ 15, infra), an officer's investigation of a reported crime (§ 16, infra) or the arrest of another person (§ 17, infra), depending upon the particular facts and circumstances, the courts have reached different conclusions after considering whether a breach of the peace or disorderly conduct has been established.

Finally, it should be noted that the courts, regardless of the circumstances of the particular case, are sensitive to any indications that the opprobrious words uttered by the defendant were in any way provoked by similar behavior by the arresting officer, and will often reverse a conviction under such circumstances.

[*2b] Practice pointers

When it appears that at the time of the incident giving rise to the arrest harsh words were spoken by both the police officer and the defendant, defense counsel should request a jury instruction that if the jury finds that the police officer deliberately spoke abusively to the defendant in his presence in such a way as to elicit language in reply which, by its nature, was no more disorderly either in substance or in manner than the language of the officer provoking him, then the officer was not justified in arresting him on a charge of disorderly conduct. n16

Although in some jurisdictions defense counsel may be prohibited from introducing evidence at a criminal trial tending to show that the police officer provoked the insulting words of the defendant by communicating insults of his own, if defense counsel is successful in defending the criminal charge and later brings an action against the officer for false arrest, he should again seek to introduce that evidence, which has been sometimes held admissible at subsequent civil trials on the theory that, at that stage, its admission prevents the officer from taking advantage of his own wrong and discourages policemen so inclined from arresting private citizens out of malice after deliberately provoking disorderly behavior on their part by the use of abusive and contemptuous language. n17

Defense counsel should, upon cross-examining the arresting officer, inquire whether the officer has received special training to deal with insulting words addressed to him. It is not uncommon for police officers to receive, in addition to their normal academy training, some sensitivity training on how to respond in such situations, thus reducing the likelihood that the insulting words directed to the officer would have aroused him to anger and thereby threatened a breach of the peace or disorderly conduct.n18

The prosecutor who finds his evidence insufficient to support a conviction of the defendant on a charge of disorderly conduct may, in some jurisdictions, be able to establish the crime of harassment based on that same evidence and should investigate whether his jurisdiction will permit a conviction for harassment when a defendant is tried under an information charging him only with disorderly conduct.n19

In those jurisdictions adopting the view that offensive language addressed to an officer does not, in and of itself, create a disturbance of the peace (§ 4, infra), the prosecuting attorney is advised to be certain to elicit testimony or other evidence concerning the effect of the defendant's conduct on bystanders at the scene of the incident involving the police officer. Moreover, it is advisable, even in those jurisdictions where insulting words alone can form the basis of the breach of the peace or disorderly conduct charge, for a prosecutor to gather such evidence whenever possible, as it can only strengthen the prosecution's case.n20

[*II] General principles

[*3] View that insulting words addressed to police officer, without more, may support charge of disorderly conduct or breach of the peace

The courts in the following cases have adopted the view that a charge of disorderly conduct or breach of the peace is supportable by evidence that the defendant directed insulting words to a police officer, regardless of whether those words were overheard by third persons.

FEDERAL COURTS

Russoli v. Salisbury Tp., 126 F. Supp. 2d 821 (E.D. Pa. 2000)

ARKANSAS

Meyers v State (1972) 253 Ark 38, 484 SW2d 334

DISTRICT OF COLUMBIA COURT

Duncan v United States (1966, Dist Col App) 219 A2d 110, remanded on other grounds *126 App DC 371, 379 F2d 148*

FLORIDA

For Florida cases, see infra § 5

GEORGIA

Elmore v State (1914) 15 Ga App 461, 83 SE 799
Bolden v State (1978) 148 Ga App 315, 251 SE2d 165

INDIANA

Whited v State (1971) 256 Ind 386, 269 NE2d 149, clarified *256 Ind 618, 271 NE2d 513*
Stults v State (1975) 166 Ind App 461, 336 NE2d 669

MAINE

For Maine cases, see infra § 6

MICHIGAN

Davis v Burgess (1884) 54 Mich 514, 20 NW 540

MINNESOTA

St. Paul v Morris (1960) 258 Minn 467, 104 NW2d 902, cert den *365 US 815, 5 L Ed 2d 693, 81 S Ct 696*
St. Paul v Azzone (1970) 287 Minn 136, 177 NW2d 559

MISSOURI

For Missouri cases, see infra § 7

NEW JERSEY

State v Brown (1973) 62 NJ 588, 303 A2d 886

NEW YORK

For New York cases, see infra § 8

PENNSYLVANIA

Commonwealth v Hughes (1979) 270 Pa Super 108, 410 A2d 1272

WASHINGTON

Pavish v Meyers (1924) 129 Wash 605, 225 P 633

WEST VIRGINIA

Marcuchi v Norfolk & W. R. Co. (1917) 81 W Va 548, 94 SE 979

WISCONSIN

Lane v Collins (1965) 29 Wis 2d 66, 138 NW2d 264

In *Duncan v United States (1966, Dist Col App) 219 A2d 110,* remanded on other grounds *126 App DC 371, 379 F2d 148,* the court said, in affirming a conviction for disorderly conduct against a defendant who had uttered insulting remarks to a police officer in the presence of other persons, that the fact that these remarks were addressed to or about a police officer did not alter the situation, adopting the view that a police officer, although trained to preserve the peace, is also human, and under great stress of abuse may forget his official duty and retaliate in the face of such provocation.

In *Elmore v State (1914) 15 Ga App 461, 83 SE 799,* the court rejected the defense argument that the breach of the peace statute could not have been violated by the defendant's language since the officers would not be legally justified in assaulting him on account of such words or language. The court agreed that under such circumstances an officer might not legally assault one in his custody because of opprobrious words or abusive language, but it reasoned that he is entitled to the same protection from such words or language which is afforded the private citizen. In fact, said the court, it would appear that an officer would be more entitled to such protection because of the very fact that he is prohibited from protecting himself by force against any insults coming from one legally in his custody. An officer should not be tempted to disobey the law, the court stated, which wisely prevents him from replying with a blow to the vilest of verbal affronts from one in his legal custody, in recognition that because of his assumption of the obligation and restraints of office, he has been shorn of that protection afforded to the humblest private citizen and that even the grossest insults offered to him, under such conditions, must go unredressed unless forceably presented at the time. A violation of the statute by such words or language cannot be measured simply by the physical ability of the object of such language to respond, the court said. If such words or language would naturally and ordinarily tend to produce a breach of the peace when addressed to a normal man not prevented by circumstances or physical limitations from properly resenting them and responding by assault and battery on the person of the offender, the court reasoned, surely such words or language when addressed to one who is prevented by the solemn obligations of office from resenting gross insults would constitute an offense under the statute where no provocation appears therefor.

Rejecting the defendant's argument that the absence of evidence that anyone in the neighborhood, except the investigating police officers, was disturbed by his behavior, and affirming the defendant's conviction for disorderly conduct, the court said in *Whited v State (1971) 256 Ind 386, 269 NE2d 149,* clarified *256 Ind 618, 271 NE2d 513,* that the defendant's reliance on the supposedly natural subjection of policemen to certain abuses in their work to support the defendant's assertion that his conduct should not be regarded as a violation of the disorderly conduct statute was misplaced, since it is the offensive nature of the conduct in terms of the neighborhood that violates the statute.

In *St. Paul v Morris (1960) 258 Minn 467, 104 NW2d 902,* cert den *365 US 815, 5 L Ed 2d 693, 81 S Ct 696,* the court rejected the defense contention that the use of abusive language toward a police officer does not, in itself, constitute disorderly conduct. The court noted that it is the rule in many states that legislation relating to disorderly conduct also embraces acts which corrupt the public morals or outrage the sense of public decency. While it is obvious that not every abusive epithet directed toward police officers would be sufficiently disturbing or provocative to justify arrest for disorderly conduct, the court explained, there is no sound reason why officers must be subjected to indignities going far beyond what any other citizen might reasonably be expected to endure.

CUMULATIVE CASES
Cases:

See *Evans v State (1988) 188 Ga App 347, 373 SE2d 52,* § 15[a].

Defendant's comments "fucking pig" and "fuck off asshole," directed at police officer, constituted "fighting words," for purposes of disturbing the peace, and were not protected by right of free speech. U.S. Const. Amend. I; MCA 45-8-101(1)(c). *State v. Robinson, 2003 MT 364, 319 Mont. 82, 82 P.3d 27 (2003).*

[*4] View that insulting words addressed to police officer, without more, may not support charge of disorderly conduct or breach of peace

In the following cases the courts have adopted the view that a charge of disorderly conduct or breach of the peace is not supported by evidence that only insulting words were addressed to a police officer.

FEDERAL COURTS

For federal cases involving state law, see state headings infra

FLORIDA

For Florida cases, see infra § 5

ILLINOIS

Landry v Daley (1968, ND Ill) 288 F Supp 189 (applying Illinois law)
Oratowski v Civil Service Com. (1954) 3 Ill App 2d 551, 123 NE2d 146
Chicago v Blakemore (1973) 15 Ill App 3d 994, 305 NE2d 687
People v Slaton (1974) 24 Ill App 3d 1062, 322 NE2d 553
People v Douglas (1975) 29 Ill App 3d 738, 331 NE2d 359 (apparently applying rule)
People v Gentry (1977) 48 Ill App 3d 900, 6 Ill Dec 617, 363 NE2d 146
People v Justus (1978) 57 Ill App 3d 164, 14 Ill Dec 836, 372 NE2d 1115
People v Trester (1981) 96 Ill App 3d 553, 52 Ill Dec 96, 421 NE2d 959

IOWA

Heath v Hagan (1907) 135 Iowa 495, 113 NW 342
Scott v Feilschmidt (1921) 191 Iowa 347, 182 NW 382

MAINE

For Maine cases, see infra § 6

MISSOURI

For Missouri cases, see infra § 7

NEW YORK

For New York cases, see infra § 8

NORTH CAROLINA

State v Moore (1914) 166 NC 371, 81 SE 693
State v Jones (1947) 227 NC 170, 41 SE2d 288

OHIO

Columbus v Guidotti (1958, App) 81 Ohio L Abs 33, 160 NE2d 355 (disapproved on other grounds *Columbus v Fraley, 41 Ohio St 2d 173, 70 Ohio Ops 2d 335, 324 NE2d 735,* cert den *423 US 872, 46 L. Ed. 2d 102, 96 S Ct 138)*

In *Chicago v Blakemore (1973) 15 Ill App 3d 994, 305 NE2d 687,* the court recognized the principle that offensive language addressed to an officer does not, in and of itself, create a disturbance of the peace. The court reasoned that an officer of the law is in a position to exercise the greatest degree of restraint in dealing with the public and must not view every threatening or insulting word, gesture, or motion as amounting to disorderly conduct, unless it is of such character or so provoked or conditioned as to be fully justified. The court noted that it is the sworn duty and obligation of the officer not to breach the peace, and beyond this, to conduct himself so as to keep others from so doing, so that mere words addressed to an officer in an insolent manner do not, without any other overt act, tend to breach the peace.

In *People v Slaton (1974) 24 Ill App 3d 1062, 322 NE2d 553,* the court said that words of a vulgar or offensive nature spoken to a police officer are not likely to evoke a violent response on the officer's part, since he has presumably been trained to preserve the public order. The court recognized that an officer has a duty to exercise the greatest degree of restraint in dealing with the public and not to conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct.

In *State v Moore (1914) 166 NC 371, 81 SE 693,* the court said that although the defendant expressed her displeasure or futile indignation a little too strongly to the police officer and should not have used so indecorous an expletive in doing so, since it did not reach beyond the ears of the policeman and hardly made a ripple on the placid surface of municipal peace, such conduct could hardly be described as disorderly, unless it tended in some degree to disturb the peace or good order of the town, or had a vicious or injurious tendency. In view of the policeman's testimony that no one heard the remarks except himself, the court stated that the defendant's words were clearly not within the provision of the ordinance, nor were the good order and peace of the community interrupted by her acts or conduct.

CUMULATIVE CASES
Cases:

Under First Amendment's free speech guarantee, citizens may not be punished for vulgar or offensive speech unless they use words that, by their very utterance, inflict injury or tend to incite immediate breach of the peace. U.S.C.A. Const. Amend. 1. *Brooks v. North Carolina Dept. of Correction, 984 F. Supp. 940 (E.D.N.C. 1997).*

When addressed to a police officer, words that might be fighting words and thus outside the First Amendment if spoken to a private citizen enjoy First Amendment protection. U.S.C.A. Const.Amend. 1. *Kaylor v. Rankin, 356 F. Supp. 2d 839 (N.D. Ohio 2005).*

Fact that a police officer encounters vulgarities with some frequency, and his training enables him to diffuse a potentially volatile situation without physical retaliation, means that words which might provoke a violent response from the average person do not, when addressed to a police officer, amount to fighting words which would support a disorderly conduct conviction. Code 1975, § 13*A-11-7. H.N.P. v. State, 854 So. 2d 630 (Ala. Crim. App. 2003).*

There was no evidence tending to prove beyond a reasonable doubt that defendant committed a breach of the peace warranting conviction of disorderly conduct; there was no evidence that defendant directed a verbal outburst toward anyone other than a police officer, and there was no evidence that defendant's outburst toward officer and his partner created the "likelihood or probability" that any of the onlookers would react with violence, and this was a pure case of words and not other actions. D.C. Official Code, 2001 Ed. § 22-1321(1). *Martinez v. District of Columbia, 987 A.2d 1199 (D.C. 2010).*

For use of obscene words to constitute a disturbance of the peace under disorderly conduct statute, it must be made in presence of member of public and not merely a police officer. *O.C.G.A. § 16-11-39. Woodward v. Gray, 241 Ga. App. 847, 527 S.E.2d 595 (2000),* cert. granted, (July 13, 2000).

Arguing with police officer, even if done loudly, or with profane or offensive language, will not in and of itself constitute disorderly conduct under Illinois law. S.H.A. 720 ILCS 5/26-1(a)(1). *Payne v. Pauley, 337 F.3d 767 (7th Cir. 2003).*

Under Illinois law, although arguing with a police officer may not by itself be a violation, other circumstances may lead to the conclusion that an individual's behavior does constitute disorderly conduct. S.H.A. 720 ILCS 5/26-1. *Penn v. Chicago State University, 162 F. Supp. 2d 968 (N.D. Ill. 2001).*

While not every abusive epithet directed toward police officers would be sufficiently disturbing or provocative to justify arrest for disorderly conduct, there is no sound reason why officers must be subjected to indignities that go far beyond what any other citizen might reasonably be expected to endure. *State v Beck (1984) 9 Kan App 2d 459, 682 P2d 137.*

For purposes of statutory provision governing offense of disorderly conduct, it is not enough if words are so offensive, obscene or abusive that they arouse resentment in others if they do not also tend to immediately incite a breach of the peace or provoke retaliatory action by those to whom they are spoken. M.S.A. § 609.72, subd. 1(3). *In re Welfare of W.A.H., 642 N.W.2d 41 (Minn. Ct. App. 2002).*

Defendant's conduct in screaming, at the top of his lungs, his anger at police officer at 2:00 a.m. in early June, while 60 feet away from apartment building, did not support conviction for disorderly conduct in violation of municipal ordinance, absent evidence establishing beyond a reasonable doubt that such conduct in fact caused inconvenience, annoyance or alarm to others, as required by the ordinance. *State v. Holmes, 129 Ohio App. 3d 735, 719 N.E.2d 32 (2d Dist. Montgomery County 1998).*

A conviction for public disorderly conduct requires a defendant to have used fighting words when the conduct in question was directed toward a police officer. Code 1976, § 16-17-530(a). *State v. Bailey, 626 S.E.2d 898 (S.C. Ct. App. 2006).*

[*5] Florida cases

In the following Florida cases the courts have apparently adopted different views with regard to the issue whether insulting words addressed to a police officer, taken alone, may support a breach of the peace or disorderly conduct charge.

In *St. Petersburg v Calbeck (1960, Fla App D2) 121 So 2d 814,* an appeal of a disorderly conduct conviction, the court said that the fact that the defendants, who had directed abusive and obscene language to police officers, could not be excused from being charged with disorderly conduct, although it appeared from the evidence that the words were not heard by any bystanders or witnesses to the incident. From this the court concluded that there had been a valid arrest, since the defendants had committed a misdemeanor in the presence of the police officers.

On the other hand, the court said in *Phillips v State (1975, Fla App D4) 314 So 2d 619* (superseded on other grounds by statute as stated in *State v Saunders (Fla) 339 So 2d 641* (superseded on other grounds by statute as stated in *Lowery v State (Fla App D4) 356 So 2d 1325)),* that the defendant's public use of the expletive "F- - -you," standing alone, did not provide legally sufficient probable cause for the officer to believe that the defendant had breached the peace, and it reversed the defendant's conviction for resisting arrest with violence arising from that alleged breach of the peace. Although remarking that it was totally unsympathetic to the defendant's conduct and to his manner of expression and expressing its hope that citizens would co-operate with police officers in their law enforcement efforts, the court said that police officers unfortunately must expect the use of such expletives, depending upon the source and the circumstances.

CUMULATIVE CASES
Cases:

Evidence was insufficient to support conviction for disorderly conduct, even though defendant yelled obscenities at police officer, and motorists along roadway where incident occurred slowed or stopped while defendant was yelling; no evidence was presented that defendant's words were fighting words or words that would tend to incite immediate breach of peace, that defendant engaged in any physical conduct toward officer that affected officer's ability to do her job or breached peace or otherwise incited others to act, or that anyone in area was actually incited into engaging in immediate breach of peace. West's F.S.A. § 877.03. *Barry v. State, 934 So. 2d 656 (Fla. Dist. Ct. App. 2d Dist. 2006).*

First Amendment protected profanities and offensive speech that arrestee yelled at police officers when they asked for identification and, therefore, prohibited arrest and delinquency adjudication for disorderly conduct; the arrestee was doing nothing unlawful, never physically interfered with the police, and was punished for pure speech. U.S. Const. Amend. 1; West's F.S.A. § 877.03. *W.L. v. State, 769 So. 2d 1132 (Fla. Dist. Ct. App. 3d Dist. 2000).*

Evidence that defendant's loud, belligerent, accusatory tirade, targeted at police officer, excited gathering crowd to such level that second officer developed safety concerns was sufficient to support conviction for disorderly conduct. *Marsh v. State, 724 So. 2d 666 (Fla. Dist. Ct. App. 5th Dist. 1999).*

Juvenile who used abusive and profane language against police officer who was working at off-duty job as security guard at apartment complex was improperly convicted of breach of the peace; her speech, which did not inflict injury or tend to incite violent response among spectators, was protected by *First Amendment. B.R. v. State, 657 So. 2d 1184 (Fla. Dist. Ct. App. 1st Dist. 1995).*

See *L.J.M. v State (1989, Fla App D1) 541 So 2d 1321,* review den (Fla) *549 So 2d 1014,* § 13[a].

[*6] Maine cases

In the following Maine cases the courts arguably adopted different views with regard to whether offensive words or epithets directed toward a police or law enforcement officer alone are sufficient to establish a breach of the peace or disorderly conduct, although the latter of the two cases stated that it was not in conflict with the former.

In *Bale v Ryder (1972, Me) 290 A2d 359,* the court said that it could conceive of no reason why a police officer or other public official responsible for maintaining law and order should have to be the object of obscenities and vulgarities of the type which, if addressed to a layman, would have a direct tendency to incite to acts of violence. The court acknowledged that not every abusive epithet directed toward an officer would be sufficiently disturbing or provocative to justify arrest for disorderly conduct, but refused to apply a different standard to officers of the law than that applied to private citizens.

Stating that it found no conflict between its present holding and the language in *Bale v Ryder (1972, Me) 290 A2d 359,* supra, the court nevertheless said in *State v W. (1980, Me) 418 A2d 1097, 14 ALR4th 1238,* that although abuse far beyond what any other citizen might reasonably be expected to endure need not be endured by the police, epithets directed at police officers are not fighting words merely because they might be so if directed at some other person. The nature of the experience, training, and responsibilities of police officers, said the court, must be considered in determining whether a given defendant's language constituted fighting words. The court emphasized the right of a citizen to remonstrate against a police intrusion into his activities.

[*7] Missouri cases

In the following Missouri cases the courts expressed different views with regard to the liability of a defendant for a breach of the peace or disorderly conduct based solely on that defendant's use of offensive or vulgar language when addressing a police officer.

In *Salem v Coffey (1905) 113 Mo App 675, 88 SW 772,* the court stated that a village marshal was not a "person" whose peace was alleged to have been disturbed by the defendant within the meaning of an ordinance prohibiting the disturbing of the peace by loud and unusual noise or the like. The court explained that when the defendant used the language stated, the village marshal, in connection with other peace officers, was endeavoring to disperse a disorderly assembly

and was acting within the scope of his official duties, and in that role was not a person within the meaning of the ordinance. The personality of the village marshal, said the court, was merged into that of the office of marshal. Although the ordinary person has the right to invoke the law to ensure his peace against the lawless, said the court, the village marshal has a duty to deal with disturbers of the peace and the authority to arrest anyone who commits a breach of the peace in his presence. If he permits a breach of the peace, the court pointed out, he neglects his duty. The court concluded that the village marshal would not be permitted to shirk his duty and to invoke the protection of the law on the ground that his own peace was disturbed, since the object of the ordinance was to protect the citizen, not the peace officer. The offense that an individual commits in the presence of an officer is not an offense against the officer, but against society, the court reasoned, and, as such, is punishable.

