#4809-DALE H.DREW,et al.VS STATE.
No. 113, September 1960

4809

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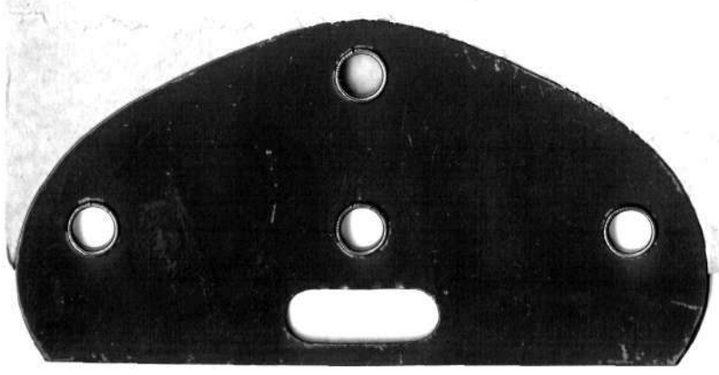

4809

HARRY N. BAETJER
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
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ROBERT R. BAIR
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CHARLES B. REEVES, JR.
WILLIAM J. McCARTHY
RUSSELL R. RENO, JR.

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
MERCANTILE TRUST BUILDING
BALTIMORE & CALVERT STS.
BALTIMORE, MARYLAND 21202
AREA CODE 301 · PLAZA 2-6780

FREDERICK STEINMANN
THEODORE W. HIRSH
THOMAS P. PERKINS, III
PAUL S. SARBANES
JOSEPH H. H. KAPLAN
LUKE MARBURY
BENJAMIN R. CIVILETTI
STUART H. ROME
C. VAN LEUVEN STEWART
HENRY F. LEONNIG
GERALD M. KATZ
ANTHONY M. CAREY
WILBUR E. SIMMONS, JR.
HENRY R. LORD
ROBERT C. EMBRY, JR.
GEORGE C. DOUB, JR.

JOSEPH FRANCE
COUNSEL

November 1, 1966

Robert C. Murphy, Esq.
Deputy Attorney General
One Charles Center
Baltimore, Maryland 21201

Re: Drews, et al., v. State

Dear Bob:

On November 23, 1965, you wrote me concerning recovery of costs to which the State was entitled in the above matter. It has taken me some time and several inquiries to obtain a response from my clients in the matter. The response is to the effect that they are without any funds to pay those costs to which the State is entitled.

Sincerely,

Francis D. Murnaghan, Jr.

FDMjr:mad
29526

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
MERCANTILE TRUST BUILDING
BALTIMORE & CALVERT STS.
BALTIMORE, MARYLAND 21202
AREA CODE 301 PLAZA 2-6780

November 1, 1966

Robert C. Murphy, Esq.
Deputy Attorney General
One Charles Center
Baltimore, Maryland 21201

Re: Drews, et al., v. State

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Francis D. Murnaghan, Jr.

FDM,Jr:mad
29526

STATE LAW DEPT.
NOV 3 1966

+ M. Murphy H~

4839

IN THE COURT OF APPEALS OF MARYLAND

No. 113

September Term, 1960

DALE H. DREWS, et al

v.

STATE OF MARYLAND

Henderson, C.J.
Hammond
Prescott
Horney
Marbury
Oppenheimer,
JJ.

Opinion by Horney, J.

Oppenheimer, J., dissents

Filed: October 22, 1964

The appellants were convicted in 1960 of violating Code (1957), Art. 27, § 123, by "acting in a disorderly manner to the disturbance of the public peace" in a place of "public resort or amusement." On the appeal to this Court, the convictions were affirmed in Drews v. State, 224 Md. 186, 167 A.2d 341 (1961). Having found that Gwynn Oak Amusement Park in Baltimore County was a place of public resort or amusement within the meaning of the statute, we held that the conduct of the appellants -- two of whom were white men, one a white woman, and the other a colored woman -- during the course of a demonstration protesting the segregation policy of the park, by joining arms and dropping to the ground after they had refused to obey a lawful request to leave the privately owned park, was disorderly in that it "disturbed the public peace and incited a crowd." We also held that the action taken by the county police, in arresting the appellants for disorderly conduct (after the police at the request of the park manager had asked them to leave and again they refused), did not constitute state enforcement of racial discrimination in violation of the Fourteenth Amendment of the United States. A direct appeal was thereafter taken to the Supreme Court of the United States, which, in a per curiam filed June 22, 1964, in Drews v. Maryland, 378 U.S. 547, vacated the judgments and remanded the case to this Court "for consideration in light of Griffin

v. Maryland [378 U.S. 130] and Bell v. Maryland [378 U.S. 226]," decided on the same day as Drews.

In Griffin v. State, 225 Md. 422, 171 A.2d 717 (1961), where the park officer was authorized to make arrests either as a paid employee of a detective agency then under contract to protect and enforce the racial segregation policy of the operator of Glen Echo Amusement Park in Montgomery County or as a nonsalaried special deputy sheriff of the county, we affirmed the conviction of the appellants for trespassing on private property in violation of Code (1957), Art. 27, § 577, when they refused to leave the premises after having been notified to do so. But the Supreme Court in Griffin v. Maryland, supra, held that the arrest of the appellants by the park officer was state action in that he was possessed of state authority and purported to act under that authority, and reversed the judgment. In Bell v. State, 227 Md. 302, 176 A. 2d 771 (1962), where the appellants had entered the private premises of a restaurant in Baltimore City in protest against racial segregation, sat down and refused to leave when asked to do so on the theory that their action in remaining on the premises amounted to a permissible verbal or symbolic protest against the discriminatory practice of the owner, we affirmed the convictions for criminal trespass for the reason that the right to speak freely and to make public protest did not import a right to invade or remain on privately owned property so long as the owner retained the right to choose his guests or

customers. The Supreme Court granted certiorari. In the interim between the decision of this Court and the decision of the Supreme Court, both the city and state enacted "public accommodation laws." When the Supreme Court decided Bell v. Maryland, supra, it reversed the judgment of this Court and remanded the case for a determination by us of the effect of the subsequently enacted public accommodation laws on pending criminal trespass convictions.[1]

On the remand of this Drews case, the appellants raise two questions. In effect they contend: (i) that their arrest and conviction constitutes state action in the light of the decision in Griffin v. Maryland, supra; and (ii) that to uphold their conviction now for acts arising out of sit-in demonstrations at Gwynn Oak Amusement Park would be to deny them due process and equal protection because the State's Attorney for Baltimore County has failed to prosecute approximately two hundred other cases charging the same offense.

(i)

In reconsidering the convictions of the "Drews" appellants in the light of Griffin v. Maryland, supra, we find nothing therein which compels or requires a reversal of our decision in Drews v. State (224 Md. 186). Significantly, the question as to whether the same result would have been reached

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1. See Bell v. State, Md. , A.2d (1964), decided on the remand on or about the same time as this case.

by the Supreme Court had the arrests in Griffin been made by a regular police officer, as in the Drews case, was not decided. The arrests and subsequent convictions of the appellants for ciminal trespass were held in Griffin to constitute state action because the arresting officer, a park employee, was also a special deputy sheriff. In Drews, however, the appellants not only refused to leave the amusement park peacefully after they had been requested to do so, but acted in a disorderly manner when the arresting officers, who were county police officers, not park employees, undertook to eject them. The record in Drews does not show, nor has it ever been contended, that the park employee, who assisted the arresting officers, had power (as was the case in Griffin) to make arrests. By reversing Griffin and remanding Drews, the Supreme Court must have had some doubt as to whether the two cases were distinguishable. We think there are important differences in the two cases between the reasons or causes for the arrests and the type of police personnel that made the arrests, and that such distinctions are controlling.

In Drews, where the trespassers conducted themselves in a disorderly manner when the police undertook to forcibly eject them from the amusement park in an effort to prevent them from further inciting the gathering crowd by remaining in the park after they had been requested to leave by the park manager as well as the county police, the arrests

were made by policemen who were not employed by the park, who were not paid by the park, and who were under no orders of any park official. The very fact that the police made no move to eject the trespassers from the park until they were requested to do so by the manager shows the complete absence of any cooperative state action. Nor was there any evidence that the State desired or intended to maintain the amusement park as a segregated place of amusement. In these circumstances, it seems clear to us that the arrest of the Drews appellants (who were both white and colored) for disorderly conduct did not constitute state enforcement of racial discrimination. To hold otherwise would, we think, not only deny the park owners equal protection of the laws, but could seriously hamper the power of the State to maintain peace and order and, when imminent as was the case here, to forestall mob violence or riots.

We deem it unnecessary to elaborately discuss the only two cases cited by the appellants -- State v. Brown, 195 A.2d 379 (Del. 1963), and Wright v. Georgia, 373 U.S. 284 (1963). Neither is apposite here and, assuming they are, both are clearly distinguishable on the facts. Even if the arrest of the Drews appellants for disorderly conduct was the result of or arose out of their ejection from the park for trespassing on private property, there was no violation of a constitutional guarantee. We reiterate what was recently said in In Matter of Cromwell, 232 Md. 409, 413, 194 A.2d 88 (1963), that "we find no violation of the Fourteenth Amendment in the assertion of a

private proprietor's right to choose his customers, or to eject those who are disorderly." We see no reason to reverse the convictions in this case.

The reason for the remand of the case for consideration in the light of Bell v. Maryland, supra, is not clear. The judgments in Bell were vacated and the case remanded to enable this Court to pass upon the effect of supervening public accommodation laws on the criminal trespass law. Since there is no provision in the public accommodation law enacted by the State (Code, 1964 Supp., Art. 49B, § 11) with respect to amusement parks, we need not decide the effect of the supervening legislative enactment on the convictions in this case.

(11)

The second contention of the appellants -- that the failure of the State to prosecute others for the same or similar offenses is a denial of due process or equal protection -- is without merit and has no bearing on the convictions in this case. Guilt or innocence cannot be made to depend on the question of whether other parties have not been prosecuted for similar acts. Callan v. State, 156 Md. 459, 466, 144 Atl. 350 (1929). Nor is the exercise of some selectiveity in the enforcement of a criminal statute, absent a showing of unjustifiable discrimination, violative of constitutional guarantees. Oyler v. Boles, 368 U.S. 448 (1962). See also Moss v.Hornig, 314 F.2d 89 (C.A.2d 1963).

JUDGMENTS REINSTATED AND REAFFIRMED; APPELLANTS TO PAY THE COSTS.

4809

IN THE COURT OF APPEALS OF MARYLAND

NO. 113

SEPTEMBER TERM, 1960

DALE H. DREWS, et al

v.

STATE OF MARYLAND

Henderson, C.J.
Hammond
Prescott
Horney
Marbury
Oppenheimer,
JJ.

Dissenting Opinion
by
OPPENHEIMER, J.

Filed: October 22, 1964

Oppenheimer, J. dissenting:

In Griffin v. Maryland, 378 U.S. 130 (1964), the Supreme Court of the United States reversed the judgments against the defendants affirmed by us in Griffin v. State, 225 Md. 422, 171 A.2d 717 (1961) on the ground that the arrests were the products of State action taken because the defendants were Negroes, and therefore racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. In Griffin, the arresting officer, Collins, was a deputy sheriff of Montgomery County employed by and subject to the direction and control of the amusement part. The record shows that in this case the special policeman, Officer Wood, was in the employ of the amusement part but it does not show whether or not he had been deputized by Baltimore County. Pursuant to the instructions of the park's management, Wood told the defendants the park was closed to Negroes, ordered them to leave and, when they did not, sent for the Baltimore County police. He and the county police together removed the defendants from the park.

If Wood, the "special officer" in this case, had virtually the same authority from Baltimore County that Collins had from Montgomery County, it seems to me immaterial that he called in the Baltimore County police to help him evict the defendants. He was the proximate cause of the

arrests. If his authority stemmed from the State, then under Griffin v. Maryland, supra, the State was a joint participant in the discriminatory action.

On the facts, it also seems immaterial that the convictions here were for disorderly conduct rather than for trespass as in Griffin. In resisting the command of the officers to leave the park, the defendants used no force against the officers or anyone else; they held back or fell to the ground. Such failure to obey the command, if the command itself was violative of the Constitution, would not sustain the convictions. Wright v. Georgia, 373 U.S. 284, 291, 292 (1963).

The Baltimore County Code authorizes the county to appoint special police officers to serve for private persons or corporations. Baltimore County Code, Sections 24-13 and 35-3 (1958). I would remand this case to the Circuit Court for Baltimore County for the taking of additional testimony to determine whether or not Wood was appointed by Baltimore County under these sections of its Code. If he was, the convictions should be reversed.

Supreme Court Mutual

August 7, 1964

Frank H. Newell, III, Esquire
State's Attorney for Baltimore County
Court House
Towson, Maryland 21204

Re: Drews, et al v. Maryland

Dear Mr. Newell:

We are enclosing a copy of a letter received from the Clerk of the Supreme Court of the United States relating to costs in the above entitled case. We are also enclosing a letter from Francis D. Murnaghan, Jr., Esquire, counsel of record in the above case indicating that payment should be made to the firm of Venable, Baetjer and Howard, Mercantile Trust Building, Baltimore & Calvert Streets, Baltimore, Maryland 21202, of which he is a partner.

Will you please pay the Clerk's costs of One Hundred ($100.00) Dollars to the firm of Venable, Baetjer and Howard in accordance with Mr. Murnaghan's letter.

Very truly yours,

Robert C. Murphy
Deputy Attorney General

RCM:fms

Encl.

Bo Ho County

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

July 17, 1964

Hon. Thomas B. Finan
Attorney General of Md.
Maryland National Bank Bldg.
1200 One Charles Center
Baltimore 2, Maryland

RE: Drews et al. v. Maryland, No. 3,
October Term, 1963

Dear Mr. Finan:

The mandate of this Court in the above-entitled case has been mailed today to the Clerk of the Court of Appeals of Maryland.

The appellants are given recovery for costs in this Court as follows:

Clerk's costs $100

This amount should be paid into the Court of Appeals of Maryland or direct to opposing counsel or parties.

Very truly yours,

JOHN F. DAVIS, Clerk

By Evelyn R. Limstrong

(Mrs) Evelyn R. Limstrong
Assistant

RECEIVED
[redacted] 20 1964
STATE LAW DEPT.

HARRY N. BAETJER
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
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C. VAN LEUVEN STEWART
HENRY F. LEONNIG
GERALD M. KATZ
ANTHONY M. CAREY, III

JOSEPH FRANCE
COUNSEL

July 27, 1964

Honorable Thomas B. Finan
Attorney General of Maryland
Twelfth Floor
One Charles Center
Baltimore, Maryland 21201

Re: Drews, et al. v. Maryland, No. 3,
October Term, 1963

Dear Mr. Finan:

Enclosed is a copy of a letter which counsel for the Appellees in the above matter have received from the clerk of the Supreme Court. I should appreciate your arranging for a check to the order of this firm to cover the item of $100. indicated as recoverable for clerk's costs. Judge Watts, to whom the Supreme Court clerk wrote, is, of course, no longer in active practice, but his appearance had never been stricken in the Supreme Court.

Very truly yours,

Francis D. Murnaghan

Francis D. Murnaghan, Jr.

FDMjr:mad
Enclosure
CC: Honorable Robert B. Watts
29526

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

DALE H. DREWS, ET AL., Appellants	:	
v.	:	
STATE OF MARYLAND, Appellee	:	No.
	:	

CERTIFICATE OF SERVICE

I, Joseph S. Kaufman, Deputy Attorney General of Maryland, one of the Attorneys for the Appellee on whose behalf this Motion to Dismiss or Affirm is filed, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 20th day of April, 1961, I served copies of the Motion to Dismiss or Affirm to the individuals named below:

Messrs. Robert B. Watts
Francis D. Murnaghan, Jr.
Robert J. Martineau
of the firm of
Venable, Baetjer and Howard
1409 Mercantile Trust Building
Baltimore 2, Maryland

Attorneys for Appellants.

Each of the above services was made by depositing a full true and correct copy of the Motion to Dismiss or Affirm in the United States Post Office addressed to each of said respective parties with the postage thereon prepaid.

Joseph S. Kaufman
Deputy Attorney General
Of Counsel for the Appellee
1201 Mathieson Building
Baltimore 2, Maryland

AIR MAIL

March 30, 1961

John E. Jackson, Jr., Esq.
Assistant Attorney General
Law Department
New Orleans, Louisiana

Dear Mr. Jackson:

At the suggestion of Stedman Prescott, who asks to be remembered to you, I am asking your help.

By April 14th we will have to file a reply brief in the United States Supreme Court in the case of Drews v. State of Maryland. The situation is similar to your cases of Garner v. Louisiana, and Briscoe v. Louisiana (#617, 8, October Term, 1960).

Would you please send us copies of your Jurisdiction Statement reply and your brief, also Appellants' briefs, if available? Thank you for whatever you can do for us in this regard. Since time is running short, your promptness will also be appreciated.

Very truly yours,

James O'C. Gentry
Assistant Attorney General

JOG:imb

State of Louisiana

DEPARTMENT OF JUSTICE

~~Baton Rouge~~
New Orleans, La.

JACK P. F. GREMILLION
ATTORNEY GENERAL

April 4, 1961

Hon. N. Cleburn Dalton
Assistant Attorney General
State Capitol
Baton Rouge, La.

COPY

Dear Cleburn:

There is enclosed herewith letter from Honorable James O'C. Gentry, Assistant Attorney General, Baltimore, Maryland, dated March 30, 1961, addressed to me which is self explanatory.

Inasmuch as I understand you have been detailed to handle these cases, I would appreciate your responding direct with Mr. Gentry.

With kindest regards, I am,

Yours sincerely,

John E. Jackson, Jr.
Assistant Attorney General

JEJ,Jr./le
encl.
cc: Hon. James O'C. Gentry

Dear Mr. Gentry:

I am sure Mr. Dalton will advise you immediately. When you next see Stedman and his lady, kindly convey to them my best wishes and kindest personal regards. Hoping to have the pleasure of seeing you at the next convention, I am,

Sincerely,
John
John E. Jackson, Jr.

April 20, 1961

Hon. James R. Browning, Clerk
Supreme Court of the United States
Washington 25, D.C.

Dear Mr. Browning:

Re: Dale H. Drews, et al.
v. State of Maryland

We are enclosing the necessary copies of Motion to Dismiss or Affirm and Certificate of Service in the above matter.

Very truly yours,

Joseph S. Kaufman
Deputy Attorney General

JSK-h

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

NO. _____

DALE H. DREWS, et al.,

Appellants,

vs.

STATE OF MARYLAND,

Appellee

On Appeal From The Court Of Appeals Of Maryland

PROOF OF SERVICE OF THE JURISDICTIONAL STATEMENT

I, James O. C. Gentry, Assistant Attorney General of the State of Maryland, hereby acknowledge receipt of a copy of the Appellants' Jurisdictional Statement in the case of Dale H. Drews, et al. v. State of Maryland, this 21st day of March, 1961.

/s/ JOCG

April 20, 1961

Messrs. Robert B. Watts
Francis D. Murnaghan, Jr.
Robert J. Martineau

Venable Baetjer and Howard

1409 Mercantile Trust Building

Baltimore 2, Maryland

Gentlemen: Re: Drews v.State - Supreme Court of the United States

We are enclosing copies of Motion to Dismiss or Affirm which is being filed today in the Supreme Court of the United States.

Very truly yours,

Joseph S. Kaufman
Deputy Attorney General

JSK-h

Encls.

Office of the Clerk,
Supreme Court of the United States,
Washington 25, D.C.

November 6, 1961

RE: DREWS, ET AL. v. MARYLAND,
No. 71, OCT. TERM, 1961:

Dear Sir:

The Court today entered the following order in the above-entitled case:

"The motion of Thurgood Marshall for leave to withdraw his appearance as counsel for appellants is granted."

Very truly yours,

JOHN F. DAVIS, Clerk

By Edwards J. Shade
Assistant

ECS:ht

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Mathieson Building
10 Light Street
Baltimore 2, Md.

4809

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 22, 1964

RE: DREWS, ET AL. v. MARYLAND,
No. 3, OCT. TERM, 1963

Dear Sir:

Enclosed is a copy of the opinion per curiam entered by the Court today in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk
By
E. T. Sydbendine
Assistant

Enclosure

Honorable Thomas B. Finan
Attorney General of Maryland
1200 One Charles Center
Baltimore 2, Md.

RECEIVED
JUN 24 1964
STATE LAW DEPT.

SUPREME COURT OF THE UNITED STATES

DREWS ET AL. *v.* MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

No. 3. Decided June 22, 1964.

PER CURIAM.

The judgment is vacated and the case is remanded to the Court of Appeals of Maryland for consideration in light of *Griffin* v. *Maryland*, No. 6, October Term, 1963, and *Bell* v. *Maryland*, No. 12, October Term, 1963, both decided this date.

MR. JUSTICE DOUGLAS would reverse outright on the basis of the views expressed in his opinion in *Bell* v. *Maryland*.

MR. JUSTICE BLACK, MR. JUSTICE HARLAN and MR. JUSTICE WHITE dissent.

RECEIVED
JUN 24
STATE LAW DEPT.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

DALE H. DREWS, ET AL.,	:	
Appellants,	:	
v.	:	No.
STATE OF MARYLAND,	:	
Appellee.	:	

CERTIFICATE OF SERVICE

I, Robert C. Murphy, Deputy Attorney General of Maryland, one of the Attorneys for the Appellee on whose behalf this Motion to Dismiss or Affirm is filed, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 19th day of April, 1965, I served a copy of the Motion to Dismiss or Affirm to the Attorneys for the Appellants,

Francis D. Murnaghan, Jr., Esquire

Paul S. Sarbanes, Esquire
1400 Mercantile Trust Building
Baltimore, Maryland 21202

This service was made by depositing a full true and correct copy of the Motion to Dismiss or Affirm in the United States Post Office, addressed as above, with the postage thereon prepaid.

Robert C. Murphy
Deputy Attorney General
Of Counsel for the Appellee
1200 One Charles Center
Baltimore, Maryland 21201

4 PSS:mms 3/18/65 29526

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

NO. _____

DALE H. DREWS, et al.,

Appellants,

v.

STATE OF MARYLAND,

Appellee

On Appeal From The Court Of Appeals Of Maryland

PROOF OF SERVICE OF THE JURISDICTIONAL STATEMENT

I, Robert C. Murphy, Deputy Attorney General of the State of Maryland, hereby acknowledge receipt of a copy of the Appellants' Jurisdictional Statement in the case of Dale H. Drews, et al. v. State of Maryland, this 19 day of March, 1965.

_____

4/4/66 payment not to be made until at RCM

November 23, 1965

Francis D. Murnaghan, Jr., Esq.
1409 Mercantile Trust Building
Baltimore, Maryland 21202

Re: Drews, et al., v. State

Dear Frank:

As you know, the Supreme Court, in its per curiam decision of June 1, 1965, granted the State's Motion to Dismiss in the above captioned case. Prior thereto, the Court of Appeals of Maryland had affirmed the convictions in these cases, awarding costs to the State. At the present time, the State has paid all outstanding printing bills with the exception of one for $84.35. The State's total costs for printing its briefs in the Court of Appeals of Maryland amounted to $159.55, and appearance fees awarded to the State amount to $20.00, or a total of $179.55. I would appreciate it if you would have your clients remit this amount payable to the order of the State Law Department at your very earliest convenience. In the event that our records are in error concerning what I believe to be due and owing to the State, or for any other reason this amount will not be forthcoming, I would appreciate your so advising me.

Best wishes,

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:mem

+ Md. Murphy #4809

IN THE COURT OF APPEALS OF MARYLAND

No. 113

September Term, 1960

DALE H. DREWS, et al

v.

STATE OF MARYLAND

Henderson, C.J.
Hammond
Prescott
Horney
Marbury
Oppenheimer,
JJ.

Opinion by Horney, J.