Expressly rejecting the reasoning of *Salem v Coffey (1905) 113 Mo App 675, 88 SW 772*, decided by a different Court of Appeals, the court said in *De Soto v Hunter (1909) 145 Mo App 430, 122 SW 1092,* that loud, offensive, and indecent language and epithets directed toward a policeman in the presence of others on a public street amounted to a disturbance of the peace of the police officer, and evidence tending to prove such facts was sufficient to make a prima facie case for the jury on that question. That every other witness to the incident testified that his peace was not disturbed by defendant's cursing and swearing was irrelevant, said the court. The court reasoned that the violent and vituperative epithets applied by the defendant to the police officer were calculated to disturb the peace of a person, even though that person was a police officer and accustomed to more or less unkind remarks from boisterous individuals. The court rejected the rule, announced in Salem, that a police officer was not entitled to the protection of a breach of the peace statute because of his office.

[*8] New York cases

New York courts have apparently adopted different views with respect to the question whether a defendant's epithets directed toward a police officer may support, in the absence of any evidence that third persons were also disturbed thereby, a charge of disorderly conduct or breach of the peace.n21

On the other hand, the court stated in *People ex rel. Conley v Frank (1935) 245 App Div 777, 281 NYS 158,* that it was well settled that opprobrious and profane words addressed to a policeman and not heard by others do not constitute an offense against the peace. Mere impudence or back talk to a policeman, said the court, does not justify an arrest by such officer for breach of the peace, and it is not the law that every insulting word, gesture, or motion even towards a policeman amounts to disorderly conduct, since it may be of such a character or so provoked or conditioned as to be fully justified. To hold otherwise, said the court, would place every citizen at the mercy of a policeman who, under color of authority, would have the power to reap private vengeance. Actuated by malice, noted the court, policemen would only have to make an insulting remark to a citizen and, if the latter resented by word or act, the officer would then drag him to jail for a breach of the peace.

In *People v Lukowsky (1916) 94 Misc 500, 159 NYS 599,* the court said that it did not think that any remark, however insulting, addressed while under lawful arrest to the police officer making the arrest, there being no evidence that the remark was made in a loud voice or public manner, can be deemed disorderly conduct tending to, or intended to provoke, a breach of the peace. The court explained that the law does not contemplate that the officer would assault the person in his custody by reason of a remark addressed to him, yet in no other way could the remark tend to provoke a breach of the peace.

Despite the absence of any evidence that the language directed toward the police officer tended to disturb or agitate third persons, the court said in *People v Fenton (1917) 102 Misc 43, 168 NYS 725,* that insulting language spoken by the defendant, a truck driver, to a police officer in the proper performance of the officer's duty was conduct tending toward a breach of the peace. Gratuitous insolence to police officers tending to cause disturbances and disorder upon a public highway, said the court, is far too common and should not be encouraged, since it seems to lessen the respect of the community for law and order, which is represented by the police officer in his legitimate discharge of his duties.

Citing with approval *People v Fenton (1917) 102 Misc 43, 168 NYS 725,* supra, the court explained in People ex rel. Nannery v *Clarke (1939, Mag Ct) 12* NYS2d 8, that once a detective discloses his business after stopping a person for questioning, that person, whether or not he is involved in any alleged crime, cannot call the detective vile or abusive names, for such conduct may tend to a breach of the peace.

To the same effect is *People v Wecker (1930) 140 Misc 388, 246 NYS 708.*

A peace officer was held not entitled to arrest a defendant on a disorderly conduct charge for the use of profane and obscene language toward the peace officer inside a home in *People v Jerome (1957) 8 Misc 2d 883, 168 NYS2d 452.* The court reasoned that the acts of the defendant did not constitute a disturbance of the quiet of the village in violation of the statute under which he was charged.

In *People v La Sister (1958) 9 Misc 2d 518, 170 NYS2d 702,* the court said that vulgar and offensive language addressed solely to a police officer was a private annoyance to the officer, and in the absence of testimony showing that there was a breach of the peace where it attracted undue attention or caused consternation amongst any, as the officer testified, of the close to 100 people who were nearby, was insufficient to constitute disorderly conduct. To constitute disorderly conduct, the court explained, there must be an actual or threatened breach of the peace, which in turn means a disturbance of the tranquility of the people of the state.

To the same effect is *People v Jones (1946, City Ct) 63 NYS2d 399.*

Adopting the view that it is not necessary to show that the peace and quiet of a sizable segment of the community is in fact disturbed to support a breach of the peace charge, the court, in *People v Lavoy (1953, Co Ct) 124 NYS2d 639,* said that certain of the foul names used by the defendant in addressing the police officer could not be spoken to anyone, including a police officer, without causing a fight or being likely to do so, and the court ruled that a breach of the peace may be committed even by spoken words to a police officer, provided they tend to provoke immediate violence.

CUMULATIVE CASES
Cases:

See *People v Stephen (1992, City Crim Ct) 581 NYS2d 981,* § 14[b].

[*III] Circumstances under which insulting words were addressed to police officer as establishing charge

[*A] Words allegedly spoken in presence of, or attracting attention of, third persons

[*9] Words spoken by person, or companion of person, cited for, or detained on suspicion of,

[*9a] arate charge or offense -- traffic offense
[*9a] Charge held established

Under the particular facts of the following cases, insulting words spoken directly to a law enforcement officer, either in the presence of, or attracting the attention of, third persons, following the arrest or detention of the speaker or his companion in connection with the commission of a traffic offense were held sufficient to establish a charge of breach of the peace or disorderly conduct.

The court held in *State v Styfco (1964) 2 Conn Cir 610, 203 A2d 610,* that evidence of boisterous and profane language spoken by the defendant to a police officer supported a conviction for breach of the peace resulting from an incident when the officer stopped the car in which the defendant was riding after noting that it was being driven in an unusual manner and following another car too closely. While writing a warning ticket, he was assailed by loud and profane language from the car's occupants. Another officer, who arrived to assist in the arrest, was treated similarly. The court found that the evidence was sufficient to find the defendant guilty beyond a reasonable doubt.

Abusive words addressed by the defendant to police officers in the presence of other officers and members of the public in a precinct station where he had been taken by other officers after being charged with a traffic offense were held to

support a disorderly conduct conviction in *Franklin v District of Columbia (1968, Dist Col App) 248 A2d 677.* The defendant was stopped by police officers on a motor vehicle charge and was taken to a precinct building because he did not have the registration certificate for the car. Two other officers in the precinct recognized the defendant and notified the arresting officer that he had been using a false name. At that point, the defendant said to the arresting officers, "You m_____r f_____s keep out of this." The defendant argued that his conviction for disorderly conduct should be reversed because the use of profanity alone, without a showing that the words used tended to provoke a breach of the peace, was insufficient to justify the conviction. Accepting, for purposes of the appeal, the defendant's interpretation of the statute, which forbade the use of such language in a public place, the court concluded that the evidence supported the disorderly conduct conviction. It reasoned that there could be no doubt that the words uttered by the defendant to the police officers were indecent, obscene, and patently offensive "fighting words, " whose very use not only inflicted injury but clearly tended to provoke an immediate breach of the peace. The court pointed out that the epithet did, in fact, precede and precipitate an altercation between the defendant and the police in a public place and in the presence of other members of the public.

See *Sharpe v State (1963) 231 Md 401, 190 A2d 628,* cert den *375 US 946, 11 L Ed 2d 275, 84 S Ct 350,* where the court, although not reaching the question whether the charge of disorderly conduct was justified by an individual's use of obscene language toward a police officer, stated that a refusal to obey a proper order of an officer may constitute an offense justifying an arrest, particularly where there is profanity in the presence of others that may threaten a breach of the peace. The defendant backed his car out of an alley without stopping, causing the police officer to abruptly stop his automobile to avoid a collision. The officer ordered the defendant to pull over to the curb, approached the car on foot, and asked the defendant for his operator's license and registration card. The defendant took out his wallet containing his driver's license, but refused to take his license out. The defendant told the officer, "You can see it enough where it is. I ain't taking this g____ d____ license out of this wallet." The officer than told the defendant he was under arrest for disorderly conduct and asked him to get out of the car. The defendant replied, "If you want me to get out this m_____ f_____ car, you are going to have to take me out." Another officer testified that the scuffle caused a crowd to gather. Failing to reach the question whether the charge of disorderly conduct could be supported, the court said only that the arrest was justified for failure to comply with the officer's demand to examine the operator's license under the circumstances.

An action to recover damages for false arrest and unlawful imprisonment was dismissed on the merits in *Lippert v State (1955) 207 Misc 632, 139 NYS2d 751,* the court concluding that the arrest of the claimant on a charge of disorderly conduct was justified by his exhibition of obscene, violent, and abusive behavior toward a police officer. The claimant was stopped by two state troopers in a patrol car and asked to exhibit his driver's license and automobile registration. He had in his possession the former, but not the latter. After some conversation with the troopers, he told them that he would meet them in a nearby village at the office of the justice of the peace, and he drove away. When the trooper arrived at the village, a third trooper was crossing the street to confront the claimant. He also asked the claimant for his car registration. The claimant responded with obscene, violent, and indecent language and called the state troopers vile names, all the while talking in a voice loud enough that it was heard by at least one other person, who was inside her home nearby. The claimant was then arrested for disorderly conduct. The court said that the claimant at the time and place of his arrest and immediately prior to his arrest had specifically acted and conducted himself "with intent to provoke a breach of peace, or whereby a breach of the peace may be occasioned" so as to bring himself within the condemnation of the disorderly conduct statute. Thus, said the court, the trooper had the right and the duty to arrest the claimant summarily.

CUMULATIVE CASES
Cases:

See *People v Foster (1995) 168 Ill 2d 465, 214 Ill Dec 244, 660 NE2d 951,* reh den (Jan 29, 1996) and cert den (US) *136 L Ed 2d 53, 117 S Ct 98,* § 22[a].

Defendant was properly convicted of disorderly conduct for screaming obscenities at officers who were preparing to have defendant's vehicle towed for lack of registration, even though speech was protected under constitution, where there was evidence that screams were overheard by his neighbors. *Hooks v State (1996, Ind App) 660 NE2d 1076,* transfer den (Mar 21, 1996).

See *State, City of Minneapolis v Lynch (1986, Minn App) 392 NW2d 700,* § 17.

Evidence was sufficient to sustain conviction on charge of disorderly conduct where defendant started walking away from police officer after defendant had been requested to stop for failure to make complete stop at stop sign, where police officer then got out of his squad car and grabbed defendant, twisting her left arm behind her, and where defendant was struggling, kicking and screaming that officer could not do this to her; jury could have reasonably concluded that defendant was guilty of more than merely arguing with police officer and that her actions and words constituted disorderly conduct. *Minneapolis v Larsen (1984, Minn App) 354 NW2d 82.*

Defendant was properly convicted of disorderly conduct where, after police officer stopped her for traffic infraction, defendant demanded "real policeman" and began screaming loudly. *Keyes v City of Virginia Beach (1993, Va App) 428 SE2d 766.*

[*9b] Charge held not established

Opprobrious words, attracting the attention of, or spoken in the presence of, third person when directed to a law enforcement officer in response to the arrest or detention of the speaker or his companion for a traffic offense, were held insufficient under the particular facts and circumstances of the following cases to support a charge of breach of the peace or disorderly conduct.

Despite the allegation of the arresting officer that the defendant's insulting language caused two nearby residents to turn on their house lights and look out their windows, the court held in *State v Martin (1975, Alaska) 532 P2d 316,* that the disorderly conduct conviction of the defendant was not supported by evidence that he had used loud and obscene language in protesting an intoxication test administered to his companion. A state trooper stopped the automobile in which the defendant was a passenger. While the officer was testing the driver for intoxication, the defendant continuously interrupted the test to explain that both he and the driver were in the military, that the driver was under his immediate supervision, and that he did not understand why the trooper was administering the tests. In response to the trooper's suggestion that the defendant either return to the vehicle or find another way home, the defendant began to raise his voice and use loud and obscene language toward the officer. The trooper testified that after he saw two people turn on their house lights and look out their windows he arrested the defendant for disorderly conduct. The lower court dismissed the complaint against the defendant on the ground that the section of the disorderly conduct statute, which provided in part that a person was guilty of disorderly conduct if he refused to comply with a lawful order of the police to disperse while in a public place, was unconstitutional. The court interpreted a lawful order as one where the person's conduct or speech substantially impedes an officer in the performance of his duties in effecting an arrest, investigating the crime, or insuring the public safety. Holding that the District Court was in error in dismissing the complaint on constitutional grounds, the court nevertheless stated that taking the facts of the case in a light most favorable to the state it had to conclude as a matter of law that the evidence was insufficient to warrant a conviction under the statute as construed.

The court reversed a disorderly conduct conviction arising from the defendant's insulting response to an arrest for a traffic offense in *Chicago v Wender (1970) 46 Ill 2d 20, 262 NE2d 470,* although the noisy altercation with the police officer apparently attracted the attention of passersby. The defendants were stopped by an officer because of a missing rear license plate. When requested, the driver produced a valid out-of-state driver's license, but was informed that this could not serve in lieu of a cash bond. When the other defendants, passengers in the car, got out, the police searched each of them. At this point the defendants yelled to the police officers, "What right do you have to search us? What are we arrested for?" The officer testified that the shouting was so loud that it could have been heard 100 feet away. As a result of the incident and the shouting, traffic began to slow and people gathered around the scene. The ordinance under which the defendants were charged defined disorderly conduct as a knowing unreasonable or offensive act, utterance, gesture, or display, which, under the circumstances, creates a clear and present danger of a breach of peace or imminent threat of violence. The court reasoned that the conduct of the officers in frisking all of the occupants of the car following an arrest on a minor traffic charge, even if justified by the circumstances, was unusual and could reasonably have caused the defendants to inquire as to the authority of the officers and their identity. Although the tone of the defendants was loud, the inference from the testimony was that they did not continue to ask why they were arrested after an explanation was given but then asked for names and star numbers of the officers, which had not been given them.

Although an altercation between a motorist and a police officer caused a number of spectators to gather nearby, the court in *Chicago v Blakemore (1973) 15 Ill App 3d 994, 305 NE2d 687,* held that offensive language addressed to the police officer, apparently as he walked away from the defendant, did not, in and of itself, create a disturbance of the peace justifying a conviction under a breach of the peace ordinance. The defendant was stopped while driving his car in the wrong direction on a one-way street. The defendant admitted that he was angered by the officer's conduct and called him "pig." The officer testified that the defendant, in addition, used profanity and called him a "son of a bitch. " The defendant was charged and found guilty under an ordinance prohibiting an unreasonable or offensive act, utterance, gesture, or display which, under the circumstances, creates a clear and present danger of a breach of the peace or imminent threat of violence. Noting that this ordinance had been construed in prior cases to prohibit only that conduct tending to cause public disorder or to disturb the public peace and quiet, the court found no evidence in the record of such disturbance or disorder. Even though a number of people gathered to observe what was transpiring between the defendant and the arresting officer, the court pointed out, no evidence was introduced and no reference was made to the effect of the defendant's conduct on the bystanders. In the absence thereof, said the court, it could conclude that the defendant's conduct did not produce an imminent threat of violence or breach the public peace.

In *State v W. (1980, Me) 418 A2d 1097, 14 ALR4th 1238,* the court held that a juvenile's verbal protestation against his sister's arrest did not violate a disorderly conduct statute. The juvenile was driving his car, accompanied by his older sister, when he was stopped by a police officer, who asked him for his license and registration. When the juvenile's older sister asked repeatedly why they had been stopped, the officer said nothing. She left the car and began yelling obscenities at the officer, who arrested her for disorderly conduct. Shortly after her arrest, another officer arrived in a police cruiser. The juvenile asked both officers what was going on and was advised that the first officer had arrested his sister for disorderly conduct. The juvenile then shouted, "I want to know what the hell is going on," and, as one officer turned and walked back to his cruiser, the juvenile screamed at him, "Hey, turn around and come back here," and "Hey, you fucking pig, you fucking kangaroo." The officer ordered the juvenile to get back into his car, but the juvenile yelled, "Fuck you," and was then arrested for disorderly conduct. After a lengthy discussion of the constitutional issues involved, the court concluded that the elements of the crime of disorderly conduct were not supported by evidence of guilt beyond a reasonable doubt and that the language and accompanying conduct of the juvenile while engaged in the permissible activity of verbally protesting the arrest were not egregiously offensive and likely to provoke a violent response. Although not condoning or encouraging abusive language, the court reiterated the right of a citizen to remonstrate against a police intrusion into his activities.

The court held in *People v La Sister (1958) 9 Misc 2d 518, 170 NYS2d 702,* that vulgar and offensive language directed solely to a police officer, after he stopped the defendant on a traffic charge on a busy street corner, did not constitute disorderly conduct in the absence of any testimony by the police officer that the language directed toward him was used in the hearing or presence of any other persons or that it did "annoy, disturb, interfere with, obstruct, or [become] offensive to others" within the meaning of the statute. The court deemed this language, so addressed, a private annoyance to the officer, and said that in the absence of testimony showing that there was a breach of the peace or that the language attracted undue attention or caused consternation amongst any, as the officer testified, of the "close to 100 people" who were apparently walking on the sidewalk and was insufficient to constitute disorderly conduct. A finding of disorderly conduct, said the court, must hinge on an actual or threatened breach of the peace, which in turn means a disturbance of the tranquility of the people of the state. The court noted that the language complained of was provoked, as admitted by the officer himself, because he peered into the defendant's car and glanced at the woman seated within. The court found no proof that the defendant caused a crowd to collect by his actions, but, rather, as the officer testified, the crowd present had gathered prior to the defendant's arrival. The court said that it appeared that the arrest of the defendant on the traffic charge was not lawful, and therefore the defendant, believing that the arrest was unlawful, was justified in resisting.

In *People v Gingello (1971) 67 Misc 2d 224, 324 NYS2d 122,* the court dismissed a charge of disorderly conduct resulting from insulting words spoken to a police officer by a passenger in an automobile stopped for a traffic offense. After the officer advised the driver that he was under arrest for several traffic violations discovered later, the defendant emerged from the passenger side of the car and stated to the police officer in a rather loud voice, "you have no right arresting my friend." As the officer placed the driver in custody and called a tow truck, the defendant repeatedly told the officer he had no right to arrest the driver and then stated in a loud and clear voice directed at the officer "you are an asshole." The defendant was advised that he was under arrest for disorderly conduct and was placed in custody. The officer testified that he saw no person other than the defendant and his companion throughout this encounter and ob-

served no lights on in neighborhood homes adjoining the area. The defendant was charged with two counts of disorderly conduct, namely, engaging in fighting or in violent, tumultuous, or threatening behavior and using abusive or obscene language in a public place. The court found insufficient evidence to support the first count and dismissed that charge. Although finding that the defendant's conduct met the requirements of the latter charge, inasmuch as abusive or obscene language was used in a public place, the court agreed with the defense that the people had not proven a conscious disruptive intent on the part of the defendant which would create a substantial risk of public alarm. The court emphasized the lack of any public observance of the incident, the lateness of the hour of its occurrence, as well as the testimony that when the public did gather it did so out of curiosity.

CUMULATIVE CASES
Cases:

Language used by defendant towards officer investigating accident, including comment, "This is some shit. . . . Damn you; you're just doing this because I'm black. You're bringing us back a hundred years," did not contain threat, did not have likelihood of causing violent response by officer, especially in view of probable training received by officer in dealing with similar situations, and could not support conviction for disorderly conduct. *Swann v Huntsville (1984, Ala App) 455 So 2d 944,* habeas corpus proceeding (Ala App) *471 So 2d 1268,* (citing anno).

[*10] Parking violation
[*10a] Charge held established

Under the particular facts of the following cases, where a parking violation prompted a direct stream of insulting words to be directed by the defendant to the ticketing officer in the presence of, or in such a way as to attract the attention of, third persons nearby, the courts held that a charge of breach of the peace or disorderly conduct was established.

In *People ex rel. Melrose Park v Scheck (1963) 42 Ill App 2d 117, 191 NE2d 645,* the court held that the evidence that the defendant repeatedly refused to remove his car from in front of a "No Parking" sign when requested and ordered to do so by a police officer in uniform, coupled with the defendant's getting out of his car and using abusive language to the officer, thereby attracting a crowd of 30 or 40 people, constituted acting in an unreasonable manner so as to provoke a breach of the peace amounting to disorderly conduct. The officer testified that the defendant swore at him, told him that he could "go to hell," and said that he (the defendant) "was damned" if he was going to move his car. The court disagreed with the defense contention that even if he had spoken and acted in the manner as testified to by the police officer his actions were not unreasonable at the time.

Offensive remarks directed by an obstinate bus operator to a police officer provided the basis for the bus operator's conviction on a disorderly conduct charge in *People v Jones (1946, City Ct) 63 NYS2d 399.* The defendant was ordered by the policeman to move his bus from one of the busiest corners of the city. The officer testified that he gave the order before the door of the bus opened to discharge passengers and he later said to the driver, "I thought I asked you to move this bus," to which the driver yelled, "I won't move that bus for you or no other damn cop." After delivering this ultimatum, the defendant allegedly jumped from the bus, stating that he was off duty and that if the cops did their duty the streets wouldn't be blocked. The officer testified that because of the force and vehemence with which the defendant made those statements, 40 or 50 people congregated to see what caused the excitement. The statute under which the defendant was charged prohibited acts disturbing, interfering with, obstructing, or offending others with intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned. Distinguishing a similar case where the objectionable language did not cause a crowd to collect, the court found the defendant guilty of the crime charged.

The court affirmed the conviction of the defendant for disorderly conduct for shouting obscenities at a meter maid on a public street, thus attracting the attention of bystanders, in *Commonwealth v Mastrangelo (1980) 489 Pa 254, 414 A2d 54,* app dismd *449 US 894, 66 L Ed 2d 124, 101 S Ct 259.* The meter maid ticketed the defendant's car, parked on the street in front of his business establishment. The defendant came out of his store and shouted at her, repeatedly calling her a "fucking pig." The meter maid walked away, but the defendant continued shouting at her. The following day the meter maid was again patrolling that street. She did not ticket the defendant's car on that occasion, because it was legally parked, but the defendant came out of his store and followed her along the street shouting at her and calling her,

among other things, a "nigger lover" and a "cocksucker." The meter maid asked the defendant to leave her alone, but he continued to follow her, yelling the entire time, until she left the area. The meter maid testified that on both occasions bystanders on the street observed the defendant's conduct, although none testified in court, and that for a period of about a week she did not patrol that street because of her fear of the defendant. The court rejected the defendant's contention that the disorderly conduct statute was unconstitutionally vague on its face and concluded that in this case the defendant was not exercising any constitutionally protected right. The court deemed fighting words those epithets he hurled at the meter maid and, finding the requisite intent of breaching the public peace by the defendant, ruled that the evidence presented at trial was sufficient to sustain the his conviction.

[*10b] Charge held not established

That a law enforcement officer was subjected to insulting language addressed directly to, and in the presence of, or attracting the attention of, third persons as a result of his citing someone for a parking infraction was held by the courts in the circumstances of the following cases not to support a charge of breach of the peace or disorderly conduct.

See *Oratowski v Civil Service Com. (1954) 3 Ill App 2d 551, 123 NE2d 146*, a case which began with a police officer's issuance of a ticket for illegal parking and concluded with the termination of the officer and his partner from the force by a civil service commission critical of their overreaction to insulting words directed to one of the officers. The recipient of the parking ticket called the issuing officer an "ignorant jerk" and was charged with disorderly conduct. The officer and his partner scuffled with the defendant in the act of taking him to the police station. Reviewing the orders of the city civil service commission discharging the two officers, the court said that words addressed to an officer in an insolent manner do not, without any other overt act, tend to breach the peace, because it is the sworn duty and obligation of the officer not to breach the peace and to conduct himself so as to keep others from so doing. In upholding the orders of the commission, the court stated that an officer of the law has an obligation to exercise a great degree of restraint in dealing with the public and should not permit abusive statements to so arouse him that he will commit a breach of the peace. The court observed that the officer permitted the arrestee's remarks to arouse his ire and he made an arrest for a fancied insult which was not in violation of the law. The concurrence by the other officer in the act, the court noted, made him guilty of the same violation.

A noisy altercation between a woman and a police officer over a parking ticket was held not to support her disorderly conduct conviction in *People v Justus (1978) 57 Ill App 3d 164, 14 Ill Dec 836, 372 NE2d 1115*, despite the officer's allegation that she caused a crowd to gather in the area and around the street. After observing the officer ticketing her husband's automobile, the defendant approached the officer and informed him that earlier that day another officer had told her to park in front of her driveway to prevent other cars from blocking it. The officer testified that the defendant became hysterical and yelled and screamed at him, and at one point reached for his pen. The defendant apparently did not use profanity at any time. The court stated that arguing with a police officer, even if done loudly, will not of itself constitute disorderly conduct. Even if it were to accept the officer's version, said the court, it only established that the defendant argued with him and reached for his pen. Such conduct, while perhaps imprudent, the court noted, does not amount to disorderly conduct. The court emphasized that an officer of the law must exercize the greatest degree of restraint in dealing with the public and must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct. The court ruled that the conduct giving rise to a conviction for disorderly conduct must tend to cause public disorder, and it noted a lack of proof that the defendant's actions created such disorder. Abusive language does not evolve into a crime, said the court, simply because persons nearby stopped, looked, and listened.

Despite the allegation by the police officer that the defendant's behavior caused a crowd to collect, the court in *People v Sternberg (1931) 142 Misc 602, 254 NYS 488*, reversed the conviction of the defendant for disorderly conduct tending to a breach of the peace resulting from a conversation between the defendant and a police officer directing traffic. The defendant was riding in a chauffeured car when it pulled up at the side of the street where the officer was regulating traffic. The officer, addressing the chauffeur, said that parking was limited to one hour. The defendant, who had by then alighted from the car, said to the officer, "Hey, we just came from headquarters." The officer said, "I am not talking to you in the first place, and if you don't keep quiet why I will lock you up." After the officer made some statement to the chauffeur apparently indicating that he thought that this automobile had been parked on the other side of the street earlier that morning, the defendant said to the officer, "We did not park there this morning." These statements, in addition to other alleged hollering by the defendant, prompted the officer to arrest the defendant for disorderly conduct. After reviewing the record, the court concluded that it was obvious that the language alone used by the defendant was not

sufficient to sustain a complaint of disorderly conduct. In summary, the court stated that it was not unreasonable to assume from all the testimony in the case that the actions of the officer had as much to do with any shouting or collection of crowd as the conduct of the defendant.

The court held in *State v Jones (1947) 227 NC 170, 41 SE2d 288,* that the defendant's use of improper language, when told by the chief of police to move his car from a newly designated loading zone, did not justify a disorderly conduct conviction. After the chief of police insisted that the defendant move his car, the defendant, after some hesitancy, got into his car but began to curse the police chief in an angry manner. He said to the officer, "When did you all start all this God damn stuff around here?" The chief of police then told the defendant that he was under arrest. A number of people were on the sidewalk near enough to hear what was said. The court noted that the record disclosed that the only indecent language used by the defendant was an inquiry addressed to the chief of police, who immediately arrested the defendant, not so much for the inquiry, but because "he had run his mouth so much" and was "killing time" in getting his car out of the loading zone. The peace of the town seems to have been in the hands of the officers, said the court, who apparently were swift to enforce it, even to the point of harshness. The court concluded that under these circumstances the prosecution on the disorderly conduct charge had to fail.

[*11] Offenses involving intoxication or controlled substances

The courts held in the circumstances of the following cases that invective addressed directly to a law enforcement officer performing his duty with regard to intoxication arrests or investigations of offenses involving controlled substances supported a charge of breach of the peace or disorderly conduct, where the words allegedly were spoken in the presence of, or attracted the attention of, bystanders.

In *Whited v State (1971) 256 Ind 386, 269 NE2d 149,* clarified *256 Ind 618, 271 NE2d 513,* the court affirmed the conviction of the defendant for disorderly conduct stemming from his shouting obscenities at a police officer during a drug raid. When the police officers approached the porch where the defendant was seated, the defendant "yelled" obscenities at the officers in a "loud and disorderly manner," alluding to the officers' lineage and freely employing colloquial terminology used by some persons to refer to officers of the law. His behavior allegedly caused a large crowd to gather. After the defendant continued his tirade for some time and refused to produce identification on request, he was arrested and charged under a statute prohibiting loud, boisterous, or disorderly actions tending to disturb the peace and quiet of any neighborhood or family. Explaining that a conviction under this statute is proper if the defendant's conduct was such as to disturb the neighborhood, the court said that the presence of a crowd may be of some considerable evidentiary weight, but is not requisite to a conviction. The court found sufficient evidence in the record to support his conviction and a finding that a crowd was drawn by the defendant's acts, since his conduct occurred in an area of residences that had previously been devoted to normal and usual urban pursuits, and whose mood was broken by the incident. That no neighbor gave testimony similar to that of the officers was not fatal to the state's case, said the court, since all that is required under the statute is a showing that an accused's actions were loud and offensive in the setting in which they were done.

Although reversing the defendants' conviction on another point, the court held in *Jones v Commonwealth (1948) 307 Ky 286, 210 SW2d 956,* that opprobrious words directed toward two constables by a man in a drunken condition were sufficient alone to support a conviction for breach of the peace under circumstances where a crowd was attracted to the scene. Following the arrest of an inebriate (not the defendant), he requested that the constables take him to the defendant's house so that the defendant could tell the arrestee's wife of his arrest. The constables testified that when they contacted the defendant, he called them "God damn sons-of-bitches." Rejecting the defense contention that the verdict was contrary to the evidence and that the trial court erred in refusing to direct an acquittal, the court ruled that such words applied to another are reasonably calculated to provoke or excite violent resentment, there by disturbing public tranquility, and constitute a breach of the peace.

In *State v Murphy (1977) 117 NH 75, 369 A2d 189,* the court held that the defendant's repeated use, while in a bar in front of several spectators, of an obscenity in reference to a police detective and a state liquor store inspector supported a conviction of the defendant pursuant to a disorderly conduct statute prohibiting anyone from engaging in a course of abusive or obscene language with a purpose to cause public inconvenience, annoyance, or alarm in a public place. The detective and the liquor store inspector entered a bowling establishment to investigate possible violations of liquor laws. Noticing the defendant, who appeared to be very young, at the bar, they asked her for identification. She showed them a

driver's license, but the officers could not read it and asked to examine it more closely. She refused to hand over the license. The officers explained that she was suspected of being a minor and that if she did not prove her age she would have to go with them to the police station. She then told them, "I'm not going anywhere with you f_____ing pigs." She repeated the statement three times and yelled, kicked, and swore when the officers took her into custody. The court said that it could be found from the evidence that the defendant engaged in a "course of abusive" language within the meaning of the statute rather than a single outburst, and that she recklessly created, by her conduct, a risk of causing public inconvenience, annoyance, or alarm within the meaning of the statute.

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The court held in *Clanton v State (1978, Fla App D2) 357 So 2d 455,* cert den (Fla) *362 So 2d 1056,* that the use of insulting words in the presence of at least one other person to castigate a deputy sheriff investigating possible juvenile drinking or drug usage did not constitute a violation of a disorderly conduct statute. The deputy approached one of several cars parked in a recreation park, opened the passenger door, and asked the driver to get out and produce some identification. The defendant, standing beside the vehicle parked nearby, began to verbally castigate the deputy, telling him that he "had no damn right to open the door" of the man's car since he "didn't have a Goddamn search warrant." The deputy then proceeded to the defendant's car, opened the door, and, thinking that he detected a slight odor of marijuana, requested the defendant to get out of the car so that he might search it. The defendant again used strong language to assert that the deputy had no right to search the car. When the defendant refused to leave the vehicle, the deputy arrested him for disorderly conduct. Citing its previous construction of the disorderly conduct statute to apply only to words inflicting injury, tending to incite an immediate breach of the peace, or creating a physical hazard in circumstances where such a report created a clear and present danger of bodily harm to others, the court concluded that the offensive language of the defendant did not amount to either fighting words or false words likely to cause harm. Although disapproving the conduct of the defendant, the court stated that his obviously offensive language did not amount to such a direct personal attack on the deputy as would cause an average person to resort to violence.

CUMULATIVE CASES
Cases:

See *Swann v Huntsville (1984, Ala App) 455 So 2d 944,* habeas corpus proceeding (Ala App) *471 So 2d 1268,* § 9[b] (citing anno).

Defendant was properly convicted of disturbing peace by use of threatening, abusive, or "profane" language, within common meaning of those terms, where, in protest of arrest of another person for driving under influence, he called tow-truck driver "son of a bitch" and "bastard," and told police officer, "You're fucking out of line. You've done it this time, you're fucked." *Columbia Falls v Bennett (1991, Mont) 806 P2d 25.*

Defendant's conduct in protesting friend's arrest by repeated shouting crude epithets such as "God damn fucking pigs" and "fucking pig, let him go" was properly convicted of disorderly conduct since while words were not obscene, they were "fighting words" which created risk of public inconvenience, annoyance, alarm and incitation of lawless behavior. *Commonwealth v Pringle (1982) 304 Pa Super 67, 450 A2d 103.*

[*12] Offense involving public gathering, demonstration, or protest
[*12a] Charge held established

The courts held in the circumstances of the following cases, involving epithets directed toward a law enforcement officer in connection with his arrest or detention of persons involved in public gatherings, demonstrations, or protests, where the offensive words were spoken directly and in the presence of, or attracted the attention of, third persons, that a charge of disorderly conduct or breach of the peace was established.

Insulting words spoken directly to a police officer in front of a group of bystanders were held to justify a conviction for disorderly conduct in *Duncan v United States (1966, Dist Col App) 219 A2d 110,* remanded on other grounds *126 App*

DC 371, 379 F2d 148. The officer had just ordered a group of juveniles to move from a particular corner when the defendant and a companion approached. The defendant stopped and looked around, and the officer ordered him to move on as well. The defendant walked away reluctantly, and when he was about 5 feet from the officer he remarked in a fairly loud voice, "No black s____ o__ b_____, m_____ f_____ cop is going to chase me off the corner." The police officer then placed the defendant under arrest on a charge of disorderly conduct, pursuant to a statute prohibiting persons from cursing, swearing, or making use of any profane language or indecent or obscene words in any street or other public place. The defendant argued that in addition to the showing required by the statute that profane, indecent, or obscene words were used or heard in a public place, a third element -- circumstances tending to incite a breach of the peace -- had to be found to justify a conviction. The court said that the circumstances present in the case were such that a breach of the peace might have been incited by the defendant's words, which it characterized as insulting, degrading, and abusive -- fighting words. The court found it reasonable to infer from the evidence that the obscene words spoken by the defendant in a fairly loud voice about 5 feet away from the officer were meant for his ears, even, as the defendant contended, if they were not spoken directly to him.

The court held in *Wilson v State (1967) 223 Ga 531, 156 SE2d 446,* cert den *390 US 911, 19 L Ed 2d 885, 88 S Ct 839* and later proceeding *405 US 518, 31 L Ed 2d 408, 92 S Ct 1103,* that the defendant's use of the words "son of a bitch" in a threatening manner when directed toward a police officer in the line of duty supported the defendant's conviction for breach of the peace. The defendant was one of a group of persons picketing local Army headquarters in protest of the war in Viet Nam. When draft inductees arrived at the building, the defendant and others began to block the door so that the inductees could not enter. They ignored requests by police officers to move from the door and when the officers attempted to remove the protesters, a scuffle ensued. The evidence indicated that the defendant said to one of the officers, "white son of a bitch, I'll kill you" and "Why you son of a bitch, I'll choke you to death." It was alleged that the defendant said to another officer, "Why you son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces." After rejecting the argument that the statuten22 was unconstitutional, the court concluded that the words charged were within themselves opprobrious and abusive and stated that it was not necessary to allege in what manner they were opprobrious and abusive. The court ruled that there was sufficient evidence of the use of the opprobrious and abusive words charged, and the jury was authorized to find from the circumstances shown by the evidence that the words were spoken without sufficient provocation intended to cause a breach of the peace.

Argumentative words spoken by the defendant to a police officer in the midst of a crowd on a picket line gave rise to a disorderly conduct charge and conviction, affirmed in *Chicago v Morris (1970) 47 Ill 2d 226, 264 NE2d 1.* While the defendant and others were picketing a grocery store, one of the pickets approached a police officer and informed him that a sale of liquor to a minor was about to be consummated in the supermarket. The officer observed the sale through the window, entered the store, and took the minor into custody. The defendant, a bystander, asked the officer if only the minor and the cashier were to be arrested. The officer replied that it was none of his business. At that point, the officer testified, the defendant accused him of arresting "the colored" and not the "white" store manager and that he wasn't "doing it right." The ordinance under which the defendant was charged prohibited acts in an unreasonable manner as to provoke, make, or aid in making a breach of the peace. Although conceding that an argument per se with the police officer is not disorderly conduct, the court explained that whether a violation has occurred is determined by the reasonableness of the conduct in relation to the surrounding circumstances. The court noted that one or both parties to the argument were loud, the defendant persisted in questioning and critizing the officer after he was told to go to the station for further information and was warned that further demands would result in arrest, and, according to the testimony of the officer, a tense crowd of such size gathered that additional assistance was summoned. The record in the case, said the court, justified the conclusion that the defendant's actions were unreasonable and intended to provoke a breach of the peace.

That all of the witnesses other than the police officer said that their peace was not disturbed by obscenities directed by the defendant toward the police officer and others was held not sufficient to authorize the trial court to direct a verdict for the defendant on the evidence in *De Soto v Hunter (1909) 145 Mo App 430, 122 SW 1092.* The police officer stated that he was attracted to the scene upon hearing profane discourse a block away and that when he approached the defendant the defendant called him a G__d d_____d s__n of a b_____ and a G__d d_____d b_____. The police officer testified that his peace was thereby disturbed. The defendant argued that the police officer was acting within the scope of his official duties and therefore was not a person within the meaning of the ordinance under which he was charged. The court disagreed, stating that a disturbance of the peace being the gravamen of the charge, whether the defendant's conduct was calculated to disturb and did disturb the peace of persons there assembled was for the jury to say. Mani-

festly, said the court, the violent and vituperative epithets by the defendant to the police officer were calculated to disturb the peace of a person, even though he be a police officer and accustomed to more or less unkind remarks from boisterous individuals.

In *State v Chaplinsky (1941) 91 NH 310, 18 A2d 754,* affd *315 US 568, 86 L Ed 1031, 62 S Ct 766,* the court held that the defendant's use of the words "God damned racketeer" and "damned Fascist" when addressing a city marshal supported his conviction under a breach of the peace statute. The defendant was a member of the sect known as Jehovah's Witnesses and was distributing religious literature on the streets of the town, prompting a crowd to gather and ultimately become violent toward him. He was led toward the police station, apparently more for his protection than for arrest, since his arrest was definite only after he uttered the words charged, when the marshal met him on the way. He was charged under a statute prohibiting the use of offensive, derisive, or annoying words to persons lawfully in any street or public place, or calling of someone by an offensive or derisive name. Addressing the question whether the terminology expressed by the defendant violated the statute, the court applied the test of what men of common intelligence would understand would be words likely to cause an average addressee to fight. The English language, said the court, has a number of words and expressions which by general consent are "fighting words," when said without a disarming smile, and explained that derisive and annoying words can be taken as coming within the purview of the statute only when they plainly tend to excite the addressee to a breach of the peace, such as the use here of the words "damned Fascist." Finally the court said that the justice below might have been warranted in telling the jury that such words were offensive as a matter of law.

In *State v Taylor (1955) 38 NJ Super 6, 118 A2d 36,* the court held that the testimony by a police officer that the defendant used loud and offensive language toward him in the presence of a group of local residents supported the defendant's conviction, presumably under a disorderly conduct statute. The officer testified that after he had attempted to disperse a gathering in the defendant's neighborhood and asked the defendant to move on, the defendant said to him, "No little [obscenity] cop like you is going to tell me what to do" and "you cops have been getting away with this [obscenity] long enough." Noting that neither the state nor the defense had corroboration for its side of the story, leaving the trial judge to resolve the question of credibility, the court concluded that the trial judge was warranted in determining the issue in favor of the state. The court found from the record that the language used was both loud and offensive and therefore in violation of the statute.

In *People v Todaro (1970) 26 NY2d 325, 310 NYS2d 303, 258 NE2d 711,* the court affirmed a conviction for disorderly conduct based on the defendant's congregation with others in a public place, use of abusive and obscene language, and refusal to comply with the lawful order of a police officer to move on after several warnings. The officer testified that he had observed the defendant and three companions on a street corner for about an hour, that he asked them to move on several times within that period, and that the last time he asked them to move they refused, the defendant telling the officer, "you can't tell us f_____g move." At this point the officer placed the appellant under arrest for disorderly conduct. The court reasoned that the circumstances of the case did not indicate any arbitrariness on the part of the police officer, charged as he was with maintaining public order on one of the busiest street corners in the world. The court noted that the defendant's emphasis on the contention that the fact of disorder was not established, to the exclusion of the risk that it might come to pass, ignored the very terms of the statute itself. On this record, said the court, the trial court could well have found beyond a reasonable doubt that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that "public inconvenience, annoyance or alarm" might result from his use of clearly "abusive and obscene language" in response to the officer's repeated requests to move on and his refusal to comply with such requests.

A defendant who, according to the testimony of the arresting officer, when ordered along with many others to move on from an area where disturbances and loitering had been reported told the officer, "Who the hell are you to tell me what to do," was found guilty of disorderly conduct in *People v Scott (1968) 58 Misc 2d 455, 295 NYS2d 724.* The defendant and his sister had been involved earlier in the evening in an incident in another part of town and had been transported to the police station by another officer so that they could lodge a complaint, presumably against someone who had injured the defendant's sister. When they got out of the police car they walked past the police station without stopping to lodge the complaint and, instead, went over to a nearby area where there were some 50 to 70 persons in front of a bar and there existed a general atmosphere of unrest. It was there that the act for which the defendant was arrested took place. Under these circumstances, the court ruled, the defendant was guilty of recklessly creating a risk of causing public convenience, annoyance, or alarm in violation of the statute.