Oppenheimer, J., dissents

Filed: October 22, 1964

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In Griffin v. State, 225 Md. 422, 171 A.2d 717 (1961), where the park officer was authorized to make arrests either as a paid employee of a detective agency then under contract to protect and enforce the racial segregation policy of the operator of Glen Echo Amusement Park in Montgomery County or as a nonsalaried special deputy sheriff of the county, we affirmed the conviction of the appellants for trespassing on private property in violation of Code (1957), Art. 27, § 577, when they refused to leave the premises after having been notified to do so. But the Supreme Court in Griffin v. Maryland, supra, held that the arrest of the appellants by the park officer was state action in that he was possessed of state authority and purported to act under that authority, and reversed the judgment. In Bell v. State, 227 Md. 302, 176 A. 2d 771 (1962), where the appellants had entered the private premises of a restaurant in Baltimore City in protest against racial segregation, sat down and refused to leave when asked to do so on the theory that their action in remaining on the premises amounted to a permissible verbal or symbolic protest against the discriminatory practice of the owner, we affirmed the convictions for criminal trespass for the reason that the right to speak freely and to make public protest did not import a right to invade or remain on privately owned property so long as the owner retained the right to choose his guests or

customers. The Supreme Court granted certiorari. In the interim between the decision of this Court and the decision of the Supreme Court, both the city and state enacted "public accommodation laws." When the Supreme Court decided Bell v. Maryland, supra, it reversed the judgment of this Court and remanded the case for a determination by us of the effect of the subsequently enacted public accommodation laws on pending criminal trespass convictions.[1]

On the remand of this Drews case, the appellants raise two questions. In effect they contend: (i) that their arrest and conviction constitutes state action in the light of the decision in Griffin v. Maryland, supra; and (ii) that to uphold their conviction now for acts arising out of sit-in demonstrations at Gwynn Oak Amusement Park would be to deny them due process and equal protection because the State's Attorney for Baltimore County has failed to prosecute approximately two hundred other cases charging the same offense.

(i)

In reconsidering the convictions of the "Drews" appellants in the light of Griffin v. Maryland, supra, we find nothing therein which compels or requires a reversal of our decision in Drews v. State (224 Md. 186). Significantly, the question as to whether the same result would have been reached

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1. See Bell v. State, Md. , A.2d (1964), decided on the remand on or about the same time as this case.

by the Supreme Court had the arrests in Griffin been made by a regular police officer, as in the Drews case, was not decided. The arrests and subsequent convictions of the appellants for ciminal trespass were held in Griffin to constitute state action because the arresting officer, a park employee, was also a special deputy sheriff. In Drews, however, the appellants not only refused to leave the amusement park peacefully after they had been requested to do so, but acted in a disorderly manner when the arresting officers, who were county police officers, not park employees, undertook to eject them. The record in Drews does not show, nor has it ever been contended, that the park employee, who assisted the arresting officers, had power (as was the case in Griffin) to make arrests. By reversing Griffin and remanding Drews, the Supreme Court must have had some doubt as to whether the two cases were distinguishable. We think there are important differences in the two cases between the reasons or causes for the arrests and the type of police personnel that made the arrests, and that such distinctions are controlling.

In Drews, where the trespassers conducted themselves in a disorderly manner when the police undertook to forcibly eject them from the amusement park in an effort to prevent them from further inciting the gathering crowd by remaining in the park after they had been requested to leave by the park manager as well as the county police, the arrests

were made by policemen who were not employed by the park, who were not paid by the park, and who were under no orders of any park official. The very fact that the police made no move to eject the trespassers from the park until they were requested to do so by the manager shows the complete absence of any cooperative state action. Nor was there any evidence that the State desired or intended to maintain the amusement park as a segregated place of amusement. In these circumstances, it seems clear to us that the arrest of the Drews appellants (who were both white and colored) for disorderly conduct did not constitute state enforcement of racial discrimination. To hold otherwise would, we think, not only deny the park owners equal protection of the laws, but could seriously hamper the power of the State to maintain peace and order and, when imminent as was the case here, to forestall mob violence or riots.

We deem it unnecessary to elaborately discuss the only two cases cited by the appellants -- State v. Brown, 195 A.2d 379 (Del. 1963), and Wright v. Georgia, 373 U.S. 284 (1963). Neither is apposite here and, assuming they are, both are clearly distinguishable on the facts. Even if the arrest of the Drews appellants for disorderly conduct was the result of or arose out of their ejection from the park for trespassing on private property, there was no violation of a constitutional guarantee. We reiterate what was recently said in In Matter of Cromwell, 232 Md. 409, 413, 194 A.2d 88 (1963), that "we find no violation of the Fourteenth Amendment in the assertion of a

private proprietor's right to choose his customers, or to eject those who are disorderly." We see no reason to reverse the convictions in this case.

The reason for the remand of the case for consideration in the light of Bell v. Maryland, supra, is not clear. The judgments in Bell were vacated and the case remanded to enable this Court to pass upon the effect of supervening public accommodation laws on the criminal trespass law. Since there is no provision in the public accommodation law enacted by the State (Code, 1964 Supp., Art. 49B, § 11) with respect to amusement parks, we need not decide the effect of the supervening legislative enactment on the convictions in this case.

(ii)

The second contention of the appellants -- that the failure of the State to prosecute others for the same or similar offenses is a denial of due process or equal protection -- is without merit and has no bearing on the convictions in this case. Guilt or innocence cannot be made to depend on the question of whether other parties have not been prosecuted for similar acts. Callan v. State, 156 Md. 459, 466, 144 Atl. 350 (1929). Nor is the exercise of some selectiveity in the enforcement of a criminal statute, absent a showing of unjustifiable discrimination, violative of constitutional guarantees. Oyler v. Boles, 368 U.S. 448 (1962). See also Moss v.Hornig, 314 F.2d 89 (C.A.2d 1963).

JUDGMENTS REINSTATED AND REAFFIRMED; APPELLANTS TO PAY THE COSTS.

4809

IN THE COURT OF APPEALS OF MARYLAND

NO. 113

SEPTEMBER TERM, 1960

DALE H. DREWS, et al

v.

STATE OF MARYLAND

Henderson, C.J.
Hammond
Prescott
Horney
Marbury
Oppenheimer,
JJ.

Dissenting Opinion
by
OPPENHEIMER, J.

Filed: October 22, 1964

Oppenheimer, J. dissenting:

In Griffin v. Maryland, 378 U.S. 130 (1964), the Supreme Court of the United States reversed the judgments against the defendants affirmed by us in Griffin v. State, 225 Md. 422, 171 A.2d 717 (1961) on the ground that the arrests were the products of State action taken because the defendants were Negroes, and therefore racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. In Griffin, the arresting officer, Collins, was a deputy sheriff of Montgomery County employed by and subject to the direction and control of the amusement part. The record shows that in this case the special policeman, Officer Wood, was in the employ of the amusement part but it does not show whether or not he had been deputized by Baltimore County. Pursuant to the instructions of the park's management, Wood told the defendants the park was closed to Negroes, ordered them to leave and, when they did not, sent for the Baltimore County police. He and the county police together removed the defendants from the park.

If Wood, the "special officer" in this case, had virtually the same authority from Baltimore County that Collins had from Montgomery County, it seems to me immaterial that he called in the Baltimore County police to help him evict the defendants. He was the proximate cause of the

arrests. If his authority stemmed from the State, then under Griffin v. Maryland, supra, the State was a joint participant in the discriminatory action.

On the facts, it also seems immaterial that the convictions here were for disorderly conduct rather than for trespass as in Griffin. In resisting the command of the officers to leave the park, the defendants used no force against the officers or anyone else; they held back or fell to the ground. Such failure to obey the command, if the command itself was violative of the Constitution, would not sustain the convictions. Wright v. Georgia, 373 U.S. 284, 291, 292 (1963).

The Baltimore County Code authorizes the county to appoint special police officers to serve for private persons or corporations. Baltimore County Code, Sections 24-13 and 35-3 (1958). I would remand this case to the Circuit Court for Baltimore County for the taking of additional testimony to determine whether or not Wood was appointed by Baltimore County under these sections of its Code. If he was, the convictions should be reversed.

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Appellants were convicted of the crime of acting in a disorderly manner to the disturbance of the public peace in a place of public resort or amusement in violation of Section 123 of Article 27 of the Annotated Code of Maryland (1957 Ed.); were each sentenced to pay a fine of $25. plus costs of the case; and are not now in custody or at large on bail.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in the transcript the following:

1. All items in the transcript prepared by the Clerk of the Court of Appeals of Maryland in the prior appeal of this case to the Supreme Court of the United States, including:
   (a) Docket entries;
   (b) Criminal information;
   (c) Testimony;
   (d) Memorandum opinion of May 6, 1960 by Judge W. Albert Menchine in the Circuit Court of Baltimore County;
   (e) Opinion and Order of the Court of Appeals of Maryland, January 18, 1961.
   (f) Notice of Appeal to the Supreme Court of the United States filed February 13, 1961.
2. Opinion and Order of the Supreme Court of the United States, June 22, 1964, vacating the judgment below and remanding the case to the Court of Appeals of Maryland.

3. Mandate of the Supreme Court of the United States, July 17, 1964.

4. Order of the Court of Appeals of Maryland, July 31, 1964, setting the case for hearing.

5. Opinions and order of the Court of Appeals of Maryland, October 22, 1964.

6. Notice of Appeal to the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. Whether the Appellants were denied their rights under the privileges and immunities, equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States in that they were arrested and convicted, upon the request of a private owner, under a statute which was interpreted by the highest court of this State to make a criminal offense the refusal to leave a place of public resort or amusement when the request to leave was based solely on the ground that the presence of the Appellants conflicted with the owner's policy that members of the Negro race should be excluded.

2. Whether the Federal Civil Rights Act of 1964, 78 Stat. 241, requires the abatement of the pending convictions and dismissal of the prosecutions of Appellants.

3. Whether the Appellants were denied their rights under the due process clause of the Fourteenth Amendment in that they were arrested and convicted for exercising their rights to freedom of expression and association in a place of public resort or amusement.

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ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
Baton Rouge

April 5, 1961

Mr. James O'C. Gentry
Assistant Attorney General
State of Maryland
10 Light Street
Baltimore, Maryland

Dear Mr. Gentry:

Pursuant to your request of March 30, 1961 to Honorable John E. Jackson, we are forwarding you copy of petition for writ of certiorari and opposition thereto in the "sit-in" cases.

No briefs on the merits have yet been filed and petitioners' brief will not be due until August 25, 1961. We have not received a jurisdiction statement, as yet.

We trust that these documents will be of assistance to you.

Yours very truly,

N. Cleburn Dalton

N. Cleburn Dalton
Assistant Attorney General

NCD:mal

Enclosures

11/17/64 4809

Court of Appeals of Maryland

No. 113, September Term, 1960—Filed October 22, 1964

DALE H. DREWS ET AL.

vs.

STATE OF MARYLAND

Appeal from the Circuit Court for Baltimore County and on demand from the Supreme Court of the United States. W. Albert Menchine (on appeal), Judge.

Argued on remand by *Francis D. Murnaghan, Jr.* (*Henry R. Lord* on the brief), both of Baltimore, Maryland, for appellants.

Argued on remand by *Robert C. Murphy,* Deputy Attorney General (*Thomas B. Finan,* Attorney General, both of Baltimore, Maryland, and *Frank H. Newell, III,* State's Attorney for Baltimore County, Towson, Maryland, on the brief), for appellee.

Argued before HENDERSON, C. J.; HAMMOND, PRESCOTT, HORNEY, MARBURY and OPPENHEIMER, JJ.

Civil Rights—Demonstration Against Segregation In Amusement Park—Disorderly Conduct In Public Resort—Remand By Supreme Court.

After convictions for disorderly conduct in Gwynn Oak Park, appeal was taken to Court of Appeals of Maryland where the convictions were upheld. The Supreme Court vacated the judgments and remanded the case for consideration of Court of Appeals in view of Griffin vs. Maryland decision.

HELD: There was nothing in case of Griffin vs. Maryland which compels a reversal in this case. The arrests in this case were not to enforce segregation.

Judgments reinstated.