In *People ex rel. Penree v Garfield (1970) 63 Misc 2d 79, 312 NYS2d 830,* the court refused to dismiss an information charging the defendant with disorderly conduct by "making unreasonable noise," "wildly waving and shaking hands," and calling the arresting officer "pig" in connection with a protest at a Selective Service Center. The defendant was charged with placing himself in the back of a bus used to transport inductees and thereby preventing its scheduled departure. He was part of a demonstration involving some 40 to 50 persons protesting against the war in Vietnam. In view of the evidence, the court concluded that there were sufficient allegations in the complaint to sustain a charge of disorderly conduct.

The court held in *People ex rel. Martinelli v Kenon (1955, Sp Sess) 138 NYS2d 108, 28 CCH LC P 69201,* that the defendant's disobedience when told by an officer to keep moving was not, without more, necessarily disorderly conduct, but his threats and gestures tended to provoke a breach of the peace, particularly in the atmosphere of a labor dispute, and rendered him guilty of disorderly conduct as charged. Union representatives and the police had agreed that not more than two pickets at a time were to walk up and down on the side-walk parallel to the struck premises. While on picket duty, the defendant stopped to talk to someone in a parked car in front of the premises. When a policeman requested him to keep moving, the defendant shook his fist in the policeman's face and said, "I'll get you. I'll fix you." Had it not been for this conduct on the part of the defendant, said the court, it might have been disposed to dismiss the complaint, but such conduct clearly tended to provoke a breach of the peace under the circumstances.

Rejecting the defense contention that the defendant's use of obscene language toward a police officer was excused because she thought she and her codefendant were arrested without cause, the court affirmed her conviction for disorderly conduct in *Commonwealth v Hughes (1979) 270 Pa Super 108, 410 A2d 1272.* Police officers were called to investigate a complaint that the defendant and her companion refused to leave the home of another. When the officers arrived, the defendant and her companion had crossed the street and were shouting obscenities and threats at the home. The officers repeatedly asked the defendant and her friend to leave, but the women continued to shout and began to yell at the officers. The court stated that a person may be guilty of disorderly conduct if, in the presence of members of the general public, he shouts obscenities, although the principal intent may have been to insult the police rather than to cause public inconvenience, annoyance, or alarm. The court emphasized that the defendant's mistaken belief in her justification in taunting the police did not vitiate her recklessness with regard to annoyance of the other members of the public in the vicinity.

[*12b] Charge held not established

The courts held in the circumstances of the following cases that a charge of breach of the peace or disorderly conduct was not established, despite the fact that a law enforcement officer was made the direct target of opprobrious epithets as a result of his arrest or detention of a person in connection with a public gathering, demonstration, or protest.

Although there was evidence that the defendant's behavior attracted a crowd just prior to his arrest, the court held in *State v Nakasone (1980, Hawaii App) 612 P2d 123,* that there was insufficient evidence to support the conviction of the defendant for disorderly conduct arising from an incident in which he yelled at an officer who approached him in a fast food restaurant. The officer testified that several customers in the restaurant approached him and requested that he talk with the defendant and have him stop bothering them. When the officer approached the defendant and conveyed that message, the defendant began to yell and refused to heed the officer's request to quiet down. A crowd began to form 10 or 15 feet away. The officer charged the defendant with disorderly conduct, under a statute prohibiting the making of unreasonable noise with intent to cause physical inconvenience or alarm, or the reckless creation of a risk thereof, to members of the public. The statute defined "unreasonable noise" as conduct involving a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation, considering the nature and purpose of the person's conduct and the circumstances known to him, including the nature of the location and the time of day or night. After reviewing the evidence, the court concluded that the state failed to show that the defendant made unreasonable noise, in that his engaging in an argument with a police officer did not involve a gross deviation from the standard of conduct expected of a law-abiding citizen in the same situation. The court further noted that the evidence did not sustain a finding that the defendant possessed the state of mind required by the disorderly conduct statute, namely, an intent or a reckless disregard on the part of the defendant that his conduct will have a specific result.

In *Landry v Daley (1968, ND Ill) 288 F Supp 189* (applying Illinois law), the court stated that the defendant's refusal to leave the lobby outside a city council meeting did not constitute disorderly conduct where there was no evidence that his behavior had a disturbing effect on others present. The defendant and others attempted to gain entrance to a city council meeting to protest certain urban renewal policies. When informed that there were no seats available inside and asked to leave, the defendant refused, stating, "Why you can't move me out of here. I want to go in there and I am going to go in." When informed by an officer that he was forcing him to place him under arrest, the defendant retorted, "I am not going to move from here." The evidence presented at the hearing on this petition to enjoin further state court prosecutions against the defendant arising from this incident failed to disclose that the defendant's action had produced any disturbing effect on the citizens present in the hallway outside the council chambers. Consequently, the court said, the defendant's conduct could not be said to have constituted a breach of the peace as far as they were concerned. The court further pointed out that it is well established that disturbing policemen is not disorderly conduct. The court emphasized that the alleged "loudness" of the defendant's statements did not justify a finding of probable cause, since the only relevance of the decibel level of the defendant's voice was whether his voice disturbed the council proceedings. Absent corroborating evidence of disturbance, said the court, the mere subjective judgment of a police officer that a person's voice is loud is not enough to justify an arrest.

The court held that insulting words spoken in the midst of a crowd directly to a village marshal did not constitute a breach of the peace within the meaning of the ordinance under which the defendant was charged and convicted in *Salem v Coffey (1905) 113 Mo App 675, 88 SW 772.* A religious revival was being held in a building of the village, causing a number of persons to assemble on the opposite side of the street about 50 feet distant, where they held mock religious ceremonies. Some of these bystanders, including the defendant, appeared to be intoxicated. After the religious meeting adjourned, the disorderly conduct of the persons across the street continued. The marshal requested the crowd to disperse and spoke with various members of the crowd regarding their conduct. At that point, the defendant said to the marshal in a loud tone of voice, "I will bet you $ 50 that [one of my associates] can outpreach any G____ d____ preacher in town." Feeling that he was unable to enforce order, the marshal left the scene, but later charged the defendant with disturbing his peace under an ordinance prohibiting loud and offensive talk disturbing the peace of another person. The court reasoned that the village marshal was not a "person" within the meaning of the ordinance, since he was acting within the scope of his official duties at the time of the incident and his personality was merged with that of his office, the duty of which was to deal with disturbers of the peace. The court said that the village marshal would not be permitted to shirk his duty and to invoke the protection of the law on the ground that his own peace was disturbed, since the object of the ordinance was to protect the citizen, not the peace officer.

In *People v Wecker (1930) 140 Misc 388, 246 NYS 708,* the court held that a disorderly conduct conviction could not be supported by evidence that the defendant had spoken in an insulting manner to a police officer in front of a store on a busy sidewalk. The officer testified that the defendant was picketing in front of a store when the officer approached him and said, "You got to cut this out or I'll take you in." The defendant replied, "Who the hell are you to tell me what to do?" The officer then arrested the defendant and charged him with violation of a disorderly conduct statute. No crowd gathered until the defendant was arrested. The court noted that nothing in the record showed the manner and appearance or the tone of voice of the defendant when it was claimed that he spoke to the officer, for example, whether there was any color of violence or disorder in this connection at all or whether this was merely a conversational tone of speech directed to the officer. The court assumed that such talk would not tend to provoke a police officer to commit any disorderly act as suggested in the complaint. Although agreeing that the form of speech was exceedingly impolite, discourteous, vulgar, and in very bad taste, the court said that there were certainly no words spoken to other persons on the street or patrons of the place that would lead them to believe that they were being threatened, insulted, or abused.

CUMULATIVE CASES
Cases:

Rule under First Amendment's free speech guarantee that vulgar or offensive language may not be punished unless speaker uses words that by their very utterance inflict injury or tend to an immediate breach of the peace extends to speech directed at police officers, and in order for such speech to be constitutionally sanctionable, it must be more than obscene or opprobrious, and must do more than interrupt any policeman in execution of his duty. U.S.C.A. Const. Amend. 1. *Brooks v. North Carolina Dept. of Correction, 984 F. Supp. 940 (E.D.N.C. 1997).*

Chanting of words by arrestee who was charged with disorderly conduct in public square, in which he said, "this is what a police state looks like" for approximately one minute, and then chanting loudly "two, four, six, eight, fuck the police state" for 15 to 20 seconds, in protest to police requirement of a pat down or search of individuals in order to enter a rally, was constitutionally protected speech under the Free Speech Clause of the First Amendment; at the time of his arrest, there was no evidence that his speech presented a clear and present danger of any violent reaction by the crowd or any other serious substantive evil. *U.S. Const. Amend. I. Spier v. Elaesser, 267 F. Supp. 2d 806 (S.D. Ohio 2003).*

Juvenile's response to police officers when he and other juveniles in group were asked to disperse, inquiring as to "what the f . . . " officers were going to do if juveniles failed to disperse, and stating that he and other juveniles had right to be on sidewalk if they "f . . . in' want[ed] to," were not the kind of words "likely" to provoke other juveniles in group, many of whom were quite young, to any sort of reaction against two fully armed officers, and were not the kind of words which, if spoken by adult, would have supported disorderly conduct conviction, on incitement theory, consistent with the First Amendment. U.S.C.A. Const. Amend. 1; M.S.A. § 609.72, subd. 1. *Matter of Welfare of M.A.H., 572 N.W.2d 752 (Minn. Ct. App. 1997).*

[*13] Miscellaneous or unspecified charge or offense
[*13a] Charge held established

Under the circumstances of the following cases, where persons were charged with a breach of the peace or disorderly conduct after directing verbal abuse toward a police officer in the presence of third parties following an arrest or investigation of a crime or offense other than a traffic offense, parking infraction, offense involving intoxication or controlled substances, or offense arising from a public demonstration, protest, or gathering, the courts held that the charges were established.

Deeming the defendant's epithets "fighting words," the court held in *Bousquet v State (1977) 261 Ark 263, 548 SW2d 125,* that her use of obscene and offensive language against an off-duty police officer employed as a security watchman at a department store violated a disorderly conduct statute. The officer was observing the defendant, who appeared to him to be watching for someone, and later, as she started to go up an escalator, she said to him, "Are you going to follow me upstairs?. . . I'm talking to you you mother f_____ pig!" The officer testified that he then decided to arrest the defendant, but she continued her tirade nevertheless, saying, "Follow me outside you mother f_____ and son-of-a-bitch." The officer followed her outside the store, exhibited his badge, identified himself as a police officer, and informed her that she was under arrest. She continued her epithets as he took her back to the store. The defendant was charged under a statute defining disorderly conduct as the use of abusive or obscene language or gestures in a public place in a manner likely to provoke a violent or disorderly response or with the purpose of causing public inconvenience or the like. The court found the evidence sufficient to sustain her conviction and rejected the defendant's argument that her words were not "fighting words" within the meaning of judicial construction of the First Amendment.

In *Stults v State (1975) 166 Ind App 461, 336 NE2d 669,* the court affirmed the conviction of two women for disorderly conduct arising from their use of insulting language toward security guards at a discount department store, despite the absence of evidence that their conduct tended to lead to violence. The defendants, who were suspected of shoplifting, had been observed through one-way windows by security guards, who were off-duty county deputy sheriffs. When the defendants left the store, the deputies approached them and displayed their badges. One of the defendants said to one of the deputies, "You ain't shit," and resumed walking toward her car. Shortly thereafter the officers and the defendants returned inside the store and the defendants began to argue and curse in loud voices. One defendant called one of the guards a "mother fucker," and at that time both defendants were arrested for disorderly conduct. A subsequent search of their persons revealed that they had no merchandise in their possession. Noting that an arrest made with probable cause is legal, the court rejected the defense argument that the charge of disorderly conduct would not lie because the entire incident arose from a wrongful accusation of shoplifting. The court ruled that actions directed solely toward the deputies could form the basis for a disorderly conduct conviction, since only a showing of conduct which by its nature is offensive in the context in which it is committed is required under the statute, and at least one witness other than the security guards testified as to the defendants' behavior and that their behavior offended her. The court explained that the failure of the proscribed speech behavior by the defendants to provoke violence was not proof that the behavior did not have the tendency to lead to violence.

In *St. Paul v Azzone (1970) 287 Minn 136, 177 NW2d 559,* the court upheld a conviction for disorderly conduct based upon the directing of obscene language toward a police officer in the public safety building and within the hearing of other police officers. After receiving complaints concerning a loud party in an apartment complex, the police arrested members of a motorcycle club and charged them with several offenses. The defendants were transported to the public safety building, where they were gathered in one room for booking. In front of the desk area, several of the defendants started a chant in which various vulgar and foul obscenities were directed at one of the arresting officers. This shouting and chanting lasted for several minutes. The defendants were finally booked in jail without physical resistance. One of the disorderly conduct charges arose from the incident in the public safety building. The relevant city ordinance prohibited the making, aiding, countenancing, or assisting in making any noise, riot, disturbance, or improper diversion to the annoyance or disturbance of the citizens. The court ruled that it was insignificant that the obscenities were used in the instant case in and around the confines of the police station, since once of the purposes of the ordinance is to protect citizens, experienced in these matters or otherwise, from enduring such abuse in the course of their duties. Thus, that the vile and abusive language is directed toward a policeman and was not overheard by members of the general public did not prevent it from being a violation of the ordinance.

In *People v Jerome (1957) 8 Misc 2d 883, 168 NYS2d 452,* the court affirmed the conviction of the defendant for disorderly conduct arising from the use of obscene and profane language in addressing police officers while the officers were investigating a disturbance on the lawn of a private home in a village where two men were wrestling in front of a number of their friends. As the officers approached, the combatants and their spectators went back into the home of their hosts, located at the rear of the address. One of the persons was charged with disorderly conduct as a result of a scuffle occurring within the home. While under arrest, the scuffle continued on the lawn and the defendant called the officer or officers various obscene names in the presence of a group of friends and members of the public who were attracted to the noise. After the defendant was handcuffed and placed in the police car, he continued to swear in a loud voice at the officer either in the car or on the street in the presence of the crowd that had assembled there. An ordinance in the village prohibited noisy, riotous, or disorderly conduct to the disturbance of the quiet of the village and the use of profane or obscene language in any street or public place in the village. Although agreeing with the defendant that the officers did not have the right to arrest him, on the ground that any profane or obscene language he directed toward them within the home did not constitute disorderly conduct pursuant to the village ordinance, the court concluded that the defendant's resistance to an unlawful arrest did not permit him to violate the subsection of the ordinance prohibiting the use of obscene and profane language in any street or public place. In short, the court said that the principle of self-defense against unlawful resistance does not give the person violated the privilege of committing other violations of the law at that time and place.

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Defendant, taken to police station for further investigation concerning fight involving several people, including defendant, was properly convicted of disorderly conduct under statute making it misdemeanor to make "unreasonable noise," where her yelling and cursing repeatedly interrupted, and hence substantially inconvenienced, operations of busy police station; her conduct was disorderly, not because of language she used, but because noise she made could have been found by jury to be unreasonably disturbing in particular time, place and circumstances where it occurred. *State v Duhan (1984) 194 Conn 347, 481 A2d 48,* on remand *3 Conn App 24, 484 A2d 468.*

Juvenile shouted vulgarities at police officer who had arrested him on previous evening and who was then standing on street with another officer talking to group of people, tended to incite immediate breach of peace and were "fighting words," and defendant was properly found guilty of disorderly conduct. *L.J.M. v State (1989, Fla App D1) 541 So 2d 1321,* review den (Fla) *549 So 2d 1014.*

Words attributed to defendant charged with disorderly conduct by reason of having uttered fighting words, considered in context in which they were used, constituted "fighting words" within scope of statutory definition of the offense; after being cited by city officer for municipal code violation, defendant confronted officer outside municipal court and, according to officer's testimony, "said what kind of black wh -- - would raise a no good black ba -- -- - like you, and he called me a black ni -- -- ." *O.C.G.A. § 16-11-39(a)(3). Brantley v. State, 572 S.E.2d 730 (Ga. Ct. App. 2002).*

Defendant's statements to security officer were disrespectful of, directly challenged, and abused officer's authority and thus were sufficient fighting words to support conviction for disorderly conduct, even though they did not incite officer to take offensive reaction, where defendant used profanity and suggested that he was going to get gun and shoot officer. *O.C.G.A. § 16-11-39(a)(3). Evans v. State, 241 Ga. App. 32, 525 S.E.2d 780 (1999).*

Defendant was properly convicted of disorderly conduct, where defendant was placed under arrest for receiving stolen property, told police officer to take off his handcuffs so he could fight, and stated that he wanted to kill police officer, threatened to give officer "Sicilian necktie," which involves slitting throat and pulling victim's tongue out through neck, continued to yell and curse at officers after being told to cease, and defendant's outburst attracted attention of passing motorists and patrons from nearby nightclub. *Brown v State (1991, Ind App) 576 NE2d 605.*

[*13b] Charge held not established

It was held under the facts of the following cases that a charge of breach of the peace or disorderly conduct was not established, although verbal abuse was directed toward a police officer in front of third persons after an arrest or detention of the speaker in connection with an offense not involving traffic, parking, controlled substances, or public gatherings, demonstrations, or protests.

In *Thompson v Louisville (1960) 362 US 199, 4 L Ed 2d 654, 80 S Ct 624, 80 ALR2d 1355* (ovrld on other grounds *Jackson v Virginia, 443 US 307, 61 L. Ed. 2d 560, 99 S Ct 2781,* reh den *444 US 890, 62 L. Ed. 2d 126, 100 S Ct 195)* as stated in *Soap v Carter (CA10 Okla) 632 F2d 872,* cert den *451 US 939, 68 L. Ed. 2d 327, 101 S Ct 2021* (applying Kentucky law), the court stated that it was justified in assuming that the defendant's arguing with a policeman to protest what he believed to be an unlawful arrest on a loitering charge could not be disorderly conduct as a matter of the substantive law of the state in question, particularly in view of a provision in that state's law stating that if a man wrongfully arrested fails to object to the arresting officer, he waives any right to complain later that the arrest was unlawful. The defendant spent about half an hour in a public cafe which sold food and beer. During that time some 12 to 30 other patrons were also present. Two police officers came into the cafe on a routine check, and upon seeing the defendant on the floor dancing by himself, one of the officers asked the manager how long the defendant had been in the cafe and whether he had bought anything. Upon being told that he had been there a little over a half hour and that he had not bought anything, the officer accosted the defendant and asked him his reason for being there. The defendant said he was waiting for a bus. The officer then arrested him on a charge of loitering and later testified that at that time the defendant became very argumentative, prompting the officers to charge him with disorderly conduct as well. Finding no evidence whatever in the record to support the defendant's convictions on charges of loitering and disorderly conduct and concluding that he was denied due process, the court reversed the judgments and remanded the cause.

In *Phillips v State (1975, Fla App D4) 314 So 2d 619* (superseded on other grounds by statute as stated in *State v Saunders (Fla) 339 So 2d 641* (superseded on other grounds by statute as stated in *Lowery v State (Fla App D4) 356 So 2d 1325)),* the court held that the defendant's use of an expletive in the presence of spectators did not afford the arresting officer substantial reason to believe the defendant was committing a breach of the peace or justify his arrest on that charge. While investigating an alleged misdemeanor committed outside his presence, the officer approached the defendant on a city street and asked him to accompany him two blocks away to straighten out the the matter. The defendant responded, "F____ you," and when the officer repeated his request, the defendant repeated the remark, adding, "I'm not going anywhere with you." The officer arrested the defendant for a breach of the peace, leading the defendant to respond as before and to walk away. The statute under which he was charged prohibited acts of a nature to corrupt the public morals, outrage a sense of public decency, or affect the peace and quiet of nearby persons. Although noting that there were certain actions which, depending upon the circumstances, constituted a breach of the peace when coupled with the use of expletives and expressing its lack of sympathy toward the defendant's conduct and manner of expression, the court said that unfortunately police officers must sometimes expect the use of such expletives, depending upon the source and the circumstances. The court emphasized that the defendant made the statements to the police officer as a result of the latter's attempt to compel him to co-operate in the investigation of a misdemeanor committed outside the presence of the officer, which, the court concluded, the officer had no right to do.

See *Jenkins v State (1907) 3 Ga App 146, 59 SE 435,* an appeal from a conviction of assault with intent to murder a policeman, in which the court stated that the arrest or attempted arrest of the defendant which gave rise to the incident was illegal and not justified by the alleged "impudence" of the defendant in addressing a police officer in front of his com-

panions. The policeman warned the defendant and others not to throw firecrackers into the street from the place where they had gathered. The defendant informed the policeman that the man who had set off the firecrackers had already left the establishment, but the policeman warned him to be quiet and threatened to put him in jail. The defendant replied that the policeman would not take him anywhere and that he would "show" him. The officer later acknowledged that there was no warrant for the arrest of the defendant and no evidence that he had violated any city ordinance or committed any other offense. The officer testified that he arrested the defendant for impudence stating that the defendant "gave me backtalk, and it appeared that he wanted to pick a fuss out of me." Conceding that the arrest or attempted arrest of the defendant by the officer was unauthorized and illegal, the court explained that although "impudence" is sometimes sufficient provocation to anger, it cannot furnish justification to an officer of the law for depriving a citizen of his sacred right of liberty.

Noting that there is a distinction between cursing as a separate and distinct offense by one under lawful arrest and acts which represent remonstrance against an illegal arrest, the court held in *Scott v State (1971) 123 Ga App 675, 182 SE2d 183,* that opprobrious words heard only by the arresting officer and used in remonstrance to an illegal arrest did not constitute a violation of a statute prohibiting opprobrious words tending to cause a breach of the peace. It appeared from the evidence that a young girl had been accosted by a group of four girls in a public park, who had used abusive language, slapped, and hit her. The young girl informed a police officer of the event and he contacted another officer, who shortly thereafter saw four girls walking down the street away from the park. He arrested two of the girls, who gave him false names, refused other information, and cursed him with various expletives calculated, if not to breach the peace as charged, at least to render his lot less than happy. The court said that one who commits a breach of the peace is, of course, guilty of disorderly conduct, but not all disorderly conduct is necessarily a breach of the peace, as where it is merely calculated to disturb, or annoy. The court concluded that the words of the two girls, uttered in response to the officer's attempted illegal arrest, did not violate the statute.

In *People v Gentry (1977) 48 Ill App 3d 900, 6 Ill Dec 617, 363 NE2d 146,* the court reversed the conviction of defendant for disorderly conduct based on his refusal to co-operate with an officer investigating a crime and his uttering obscenities directed toward that officer. The officer was investigating a call that a boy had been shot, and upon reaching the location of the reported shooting, he observed the defendant walking with two other men. He approached them, informed them of the shooting, and asked the defendant why he was in the neighborhood. The defendant stated in a loud voice that it was none of his "f_____ business," adding, "You police don't do nothing but harass me." A crowd gathered, the officer told the defendant to leave, and the defendant refused, replying to the officer "f_____ you." The officer told the defendant to either stop causing a disturbance or leave; the defendant refused and was arrested. He was charged under a disorderly conduct ordinance prohibiting any unreasonable or offensive act, utterance, gesture, or display, which, under the circumstances, created a clear and present danger of a breach of peace or an imminent threat of violence. Arguing with a police officer, even if done loudly, said the court, will not of itself constitute disorderly conduct, and it noted that the ordinance in question had been construed to prohibit only that conduct tending to cause public disorder. Although acknowledging that a disturbance resulted at the time of the incident, the court found no evidence that the defendant's conduct prior to his arrest caused this disturbance. The most that can be said from the evidence, concluded the court, was that the defendant was argumentative and noisy, but what effect, if any, these words had upon the crowd was not apparent. The court did not permit the state to rely on the subsequent disturbance as proof that the defendant's words precipitated a breach of the peace.

A young woman's outbursts against a police officer, first in a hotel lobby in front of at least one other person and later on a public street, were held not to justify her arrest for either disorderly conduct or breach of the peace in *Scott v Feilschmidt (1921) 191 Iowa 347, 182 NW 382,* an action brought by the woman to recover damages against the police officer for false arrest. The evidence most favorable to the police officer indicated that he had approached the woman and asked what she was doing in a hotel lobby, to which she replied, "You are full of prunes, you bastard." The officer later arrested her, but apparently never charged her with a specific crime. Affirming a judgment against the officer and the surety on his bond, the court stated that the record afforded no justification for the policeman arresting the young woman, since she had committed no offense. Although the woman talked saucily to the officer and called him a "big prune," at no time before or after the arrest did she do anything to justify her arrest, said the court. The court concluded from the record that the policeman followed the girl from the hotel onto the street and pursued her, not for the purpose of performing any service as an officer, but to gratify his own personal and wicked desires.

In *People v Tinston (1957) 6 Misc 2d 485, 163 NYS2d 553*, the court held that insulting language addressed to a police officer in response to an illegal arrest did not constitute disorderly conduct. The arresting officer testified that he and a fellow officer, each in plain clothes, were seated in an automobile and observed the defendant walking along the street and stopping to talk to two different men at two different intervals. The officer said that the defendant walked towards the vehicle in which he and his partner were sitting, looked over the two officers, and immediately went off in another direction, continually turning around to look at them. The officers approached the defendant and told him they would like to talk to him for a minute. One of the officers identified himself as a police officer. The defendant said, "I don't care who you are. Where do you punks think you are, Russia, Germany?" The defendant refused to produce some identification and attracted the attention of several people in the vicinity. After a second refusal by the defendant to identify himself, the officer put him under arrest. The court concluded that the real reason for the arrest of the defendant was his refusal to disclose his identity to the police. Noting that the disorderly conduct statute was concerned exclusively with the preservation of the public peace, the court said that the record was completely barren of any proof that the defendant intended to provoke a breach of the public peace or did anything whereby a breach might have been occasioned. The officer's statement that the defendant "hollered," said the court, was conclusory. The court concluded by stating that the disorderly conduct statute was one of the most abused in the entire penal law by both civilians and police.

Reversing the conviction of the defendant for disorderly conduct, the court held in *People v Cuvelier (1957) 8 Misc 2d 823, 167 NYS2d 871*, that the use of the phrase "son of a bitch" by the defendant in reference to a police officer in a restaurant in front of others did not constitute disorderly conduct. The defendant, his wife, and another couple entered a restaurant after having attended a clambake. Two state troopers were seated near them. One of the officers asked the defendant whether he had been to the clambake and, if so, who was driving. After stating that he was driving, the defendant was informed that there had been an accident near the clambake and that it was fellows like the defendant who caused fatalities. After the officer advised the defendant that he was in no condition to drive, the defendant said, "Well you sons of bitches aren't going to stop me from driving my car," and was arrested for disorderly conduct. The evidence indicated that no particular number of persons were attracted to the scene and the proprietor of the restaurant did not complain about the defendant's conduct or demand his arrest or removal from the premises. Noting the lack of evidence that the defendant was drunk at the time of the incident and that the police officer's actions were based on a previous accident unrelated to this incident, the court concluded that the remark made by the defendant was provoked by the actions of the officer, and that it was not made in such a tone of voice as to attract undue attention or cause consternation among the patrons of the restaurant. That it may have annoyed the police officer, said the court, did not justify a disorderly conduct conviction, which should be set aside if the remarks of the defendant do not tend to a breach of the peace or, in cases such as this, if they were made by the defendant in response to improper remarks or accusations by the officer.

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Arguing with police officer does not evolve into disorderly conduct under Illinois law merely because crowd gathers to watch. S.H.A. 720 ILCS 5/26-1(a)(1). *Payne v. Pauley, 337 F.3d 767 (7th Cir. 2003).*

Under totality of circumstances, defendant's telling military police officer to "go f * * *himself," in response to his repeated inquiries about her presence near stables on military base, would not have provoked the average person to retaliate and, thus, was not disorderly conduct; although defendant approached and departed from officer in her vehicle in a reckless and dangerous manner, she approached officer because she believed he had urinated on some equipment, she did not threaten or offer to fight officer, and she left officer's presence both times after uttering offensive remarks. 18 U.S.C.A. § 13; K.S.A. 21-4101(c). *U.S. v. McKinney, 9 Fed. Appx. 887 (10th Cir. 2001).*

Juvenile's yelling of obscenities at police officer after officer grabbed juvenile's bicycle to check its serial numbers did not constitute breach of the peace for purposes of determining whether juvenile was guilty of disorderly conduct and should be adjudged delinquent; juvenile's words were not aimed at crowd that had gathered, but, rather, at the officer herself, juvenile was not attempting to entice crowd to act against the officer, and reaction of crowd was to urge juvenile to allow officer to see bicycle. D.C.Code 1981, § 22-1121. *In re W.H.L., 743 A.2d 1226 (D.C. 2000).*

Evidence was insufficient to support conviction for disorderly conduct, even though defendant yelled obscenities at police officer, and motorists along roadway where incident occurred slowed or stopped while defendant was yelling; no evidence was presented that defendant's words were fighting words or words that would tend to incite immediate breach of peace, that defendant engaged in any physical conduct toward officer that affected officer's ability to do her job or breached peace or otherwise incited others to act, or that anyone in area was actually incited into engaging in immediate breach of peace. West's F.S.A. § 877.03. *Barry v. State, 934 So. 2d 656 (Fla. Dist. Ct. App. 2d Dist. 2006).*

Defendant's comments to officer "arrest me" and "damn, I am calling corporate office," which were made in response to store employee's asking defendant's daughter to move to a different check-out line, did not rise to the level of "fighting words," within meaning of disorderly conduct statute's proscription on fighting words, since they would not as matter of common knowledge and under ordinary circumstances naturally tend to provoke violent resentment and defendant's utterances were not personally abusive towards or personal epithets against officer, and defendant's waving arms did not convert her inappropriate, but harmless words, into "fighting words." West's *Ga.Code Ann. § 16-11-39(a)(3). Sandidge v. State, 630 S.E.2d 585 (Ga. Ct. App. 2006).*

Arrestee's language directed at police officer while officer was arresting arrestee's brothers did not constitute "fighting words," that is, those which by their very utterance inflict injury or tend to incite an immediate breach of the peace; arrestee yelled that officer could not tell her what to do, that she was on public property, that she did not have to go "any fucking where," that she paid "your fucking salary" and "the hell with you," and that she could go over and find out what was going on. *O.C.G.A. § 16-11-39. Woodward v. Gray, 241 Ga. App. 847, 527 S.E.2d 595 (2000),* cert. granted, (July 13, 2000).

State failed to show that defendant's political expression, in protesting police officer's conduct toward third party, inflicted particularized harm analogous to tortious injury on readily identifiable private interests, and thus such speech could not support disorderly conduct conviction; only evidence presented by state on issue of loudness of defendant's tirade was testimony of the officer, who only focused on effect of tirade on him personally but made no statements as to its effect on residents of surrounding area. West's A.I.C. Const. Art. 1, §

West's A.I.C. 35-45-1-3(2). *Shoultz v. State, 735 N.E.2d 818 (Ind. Ct. App. 2000).*

Evidence was insufficient to support defendant's conviction under ordinance for disturbing the peace by using abusive and violent language where, though officers testified they were "offended" when defendant screamed at them, as they were citing nude dancer in defendant's bar for violation of municipal ordinance, "You're such an ass. . . .You mother. . . . ers, you can't -- you're not brave enough to go out and catch murders (sic) and robbers. You are a couple of pussies," Neither officer was provoked to point of near violence. *Harrington v Tulsa (1988, Okla Crim) 763 P2d 700.*

[*14] Words spoken in incident unrelated to

[*14a] arate charge or offense
[*14a] Charge held established

Under the facts of the following cases the courts held that the offense of disorderly conduct or breach of the peace was established where insulting words were spoken directly to a law enforcement officer, unrelated to any separate criminal charge, where it was alleged that third persons nearby might have heard the altercation.

The court affirmed an adjudication of delinquency in *Driskill v State (1979, Ala) 376 So 2d 678,* in which a juvenile was charged with delinquency in the wake of a fracas with a guard which erupted at a high school football game. The youth made an insulting remark about the off-duty policeman working as a security guard at the game, and, when the remark was overheard by the officer, he was ordered to leave the stadium. After the young man protested the order with some vehemence, additional profanity, and, physically resisting his discharge from the stadium, he was finally subdued and handcuffed with the assistance of two other guards. The court said that it was unclear from the delinquency petition charging him with disorderly conduct and resisting arrest whether the young man had violated a local ordinance prohibiting disorderly conduct or a state statute prohibiting disturbances of the peace, since the petition neither alleged that his language or conduct was intended to provoke a breach of the peace, as required by the ordinance, nor that it resulted in disturbing the peace, as required by the statute. The court concluded that the boy's behavior violated a statute making it

a misdemeanor to make any insulting remarks about a police officer engaged in the active discharge of his duties, explaining that, although the officer was in the employ of the local board of education at the time of the incident, he was in uniform and received his orders from his police chief, and, therefore, was engaged in the act of discharge of his duties for the purposes of that statute.

Offensive epithets shouted by a woman airline passenger in an airport terminal were held to constitute disorderly conduct in *State v Brahy (1974) 22 Ariz App 524, 529 P2d 236.* When the defendant sought to enter the boarding area at the airport, she was told that her purse would have to be analyzed by an X-ray machine. After being told that a hand search of her purse would be necessary because an object within it could not be identified by the X-ray procedure, the defendant slammed her purse down on the table and went toward the boarding gate. Several minutes later, as she was returning toward the X-ray machine and the table, she saw that her purse was being searched and began screaming, from a distance of about 25 feet, "What are you fucking sons of bitches doing in my purse?" The defendant repeated these remarks, directed at the women assigned to check the purse, 6 to 8 times. After a number of people had gathered around the X-ray machine, the arresting officer tried to calm her, but the defendant said to him, "Why you fucking son of bitch, I will spit in your face." After spiting on the officer, the defendant was placed under arrest. She was charged under a disorderly conduct statute prohibiting the disturbance of the peace or quiet of a neighborhood, family, or person, maliciously and willfully, by tumultuous or offensive conduct or the application of violent, abusive, or obscene epithets to another. After discussing whether her actions enjoyed First Amendment protection, the court explained that the statute's definition of "disturbing the peace" through "offensive" conduct had been judicially narrowed to mean willfully and maliciously inciting others to violence or engaging in conduct likely to incite others to violence. On that basis, the court concluded that the conduct of the defendant was likely to incite others to violence, and it affirmed the judgment and sentence.

In *Meyers v State (1972) 253 Ark 38, 484 SW2d 334,* the court affirmed the conviction of the defendant for breach of the peace following his arrest by an off-duty patrolman employed as a security guard for a motel. The patrolman had advised the defendant and others not to block the balcony outside the room in which they were having a party. Later that evening, the patrolman told the same revelers to go back inside the room or they would be arrested. The patrolman later testified that as one member of the party began to close the door after those on the balcony had gone inside, he heard the defendant, who was standing at the back of the room, say, "Get f_____d you g____ d____ pigs." The patrolman immediately arrested the occupants of the room and the defendant was charge with resisting arrest and violating a statute prohibiting the use of profane, violent, vulgar, abusive, or insulting language calculated to arouse the anger of the person to whom it was directed or cause a breach of the peace or an assault. The defendant argued that the object of this statute was to prevent disturbances, rather than the use of specific language. Citing the patrolman's testimony that the defendant's words did not make him angry, the defendant argued that he could not be guilty of violating the statute, since it was not contemplated that a police officer would assault a person in custody by reason of such a remark. The court ruled that the fact that abusive language is addressed to a policeman or other law enforcement officer does not prevent it from constituting a breach of the peace. The court further found that the evidence was sufficient to support the charge of breach of the peace and, in connection with other charge of resisting arrest, refused to distinguish between an off-duty officer and an officer on duty at the time of the offense.

See *People v D'Amore (1972) 7 Ill App 3d (abstract) 741, 288 NE2d 697,* in which it appeared that the defendant had used opprobrious language in front of his family, police officers, and a third person when the officers attempted to intercede in a domestic dispute between the defendant and his wife, although the court reduced the sentence of the defendant, he was convicted of disorderly conduct. The altercation arose when the defendant was denied permission to see his children. Although affirming the conviction, the court concluded, in reducing the sentence, that the defendant should not have been placed in such a position by the police.

See *Warwick v State (1897) 17 Ind App 334, 46 NE 650,* in which the court affirmed the conviction of the defendant on the charge of criminal provocation, defined by statute as a provocation or attempted provocation of another, who has the present ability to do so, to commit an assault or an assault and battery upon the provocator. The prosecuting witness was acting as a merchant policeman, clothed with the power to make arrests for the breach of the peace, at the request of a citizen. He separated a man and the defendant, who were quarreling upon a public street in the city, ordered the defendant, who persisted in continuing to quarrel, to go to her home, and threatened to arrest her if she did not do so. After moving away from the place where she had been standing, some 30 feet from the prosecuting witness, she twice called him by a vile and opprobrious name. He was irritated and provoked, but made no attempt to approach or strike her, al-

though no obstacle stood in his path or prevented him from going to her. The defendant contended that the evidence failed to show that the prosecuting witness had the present ability to commit an assault upon her, an element of the crime charged. The court disagreed, stating that at a distance of 30 feet, unobstructed, the prosecuting witness had the present ability to commit an assault or assault and battery upon the defendant, since he might have traversed the distance between himself and the defendant in a matter of seconds.

See *Re Nawrocki (1972) 15 Md App 252, 289 A2d 846,* in which the court upheld the conviction of a juvenile based on a disorderly conduct charge arising from abusive and obscene words directed by the juvenile defendant to a youth in the custody of a police officer. The defendant juvenile was charged with disorderly conduct after using profane language and threatening a juvenile suspect who was in custody and sitting in a police cruiser. The defendant juvenile threatened the youth in custody that he would "work [him] over, and do him in and everything right down the line. . . was going to get even with him." Several statutes proscribed acts of a disorderly nature involving loud and unseemly noises or profanity and swearing in a public place. Although finding that the evidence was insufficient to show that the juvenile was making loud and unseemly noises or that he was profanely cursing, swearing, or using obscene language in violation of one of the statutes, the court said it was clear that he directed threats to the person the officer had in custody. The court said that the lower court should have decided on this evidence, spare as it was, that the juvenile's words had a direct tendency to cause acts of violence by the prisoner, that is, that they had the characteristic of plainly tending to excite the prisoner, inciting him to a breach of the peace. And because the prisoner was in the legal custody of the officer, charged with the duty of his safekeeping, reasoned the court, the directing of the words to the prisoner was in effect the directing of them to the officer, who also may have been disturbed or provoked to resentment thereby, culminating in violence. Thus, the court concluded, the lower court properly could have found that the words used by the defendant were "fighting" words and that he was guilty of disorderly conduct.

In *Commonwealth v Harris (1869) 101 Mass 29,* the court affirmed the conviction of the defendant for disturbing and breaching the peace by using abusive and profane language toward a constable in an incident attracting between 100 and 250 onlookers. The defendant was charged with uttering loud exclamations and outcries, thereby drawing together a number of persons to the great damage and common nuisance of all the nearby residents. The evidence indicated that the defendant talked in so loud and angry a tone that he was heard at a distance of 50 or more rods. Some persons in the crowd allegedly uttered cries of encouragement to him. The defendant claimed on appeal that there was a variance between the evidence and the allegations in the complaint and that the court had improperly denied defense counsel the opportunity of asking one of his witnesses whether he saw anything indicating that the citizens of the town were disturbed or annoyed by what the defendant was doing. The court ruled that in such a case it was unnecessary to allege that it was to the great damage and common nuisance of all the nearby residents, but if so alleged, the proof need not be as extensive as the allegation. The act must be of such a nature as tends to annoy good citizens, said the court, and does in fact annoy such of them as are present and not favoring it. That there are persons present who give encouragement and countenance to the illegal act, the court pointed out, is no defense.

In *Davis v Burgess (1884) 54 Mich 514, 20 NW 540,* the court reversed a judgment against a police officer sued for false imprisonment arising from his arrest of a man who shouted obscenities at him on a public street, thereby attracting a crowd. The officer testified that he went into a pawnbroker's shop to assist a young man in obtaining a watch he had left there. The clerk in the shop directed a stream of indecent and profane comments toward the officer, including the term "son of a bitch. " The following day the comments were repeated, this time on a public street. The officer arrested the clerk under a city ordinance prohibiting the use of indecent or immoral language in a public place in the city. The city attorney took the complaint sworn by the officer, but failed to prosecute it. The clerk then sued the officer for assault and battery and false imprisonment. The trial court charged the jury that the only question for them to consider was that of damages, since the evidence showed that the officer was not justified in his actions. On appeal, the court noted that the official position of the officer at the time of the arrest constituted him a conservator of the peace, and that the officer had a right to arrest without process for a breach of the peace committed in his presence. The court defined a breach of the peace as an intentional violation of the right of all persons in political society to enjoy tranquility as is enjoyed by citizens of a municipality or community where good order reigns among its members, and noted that personal violence is not an essential element in the offense.

Affirming the defendant's conviction for disorderly conduct, the court held in *State v Brown (1973) 62 NJ 588, 303 A2d 886,* that abusive words directed toward a police officer at a crowded board of education meeting justified a finding that they represented a threat to the peace, in spite of the officer's training to take such incidents in stride. Several controver-

sial issues were discussed at the meeting, which was well attended. The officer at one point asked the defendant to move back to afford more room for members of the board. The defendant did so, but directed profanity toward the officer. Later that evening when the officer and the defendant met, the defendant became abusive and told the officer, "I'll kick the s____ out of you, you m_____ f_____ -- remember you work for me -- you take that badge off and I'll kill you." The evidence indicated that these words were spoken loudly within the hearing of the officer and others. A municipal court judge found that under the particular circumstances the words were such as to "incite a violent action." The appellate court sustained the conviction and made its own factual findings, including a conclusion that the words were "fighting words," that is, likely to evoke an immediate violent response by the person to whom they were addressed. Accepting the appellate division's factual findings, the court emphasized that the words definitely referred to an individual and were addressed to his face, and that that individual was a police officer presumably trained to exercise a high degree of restraint did not preclude a finding that there was a threat to the peace.