HORNEY, J. (Dissenting Opinion by OPPENHEIMER, J.)—

The appellants were convicted in 1960 of violating Code (1957), Art. 27, § 123, by "acting in a disorderly manner to the disturbance of the public peace" in a place of "public resort or amusement." On the appeal to this Court, the convictions were affirmed in *Drews vs. State,* 224 Md. 186, 167 A. 2d 341 (1961). Having found that Gwynn Oak Amusement Park in Baltimore County was a place of public resort or amusement within the meaning of the statute, we held that the conduct of the appellants —two of whom were white men, one a white woman, and the other a colored woman — during the course of a demonstration protesting the segregation policy of the park, by joining arms and dropping to the ground after they had refused to obey a lawful request to leave the privately owned park, was disorderly in that it "disturbed the public peace and incited a crowd." We also held that the action taken by the county police, in arresting the appellants for disorderly conduct (after the police at the request of the park manager had asked them to leave and again they refused), did not constitute state enforcement of racial discrimination in violation of the Fourteenth Amendment of the United States. A direct appeal was thereafter taken to the Supreme Court of the United States, which, in a *per curiam* filed June 22, 1964, in *Drews vs. Maryland,* 378 U. S. 547, vacated the judgments and remanded the case to this Court "for consideration in light of *Griffin vs. Maryland* [378 U. S. 130] and *Bell vs. Maryland* [378 U. S. 226]," decided on the same day as *Drews.*

In *Griffin vs. State,* 225 Md. 422, 171 A. 2d 717 (1961), where the park officer was authorized to make arrests either as a paid employee of a detective agency then under contract to protect and enforce the racial segregation policy of the operator of Glen Echo Amusement Park in Montgomery County or as a nonsalaried special deputy sheriff of the county, we affirmed the conviction of the appellants for trespassing on private property in violation of Code (1957), Art. 27, § 577, when they refused to leave the premises after having been notified to do so. But the Supreme Court in *Griffin vs. Maryland, supra,* held that the arrest of the appellants by the park officer was state action in that he was possessed of state authority and purported to act under that authority, and reversed the judgment. In *Bell vs. State,* 227 Md. 302, 176 A. 2d 771 (1962), where the appellants had entered the private premises of a restaurant in Baltimore City in protest against racial segregation, sat down and refused to leave when asked to do so on the theory that their action in remaining on the premises amounted to a permissible verbal or symbolic protest against the discriminatory practice of the owner, we affirmed the convictions for criminal trespass for the reason that the right to speak freely and to make public protest did not import a right to invade or remain on privately owned property so long as the owner retained the right to choose his guests or customers. The Supreme Court granted certiorari. In the interim between the decision of this Court and the decision of the Supreme Court, both the city and state enacted "public accommodation laws." When the Supreme Court decided *Bell vs. Maryland, supra,* it reversed the judgment of this Court and remanded the case for a determination by us of the effect of the subsequently enacted public accommodation laws on pending criminal trespass convictions.[1]

On the remand of this *Drews* case, the appellants raise two questions. In effect they contend: (i) that their arrest and conviction constitutes state action in the light of the decision in *Griffin vs. Maryland, supra;* and (ii) that to uphold their conviction now for acts arising out of sit-in demonstrations at Gwynn Oak Amusement Park would be to deny them due process and equal protection because the State's Attorney for Baltimore County has failed to prosecute approximately two hundred other cases charging the same offense.

(i)

In reconsidering the convictions of the "Drews" appellants in the light of *Griffin vs. Maryland, supra,* we find nothing therein which compels or requries a reversal of our decision in *Drews vs. State* (224 Md. 186). Significantly, the question as to whether the same result would have been reached by the Supreme Court had the arrests in *Griffin* been made by a regular police officer, as in the *Drews* case, was not decided. The arrests and subsequent convictions of the appellants for criminal trespass were held in *Griffin* to constitute state action because the arresting officer, a park employee, was also a special deputy sheriff. In *Drews,* however, the appellants not only refused to leave the amusement park peacefully after they had been requested to do so, but acted in a disorderly manner when the arresting officers, who were county police officers, not park employees, undertook to eject them. The record in *Drews* does not show, nor has it ever been contended, that the park employee, who assisted the arresting officers, had power (as was the case in *Griffin*) to make arrests. By reversing *Griffin* and remanding *Drews,* the Supreme Court must have had some doubt as to whether the two cases were distinguishable. We think there are important differences in the two cases between the reasons or causes for the arrests and the type of police personnel that made the arrests, and that such distinctions are controlling.

In *Drews,* where the trespassers conducted themselves in a disorderly manner when the police undertook to forcibly eject them from the amusement park in an effort to prevent them from further inciting the gathering crowd by remaining in the park after they had been requested to leave by the park manager as well as the county police, the arrests were made by policemen who were not employed by the park, who were not paid by the park, and who were under no orders of any park official. The very fact that the police made no move to eject the trespasser from the park until they were requested to do so by the manager shows the complete absence of any cooperative state action. Nor was there any evidence that the State desired or intended to maintain the amusement park as a segregated place of amusement. In these circumstances, it seems clear to us that the arrest of the Drews appellants (who were both white and colored) for disorderly conduct did not constitute state enforcement of racial discrimination. To hold otherwise would, we think, not only deny the park owners equal protection of the laws, but could seriously hamper the power of the State to maintain peace and order and, when imminent as was the case here, to forestall mob violence or riots.

We deem it unnecessary to elaborately discuss the only two cases cited by the appellants—*State vs. Brown,* 195 A. 2d 379 (Del. 1963), and *Wright vs. Georgia,* 373 U. S. 284 (1963). Neither is apposite here and, assuming they are, both are clearly distinguishable on the facts. Even if the arrest of the Drews appellants for disorderly conduct was the result of or arose out of their ejection from the park for trespassing on private property, there was no violation of a constitutional guarantee. We reiterate what was recently said in *In Matter of Cromwell,* 232 Md. 409, 413, 194 A. 2d 88 (1963), that "we find no violation of the Fourteenth Amendment in the assertion of a private proprietor's right to choose his customers, or to eject those who are disorderly." We see no reason to reverse the convictions in this case.

The reason for the remand of the case for consideration in the light of *Bell vs. Maryland, supra,* is not clear. The judgments in *Bell* were vacated and the case remanded to enable this Court to pass upon the effect of supervening public accommodation laws on the criminal trespass law. Since there is no provision in the public accommodation law enacted by the State (Code, 1964 Supp., Art. 49B, § 11) with respect to amusement parks, we need not decide the effect of the supervening legislative enactment on the convictions in this case.

(ii)

The second contention of the appellants—that the failure of the State to prosecute others for the same or similar offenses is a denial of due process or equal protection —is without merit and has no bearing on the convictions in this case. Guilt or innocence cannot be made to depend on the question of whether other parties have not been prosecuted for similar acts. *Callan vs. State,* 156 Md. 459, 466, 144 Atl. 350 (1929). Nor is the exercise of some selectiveity in the enforcement of a criminal statute, absent a showing of unjustifiable discrimination, violative of constitutional guarantees. *Oyler vs. Boles,* 368 U. S. 448 (1962). See also *Moss vs. Hornig,* 314 F. 2d 89 (C. A. 2d 1963).

Judgments reinstated and reaffirmed; appellants to pay the costs.

(1) See Bell vs. State, — Md. —, — A. 2d — (1964), decided on the remand on or about the same time as this case.

OPPENHEIMER, J. (dissenting)—

In *Griffin vs. Maryland,* 378 U.S. 130 (1964), the Supreme Court of the United States reversed the judgments against the defendants affirmed by us in *Griffin vs. State,* 225 Md. 422, 171 A.2d 717 (1961) on the ground that the arrests were the products of State action taken because the defendants were Negroes, and therefore racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. In *Griffin,* the arresting officer, Collins, was a deputy sheriff of Montgomery County employed by and subject to the direction and control of the amusement park. The record shows that in this case the special policeman, Officer Wood, was in the employ of the amusement park but it does not show whether or not he had been deputized by Baltimore County. Pursuant to the instructions of the park's management, Wood told the defendants the park was closed to Negroes, ordered them to leave and, when they did not, sent for the Baltimore County police. He and the county police together removed the defendants from the park.

If Wood, the "special officer" in this case, had virtually the same authority from Baltimore County that Collins had from Montgomery County, it seems to me immaterial that he called in the Baltimore County police to help him evict the defendants. He was the proximate cause of the arrests. If his authority stemmed from the State, then under *Griffin vs. Maryland, supra,* the State was a joint participant in the discriminatory action.

On the facts, it also seems immaterial that the convictions here were for disorderly conduct rather than for trespass as in *Griffin.* In resisting the command of the officers to leave the park, the defendants used no force against the officers or anyone else; they held back or fell to the ground. Such failure to obey the command, if the command itself was violative of the Constitution, would not sustain the convictions. *Wright vs. Georgia,* 373 U.S. 284, 291, 292 (1963).

The Baltimore County Code authorizes the county to appoint special police officers to serve for private persons or corporations. Baltimore County Code, Sections 24-13 and 35-3 (1958). I would remand this case to the Circuit Court for Baltimore County for the taking of additional testimony to determine whether or not Wood was appointed by Baltimore County under these sections of its Code. If he was, the convictions should be reversed.

IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 113

DALE H. DREWS, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

REMAND FROM THE SUPREME COURT OF THE UNITED STATES

BRIEF OF APPELLANTS ON REMAND

FRANCIS D. MURNAGHAN, JR.,
HENRY R. LORD,
Attorneys for Appellants.

The Daily Record Co., Baltimore 3, Md.

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IN THE

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SEPTEMBER TERM, 1960

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DALE H. DREWS, ET AL.,
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v.

STATE OF MARYLAND,
Appellee.

REMAND FROM THE SUPREME COURT OF THE UNITED STATES

BRIEF OF APPELLANTS ON REMAND

STATEMENT OF THE CASE

This case has been set for hearing pursuant to a *per curiam* opinion of the Supreme Court, dated June 22, 1964, and an Order of this Honorable Court, dated July 31, 1964. A full statement of the case is found at pages 1 and 2 of the original Appellants' brief, filed with this court.

QUESTIONS PRESENTED

1. Did the arrest and conviction of Appellants constitute State action, in light of the Supreme Court decision in *Griffin v. Maryland?*

2. Is there a denial of due process and equal protection in continuing to uphold the conviction of Appellants for acts arising out of sit-in demonstrations at Gwynn Oak

Park when the State's Attorney of Baltimore County has failed to prosecute approximately 200 cases charging the same offense?

STATEMENT OF FACTS

The facts of this case are set out in the original Appellants' brief at pages 3 through 5.

ARGUMENT

I.

RECONSIDERATION IN LIGHT OF THE OPINION OF THE SUPREME COURT IN *GRIFFIN v. MARYLAND* SHOULD LEAD TO A REVERSAL OF THE CONVICTIONS OF THE APPELLANTS.

The majority of the Supreme Court in *Griffin v. Maryland*, 378 U.S. 130, 84 S. Ct. 1770 (1964), found under the facts of that case that there had been sufficient State participation in the arrest of the petitioners to establish "State action" forbidden by the Fourteenth Amendment. It is to be expected that the State will contend that the pivotal point in the *Griffin* case, distinguishing it from this case, was the special position of the arresting park detective as a deputized police officer, and that, consequently, the State was doing more in *Griffin* than even-handedly effectuating the "management's desire to exclude designated individuals from the premises". It had "undertake[n] an obligation to enforce a private policy of racial segregation" by virtue of the fact that the park detective was also a deputy sheriff of Montgomery County and had acted under color of this office.

Such a distinction is thin, and limits *Griffin* to its particular facts. To make it, therefore, is to render meaningless the action of the Supreme Court in remanding the instant case for consideration in light of *Griffin*. Obviously the Supreme Court felt that there was doubt about the

proposition that there is a substantial constitutional difference between two situations, in one of which (*Drews*) two persons separately perform certain acts, and in the other (*Griffin*) one person, acting at different times in two different capacities, performs the same acts. Yet, the position that we expect the State to urge would merely preserve and reiterate the very distinction about which the Supreme Court had doubts.

The distinction is not a viable one. This Honorable Court has already so determined in its holding that *Griffin* was controlled by *Drews*. *Griffin & Greene v. State*, 225 Md. 422, 430 (1961). At that time this Honorable Court reasoned that the arrest and prosecution in one were lawful because the arrest and prosecution in the other were lawful. Now the Supreme Court, whose determinations of such constitutional issues under the Fourteenth Amendment take precedence, has ruled that the arrest and conviction in one were constitutionally improper. It follows that the arrest and conviction in the other were unconstitutional, too.