The court affirmed the conviction of the defendant for disorderly conduct arising from his insulting statement made to a police officer in the presence of others in *People v Doyle (1960) 21 Misc 2d 38, 195 NYS2d 770.* The defendant was convicted upon a plea of guilty of the offense of disorderly conduct. The criminal information alleged that he called a village police officer a "flatfoot" and when told by the officer not to call him by that name called the officer a "God damn flatfoot." A statute proscribed the use of offensive, disorderly, threatening, abusive, or insulting language, conduct, or behavior and acts annoying, disturbing, interfering with, obstructing, or being offensive to others. The acts complained of occurred on the main thoroughfare of the village, leading the court to conclude that the acts and words alleged in the information would have been offensive, threatening, abusive, or insulting to any person actually present on that street or other passersby. All of the acts and conduct, the court noted, were admitted by the defendant's plea of guilty. The court also cited evidence that a crowd gathered on the street as tending to indicate that there were persons other than the police officer and the defendant actually present who were in a position to observe the defendant's acts and hear his words. The court concluded that such conduct and words as those attributed to the defendant would annoy, disturb, and interfere with others and tend to provoke or occasion a breach of the peace.

Although reversing the defendant's conviction for disorderly conduct on other grounds, the court stated in *Georgetown v Scurry (1912) 90 SC 346, 73 SE 353,* that evidence that the defendant had called the chief of police a liar in front of the courthouse and that the defendant's statement was heard inside the courthouse supported his conviction under an ordinance prohibiting malicious or mischievous disturbances of the peace and good order of the town or use of any profane or obscene languange to the annoyance of any citizen. The chief of police testified that the defendant came up while he was seated in his buggy and was speaking to another man and said to him, "I told you in the recorder's court that you were a liar, and I still say you are a liar." The officer told the defendant's father that if his son called him a liar again he would arrest him. Afterwards, the defendant said, "Chief, I told you that you and Spry both lied, and I mean it." After that a scuffle broke out between the police chief and the defendant, who was charged with disorderly conduct. After finding the evidence sufficient to support the charge, however, the court reversed, based on the recorder's failure in the court below to instruct the jury that if the jury found that the officer had gone out of his way to speak abusively to the defendant in his presence so as to elicit language in reply which is no more disorderly, either in substance or in manner, than the language of the officer provoking him, then the officer would not have been justified in arresting without a warrant for disorderly conduct.

In *Marcuchi v Norfolk & W. R. Co. (1917) 81 W Va 548, 94 SE 979,* the court reversed a judgment for the plaintiff in a civil action for false arrest arising when he directed loud, vulgar, obscene, and profane language toward a train conductor and a special police officer employed by the railroad. The plaintiff alleged in the suit against the railroad that the conductor was not justified in arresting him without having first secured a warrant. The plaintiff was arrested pursuant to a code provision that any person, whether a passenger or not, while on a passenger car or any train of cars, who behaves in a riotous or disorderly manner, is guilty of a misdemeanor for which he may be fined, imprisoned, and ejected from the car or train by the person or persons in charge thereof. At the civil trial in which the plaintiff sought damages from the railroad, the court on its own motion propounded instructions to the jury that the railroad's servants and agents had no right under the law to arrest the plaintiff without a warrant, thereby rendering the railroad liable, and leaving only the question of damages for the jury. After establishing that the conductor and the special police officer were empowered to maintain order on the train, the court noted that there could be no doubt that an officer upon whom legally devolves the duty to preserve the public peace may, without a warrant, apprehend any person who is in the act of committing or has committed a public offense in his presence if it be a misdemeanor. Whether the language used by the plaintiff when detained by the conductor on the platform of the railroad coach was sufficient to constitute a misde-

meanor as for breach of the peace, tranquillity, and quietude of the passengers and general public then assembled was a question that should properly have been submitted to the jury, said the court.

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Evidence that defendant refused to stop verbally abusing and cursing at police officers and leave tanning salon after being asked to do so several times was sufficient to support conviction for disorderly conduct; defendant made recurring outbursts that attracted the attention not only of patrons of the salon but also customers of adjoining laundry area and interfered with the salon being able to conduct its business. West's A.I.C. 35-45-1-3(a)(2). *Anderson v. State, 881 N.E.2d 86 (Ind. Ct. App. 2008).*

In prosecution for disorderly conduct, defendant's words could rationally have been found to be "fighting words" under circumstances in which they were uttered and such finding was sufficient to support conviction. *State v Beck (1984) 9 Kan App 2d 459, 682 P2d 137.*

Defendant's conduct at abortion protest transcended exercise of free speech and justified her conviction for disorderly conduct where she persistently screamed words like "pig" and "Nazi" at police officer in midst of angry crowd and in manner that gave rise to likelihood of violence. *State v Callahan (1989, Hamilton Co) 48 Ohio App 3d 306, 549 NE2d 1230.*

[*14b] Charge held not established

The offense of breach of the peace or disorderly conduct was held not established by a direct confrontation between the speaker and a law enforcement officer under circumstances that did not involve an independent criminal offense in the following cases, despite the presence of, or the attraction of the curiosity of, third persons within hearing distance of the insulting words spoken to the officer.

Although there was evidence that the defendant's offensive epithets directed toward a deputy in broad daylight were an object of curiosity to a neighbor, who opened her window to better see what was going on, the court in *Harbin v State (1978, Fla App D1) 358 So 2d 856,* reversed the defendant's disorderly conduct conviction arising from the domestic dispute. The defendant was arrested when she began to curse at the deputy sheriff who had been sent to accompany her husband to the couple's trailer while he picked up his clothes after an argument. She contended that her mere words were not sufficient to justify her disorderly conduct arrest. Interpreting that statute to apply only to words which by their very utterance inflict injury or tend to incite an immediate breach of the peace or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others, the court concluded that the defendant's admittedly profane words did not meet either test. The court noted that the only evidence presented by the state with regard to the tendency of those words to incite an immediate breach of the peace was the arousal of her neighbor's curiosity. Other testimony established that the dispute took place at approximately 3:30 in the afternoon in the yard immediately in front of the defendant's own private residence. On these facts, said the court, the most that could be said about the defendant's epithets is that they were offensive to the deputy who made the arrest and perhaps interested the neighbor who opened her window. The court found it significant that the only person who arguably could have been "incited to an immediate breach of the peace" was the deputy who had been sent to the scene to keep the peace.

Emphasizing the testimony of witnesses who stated that the officer did not seem to be angered by the defendant's actions, the court in *Jacksonville v Headen (1892) 48 Ill App 60,* affirmed the acquittal of the defendant on charges including disorderly conduct arising from his allegedly abusive behavior in threatening and striking a police officer. Testimony indicated that the defendant went up to the police officer, shook his fist, and made some threat to the effect that he did not want the officer to follow him around, and that he would settle, or fix, the officer. Witnesses stated that the defendant seemed to be excited and spoke to the officer in a rough tone. There was evidence to indicate that the officer knew the defendant and did not take offense at the remark. Noting that the defendant was a long time resident of the county and, on the whole, a respectable and good citizen, and that he was not intoxicated, used no obscene language,

and showed no disposition to harm anybody, the court saw nothing in his conduct of a criminal or quasi-criminal character.

The conviction of the defendant for disorderly conduct arising from his shouted insults directed towards police officers, which behavior was alleged to have attracted the attention of onlookers across the street, was reversed in *People v Douglas (1975) 29 Ill App 3d 738, 331 NE2d 359.* The police officer and his partner drove into an apparently abandoned service station and waited to intercept a traffic offender in an unrelated incident. After several minutes, the defendant drove into the station, pulled alongside the police car, screamed an obscenity to the officer, and added that the police had no business on his property, punctuating his later remarks with profanities. After the officer noticed that several pedestrians and customers standing at a frozen custard stand across the street were looking in their direction he immediately informed the defendant that he was under arrest for disorderly conduct. The officer testified that the underlying reason for the defendant's initial arrest was that the defendant had disturbed the people nearby, but he acknowledged that he never questioned the bystanders, none of whom approached him. Noting that arguing with the police officer, even if done loudly, will not of itself constitute disorderly conduct, the court found on the record insufficient evidence of public disorder resulting from the shouting between the defendant and the police officer. Vulgar language, however distasteful or offensive to one's sensibilities, the court pointed out, does not evolve into a crime because people standing nearby stop, look, and listen. The court explained that the state's concern becomes dominant only when a breach of the peace is provoked by the language.

See *People v Trester (1981) 96 Ill App 3d 553, 52 Ill Dec 96, 421 NE2d 959,* infra § 18[b], where an altercation between the defendant and a police officer began with the defendant directing profanities toward the officer in an elevator in the presence of three women, but where the charge of disorderly conduct was apparently based on threats uttered by the defendant after the women had left the elevator.

In *Heath v Hagan (1907) 135 Iowa 495, 113 NW 342,* the court affirmed a judgment awarding damages against a police officer for false imprisonment and stated that vehement protestations against an illegal arrest could not support a charge of breach of the peace. A woman was charged with a breach of the peace by using loud, indecent, and abusive language and making an indecent exposure of her person in public, while allegedly disturbing a private family. The court said that the woman's language or acts prior to her arrest could not have amounted to a breach of the peace or to a disturbance of anyone resulting from her earnest and excited protestation against the arrest and vehement insistence that she should not be taken to the police station. Such actions are nothing more than any consciously innocent person would naturally do, said the court, and it cannot be made to justify an illegal arrest.

In *State v Reed (1970) 56 NJ 354, 266 A2d 584,* the court reversed the defendant's disorderly conduct conviction which arose from his use of the words "Jesus Christ" and "God damn" in a disagreement, overheard by others, with a police officer. The defendant drove his car into a service station to have a windshield wiper replaced and became engaged in an argument with the attendant. A state trooper who knew the attendant drove into the service station during the disagreement and inquired what the problem was. The officer told the defendant that he was a police officer, and the defendant allegedly replied, "Jesus Christ. I don't give a God damn who the hell you are." The defendant was then arrested. The court explained that for a defendant to be guilty under the disorderly conduct statute, the words had to be spoken loudly, in a public place, and be likely to incite the hearer to an immediate breach of the peace or, in light of the gender and age of the listener and the setting of the utterance, to affect his sensibilities. Here, the court concluded, the words could not have had such an effect and were not uttered at a time, place, and in the manner contemplated by the statute.

An insulting remark directed by the defendant to a police officer in a moving police car was held not to justify a conviction under a disorderly conduct statute in *State v Griffin (1966) 92 NJ Super 389, 223 A2d 633.* The defendant had been involved in an automobile accident, following which his car had been towed to a garage. A police officer who was detailed to investigate the accident was en route to the garage in a patrol car, and had given a ride to the defendant and a friend of the defendant. As the officer was about to drive into the garage, the defendant made a remark of an offensive, profane, or indecent nature to the officer. There was no evidence that the remark was heard by anybody other than the occupants of the moving police car. The defendant was charged with violating a disorderly conduct statute prohibiting the utterance of loud and offensive, profane, or indecent language in any public street or other public place, public conveyance, or place to which the public is invited. Noting that the case was completely lacking in proof that the offensive

remark was uttered loudly or in any of the places enumerated in the statute, the court concluded that the defendant's conviction was unsupportable.

In *People v Jerome (1957) 8 Misc 2d 883, 168 NYS2d 452,* the court held that obscene language directed towards police officers by the defendant while he stood inside a home where the officers had come to investigate a complaint did not constitute disorderly conduct. As the officers approached the premises they observed two unidentified men wrestling on the front lawn while being observed by a number of their friends. As the officers pulled into the driveway, the participants and the spectators entered the home of their host located at the rear of the address. The officers went to the door of that residence to inform the occupants of the complaint. The ordinance under which the defendant was charged prohibited noisy, riotious, or disorderly conduct to the disturbance of the quiet of the village, or the public use of profane or obscene language. Since the evidence indicated that the defendant used profane and obscene language only in the private residence of his hosts, not on a street or public place as required by the ordinance, the court held that the requirements of the statute were not met.

See *Tessier v La Nois (1964) 97 RI 414, 198 A2d 142,* later op *98 RI 333, 201 A2d 927,* an action for assault and battery and false arrest brought against a police officer who placed a heckler under arrest as a result of his insulting actions directed toward the officer from a distance of 20 to 30 yards while the officer was speaking to a third person. The plaintiff in this action, who was criminally charged as a result of his alleged disorderly behavior, ultimately recovered nominal damages against the officer in a civil suit. The incident arose when the officer was patrolling his beat and his attention was attracted by the plaintiff, who was inside a poolroom operated by his father, making faces and sticking out his tongue at him. The officer spoke to the plaintiff, apparently in regard to his conduct, and then resumed patrolling his beat. When the officer was some 20 to 30 yards from the plaintiff, the plaintiff began to shout and heckle him in a perfectly audible manner for about 15 or 20 seconds. There was no indication, however, that the language used by the plaintiff was either profane or obscene. The officer arrested him, nevertheless, although the nature of the specific charge was not clear from the record. The court stated that the plaintiff's behavior, although derogatory, insulting, and provocative, had not been declared a misdemeanor by the legislature, nor cognizable as such at common law. Although such conduct is consistent with offenses prohibited by municipal ordinances, and it was conceivable that the officer may have had knowledge of an applicable ordinance, the court noted, the officer had not brought such knowledge to the attention of the court and specific municipal ordinances are not susceptible to judicial notice. The court concluded that the defendant acted without justification in making the arrest and said that the plaintiff's motion for a directed verdict should have been granted.

In *Pavish v Meyers (1924) 129 Wash 605, 225 P 633,* the court held that the trial court should not have nonsuited the plaintiff in an action for false arrest brought against a police officer, in view of evidence that the officer had provoked the defendant's insulting words with insults of his own. The plaintiff owned and operated a fish market on the police officer's regular beat. While passing the plaintiff's place of business, and in the presence of other persons, the officer held his hand over his nose and said, "Oh, that place smells!" or words to that effect. He soon returned and made similar remarks while passing the market. The plaintiff told the officer that his place of business did not smell bad, and that selling fish was better than peddling whiskey as the officer did, or words to that effect. The officer immediately arrested the plaintiff on a charge of breach of the peace. The plaintiff sought damages because of his alleged unlawful and unwarranted arrest. The court stated that the plaintiff's open accusation of the officer of being a peddler of whiskey, a serious offense under the laws of the state, standing alone, would tend to breach the peace and justify arrest. That the degrading or abusive words were addressed to a peace officer, said the court, did not alter the situation. Nevertheless, the court found the trial court in error in nonsuiting the plaintiff in view of testimony that the officer had provoked the plaintiff into using the opprobrious words. The court reasoned that it would be unfortunate if a policeman could provoke another to commit a breach of the peace, arrest him, and then, when sued for damages for the arrest, defeat the action by simply showing that because the other was breaching the peace, the arrest was lawful and justified and that provocation would be immaterial and beside the question.

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See *B.R. v. State, 657 So. 2d 1184 (Fla. Dist. Ct. App. 1st Dist. 1995),* § 5.

Defendant's words to police officer after she had stopped other vehicle inside entrance to subdivision, "What are you doing parked in the middle of the roadway," did not constitute "fighting words," as required for conviction under subsection of disorderly conduct statute prohibiting unprovoked use of opprobrious or abusive words that tend to incite to immediate breach of peace, even though officer testified that defendant was loud and obnoxious. West's *Ga. Code Ann. § 16-11-39(a)(3). Delaney v. State, 599 S.E.2d 333 (Ga. Ct. App. 2004).*

Defendant's reply "I don't give a fuck" to policeman who had offered to take her home then told her to enter police car or he would arrest her did not constitute disorderly conduct where vulgar noun was not profanity or obscene language, it was not effort to incite policeman, and it was not directed at policeman, but rather it merely expressed defendant's state of mind. *Baynard v State (1990) 318 Md 531, 569 A2d 652.*

Defendant's actions in repeatedly clutching his genitals and yelling offensive epithets at police officer did not constitute impermissible violent, tumultuous, or threatening behavior where crowd gathered and joined defendant's chants on city street at 4 a.m. There was no likelihood that defendant's remarks -- which were phrased in hypothetical terms -- would produce immediate violent response by persons hearing them and, even with accompanying gestures, they could not be said to have direct tendency to provoke police officer to retaliate with acts of violence or other breach of peace. Thus defendant could not be prosecuted under statute providing that person is guilty of disorderly conduct "when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof. . . [h]e engages in fighting or in violent, tumultuous or threatening behavior." Rather, defendant's activities amounted to speech protected by federal and state constitutions. *People v Stephen (1992, City Crim Ct) 581 NYS2d 981.*

Trial court improperly convicted defendant of disorderly conduct where, although defendant directed abusive language and threatening physical gestures towards sheriff's deputy in sheriff's office there was nothing in record indicating deputy was about to initiate an assault on defendant and where deputy remained calm throughout, recognizing that defendant was intoxicated and unarmed, and defendant left premises without incident. *State v Yoakum (1982) 30 Wash App 874, 638 P2d 1264.*

[*B] Words not allegedly spoken in presence of, or attracting attention of, third persons

[*15] Words spoken in response to speaker's arrest or detention for unlawful or suspicious behavior observed by officer

[*15a] Charge held established

Under the circumstances of the following cases, where there were no allegations that others overheard or were present when insulting words were spoken directly to a law enforcement officer in response to his arrest or detention of the speaker after observing his unlawful or suspicious behavior, the courts held that the offense of disorderly conduct or breach of the peace nevertheless had been established.

That the offensive words were spoken only to the officer by the defendant while the defendant was in custody following his arrest on another charge was held not a defense against a breach of the peace charge in *Elmore v State (1914) 15 Ga App 461, 83 SE 799.*n23 The defendant argued that his use of alleged improper and abusive language could not have been in violation of the breach of the peace statute since it occurred after he had been arrested on a separate charge and while he was in the custody of the two deputy sheriffs, who would not be legally justified in assaulting him on account of such words or language. The statute under which he was charged prohibited words "tending to cause a breach of the peace." Although noting that the law assumes that an officer entrusted with its enforcement will be guided by the law's mandates and not assault one in his custody because of opprobrious words or abusive language, the court said that an officer is entitled to the same protection from such words or language as that afforded a private citizen. The violation of a statute by such words or language, said the court, cannot be measured simply by the physical ability of the object of such language to respond. Surely words or language of like character when addressed to one who is prevented by the solemn obligations of office from resenting gross insults would constitute an offense under the statute where no provocation appears therefor.

The court held without substantial discussion that the use of vulgar language and the raising of clenched fists by the defendant when approached by officers in connection with a traffic offense supported a conviction for disorderly conduct, despite the absence of an allegation that anyone else witnessed the behavior, in *State v White (1980, Minn) 292 NW2d 16.* Police officers observed the defendant recklessly spinning his pickup truck on a slippery street and, after seeing him park his truck in a traffic lane and enter a bar, followed him inside. The defendant at first refused to come outside and talk with the officers about his driving and, using vulgar language, put up his clenched fists and threatened to knock the officers down if they tried to take him outside. The court stated simply that the evidence that the defendant used "fighting words" and raised his fists was sufficient to establish that he had committed disorderly conduct.

In *People v Fenton (1917) 102 Misc 43, 168 NYS 725,* the court held that insulting words spoken to a police officer constituted conduct tending to a breach of the peace and supported a conviction for disorderly conduct, although it was not contended that anyone else was disturbed by the incident. The incident arose when a mounted police officer instructed the defendants to discontinue driving the truck in which they were riding because the truck was in an unsafe condition and a menace to the safety of other vehicles driving along the same highway. The officer testified that after warning the defendants to stand still until their truck could be fixed and safely removed the defendants said to him, "Where the hell do you get off to tell us what to do?. . . We'll do as we like, we don't care what you say. . . ." The court declared that such language under the circumstances, addressed to a police officer in the proper performance of his duty, was conduct tending to a breach of the peace. Gratuitous insolence to police officers, tending to cause disturbance and disorder upon a public highway, is far too common, said the court, and should not be encouraged, since it tends to lessen the respect of the community for law and order, which the police officer in the legitimate discharge of his duties represents.

The court held in People ex rel. Nannery v *Clarke (1939, Mag Ct) 12* NYS2d 8, that opprobrious language directed by the defendant toward, and heard only by, a detective who, in the discharge of his duties, first disclosed his business and requested the defendant to fully disclose his identity, supported a conviction for disorderly conduct. The defendant's demeanor and wearing apparel prompted the detective's inquiry. Testimony of the defendant revealed that upon the detective's inquiry, the defendant placed himself immediately in a defiant position and called the detective certain vile or abusive names. The court reasoned that such language might tend to a breach of the peace and such should be discouraged, since gratuitous insolence to police officers tends to lessen the respect of a community for law and order, represented by the police officer in the legitimate discharge of his duties.