This conclusion is recognized by the recent holding by the Supreme Court of Delaware in a case factually indistinguishable from *Drews* insofar as the constitutional issue is concerned. *State v. Brown*, ... Del. ....., 195 A. 2d 379 (1963). That case involved the constitutionality of the State's entertaining a trespass prosecution against one who refused to leave a hotel restaurant after being requested to do so. The owner obtained a warrant which was executed by the police. Chief Justice Terry, relying on *Shelley v. Kraemer*, 334 U.S. 1 (1943) and *Barrows v. Jackson*, 346 U.S. 249 (1953), stated, 195 A. 2d at 386, that:

> ". . . the State may not compel the Negro patron to leave the place of public accommodation. To do so would place the weight of State power behind the discriminatory action of the owner or proprietor."

The opinion went on to state that such "judicial sanction of a policy of racial discrimination" through acting on a trespass prosecution is not action within "merely a neutral framework" but rather amounts to the State's "intervening on the side of private discrimination".

II.

THERE IS A DENIAL OF DUE PROCESS AND EQUAL PROTECTION IN SINGLING OUT APPELLANTS FOR PROSECUTION AND CONVICTION WHEN THE CIRCUMSTANCES OF THEIR CASES, INVOLVING AN ATTEMPT BY PEACEFUL PERSUASION TO END DISCRIMINATORY PRACTICES, ARE NO DIFFERENT FROM MANY OTHER CASES WHICH THE STATE'S ATTORNEY DOES NOT PROSECUTE.

The Supreme Court remanded this case for reconsideration in the light of *Bell v. Maryland*, ... U.S. ....., 84 S. Ct. 1814 (1964). The Court has suggested in that case that the intervening enactment of legislation making acts such as those for which Appellants were convicted lawful is grounds for reversal. The precise argument cannot be made here inasmuch as Baltimore County has not as yet adopted proposed civil rights legislation, and the act of the State Legislature, Chapter 29 of the Acts of 1964 (Extra Session, March, 1964), does not appear to extend to amusement parks. However, the manner in which the law is enforced is as important as the statutory language. While a statute is not rendered ineffective through non-use [*Louisville & N. R. Co. v. United States*, 282 U.S. 740, 759 (1931); *Snowden v. Snowden*, 1 Bland (Md. Chan.) 550, 556-58 (1829)], it may not be applied discriminatorily to members of the same class. The Supreme Court established long ago that the Fourteenth Amendment prevents the unequal enforcement of valid laws as well as any enforcement of invalid laws. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). See also *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946), and the cases cited therein.

It is common knowledge of which the court should take judicial notice that Gwynn Oak Park, the scene of the alleged offenses of Appellants, was the subject of sit-in demonstrations in the summer of 1963. The demonstrations achieved their objective, for the park abandoned its segregation policy. In the course of the demonstrations, however, approximately 200 arrests were made. The State's Attorney has done nothing about bringing the cases on for trial, and it appears extremely unlikely that any prosecution will ever take place. Considerations of due process and equal protection under the Fourteenth Amendment and the Maryland Constitution, as well as those set forth in the opinion of the Supreme Court in *Bell v. Maryland, supra,* should prohibit the continuation of the convictions of Appellants. The convictions have never become final, inasmuch as they have been on appeal in the Supreme Court, and, consequently, for reasons stated in *Bell v. Maryland, supra,* this Court still has jurisdiction to act to reverse.

CONCLUSION

For the foregoing reasons, the convictions of Appellants should be reversed.

Respectfully submitted,

FRANCIS D. MURNAGHAN, JR.,
HENRY R. LORD,
Attorneys for Appellants.

File Copy

IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 113

DALE H. DREWS, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

REMAND FROM THE SUPREME COURT OF THE UNITED STATES

BRIEF OF APPELLEE ON REMAND

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For Appellee.

The Daily Record Co., Baltimore 3, Md.

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IN THE

Court of Appeals of Maryland

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DALE H. DREWS, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

REMAND FROM THE SUPREME COURT OF THE UNITED STATES

BRIEF OF APPELLEE ON REMAND

STATEMENT OF THE CASE

Appellants were convicted by the Circuit Court for Baltimore County, Maryland, sitting without a jury, of violating Article 27, Section 123, of the Annotated Code of Maryland (1957 Edition), "by acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement". The convictions were affirmed on appeal to this Court, *Drews, et al. v. State,* 224 Md. 186, decided January 18, 1961. A direct appeal was thereafter taken to the Supreme Court of the United States, which Court, on June 3, 1964, vacated the judgments and remanded the case to this Court "for consideration in light of *Griffin v. Maryland* (378 U.S. 130, 12 L. Ed. 2d 754) and *Bell v. Maryland* (378 U.S. 226, 12 L. Ed. 2d 822)". *Drews, et al. v. Maryland,* No. 3, October Term, 1963 (..... U.S. ....., 12 L. Ed. 2d 1032).

QUESTIONS PRESENTED

The State accepts the questions presented by Appellants.

STATEMENT OF FACTS

On Sunday, September 6, 1959, Appellants, being three caucasians and one Negro, accompanied by another Negro who was not tried, went to Gwynn Oak Park, a public amusement park in Baltimore County, owned and operated by a private corporation. The management of the park as a business policy did not admit Negroes and the Appellants were requested by a private park guard to leave the premises. The Appellants refused and, as a result, a crowd began to gather. The private police officer enlisted the assistance of Baltimore County policemen who were stationed on a public road nearby to eject the group from the park. Baltimore County policemen arrived and requested that the Appellants leave the park. Upon receiving instructions from the park management, the Baltimore County policemen advised the Appellants that they had a choice of withdrawing or being arrested. They refused to leave, at which time they interlocked their arms and two of them dropped on the ground in a prone position. As a result of this conduct, the crowd which had gathered became unruly and began hollering, spitting and kicking at the Appellants as well as the officers, creating a mob scene. The Appellants were thereupon taken by the County Police from the scene and transported to a nearby police station where a warrant was sworn out by the amusement park management.

Thereafter, the State filed a criminal information charging violation of Article 27, Section 123, of the Annotated Code of Maryland, *supra*, and the Appellants elected to be tried by the Court sitting without a jury. The trial court,

by its opinion dated May 6, 1960, found that from the facts and circumstances there was clear and convincing proof that public disorder reasonably could be expected if Appellants were allowed to remain in the park, and that the continued refusal of the Appellants to leave at the request of the police constituted "acting in a disorderly manner to the disturbance of the public peace".

On appeal to this Court, the Appellants raised four questions, to wit:

1. What constitutes a place of public resort or amusement within the meaning of Article 27, Section 123 of the Annotated Code?

2. Was there evidence to establish the public character of Gwynn Oak Park, the scene of the actions with which Appellants were charged?

3. Did any acts of Appellants constitute acting in a disorderly manner to the disturbance of the public peace?

4. Did conviction of Appellants infringe upon the rights, privileges and immunities guaranteed to them by the Fourteenth Amendment to the Constitution of the United States?

This Court, notwithstanding the fact that the Appellants did not raise constitutional questions in the lower court, found by its opinion that the amusement park had a legal right to maintain a business policy of excluding Negroes, a private policy in which the State neither legislated or assisted. The Court further found that the arrest of the Appellants was not because the State desired or intended to maintain the park as a segregated place of amusement, but, rather, because the Appellants were inciting a crowd by refusing to obey a valid directive to move from a place where they had no lawful right to be. This Court con-

cluded that the action of the State in arresting and convicting the Appellants on warrants sworn out by the amusement park for disorderly conduct did not constitute "such action as may fairly be said to be that of the State's".

ARGUMENT

I.

THE ARREST AND CONVICTION OF APPELLANTS DID NOT CONSTITUTE AN UNCONSTITUTIONAL EXERCISE OF STATE POWER WITHIN THE RATIONALE OF THE SUPREME COURT'S DECISION IN *GRIFFIN v. MARYLAND* (378 U.S. 130).

In its opinion in this case, *Drews v. State, supra,* at Page 191, this Court held:

> "* * * Early in the common law the duty to serve the public without discrimination apparently was imposed on many callings. Later this duty was confined to exceptional callings as to which an urgent public need called for its continuance, such as innkeeper and common carriers. Operators of most enterprises, including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discrimination, can pick and choose their patrons for any reason they decide upon, including the color of their skin. Early and recent authorities on the point are collected, and exhaustively discussed, in the opinion of the Supreme Court of New Jersey in *Garfine v. Monmouth Park Jockey Club,* 148 A. 2d 1. See also *Greenfeld v. Maryland Jockey Club of Baltimore,* 190 Md. 96; *Good Citizens Community Protective Ass'n v. Board of Liquor License Commissioners of Baltimore City,* 217 Md. 129, 131; *Slack v. Atlantic White Tower System, Inc.,* 181 F. Supp. 124; *Williams v. Howard Johnson's Restaurant,* 268 F. 2d 845."

Continuing, this Court said at pages 193-194:

> "We turn to appellants' argument that the arrest by the County police constituted State action to enforce

> a policy of segregation in violation of the ban of the Equal Protection and Due Process clauses of the Fourteenth Amendment against State-imposed racial discrimination. The Supreme Court said in the racial covenant case of *Shelley v. Kraemer*, 334 U.S. 1, 13, 92 L. Ed. 1161, 1180: '(T)he action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful'. The Park had a legal right to maintain a business policy of excluding Negroes. This was a private policy which the State neither required nor assisted by legislation or administrative practice. The arrest of appellants was not because the State desired or intended to maintain the Park as a segregated place of amusement; it was because the appellants were inciting the crowd by refusing to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people acted in a disorderly manner and the State, without discrimination, arrested and prosecuted all who were so acting."

This Court concluded by stating that in the absence of controlling authority to the contrary, "it is our opinion that the arresting and convicting of Appellants on warrants sworn out by the Park for disorderly conduct, which resulted from the Park enforcing its private, lawful policy of segregation, did not constitute 'such action as may fairly be said to be that of the State's' "; and that such action was "at least one step removed from State enforcement of a policy of segregation and violated no constitutional right of Appellants".

Since this Court's decision in *Drews*, the Supreme Court has had before it a number of "sit-in" cases squarely presenting the crucial constitutional issue as to whether the Fourteenth Amendment, of its own force, forbids a state

to arrest and prosecute those who, solely because of their race, have been asked to leave a privately-owned place of public accommodation (not covered by any public accommodation legislation), but have refused or declined to do so. In none of these cases, however, has a majority of the Court found it necessary to reach this fundamental question and, as a result thereof, the law as enunciated by this Court in the *Drews* case remains undisturbed.[1] In the absence of further light upon the subject, therefore, it is believed that this Court will adhere to the basic constitutional precepts expressed in the *Drews* case, as reiterated and reaffirmed in *Griffin & Greene v. State*, 225 Md. 422, reversed on other grounds, 378 U.S. 130, 12 L. Ed. 2d 754, and *Bell v. State*, 227 Md. 302, reversed on other grounds, 378 U.S. 226, 12 L. Ed. 2d 822.

The reason for the remand of this case for consideration in light of *Bell v. Maryland, supra,* is by no means clear. The judgments in *Bell* were vacated and reversed in order to afford this Court an opportunity to pass upon the effect, if any, wrought upon the State's criminal trespass law by the supervening enactment of the State and City public accommodations legislation. The present case, unlike *Bell*, involves convictions for disorderly conduct and not trespass, and in a facility, (amusement park) not covered by any public accommodations law — State, County or Federal. Nothing in *Bell*, therefore, is even remotely sugges-

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[1] The question was presented in one posture or another in the following recent Supreme Court decisions: *Lombard v. Louisiana*, 373 U.S. 267, 10 L. Ed. 2d 338; *Peterson v. City of Greenville*, 373 U.S. 244, 10 L. Ed. 2d 323; *Griffin v. Maryland, supra; Robinson v. Florida*, ... U.S. ..., 12 L. Ed. 2d 771; *Barr v. Columbia*, ... U.S. ..., 12 L. Ed. 2d 766; and *Bouie v. Columbia*, ... U.S. ..., 12 L. Ed. 2d 894. In *Bell v. Maryland, supra,* three members of the Court advocated the affirmative constitutional view of this question, while three other members of the Court were of the opposite mind.

tive of an intention by the Supreme Court to override this Court's constitutional pronouncements as set forth in *Drews*.

The *Griffin* case involved convictions for trespass in a racially segregated private amusement park in Montgomery County, and was reversed on the narrow ground that the action taken by Collins, a special deputy sheriff under contract to and in the employ of the private owner, was State action for the purposes of the Fourteenth Amendment; and being such, the State had become in reality a joint participant in the challenged activity. The question of whether the same result would have been reached had the arrests been made by a regular police officer, as was done in the present case, was not decided in *Griffin*. On this point, therefore, *Drews* continues to be controlling in Maryland. In any event, *Griffin* and *Drews* are hardly to be considered parallel cases, since the former involves trespass convictions while the latter involves convictions for disorderly conduct.

In light of the above, therefore, Appellants' reliance on the law of Delaware would seem to be misplaced. The fact that the Supreme Court may have had "doubts" as to the applicability of the *Griffin* rationale to the *Drews* facts furnishes little justification for this Court to overrule its holdings in the *Drews* and *Bell* cases.

II.

APPELLANTS HAVE NOT BEEN DENIED DUE PROCESS OR EQUAL PROTECTION OF THE LAW BECAUSE THE STATE HAS FAILED TO PROSECUTE OTHERS FOR THE SAME OR LIKE OFFENSES.

Appellants contend that where the State prosecutes one person and not the other for the same acts there is a denial of equal protection of the law under the Fourteenth Amend-

ment and the prosecution is, therefore, void. The contention appears to be predicated upon the belief that approximately two hundred persons were arrested in 1963 at Gwynn Oak Park either for trespass or disorderly conduct in the course of racial demonstrations calculated to induce the proprietor of that facility to integrate. Appellants state further that since the State's Attorney has done nothing to date to bring the cases on for trial, it is unlikely that such prosecutions will ever materialize and, hence, Appellants' reason that Fourteenth Amendment considerations are such as should prohibit continuation of their convictions.

It is, of course, the governing law, applicable in the present case, that matters appearing otherwise than by the record will not be considered on appeal, and a judgment of conviction cannot be impeached by evidence outside the record. 7 M.L.E., *Criminal Law*, Section 652.[2]

Assuming the fact that there were arrests in 1963, as depicted by Appellants, and that these cases have not as yet been brought on for trial, it is, nevertheless, well settled that the prosecution of one guilty person, while others equally guilty are not prosecuted, is not a denial of equal protection of the law, nor is the mere laxity in enforcement of the law by public officials a denial of equal protection. *Sims v. Cunningham,* 124 S.E. 2d 221 (Va., 1962); *Bailleaux v. Gladden,* 370 P. 2d 722 (Ore., 1962), cert. den. 371 U.S.

[2] It is believed that in practically all such cases to which Appellants refer jury trials were prayed before a magistrate. The State's Attorney, in the exercise of the broad discretion vested in him as to the prosecution of criminal cases — *Ewell v. State,* 207 Md. 288 and *Brack v. Wells,* 184 Md. 86 — may have preferred to withhold immediate prosecution since the constitutional issues involved in the cases were presently pending before the Supreme Court of the United States for decision. Insofar as is known, the defendants have not made any demand for a speedy trial, and it must be presumed that they acquiesce in the State's Attorney's action. See *Woodland v. State,* 235 Md. 347.

841, 9 L. Ed. 2d 84; *Application of Finn*, 356 P. 2d 685 (Calif., 1960); *Maloney v. Maxwell*, 186 N.E. 2d 728 (Ohio, 1962); *Highland Sales Corp. v. Vance*, 186 N.E. 2d 682 (Ind., 1962); *State v. Hicks*, 325 P. 2d 794 (Ore., 1958). This Court recognized the validity of this proposition in *Callan v. State*, 156 Md. 459 (1928), where on a prosecution for violating Sunday laws evidence that others had been guilty of similar acts without being prosecuted was held inadmissible, the Court noting at Pages 466-467 that the guilt or innocence of the traversers was not to be made to depend upon the question of whether other parties had been guilty of similar acts without being prosecuted or convicted. In order to show that unequal administration of a statute offends the equal protection clause, an intentional or purposeful discrimination must be shown — *Snowden v. Hughes*, 321 U.S. 1, 88 L. Ed. 497 (1944) and *Moss v. Horning*, 314 F. 2d 89 (2d Cir., 1963) — and relief therefor is at most limited to cases where class discrimination is proved. *Oyler v. Boles*, 368 U.S. 448, 7 L. Ed. 2d 446 (1962). Appellants allege no such intentional or purposeful discrimination in the present case. The case of *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L. Ed. 220 (1886), relied upon by Appellants, is manifestly inapplicable as the above cases demonstrate. See, however, in addition to the above cases, *People v. Montgomery*, 117 P. 2d 437 (Calif., 1941) and *Society of Good Neighbors v. Van Antwerp*, 36 N.W. 2d 308 (Mich., 1949), distinguishing *Yick Wo*.

CONCLUSION

Appellants' direct appeal to the Supreme Court of the United States from the judgments of conviction in this case squarely presented the question as to whether Appellants' presence at Gwynn Oak Park was in the exercise of constitutionally guaranteed rights so that their arrest and prosecution under the circumstances amounted to State action to enforce segregation in violation of the Federal Constitution. The Supreme Court did not decide the issue, leaving the law as articulated by this Court in this case undisturbed and intact. In the absence of Supreme Court authority to the contrary, it necessarily follows that this Court's decision in *Drews* is controlling, and the convictions appealed from must be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

ROBERT C. MURPHY,
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FRANK H. NEWELL, III,
State's Attorney for
Baltimore County,
For Appellee.

Sub Copy

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. ------

DALE H. DREWS, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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The Daily Record Co., Baltimore, Md. 21203

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DALE H. DREWS, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

The Appellee, pursuant to the Rules of the Supreme Court of the United States, moves to dismiss or affirm on the following grounds:

(a) This appeal is not within the jurisdiction of this Court because it has not been taken in conformity with statute.

(b) This appeal does not present any substantial Federal question as to warrant further argument.

STATEMENT OF FACTS

The four Appellants were convicted by the Circuit Court of Baltimore County, Maryland, sitting without a jury, of violating Article 27, Section 123, of the Annotated Code of Maryland (1957 Ed.), "by acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement". Two of the Appellants are white men, one is a white woman and the last is a Negress.

The Appellants, accompanied by a Negro who was not tried, on Sunday, September 6, 1959, went to Gwynn Oak Park, a public amusement park in Baltimore County, owned and operated by a private corporation. The management of the park as a business policy did not at that time admit Negroes and the Appellants were requested to leave the premises. The Appellants refused and, as a result, a crowd began to gather. The Park's privately employed Park Guard enlisted the assistance of Baltimore County policemen who were stationed nearby to eject the group from the park. Baltimore County policemen arrived and requested that the Appellants leave the park. Upon receiving instructions from the park management, the Baltimore County policemen advised the Appellants that they had a choice of withdrawing or being arrested. They refused to leave, at which time they interlocked their arms and two of them dropped on the ground in a prone position. As a result of this conduct, the crowd which had gathered became unruly and began hollering, spitting and kicking at the Appellants as well as the officers, creating a mob scene. The Appellants were thereupon taken by the County Police from the scene and transported to a nearby police station where a warrant was sworn out by the amusement park management.

Thereafter, the State filed a criminal information charging violation of Article 27, Section 123, of the Annotated Code of Maryland, *supra*, and the Appellants elected to be tried by the Court sitting without a jury. The trial court, by its opinion dated May 6, 1960 (Appendix C of the Jurisdictional Statement), found that from the facts and circumstances there was clear and convincing proof that public disorder reasonably could be expected if Appellants were allowed to remain in the park, and that the continued refusal of the Appellants to leave at the request of the police constituted "acting in a disorderly manner to the disturbance of the public peace." From the opinion of the trial court, it does not appear that the Appellants raised any constitutional issues in that court.

On appeal to the Court of Appeals of Maryland, that Court, notwithstanding the fact that the Appellants did not raise constitutional questions in the lower court, found by its opinion (Appendix B of the Jurisdictional Statement) that the amusement park had a legal right to maintain a business policy of excluding Negroes, a private policy which the State neither legislated or assisted. The Court further found that the arrest of the Appellants was not because the State desired or intended to maintain the park as a segregated place of amusement, but, rather, because the Appellants were inciting a crowd by refusing to obey a valid directive to move from a place where they had no lawful right to be. The Court of Appeals of Maryland concluded that the action of the State in arresting and convicting the Appellants on warrants sworn out by the amusement park for disorderly conduct did not constitute "such action as may fairly be said to be that of the State's."

Appellants then proceeded to the Supreme Court of the United States, and on June 22, 1964, this Court vacated

the judgment and remanded the case to the Court of Appeals of Maryland for consideration in light of *Griffin v. Maryland,* 378 U.S. 130 and *Bell v. Maryland,* 378 U.S. 226. The Court of Appeals of Maryland re-examined the case according to this directive and on October 22, 1964, reinstated and reaffirmed the prior judgment of conviction (Appendix A, Jurisdictional Statement). The Court of Appeals of Maryland found that the facts of this case were significantly distinguishable from those of *Griffin* to produce an opposite result, and further, that there was no supervening public accommodations law enacted that would affect their decision, as in *Bell.*

ARGUMENT

I.

This Case Is Not Within the Appellate Jurisdiction of This Court.

The Appellants did not claim at any stage of the proceedings that the provisions of Article 27, Section 123, Annotated Code of Maryland, *supra,* were void, but, rather, now contend that the application of the statute was discriminatory and, therefore, in violation of the Fourteenth Amendment. Since no claim is made that the statute involved was invalid, an appeal will not lie. See *Charleston Federal Savings & Loan Association v. Alderson,* 324 U.S. 182, 185; *Jett Bros. Distilling Co. v. Carrolton,* 252 U.S. 1; *Mergenthaler Linotype v. Davis,* 251 U.S. 256, 259.

II.

This Appeal Does Not Present Any Substantial Federal Question.

The Appellants assert that the State of Maryland, as a result of the decisions below, has applied its criminal

law of disorderly conduct in such a way as to aid and encourage the segregation of an amusement park facility and the denial of the use thereof to Negroes solely on the basis of race. Nothing can be further from the truth. The position of the State of Maryland in this case is very clear. The State of Maryland neither required nor assisted by legislation or otherwise the decision of the amusement park, as a matter of business policy, to exclude Negroes. The State of Maryland has neither condemned nor condoned such business decision and policy. The arrest of the Appellants was not because the State desired or intended to maintain the park as a segregated place of amusement, but rather because the Appellants were inciting the crowd and, therefore, were acting in a disorderly manner. Both whites and Negroes in this instance acted in a disorderly manner, and the State without discrimination arrested and prosecuted all those who were so acting. As was stated by this Court in *Shelley v. Kraemer*, 334 U.S. 1, 13:

> "The action inhibited by the first Section of the Fourteenth Amendment is only such action as may be fairly said to be that of the State's. *That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.*" (Emphasis supplied.)

The State of Maryland has not only the right but the duty to protect the public against disorders which may occur, regardless of the race of the participants. It was clearly recognized in the case of *Bernstein v. Real Estate Commission of Maryland*, 221 Md. 221, appeal dismissed 363 U.S. 419, that the general State laws apply to all with equal force, regardless of their race, and that violation of the general public laws cannot be shielded from State action on account of race. The Appellants are not entitled to an unexpressed exemption in the disorderly conduct law.

The establishment involved in this case was not publicly owned or operated, nor was it operated or franchised by the State, and the State had no law requiring segregation on these premises. Since the Appellants disobeyed the officers' directive and in so doing created a public disturbance, the State of Maryland had every right to arrest and prosecute the Appellants for this disturbance.

Appellants further contend that they were denied the rights of freedom of speech and freedom of assembly in contravention of the Fourteenth Amendment. To sustain this argument, one must assume that the owners of the amusement park were willing to allow the appearance of Appellants on their private premises. This was not the case, and as Justice Black has said:

> ". . . none of our prior cases has held that a person's right to freedom of expression carries with it a right to force a private property owner to furnish his property as a platform to criticize the property owner's use of that property." Dissent, *Bell v. Maryland,* 378 U.S. 226, ..., (1964).

Cf. *Giboney v. Empire Storage and Ice Co.,* 336 U.S. 490 (1949).