In *Cleveland Heights v Christie (1934) 128 Ohio St 297, 190 NE 770,* cert den *293 US 574, 79 L Ed 672, 55 S Ct 86,* the court held that the defendant's use of the term "bastard," which apparently went unheard by others, with reference to a police officer supported his conviction for disorderly conduct. A police officer ticketed the defendant for double parking. The defendant responded by calling the officer "a bastard" and was charged pursuant to a village ordinance prohibiting persons from conducting themselves in a noisy, boisterous, rude, insulting, or other disorderly manner, by either words or acts. The defendant was found guilty by the police court. The county court of appeals reversed the conviction on the ground that the affidavit filed by the officer did not contain sufficient allegations to constitute a crime. The affidavit alleged that the defendant had conducted himself in a loud, insulting, and disorderly manner toward the officer. The court rejected the defense argument that no offense was charged because the word "bastard" has certain innocuous meanings according to the dictionary, stating that none of those meanings were in the mind of the defendant or the officer upon the occasion in question and noting that the dictionary also defined bastard as "begotten and born out of lawful matrimony." From the time to which the memory of man runneth not to the contrary, the court observed, the term "bastard," applied in anger as an epithet, has been standard usage in the terminology of insult and its tendency to provoke disorder is well known.

In *Cincinnatti v Karlan (1973) 35 Ohio St 2d 34, 64 Ohio Ops 2d 20, 298 NE2d 573,* vacated *416 US 924, 40 L Ed 2d 280, 94 S Ct 1922,* on remand *39 Ohio St 2d 107, 68 Ohio Ops 2d 62, 314 NE2d 162,* cert den *419 US 1056, 42 L Ed 2d 654, 95 S Ct 640,* the court held that the defendant's statement to an officer investigating his apparent tampering with an auto, that, "I hate all you fucking cops," and, upon the officer's further inquiry, the statement, "Get out of my way you fucking, prick-ass cops," and thereafter, his calling the officer a "prick-assed cop," constituted fighting words justifying conviction under a city disorderly conduct ordinance, although only the officers apparently heard the remarks. The court initially affirmed the conviction of the defendant, but that conviction was vacated by the United States Supreme Court. On remand, the state court reaffirmed his conviction, stating that where epithets used in a public place and willfully directed at those who can hear them are likely to provoke the average person to an immediate retaliatory breach of the peace, they are fighting words and the utterance thereof may be punished as a criminal act. After explaining that persons

may not be punished under a disorderly conduct ordinance for speaking boisterous, rude, or insulting words, even with the intent to annoy another, unless the words by their very utterance inflict injury or are likely to provoke the average person to an immediate retaliatory breach of the peace, the court ruled that the defendant's words fell within this latter category.

CUMULATIVE CASES
Cases:

Defendant who, after being stopped for traffic violation, called officer "a g-- d-- liar" and told all officers at scene to "f-- - o--" was properly convicted under statute declaring to be misdemeanor the use of opprobrious or abusive words that by their utterance tended to incite to immediate breach of peace. *Evans v State (1988) 188 Ga App 347, 373 SE2d 52.*

[*15b] Charge held not established

The courts held that the offense of breach of the peace or disorderly conduct was not established by the facts of the following cases, in which no bystanders allegedly overheard or were present when a person arrested or detained by a law enforcement officer observing his suspicious or unlawful behavior directed opprobrious epithets toward the officer.

The court held in *People v Lukowsky (1916) 94 Misc 500, 159 NYS 599,* that insulting remarks directed toward a police officer while the defendant was already under lawful arrest and was being taken to the police station did not constitute disorderly conduct. The officer testified that the defendant was annoying and interfering with passengers in a railroad station. The officer said that after he arrested the defendant and while taking the defendant to the station house he applied a vile name, which apparently went unheard by others, to the police officer. The court stated that it did not think that any remark, however insulting, addressed, while under lawful arrest, to the police officer making the arrest, there being no evidence that the remark was made in a loud voice or public manner, could be deemed disorderly conduct tending to, or intended to provoke, a breach of the peace. The court explained that law does not contemplate that the officer would assault a person in his custody by reason of a remark addressed to him, yet in no other way could the remark tend to provoke a breach of the peace.

Apparently emphasizing that no third persons were disturbed by the altercation, the court granted the defendants' motions to dismiss the informations charging them with a breach of the peace and assault in *People v Bomboy (1962) 32 Misc 2d 1002, 229 NYS2d 323,* holding that vile and obscene language directed toward police officers following an illegal arrest could not constitute a breach of the peace. The defendants were observed entering a fenced-in area behind a commercial garage in the middle of the night. Two state troopers drove their car onto the property behind the building and ascertained that the enclosed area was a swimming pool. They asked the defendants to identify themselves and the defendants refused. The officers then informed the defendants that they were under arrest for disorderly conduct for refusing to answer the officers' inquiries. Thereafter the defendants engaged in some loud conversation with the arresting officers and used vile and obscene language in refusing to identify themselves and in ordering the officers to remove themselves from the property. The defendants were charged with a breach of the peace, not disorderly conduct as first indicated by the officers. The warrantless arrests were made on property owned by one of the defendants. Noting that the arrest for disorderly conduct was illegal, the court concluded that the loud and obscene language which occurred after the defendants were advised of their arrest did not provoke a breach of the public peace.

In *State v Moore (1914) 166 NC 371, 81 SE 693,* the court reversed the conviction of a woman on a disorderly conduct charge arising from her use of insulting words, heard by no one except the policeman, in response to a policeman's request. The defendant was charged with violating a town ordinance by cursing on the streets loudly enough to be heard by those passing by and in a disorderly manner. The evidence indicated that she had been arrested for violating a different ordinance and had given a bond for her appearance to answer the charge. Just as she stepped into her buggy, she was cautioned by the policeman who had arrested her not to drive through the town, to which she replied that she would drive "where she damned please." The policeman testified that no one else heard the remark, and other evidence in support of this indicated that the remark was uttered in an ordinary or low tone of voice. The remark did not appear to have disturbed anyone, although there were bystanders as near as 8 or 10 feet from her at the time. The court reasoned that conduct can hardly be described as disorderly unless it tends in some degree to disturb the peace or good order of the town, or has a vicious or injurious tendency. The court agreed that the defendant expressed her displeasure or futile in-

dignation a little too strongly and should not have used so indecorous an expletive in doing so, but noted that her language did not reach beyond the ears of the policeman and hardly made a ripple on the placid surface of municipal peace.

The court held in *Lane v Collins (1965) 29 Wis 2d 66, 138 NW2d 264,* an action for false imprisonment brought against a police officer, that the charge of disorderly conduct lodged against the plaintiff was not established by the evidence, which indicated that the policeman had provoked the plaintiff. After stopping the plaintiff's car to investigate a traffic offense, the officer called him over to the police car and, apparently recognizing him, said nothing further about that offense. Instead, the officer asked the plaintiff not to call his home again, apparently in reference to a disagreement between the two men involving the plaintiff's ex-wife. Then the officer asked the plaintiff whether he was on probation, another reference to the plaintiff's marital difficulties, thereby provoking the plaintiff to state that he thought the officer was a "son-of-a-bitch." The plaintiff repeated the statement at the officer's request, prompting the arrest. The charge against the plaintiff was later dismissed when the city attorney refused to prosecute. The court expressed the opinion that calling a police officer a "son-of-a-bitch" under charged circumstances might well constitute a violation of a disorderly conduct statute, regardless of the fact that the abusive language is directed to a policeman and is not overheard by others. After explaining that the underlying reason for such statutes and ordinances proscribing abusive language is that such language tends to provoke retaliatory conduct, amounting to a breach of the peace, on the part of the person to whom it is addressed, however, the court stated that a police officer cannot provoke a person into a breach of the peace and then arrest him without a warrant. The court affirmed the judgment against the officer for compensatory and punitive damages.

CUMULATIVE CASES
Cases:

See *U.S. v. McDermott, 971 F. Supp. 939 (E.D. Pa. 1997)* § 4.

Evidence was insufficient to show that defendant's actions were calculated to lead to a breach of the peace, as required for conviction for disorderly conduct, even though police officer testified that defendant, who he had stopped, cursed at him and accused him, in effect, of racial harassment and that, as defendant was doing so, a small group of bystanders gathered to see what the "commotion" was about and "looked a little annoyed"; nothing suggested that group's annoyance was directed toward officer and his partner rather than defendant, and nothing suggested that defendant was attempting to incite bystanders by, e.g., addressing his angry words to them. D.C. Official Code, 2001 Ed. § 22-1321. *Shepherd v. District of Columbia, 929 A.2d 417 (D.C. 2007).*

[*16] Words spoken in reaction to officer's investigation of complaint or report of crime
[*16a] Charge held established

Insulting words, spoken directly to a law enforcement officer investigating a complaint or report of a crime, were held to establish the offense of disorderly conduct or breach of the peace under the circumstances of the following cases, in which there were no allegations of remarks being overheard by bystanders.

The court concluded that the arrest of the defendants for disorderly conduct was proper in view of the loud and obscene language they directed toward two police officers in *St. Petersburg v Calbeck (1960, Fla App D2) 121 So 2d 814.* At an early hour of the morning the police officers went to the defendants' door to investigate a report of an incident. Refused admittance and told to get a warrant, the officers retreated to the street where their vehicles were parked. The defendant husband came out of his residence and walked to the street, cursing the officers as he approached them. He was placed under arrest when he stepped onto the public street. The officers testified concerning the language used, which the court found to be foul and obscene. Shortly thereafter, the defendant wife, searching for her husband, also approached the police cruiser and cursed and verbally abused the officers. She was also placed under arrest. Both defendants then forcibly resisted after their arrests. They were charged with disorderly conduct under a statute providing that a peace officer may make a warrantless arrest when the person to be arrested has committed a felony, misdemeanor, or violation of a municipal ordinance in his presence. Noting that the utterance of the words appearing in the testimony fell within the category of "abusive or profane language," the court concluded that the words were directed to the police officers and not heard by others did not excuse the defendants, and the arrest was therefore legal.

In *Whitten v Savannah (1921) 26 Ga App 377, 106 SE 302,* the court affirmed the conviction of the defendant for disorderly conduct in violation of a city ordinance where the evidence indicated that she cursed and slammed the door in the face of police officers who had called at her home at night to make inquiry of her about matters in their line of duty.

In an action arising from an investigation concerning a suspected stolen car, which ultimately resulted in the arrest of the defendant for assaulting a police officer engaged in the performance of his duties, the court stated in *State v Bradley (1974, Mo App) 515 SW2d 826,* that the officer's attempted warrantless arrest of the defendant was justified even if the car's possession was satisfactorily explained, since the repeated cursing by the defendant against the officer would have constituted a misdemeanor or disturbance in the presence of the officer.

In *People v Sadowsky (1933) 149 Misc 583, 267 NYS 762,* the court concluded that the evidence that the defendant shouted insulting words to a policeman in a voice that could be heard across the street justified the defendant's conviction for disorderly conduct, although it was not alleged that the remarks were overheard by anyone else. The complaining officer, accompanied by another police officer, went to the defendant's rooming house to investigate a crime. The officers rang the bell at the front of the house. When the defendant came to the door, which opened on a public street in a city, the officers remained outside the house and stated the nature of the business to the defendant. The defendant shouted at them, "Son of a bitch," and used other abusive and vile names in a loud tone of voice before slamming the door. The preamble of the statute defining the offense of disorderly conduct provided that the offense had to be committed "with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned. " The court noted, therefore, that circumstances whereby a breach of the peace might be occasioned could not arise solely from the opinion or the mental operation of the complainant, but from a fact or facts which had to be established in the same manner as other facts. The court found that the defendant's language was disorderly and insulting and that the public place and loud manner in which the names were called constituted circumstances "whereby a breach of the peace may be occasioned."

CUMULATIVE CASES
Cases:

Evidence supported conviction for disorderly conduct in arrest arising from confrontation at apartment complex, where defendant continued to curse and scream at investigating officers after being told to be quiet. *Gamble v State (1992, Ind App) 591 NE2d 142.*

[*16b] Charge held not established

The courts held under the facts of the following cases that where no third persons were alleged to have overheard opprobrious epithets directed toward a law enforcement officer in a dispute between the officer and the speaker as a result of an investigation of a complaint or a report of a crime, the offense of disorderly conduct or breach of the peace was not established.

The court held in *Chicago v Hopson (1970) 131 Ill App 2d 591, 266 NE2d 363,* that evidence that the defendant uttered a "real dirty remark," apparently heard only by the investigating officer, and later failed to furnish his name and address did not support a conviction for disorderly conduct. The officer in question was on routine patrol and had been asked to investigate complaints about a man exposing himself to children near a school. The officer saw the defendant standing near the building and called him to the patrol car. At that time, the officer testified, the defendant responded, "What the so and so do you want." The officer then asked the defendant his name and his address, to which the defendant responded that he did not have to tell the officer anything. The officer placed the defendant under arrest for disorderly conduct. Citing authority that the disorderly conduct ordinance prohibited only that conduct tending to cause public disorder or to disturb the public peace and quiet, the court noted that the defendant was not placed under arrest at the time of his utterance, but after he declined to furnish his name and address. The court reasoned that this chain of events strongly suggested that the officer did not perceive the defendant's remark to have been done in such unreasonable manner as to provoke, make, or aid in making a breach of the peace.

The court reversed a finding of delinquency based on a charge of disorderly conduct lodged against a 14-year-old girl for saying "fuck you, pigs" to police officers from 15 to 30 feet away, in *Re Welfare of J. (1978, Minn) 263 NW2d 412.* Two police officers questioned the defendant and her girlfriend concerning certain unrelated crimes. After they were released by the officers, the defendant and her friend, at a point somewhere between 15 and 30 feet from the officers' squad car, turned and hurled the epithet at the officers. The officers pursued and arrested the girls under a disorderly conduct statute prohibiting the use of offensive, obscene, or abusive language or engaging in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others. This charge was made the basis for a delinquency petition filed in juvenile court. The officer testified that at the time the remark was made he was mad and upset, but admitted during cross-examination that he had received some sensitivity training on the proper way to respond to name calling and that, although angry, he did not react violently in this case or could not even have considered such a reaction because of the speaker's age, sex, and relative size. The real test, said the court, was whether under the facts and circumstances the defendant's mere utterance of the vulgar, offensive, insulting words would tend to incite an immediate breach of the peace, was inherently likely to provoke violent reaction, or had an immediate tendency to provoke retaliatory violence or tumultuous conduct by those to whom the words were addressed. Admitting that no ordered society would condone the vulgar language and that the words were intended to and did cause resentment in the officers, the court nevertheless ruled that the conviction for disorderly conduct could not stand.

*Columbus v Guidotti (1958, App) 81 Ohio L Abs 33, 160 NE2d 355,*n24 the court reversed the disorderly conduct conviction of a defendant who objected loudly to an illegal arrest. Police officers investigating an alleged robbery observed the defendant running a short distance and entering a nearby restaurant, where he purchased a package of cigarettes. As the defendant was leaving the premises, he was accosted by three plainclothes police officers. They used physical force to detain the defendant, who thereupon used certain vile and offensive language. There was no allegation that the language disturbed third persons. He was overpowered by the officers, handcuffed, and placed under arrest, at which time the officers identified themselves. He was later charged with disorderly conduct under a city ordinance prohibiting the disturbance of the good order and quiet of the city by any clamor, noise, or obscene or profane language in any street or other public place. The court noted that there was not a scintilla of evidence indicating that the defendant had committed any violation of law prior to the time of his detention by the police officers. The defendant testified that at the time the officers accosted him he was carrying a considerable sum of money on his person and he feared that he was being robbed. The court was of the opinion that it was because of the provocation by the officers that the defendant resisted their interference with his freedom by force and language which was not complimentary to their organization. Since the defendant had committed no offense prior to his detention, the court noted, no grounds existed for his arrest and he was justified in resisting them by any manner or means which may have been reasonably necessary to retain his freedom. It is indeed quite natural, said the court, for a respectable citizen to become aroused and excited when accosted in the manner in which he was and the things which he did under the circumstances should have been overlooked.

CUMULATIVE CASES
Cases:

Evidence was insufficient to support defendant's conviction for disorderly conduct; defendant yelled vulgar and profane statements at police over the course of three hours, and while doing so, defendant came out of the house to yell at officers, but would advance only as far as the porch before quickly retreating inside to avoid arrest, and defendant's conduct, while cowardly and irritating, posed no threat to officers present at scene, defendant's taunting, even though his words might have been threatening, occurred at a distance, state did not claim that defendant's behavior tended to disturb or incite his neighbors, and there was no evidence that defendant's friend was influenced by or reacted as consequence of defendant's behavior. West's NMSA § 30-20-1. State v. Correa, 2009-*NMSC-051, 222 P.3d 1 (N.M. 2009).*

Defendant's verbal protest of his unlawful detention, when police officers told defendant to not leave area because he was a material witness to shooting, did not amount to disorderly conduct, and thus indictment had to be dismissed; nothing indicated that defendant intended to create a public disturbance, or cause public annoyance, inconvenience or alarm. McKinney's Penal Law § 240.20(1). *People v. Ferreira, 10 Misc. 3d 441, 807 N.Y.S.2d 832 (City Crim. Ct. 2005).*

[*17] Words spoken to protest arrest of another

The courts in the following cases reached opposite results in considering whether insulting words spoken directly to a law enforcement officer in protest of the arrest of another supported a charge of breach of the peace or disorderly conduct under the particular circumstances, where there were no allegations that third persons witnessed or were attracted to the altercation.

However, in *Hammond v Adkisson (1976, CA8 Ark) 536 F2d 237* (applying Arkansas law) the court held that findings by a state trial judge that the defendant directed abusive and profane words to an arresting police officer were insufficient to support a conviction under a breach of the peace statute. There was no allegation that the opprobrious words attracted the attention of bystanders. The statute in question prohibited the use of profane, violent, vulgar, abusive, or insulting language calculated to arouse to anger the person addressed, or to cause breach of the peace or an assault. The officer was making an arrest of a relative in the home of the defendant when she came out of the house onto the porch and said to the officer, "You m. f. son-of-a-bitches think you all can come out and do anything that you want to do." At that point, the officer told her that she was under arrest. She responded, "You m. f. pigs is not gonna carry me anywhere." The appellate court criticized the findings of the trial court as insufficient to support a conviction under the statute. The additional and essential prerequisite for a valid application of a breach of peace statute to speech, the court noted, is a determination that the words were used "under such circumstances" that they were likely to arouse to immediate and violent anger the person to whom the words were addressed. Although agreeing that the words used may be judicially noted as profane and abusive, the court said that a trier of fact might nonetheless find that they did not constitute "fighting words" -- that is, words likely to incite the addressee to a violent reaction under the circumstances of the case. In summary, the court said that the trier of fact might well conclude, notwithstanding the abusive and profane language, that there was no likelihood that a 19-year-old young woman's words would provoke a violent response from the particular officer involved.

The court held that the use of obscene language by the defendant toward two arresting police officers constituted disorderly conduct, and it affirmed the defendant's conviction in *St. Paul v Morris (1960) 258 Minn 467, 104 NW2d 902,* cert den *365 US 815, 5 L Ed 2d 693, 81 S Ct 696.* The officers arrested the defendant's half brother on an unrelated offense and, as they were leading him to the police car, the defendant walked behind him asking the officers why they were arresting his brother. The defendant then said to the officers two or three times, "You white mother f____kers, what are you picking on us for, why don't you pick on the white people?" The defendant was then placed under arrest and charged under an ordinance prohibiting the making, aiding, countenancing, or assisting in making any noise, riot, disturbance, or improper diversion to the annoyance or disturbance of the citizens, or other persons in the city. It was not claimed that anyone other than the officers did, in fact, hear the defendant's remarks or that, apart from the words referred to, the defendant created any disturbance. The defendant contended that the use of abusive language toward a police officer did not, in itself, constitute disorderly conduct. The court commented that while it is obvious that not every abusive epithet directed toward police officers would be sufficiently disturbing or provocative to justify arrest for disorderly conduct, there is no sound reason why officers must be subjected to indignities as those committed by the defendant, indignities that go far beyond when any other citizen might reasonably be expected to endure.

CUMULATIVE CASES
Cases:

There was question of fact as to whether defendant was guilty of disorderly conduct where police officers testified that he shouted obscenities to them several times and that his heated shouting, yelling, and cursing continued throughout his arrest. *Lepard v State (1989, Ind App) 542 NE2d 1347.*

In prosecution for disorderly conduct arising out of defendant's protest of her brother's arrest for disorderly conduct, defendant's statement to police officer that he had some type of grudge and had no right to be arresting brother, her calling police officer "asshole," and her "continuing to debate it," did not constitute fighting words inherently likely to provoke violent reaction, did not constitute unreasonable noise, did not amount to public nuisance, and did not consitute incitement to imminent lawless action; accordingly, evidence was insufficient to sustain conviction. *Cavazos v State (1983, Ind App) 455 NE2d 618.*

Defendant's denunciation of police officers as "mother-fucking pigs" when they arrested her nephew in front of her house after he drove scooter at high rate of speed, rolled through stop sign, and was found not to have required motor-

cycle endorsement on his license, constituted use of "fighting words," and defendant thus was guilty of disorderly conduct under Minneapolis ordinance where confrontation between defendant and officers drew crowd, several members of which were brandishing clubs, and defendant's language had effect of inciting crowd. *State, City of Minneapolis v Lynch (1986, Minn App) 392 NW2d 700.*

Defendant who yelled "goddamn fucking pigs" at police who were arresting her friends was improperly convicted under disorderly conduct/obscenity statute which did not define obscenity, since her conviction was obtained prior to state appellate court opinion which interpreted statute to prohibit such language against police. However, anyone subsequently convicted for same conduct would be guilty, since appellate ruling would give public adequate notice of proscribed conduct. *Pringle v Court of Common Pleas (1985, CA3 Pa) 778 F2d 998* (applying Pa law).

[*18] Words spoken in incident unrelated to other unlawful or suspicious behavior
[*18a] Charge held established

Insults communicated directly to a law enforcement officer in incidents unrelated to any other unlawful or suspicious behavior by the speaker were held under the circumstances of the following cases to establish the offense of breach of the peace or disorderly conduct, although there were no allegations that third persons were disturbed by or attracted to the incident.

In *Bolden v State (1978) 148 Ga App 315, 251 SE2d 165,* the court held that the use of the terms "son of a bitch", "mother fucker," "pig," "mother fucking pig," and "bastard" directed toward an arresting officer amply supported the defendants' conviction of a charge of breaching the peace by the use of abusive and opprobrious language, although apparently no third persons were disturbed thereby. The court rejected the defense argument that the police officer's testimony that the language used by the women did not make him angry showed that there was not an immediate breach of the peace as a result of that language. Reasoning that the state need not prove the effect of the words upon a particular individual, the court stated that a policeman's admission that he is used to hearing obscene language during the performance of his duties is not a defense available to the defendant charged with a breach of the peace. Under the terms of that statute, said the court, a jury is only required to determine that the words uttered were those "which as a matter of common knowledge and under ordinary circumstances will, when used to or of another person in his presence," naturally tend to provoke a violent response.

Despite evidence that an obscenity directed by the defendant to a police officer while they were conversing in the yard of an ice cream stand was not overheard by persons standing nearby, the court reversed a judgment against the police officer in an action by the defendant on the theories of false arrest and assault and battery in *Bale v Ryder (1972, Me) 290 A2d 359.* The disorderly conduct statute pursuant to which the defendant was arrested included the language "annoy or interfere with any person." The trial judge instructed the jury that these words did not include a police officer and that it was not sufficient that the profane language annoy only the police officer to support the disorderly conduct arrest. The defendant argued that he had not directed the remark toward the officer, but, even assuming that he had, this would not have constituted a violation of the statute in the absence of some evidence that it had disturbed or annoyed a third person at the scene of the incident. Rejecting the plaintiff's argument and finding the trial judge's instruction erroroneous, the court said that the phrase "annoy or interfere with any person" was clear and unequivocal and that the legislature could easily have modified the expression, had it intended to exclude police officers. The court found no conceivable reason why a police officer or other public official responsible for maintaining law and order should have to be the object of obscenities and vulgarities of the type which, if addressed to a layman, would have a direct tendency to incite him to acts of violence.

Stating that a breach of the peace may be committed even by spoken words, provided they tend to provoke immediate violence, the court affirmed the conviction of the defendant for disorderly conduct arising from his use of foul names and other curse words in speaking to two police officers sitting in a police car standing in a public roadway in *People v Lavoy (1953, Co Ct) 124 NYS2d 639.* After the defendant directed the opprobrious epithets to the officers, he struck the police car with his fists and began to scuffle with the officers. After noting that the defendant's remarks occurred in a public place and were offensive, disorderly, and likely to produce a fight, the court stated that it is not necessary that the peace and quiet of a sizable segment of the community be disturbed to support a conclusion that a breach of the peace occurred. A fight itself is a breach of the peace, said the court, and where the defendant starts a fight, he provokes a

breach of the peace by so doing. The court added that it would seem to follow that only when the disorderly conduct fails to cause immediate violence would it be necessary to inquire as to whether or not the peace and quiet of a sizable segment of the community was disturbed or was likely to be.

CUMULATIVE CASES
Cases:

Defendant was properly convicted of disturbing the peace for his remark to police officer, "Well, motherfucker, I will holler and yell when and wherever I want to," where defendant made remark willfully and maliciously in that he made remark visually and directly to officer, and where remark constituted "fighting words" in that threat of violence or threat or violent reaction was present. *Whitefish v O'Shaughnessy (1985, Mont) 704 P2d 1021.*

[*18b] Charge held not established

The courts held under the facts of the following cases that opprobrious words uttered directly to a law enforcement officer in incidents not involving any other unlawful or suspicious behavior by the speaker did not establish the offense of breach of the peace or disorderly conduct where third persons were not alleged to have been within earshot.

No allegation was made that the remarks objected to were heard by anyone other than the police officers to whom they were addressed in *Skelton v Birmingham (1976, Ala App) 342 So 2d 933,* remanded on other grounds (Ala) *342 So 2d 937,* on remand (Ala App) *342 So 2d 938,* in which the court held that the defendant's reference to a law enforcement officer as a "Big Shit," made while the officer was in the act of discharging his lawful duties, did not violate a breach of the peace statute. The officer parked the marked police cruiser in which he was riding to purchase a newspaper, thereby blocking a sidewalk crossing an alley and the defendant's path. According to the officer, the defendant called to the officer and his partner, from some distance away, "are you big shits going to move your car, or are you going to make me walk around?" The officer then arrested the defendant pursuant to a statute making it unlawful for any person to make any insulting remark or the like calculated to insult or humiliate an officer while engaged in discharging his lawful duty. Construing the statute to prohibit only those verbal acts having a direct tendency to cause a violent reaction in the officer to whom the words were addressed, the court explained that the words had to be calculated to cause an immediate breach of the peace, not merely arouse anger or resentment. The court noted that implicit in the statute is the purpose to offer the officer a legal alternative to violence, namely, redress through the judicial process rather than reliance on more immediate and more primitive means of obtaining satisfaction.

In *Anniskette v State (1971, Alaska) 489 P2d 1012,* the court held that a disorderly conduct statute did not apply to an abusive phone call made to the home of a state trooper assigned to local duty. The defendant regularly telephoned the local resident trooper and complained at length regarding the trooper's qualifications and performance. Repeated calls were often made late at night while the defendant was apparently intoxicated. The defendant was charged with making a single call on a particular date, during the course of which he complained about the trooper's effectiveness and qualifications and described the trooper as a "no good goddamn cop." The statute under which the defendant was charged prohibited the use of obscene or profane language in a public place or private house or place to the disturbance or annoyance of another, the making of a loud noise, or engaging in tumultuous conduct in a public place or private house to the disturbance or annoyance of another. Expressing its sympathy concerning the difficulties encountered by a state trooper in a small community, where village vexations at times can reach a fever pitch, the court said that although it might view the defendant's conduct with personal disapproval it could find neither legislative language nor constitutional power to read the statute as including within its ambit a single telephone call criticizing a public officer for the performance of his official duties.

The court reversed the conviction for disorderly conduct of a defendant who addressed insulting words, out of the hearing of others, toward a police officer while working under his supervision in *People v Slaton (1974) 24 Ill App 3d 1062, 322 NE2d 553.* Apparently under the impression that he was being treated unfairly, the defendant stated, according to the officer, that "the son of a bitches are picking on me and I have done enough work for today and I am not going to do any more work and you can go. . . yourself and everybody else on the property and. . . [I am] . . . getting sick and tired of it." This complaint was made to the officer outside the immediate presence of others and the defendant displayed no physical conduct threatening a breach of the peace. The officer further testified that he was not provoked to such a

breach. Noting that the relationship between the words spoken by the defendant and the public order was very tenuous and that words spoken under these circumstances were not of a nature to evoke a violent response, especially from a police officer presumably trained to preserve the public order, the court concluded that the state did not prove the elements of disorderly conduct as required by the statute. The court reasoned that the defendant's statements indicated that he did not expect violence, but, rather, his return to his cell, which is what happened. The court found not an iota of proof that the words uttered by the defendant inflicted injury or intended to invite an immediate breach of the peace.

In *People v Trester (1981) 96 Ill App 3d 553, 52 Ill Dec 96, 421 NE2d 969,* the court held as a matter of law that no breach of the peace occurred when the defendant, who, while riding in an elevator in the county court building with a police officer, stated to the officer that if he would take off his gun and badge he would punch the officer in the nose and they would fight. The testimony indicated that the statement was made by the defendant in a normal speaking voice and that the only movement made by him was to step away from the wall of the elevator upon which he had been leaning. The officer testified that he would have liked to have fought the defendant but did not and that he was disturbed by the defendant's remarks and thought that the defendant might hit him. The defendant was charged under a statute prohibiting conduct occurring when one knowingly acts in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. The court concluded that the profane nature of the defendant's language did not give rise to a breach of the peace. Under its interpretation of the statute, the court explained, construction of the defendant's remarks as a challenge to the officer to fight would also be insufficient. As the words were couched in terms of what might happen if the officer removed his badge and gun, the words could not be construed as an immediate threat even when accompanied by a step away from the wall, the court observed.

The court held in *State v Profaci (1970) 56 NJ 346, 266 A2d 579,* that an obscene remark directed toward a police officer which was heard only by another officer did not support the defendant's conviction under a disorderly persons statute. The defendant's motor vehicle was stopped by the officer for a routine motor vehicle check. Upon discovering that the lisence of the defendant driver was unsigned, the officer informed the defendant that he was going to issue a warning. The defendant allegedly exited from his car and while still on the road, in a loud voice, stated, "what the f____ are you bothering me for." The officer then advised the defendant that he was under arrest for using loud and profane language. Apparently the only other person to overhear the remark was a second police officer who had arrived on the scene minutes after the defendant's car was stopped. The defendant was charged under a statute prohibiting the utterance of loud and offensive or profane or indecent language in any public street, public conveyance, or place to which the public is invited. In response to the defendant's argument that the disorderly conduct statute was so vague and indefinite that it violated the First Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the court concluded that it was in fact constitutional because of its worthy purposes, that is, to preserve the peace and to protect the sensibilities of those persons within hearing of the person uttering the language. The court explained that for a defendant to be guilty under the statute, the words must be spoken loudly, in a public place, and must be of such a nature as to be likely to incite the hearer to an immediate breach of the peace or to be likely, in light of the gender and age of the listener and the setting of the utterance, to affect the sensibilities of the hearer. After analyzing the facts, the court concluded that the language used under the circumstances was not likely to incite a breach of the peace or to offend the sensibilities of the listener, and it reversed the conviction of the defendant.

Where it was not alleged that the remarks complained of were overheard by others, the court in *Ruthenbeck v First Criminal Judicial Dist. Court (1929) 7 NJ Misc 969, 147 A 625,* set aside the conviction of the prosecutor for violating a borough ordinance prohibiting the utterance of any loud, profane, indecent, lewd, abusive, or offensive language in any public place. The evidence indicated that the prosecutor entered the police headquarters of the borough, located in a public building, and said in a loud and offensive tone to a member of the police department acting as clerk of court at the moment, "You big muttonhead, do you think you are a czar around here?" Noting that a "muttonhead" is defined as a dull, heavy, and uninteresting person and acknowledging that the dignity of the clerk may have been ruffled by such language, the court nevertheless concluded that this language was not indecent or disorderly as defined by the legislative power conferred upon the borough council. It is not every trivial epithet, addressed by one person to another, even in the office of the clerk of the recorder's court and to a police officer doing desk duty there, said the court, that constitutes disorderly conduct.

In *People ex rel. Conley v Frank (1935) 245 App Div 777, 281 NYS 158,* the court granted the defendant her release on a writ of habeas corpus and ruled that an information purporting to charge her with disorderly conduct was insufficient to charge a crime. The information stated that on a particular date the defendant feloniously, wrongfully, unjustly, unlaw-

fully, wickedly, willfully, maliciously, and knowingly violated a disorderly conduct statute by committing acts whereby a breach of the peace might be occasioned, particularly, used offensive, abusive, and insulting language and shouting in a loud voice to a police officer "go on now and mind your own god damn business you can't talk to me, the last time your fellows took me in you broke two of my ribs and I will not go with you this time." Noting that the information merely alleged that the defendant committed acts whereby a breach of the peace "might be occasioned," the court concluded that the information did not charge any offense, since whatever those acts are was left to surmise and conjecture. The court cited as fatal the failure of the complaint to allege that any other person, except the one to whom the words were addressed, heard the statement and that it was not contended that a crowd collected or that a single act occurred which would indicate disorder or violence. Although noting that it is well settled that the use of profane language in a loud and boisterous tone of voice in a public place and in the presence and hearing of others constitutes disorderly conduct, the court cited prior authority that opprobrious and profane words addressed to a policeman and not heard by others do not constitute an offense against the peace. To hold otherwise, the court explained, would vest police officers with the power to reap private vengeance. And a police officer actuated by malice, the court pointed out, need only make an insulting remark to a citizen and then drag that citizen to jail for a breach of the peace if the latter should resent the remark.

The court reversed the defendant's conviction for disorderly conduct arising from his inquiry directed toward a police officer in *People ex rel. Koehler v Magnes (1921, Gen Sess) 187 NYS 913.* The defendant was charged with having used threatening and abusive language and acts amounting to insulting behavior with intent to provoke a breach of the peace. The court said that to ask one or more questions of a police officer, propounded in a quiet and gentlemanly way and not attracting the attention of others, can under no circumstances be regarded as disorderly conduct. The record disclosed that the defendant asked simple questions of the police officer tending only to learn why two persons were placed in custody and the necessity of the issuance of a complaint against two persons who had already been apprehended by the police officer. This conduct, when done in a quiet and peaceful way, said the court, cannot be regarded as amounting to a transgression of any law, and the defendant had a perfect right to make the inquiries he did of a police officer, when such inquiries were propounded in a gentlemanly manner.

CUMULATIVE CASES
Cases:

Defendant's yelling "you bastards" as he drove by officer did not amount to use of language so inherently abusive as to amount to "fighting words" within meaning of disorderly conduct statute; defendant was not engaged in face-to-face confrontation with officer tending to incite immediate breach of peace when words were spoken, but rather defendant continued to travel past officer in his vehicle throughout brief incident. West's *Ga.Code Ann. § 16-11-39(a)(3). Turner v. State, 274 Ga. App. 731, 618 S.E.2d 607 (2005),* reconsideration denied, (July 28, 2008).

Defendant's conviction of breach of peace for cursing, complaining, and making argumentative remarks to police officers who were attempting to execute eviction judgment against defendant was improper, where such remarks did not constitute "fighting words," and thus they were constitutionally protected expressions. *State v Woolverton (1985, La App 5th Cir) 474 So 2d 1003.*

Testimony of arresting officer that while he was endeavoring to issue parking citation to driver of illegally parked vehicle, defendant, who with her husband owned nearby tavern, yelled at officer, "I am tired of this f s. You're not going to get away with this. I'm just tired of this f s," was insufficient to prove essential element for defendant to be found guilty of disorderly conduct, that her words were such as to provoke violent response from officer or others; consequently, defendant's conviction for minor-misdemeanor disorderly conduct could not stand. *State v Maxson (1990, Hamilton Co) 66 Ohio App 3d 32, 583 NE2d 402.*

Evidence that defendant approached police officer and said, "just because you've got a f badge you think you can f with people" and continued with "f you and your gun, money talks so I'll walk," failed to establish that words spoken by defendant were likely to inflict injury or provoke average person to immediate retaliatory breach of peace; accordingly, trial court erred in finding defendant guilty of disorderly conduct. *State v Hampton (1990, Hamilton Co) 66 Ohio App 3d 30, 583 NE2d 400.*

Motorist's use of expletive to express his dislike of roadblock, in comment not directed personally at trooper or anyone else, was free speech protected by First Amendment that motorist could not be punished for under disorderly conduct statute; comment did not constitute fighting words, was not obscene as comment was not erotic, and did not invade substantial privacy interest in manner that would warrant government intervention. U.S.C.A. Const. Amend. 1; 13 V.S.A. § 1026(3). *Long v. L'Esperance, 166 Vt. 566, 701 A.2d 1048 (1997).*

FOOTNOTES

n1 It supersedes the annotation at 34 ALR 566, entitled "Opprobrious words addressed to policemen as breach of peace."

n2 The term "disturbing the peace," sometimes used in statutes or ordinances, will be used synonymously with the term "breach of the peace" in this annotation.

n3 The term "insulting words" includes, in addition to the indecent, profane, and obscene, words of an argumentative nature questioning the authority of the officer to carry out his duties.

n4 The term "police or other law enforcement officer" includes, but is not restricted to, policemen, sheriffs, deputy sheriffs, constables, and privately employed security guards.

n5 For a detailed discussion of United States Supreme Court cases determining the constitutionality of disorderly conduct or breach of the peace statutes, see the annotation at *39 L Ed 925,* entitled "Supreme Court's view as to the protection or lack of protection, under the Federal Constitution, of the utterance of "fighting words.""Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct," is the subject of annotation in *12 A.L.R.3d 1448.*

n6 See § 1[a], supra.

n7 The American Law Institute has suggested a disorderly conduct statute in its proposed official draft of a Model Penal Code.

n8 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 1.

n9 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 4.

n10 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 1.

n11 Bailey & Rothblatt, Handling Misdemeanor Cases § 316.

n12 *Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 30.*

n13 Torcia, Wharton's Criminal Procedure (12th Ed) § 64.

n14 Bailey & Rothblatt, Handling Misdemeanor Cases § 315.

n15 This is the implication of numerous cases throughout the annotation.

n16 See, for example, the instruction reviewed in *Lane v Collins (1965) 29 Wis 2d 66, 138 NW2d 264.*

n17 See, for example, *Georgetown v Scurry (1912) 90 SC 346, 73 SE 353,* and *Pavish v Meyers (1924) 129 Wash 605, 225 P 633.*

n18 See, for example, *Re Welfare of J. (1978, Minn) 263 NW2d 412,* where the officer was forced to admit on cross-examination that he had received some sensitivity training on how to respond to name calling and that, although angry, he did not react violently to the name calling by the defendant.

n19 See, for example, *People v Gingello (1971) 67 Misc 2d 224, 324 NYS2d 122,* where the court ruled that it could properly find that the defendant, charged with disorderly conduct, was guilty of harassment, since the former charge required proof of an additional element not required for the latter.

n20 See, for example, *People v Douglas (1975) 29 Ill App 3d 738, 331 NE2d 359,* where the court, in reversing the defendant's conviction for disorderly conduct, noted that although both officers testified that the defendant's arrest for disorderly conduct was predicated upon the fact that people in the area began looking in their direction at the time of the disagreement, neither officer questioned any of these onlookers after the arrest was

made. The court emphasized that the record showed that no disorder took place and that no evidence was introduced as to the effect of the language, if any, upon the onlookers. In the absence of any evidence permitting even an inference of a disturbing effect upon the bystanders through the defendant's conduct, said the court, the conviction for disorderly conduct could not stand. Similarly, in *Chicago v Blakemore (1973) 15 Ill App 3d 994, 305 NE2d 687*, the court noted that no disturbance or disorder had occurred and that no evidence had been introduced as to the effect of the defendant's conduct upon the bystanders who, the police alleged, gathered in response to the defendant's vulgar language in his dispute with the police.

n21 Included in the group of cases infra supporting the view that no breach of peace is represented is one Appellate Division case, all the rest, in either grouping, being lower court cases.

n22 The statute provided that any person who, without provocation, used to or of another, and in his presence, opprobrious words or abusive language tending to cause a breach of the peace would be guilty of a misdemeanor. The defendant later challenged this statute successfully on constitutional grounds in a federal habeas corpus proceeding, the United States Supreme Court ruling ultimately in *Gooding v Wilson (1972) 405 US 518, 31 L Ed 408, 92 S Ct 1103*, that the Georgia statute was, on its face, unconstitutionally vague and overbroad, in violation of the First and Fourteenth Amendments to the United States Constitution, since the state courts had not, by construction, limited the statutory proscription to "fighting" words, which by their very utterance tend to incite an immediate breach of the peace.

n23 The validity of the Elmore decision was questioned many years later by the United States Supreme Court in *Gooding v Wilson (1972) 405 US 518, 31 L Ed 408, 92 S Ct 1103*, in which the court, after quoting extensively from the reasoning of the Elmore decision, noted that this decision and others construed the phrase "tending to cause" a breach of the peace in the applicable statute as not limited to words that naturally tend to provoke violent resentment, the test by which such statutes should be judged pursuant to the Supreme Court's decision in *Chaplinsky v New Hampshire (1942) 315 US 568, 86 L Ed 1031, 62 S Ct 766.* The court relied on the Elmore Case and others in concluding that the the Georgia disorderly conduct statute made it a breach of the peace merely to speak words offensive to some who hear them, and therefore swept too broadly from a constitutional point of view.

n24 The doctrine represented by this case has apparently been overruled by *Columbus v Fraley (1975) 41 Ohio St 2d 173, 70 Ohio Ops 2d 335, 324 NE2d 735*, cert den *423 US 872, 46 L Ed 102, 96 S Ct 138*, a case outside the scope of this annotation, in which the court abandoned the rule permitting forceable, and by implication, verbally offensive, resistance to arrest by uniformed police officers in the absence of excessive or unnecessary force by those officers.

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