Appellants also claim a denial of equal protection and due process of law because of the failure of the State of Maryland to arrest or prosecute unruly members of the crowd that gathered around them in Gwynn Oak Park, and the failure to prosecute other cases arising out of demonstrations at the same place of amusement. This contention is "without merit and has no bearing on the convictions in this case." *Drews v. Maryland,* 236 Md. 349, 204 A. 2d 64 (1964).

The guilt or innocence of Appellants is a question of fact that is determined by the circumstances of their own

case. It in no way depends on the prosecution or non-prosecution of other possible offenders. *Callan v. State*, 156 Md. 459, 466, 144 A. 350 (1929). Additionally, the non-discriminatory exercise of some selectivity in the enforcement of a criminal statute does not violate constitutional guarantees. *Oyler v. Boles*, 368 U.S. 448 (1962). See also *Moss v. Horning*, 314 F. 2d 89 (C.A. 2d 1963).

Finally, Appellants contend the passage of the Federal Civil Rights Act of 1964, 78 Stat. 241, requires the abatement of their pending convictions and the dismissal of their prosecutions. It is by no means clear that this is so, since it is highly questionable that Gwynn Oak Park, as an amusement park facility, is a covered establishment under the Federal law.

Conceding the existence of a cafeteria on the park's grounds, the Appellants have not shown that a substantial portion of the food which is served thereby had moved in commerce, as required by Sec. 201(c)(2). Such a demonstration of fact is necessary to bring the amusement park within the ambit of this statute under Sec. 201(b)(4) and (c)(4), as a facility within which exists a covered establishment and which holds itself out as serving the patrons of such covered establishment.

Nor have Appellants shown that the amusement park customarily presents any source of entertainment which has moved in commerce, which must be demonstrated to classify such a place of exhibition or entertainment as a covered establishment under Sec. 201 (b)(3) and (c)(3).

No discrimination or segregation by the cafeteria within the amusement park, or by the amusement park itself, was in any way, or to any measure, carried on under color of a custom or usage required or enforced by officials of the State or political subdivision thereof. As dis-

cussed above, the police officers of Baltimore County, Maryland and the courts of the State of Maryland were simply enforcing the legal right and duty of the State to maintain public peace and quiet and prevent public disorder.

CONCLUSION

The State of Maryland respectfully submits that the Appeal from the Court of Appeals of Maryland be dismissed, or, in the alternative, the decision of the Court of Appeals be affirmed, the mandate to issue forthwith.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General of Maryland,
ROBERT C. MURPHY,
Deputy Attorney General
of Maryland,
For Appellee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

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Appellants,

v.

STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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The Daily Record Co., Baltimore 3, Md.

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ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

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The Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss or affirm on the following grounds:

(a) This appeal is not within the jurisdiction of this Court because it has not been taken in conformity with statute.

(b) This appeal does not present any substantial Federal question as to warrant further argument.

STATEMENT OF FACTS

The four Appellants were convicted by the Circuit Court of Baltimore County, Maryland, sitting without a jury, of

violating Article 27, Section 123, of the Annotated Code of Maryland (1957 Ed.), "by acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement". Two of the Appellants are white men, one is a white woman and the last a Negress.

The Appellants, accompanied by a Negro who was not tried, on Sunday, September 6, 1959, went to Gwynn Oak Park, a public amusement park in Baltimore County, owned and operated by a private corporation. The management of the park as a business policy did not admit Negroes and the Appellants were requested by a private park guard to leave the premises. The Appellants refused and, as a result, a crowd began to gather. The private police officer enlisted the assistance of Baltimore County policemen who were stationed on a public road nearby to eject the group from the park. Baltimore County policemen arrived and requested that the Appellants leave the park. Upon receiving instructions from the park management, the Baltimore County policemen advised the Appellants that they had a choice of withdrawing or being arrested. They refused to leave, at which time they interlocked their arms and two of them dropped on the ground in a prone position. As a result of this conduct, the crowd which had gathered became unruly and began hollering, spitting and kicking at the Appellants as well as the officers, creating a mob scene. The Appellants were thereupon taken by the County Police from the scene and transported to a nearby police station where a warrant was sworn out by the amusement park management.

Thereafter, the State filed a criminal information charging violation of Article 27, Section 123, of the Annotated Code of Maryland, *supra*, and the Appellants elected to be tried by the Court sitting without a jury. The trial court, by its opinion dated May 6, 1960 (Appendix B of the Juris-

dictional Statement), found that from the facts and circumstances there was clear and convincing proof that public disorder reasonably could be expected if Appellants were allowed to remain in the park, and that the continued refusal of the Appellants to leave at the request of the police constituted "acting in a disorderly manner to the disturbance of the public peace." From the opinion of the trial court, it does not appear that the Appellants raised any Constitutional issues in that court. In fact, the Motion for Directed Verdict made by counsel for the Appellants in the trial court only raised two grounds: (1) ". . . that there had been no proof to indicate that the nature of the area in which the alleged offenses occurred was a place of public resort or amusement" and (2) ". . . that there has been no indication of any action on the part of the Defendants which would be described as disorderly".

On appeal to the Court of Appeals of Maryland, the Appellants raised four questions, to wit:

1. What constitutes a place of public resort or amusement within the meaning of Article 27, Section 123 of the Annotated Code?

2. Was there evidence to establish the public character of Gwynn Oak Park, the scene of the actions with which Appellants were charged?

3. Did any acts of Appellants constitute acting in a disorderly manner to the disturbance of the public peace?

4. Did conviction of Appellants infringe upon the rights, privileges and immunities guaranteed to them by the Fourteenth Amendment to the Constitution of the United States?

The Court of Appeals of Maryland, notwithstanding the fact that the Appellants did not raise constitutional questions in the lower court, found by its opinion that the

amusement park had a legal right to maintain a business policy of excluding Negroes, a private policy in which the State neither legislated or assisted. The Court further found that the arrest of the Appellants was not because the State desired or intended to maintain the park as a segregated place of amusement, but, rather, because the Appellants were inciting a crowd by refusing to obey a valid directive to move from a place where they had no lawful right to be. The Court of Appeals of Maryland concluded that the action of the State in arresting and convicting the Appellants on warrants sworn out by the amusement park for disorderly conduct did not constitute "such action as may fairly be said to be that of the State's."

ARGUMENT

I.

THIS CASE IS NOT WITHIN THE APPELLATE JURISDICTION OF THIS COURT.

The Appellants did not claim at any stage of the proceedings that the provisions of Article 27, Section 123, Annotated Code of Maryland, *supra,* were void, but, rather, now contend that the application of the statute was discriminatory and, therefore, in violation of the Fourteenth Amendment. Since no claim is made that the statute involved was invalid, an appeal will not lie. See *Charleston Federal Savings & Loan Association v. Alderson,* 324 U.S. 182, 185; *Jett Bros. Distilling Co. v. Carrollton,* 252 U.S. 1; *Mergenthaler Linotype v. Davis,* 251 U.S. 256, 259.

II.

THIS APPEAL DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION AND IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS CASE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

The Appellants assert that the State of Maryland, as a result of the decision below, has made the act of refusing

to leave an amusement park owned by a private corporation, when the request to leave arises solely from the policy of the park to exclude Negroes, a criminal offense. Nothing can be further from correct. The position of the State of Maryland in this case is very clear. The State of Maryland neither required nor assisted by legislation or otherwise the decision of the amusement park, as a matter of business policy, to exclude Negroes. The State of Maryland has neither condemned nor condoned such business decision and policy. The arrest of the Appellants was not because the State desired or intended to maintain the park as a segregated place of amusement, but rather because the Appellants were inciting the crowd and, therefore, were acting in a disorderly manner. Both white and colored people in this instance acted in a disorderly manner, and the State without discrimination arrested and prosecuted all those who were so acting. As was stated by this Court in *Shelley v. Kraemer*, 334 U.S. 1, 13:

> "The action inhibited by the first Section of the Fourteenth Amendment is only such action as may be fairly said to be that of the State's. *That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.*" (Emphasis supplied.)

The State of Maryland has not only the right but the duty to protect the public against disorders which may occur, regardless of the race of the participants. It was clearly recognized in the case of *Bernstein v. Real Estate Commission of Maryland,* 221 Md. 221, appeal dismissed 363 U.S. 419, that the general State laws apply to all with equal force, regardless of their race, and that violation of the general public laws cannot be shielded from State action on account of race. To follow the Appellants' contention,

if an argument arose between two private persons engendered by racial discrimination, and one of the persons caused physical harm or death to the other, the State would be powerless to prosecute the offender because the private argument erupted from a racial question. Thus, if one of the individuals was murdered, the State would be powerless to prosecute the murderer because it would, under the Appellants' theory, be fostering a policy of racial discrimination. With this contention, the State of Maryland most emphatically demurs. The Appellants are not entitled to an unexpressed exemption in the disorderly conduct law.

In the recent case of *Griffin v. Collins*, 187 F. Supp. 149, 153, Chief Judge Thomsen of the United States District Court for the District of Maryland, in denying a preliminary injunction and motion for summary judgment in a suit brought to end the segregation policy of the Glen Echo Amusement Park near Washington, stated:

> "Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant, or amusement park, himself or through his own employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. *Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights.*" (Emphasis supplied.)

To permit the contention of the Appellants herein to be established as the law of this nation would completely

obliterate the rights of owners of private property to keep unwanted persons from such property. It has been clearly established and recognized that places of public accommodation, resort and amusement can exclude patrons which they deem undesirable in the eyes of the management. See *Garifine v. Monmouth Park Jockey Club*, 148 A. 2d 1 (New Jersey); *Madden v. Queen's County Jockey Club*, 72 N.E. 2d 697 (New York); *Greenfeld v. Md. Jockey Club*, 190 Md. 96, 57 A. 2d 335; *Slack v. Atlantic White Tower Systems, Inc.*, 181 F. Supp. 124; *Williams v. Howard Johnson's Restaurant*, 268 Fed. 2d 845.

This Court, in the recent case of *Boynton v. Virginia*, 364 U.S. 354, clearly recognized this principle when it said that every time a bus stops at a wholly independent roadside restaurant, the Interstate Commerce Act does not require that restaurant service be supplied in harmony with the provisions of that Act. The issues presented in the case at bar were squarely presented for decision in the *Boynton* case, *supra*, but the Court chose to decide the case on other grounds.

The establishment involved in this case was not publicly owned or operated, nor was it operated by or franchised by the State, and the State had no law requiring segregation on these premises. Consequently, under the general principles of law enunciated by this Court, as well as the rulings of the lower Federal Courts cited herein, the police officers did have a legal right to direct the Appellants to leave the park after their refusal to obey the order of the private police officer. Since the Appellants disobeyed the officer's directive and in so doing created a public disturbance, the State of Maryland had every right to arrest and prosecute the Appellants for this disturbance.

CONCLUSION

In conclusion, the State of Maryland respectfully submits that the appeal from the Court of Appeals of Maryland be dismissed, or, in the alternative, the decision of the Court of Appeals be affirmed, the mandate to issue forthwith.

Respectfully submitted,

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For Appellee.

Apr. 19
Decided March 9

File Copy.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. ------

DALE H. DREWS, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

Appellants appeal from the decision of the Court of Appeals of Maryland entered on October 22, 1964, reinstating and reaffirming judgments of the Circuit Court for Baltimore County, Maryland, which had previously been affirmed by the Court of Appeals of Maryland on January 18, 1961 and vacated by the Supreme Court of the United States on June 22, 1964, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland setting forth the decision and judgment from which this appeal is

taken and the dissenting opinion of Judge Oppenheimer are reported in 236 Md. 349, 204 A. 2d 64, and are attached hereto as Appendix A. The earlier opinion of the Court of Appeals of Maryland which was reviewed by the Supreme Court of the United States (378 U.S. 547) is reported in 224 Md. 186, 167 A. 2d 341, and is attached hereto as Appendix B. The memorandum opinion of the Circuit Court for Baltimore County, Maryland, setting out the judgments of conviction now on appeal is unreported and is attached hereto as Appendix C.

JURISDICTION

1. This prosecution was begun by the filing of a criminal information by the State's Attorney for Baltimore County, Maryland, against the appellants under Section 123 of Article 27 of the Annotated Code of Maryland (1957 edition). Appellants were convicted of the charge of acting in a disorderly manner to the disturbance of the public peace on May 6, 1960 by the Circuit Court for Baltimore County, Maryland. The decision of the Court of Appeals of Maryland affirming the convictions was filed on January 18, 1961; that judgment was subsequently vacated by the Supreme Court of the United States on June 22, 1964 and the case remanded to the Court of Appeals of Maryland for consideration in light of *Griffin v. Maryland*, 378 U.S. 130, and *Bell v. Maryland*, 378 U.S. 226. The decision of the Court of Appeals of Maryland reinstating and reaffirming the judgment previously entered by it was filed on October 22, 1964. Notice of appeal in this case was filed on January 20, 1965 in the Circuit Court for Baltimore County, Maryland, to which the record in the case had been returned after the entry of judgment by the Court of Appeals of Maryland.

2. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred

by Title 28, United States Code, Section 1257(2). Appellants question the validity of Section 123 of Article 27 of the Annotated Code of Maryland (1957 edition) as interpreted by the Court of Appeals of Maryland in its decisions of January 18, 1961 and October 22, 1964, on the ground that, as so interpreted, it is repugnant to the Constitution and laws of the United States, and the decision of the highest court of the State was in favor of its validity as so interpreted. The following cases sustain the jurisdiction of the Supreme Court of the United States to review the decision of the Court of Appeals of Maryland on direct appeal. *Drews v. Maryland*, 378 U.S. 547 (1964); *Frank v. Maryland*, 359 U.S. 360 (1959); *Niemotko v. Maryland*, 340 U.S. 268 (1951); *McCollum v. Board of Education*, 333 U.S. 203 (1948).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant portions of Amendments I and XIV to the Constitution of the United States, Section 123 of Article 27 of the Annotated Code of Maryland (1957 edition), and Title II of the Federal Civil Rights Act of 1964, 78 Stat. 241, are set forth in Appendix D hereto.

QUESTIONS PRESENTED

Appellants, two white males, one white female and one Negro female, were convicted of violating a statute making it a criminal offense to act in a disorderly manner to the disturbance of the public peace at any place of public resort or amusement. The basis for the convictions was the refusal of the appellants to leave a public amusement park, owned by a private corporation. The Negro appellant and another Negro were asked to leave the park because the owner had a policy of not admitting Negroes. The white persons were requested to leave because they were

in the same group as the two Negroes. The appellants at all times acted in a courteous and peaceful manner, and their only conduct which was found to be disorderly was their refusal to leave the amusement park when requested. Under these circumstances were the appellants:

1. Denied their rights under the privileges and immunities, equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States in that they were arrested and convicted, upon the request of a private owner, under a statute which was interpreted by the highest court of the State to make a criminal offense the refusal to leave a place of public resort and amusement when the request to leave was based solely on the ground that the presence of the appellants conflicted with the owner's policy that members of the Negro race should be excluded;

2. Denied their rights under the due process clause of the Fourteenth Amendment in that they were arrested and convicted for exercising their rights to freedom of expression and association;

3. Denied their rights under the equal protection and due process clauses of the Fourteenth Amendment in that they were arrested and convicted without any evidence that the appellants acted in a disorderly manner to the disturbance of the public peace;

4. Denied their rights under the equal protection clause of the Fourteenth Amendment in that they were arrested and convicted of acting in a disorderly manner to the disturbance of the public peace although the evidence clearly showed that others were the only persons acting in a disorderly manner and such other persons were not proceeded against by the State;

5. Denied their rights under the equal protection and due process clauses of the Fourteenth Amendment in that they have been convicted for acts arising out of sit-in demonstrations at a place of public resort or amusement, whereas the State's Attorney of Baltimore County is proceeding to discontinue and dismiss the prosecutions in approximately 200 other cases arising out of such demonstrations at the same place of public resort or amusement;

6. Exercising rights now established, protected and confirmed by the Federal Civil Rights Act of 1964, 78 Stat. 241, thereby requiring the abatement of the pending convictions and dismissal of the prosecutions of appellants.

STATEMENT OF THE CASE

On Sunday, September 6, 1959, the appellants, three whites and one Negro, together with another Negro, went to Gwynn Oak Park, a public amusement park in Baltimore County, Maryland owned by a private corporation. All Nations Day was being celebrated at the park on that particular day (R. 33-34, E. 15).[1] About 3:00 P.M. the five individuals were standing approximately in the center of the park. They were in a group by themselves and had attracted no attention from others present on the park premises (R. 34, 36, E. 15, 17). A private park guard approached them and told them that the park was closed to colored persons and that they would have to leave (R. 19, 35, E. 7, 16). There was no evidence that appellants had prior knowledge of such an exclusionary policy (See p. 14a, Appendix C). The initial direction to leave was given to the two Negroes. When they remained, all five persons were asked to leave, but they refused (R. 22, E. 9). Appel-

[1] "R." references are to the transcript of testimony at the trial. "E." references are to the Record Extract printed as part of appellants' brief in the Court of Appeals in the initial appeal.

lants were very polite to the guard; one stated that he was enjoying himself and was going to stay and look around a little bit more (R. 22-23, E. 8, 9). Although the park was crowded (R. 48, E. 23), there was no particular congregation around the appellants until they were approached and asked to leave by the park guard (R. 33-36, E. 15-17).

Upon the refusal of the appellants to leave the park, the guard summoned the Baltimore County police (R. 23, E. 8). After requesting the appellants to leave (R. 35, 40-42, E. 16, 19, 20), the police arrested the appellants on the specific request of a park official (R. 43, 49-50, E. 20, 24). The park official ordered the arrest in furtherance of the amusement park's policy of excluding Negroes (R. 19-22, 49-51, E. 7, 8, 24). During the period between the time the appellants were first requested to leave by the park police and their arrest by the County police, a crowd gathered around the appellants and the police, and its members appeared to become angry and engaged in certain unruly and disorderly activities, including spitting at and kicking the appellants and using improper language in speaking to them (R. 23-24, 26, 28, E. 9, 11, 12). There was no attempt by the park officials or by the County police to exclude from the park or to arrest any of those who engaged in the disorderly conduct (R. 37, 51, 67, E. 17, 24, 33).

When arrested, appellants locked arms (R. 43, E. 20). Appellants Drews and Sheehan, in a further show of passive resistance, proceeded to lie on the ground at which time the joining of arms with the other two appellants ceased (R. 38, 45, 51, 54, E. 17, 21, 22, 26). Appellants Joyner and Brown left the park in the custody of the police but under their own power (R. 46, 53, E. 22, 26). The others were carried out (R. 38, E. 18). None of the appellants offered positive resistance and they made no remarks other than a plea by Drews for forgiveness of someone who was

mistreating him (R. 26, 29, 47, 61, 63, E. 11, 13, 22, 30, 31). The appellants were then taken to a police station where an employee of the park swore out a warrant against them.

On April 5, 1960, the appellants were charged in an amended criminal information with "acting in a disorderly manner, to the disturbance of the public peace, in or on Gwynn Oak Amusement Park, Inc., a body corporate, a place of public resort and amusement in Baltimore County" contrary to Section 123 of Article 27 of the Annotated Code of Maryland (1957 edition). On April 8, 1960, appellants were arraigned, pleaded not guilty and waived a jury trial. The trial then took place on this same day. At the trial, the officer who arrested the appellants testified that, had it not been for the request of the park official that appellants be arrested, he would not have arrested them (R. 52, E. 25). At the conclusion of the State's case, appellants moved for a directed verdict, which motion was taken under advisement by the Court. On May 6, 1960, the Court denied appellants' motion for a directed verdict. Appellants introduced no testimony and renewed their motion for a directed verdict. The Court thereupon entered a verdict of guilty against each of the appellants and imposed a sentence of $25.00 plus costs on each. On June 2, 1960, an appeal to the Court of Appeals of Maryland was filed. On January 18, 1961, the Court of Appeals of Maryland affirmed the judgments rendered against the appellants and a notice of appeal to the Supreme Court of the United States was filed with the Court of Appeals on February 13, 1961. On June 22, 1964 the Supreme Court vacated the judgment and remanded the case to the Court of Appeals of Maryland for consideration in light of *Griffin v. Maryland*, 378 U.S. 130 and *Bell v. Maryland*, 378 U.S. 226. Following such consideration the Court of Appeals of Maryland on October 22, 1964 reinstated and reaffirmed the prior

judgment of conviction. Appellants filed a notice of appeal from this decision on January 20, 1965.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

The first four questions set out above for review in this Court were raised in the Court of first instance, the Circuit Court for Baltimore County, Maryland, generally by pleas of not guilty entered on April 8, 1960. On the same day at the end of the presentation of the State's evidence, the appellants requested a directed verdict of not guilty on the grounds, inter alia, that, if appellants were convicted, they would be denied their constitutional rights under the Fourteenth Amendment to the Constitution of the United States. These contentions were originally made in oral argument. A reference to the record cannot be made since there is no transcript of the oral arguments. In the memorandum filed by appellants in support of their motion for a directed verdict of not guilty, each of the constitutional arguments raised by the first four questions presented here for review were advanced and argued. However, the Circuit Court judge, in his memorandum opinion, did not specifically pass on any of these constitutional arguments. The same constitutional contentions were presented to the Court of Appeals of Maryland in appellants' brief and in oral argument. That Court ruled on Question One on pages 11a-12a of Appendix B, Question No. 3 on pages 9a-10a, Questions Nos. 2 and 4 were not specifically ruled upon by the Court of Appeals but were rejected by the affirmance of the judgments of the Circuit Court.

The fifth question set out above for review by this Court grew out of occurrences subsequent to conviction of Appellants, and the original affirmance of their convictions by the Court of Appeals of Maryland. The question was raised

in the brief of appellants in the Court of Appeals following remand of this case by the Supreme Court. The Court of Appeals ruled on this question on page 5a of Appendix A.

The sixth question presented for review by this Court concerns the effect of the Federal Civil Rights Act of 1964 upon the convictions of appellants. The convictions in this case, their original affirmance by the Court of Appeals of Maryland, and the remand of the case by this Court all took place prior to the enactment of the Federal Civil Rights Act of 1964. The order of the Court of Appeals setting the case for rehearing specified that it should be in accordance with the remand and consequently matters arising from the enactment of the Federal Civil Rights Act of 1964 have not heretofore been considered in this proceeding. Appellants respectfully submit that the matters raised by question six are properly before this court for review. *Hamm v. Rock Hill*, 379 U.S. 306 (1964).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. The arrest and conviction of the appellants are the use of State action to enforce private discrimination, and, therefore, constitute violations of the rights of the appellants under the Fourteenth Amendment.

The State of Maryland, by the decision in this case, has made the act of refusing to leave an amusement park open to the public but owned by a private corporation, when the request to leave arises solely from the policy of the park owner to exclude Negroes, a criminal offense. This case raises therefore the important constitutional question of whether a state can, without violating the Fourteenth Amendment, support by the use of its criminal laws, policies of racial discrimination adopted by owners of places of public resort or amusement. Alternatively stated, has the State of Maryland complied with the duty imposed on

it by the Fourteenth Amendment to enforce equal treatment of all persons similarly situated in a place of public resort or amusement?

It has of course long been the law that a state cannot, under the Fourteenth Amendment, adopt and enforce a policy of racial segregation directly through the use of its criminal laws. *Buchanan v. Warley,* 245 U.S. 60 (1917); *Holmes v. City of Atlanta,* 350 U.S. 879 (1955); *Gayle v. Browder,* 352 U.S. 903 (1956); *State Athletic Commission v. Dorsey,* 359 U.S. 533 (1959). *Moreover, as Shelley v. Kraemer,* 334 U.S. 1 (1948) and *Barrows v. Jackson,* 346 U.S. 249 (1953) clearly indicate, the thrust of the Fourteenth Amendment has not been limited solely to those laws or state actions which enforce racial segregation policies directly adopted or supported by the state. In those cases, judicial enforcement of a discriminatory policy based upon a private agreement was held to be state action and hence within the prohibition set forth in the Fourteenth Amendment. These decisions have been read to mean that a State may not apply its criminal trespass laws to compel a Negro patron to leave a place of public accommodation since this would be to place the weight of State power behind the discriminatory action of the owner or proprietor. As the Supreme Court of Delaware noted in *State v. Brown,* ..... Del. ....., 195 A. 2d 379, 386 (1963).

> "In the instant case, the trespass statute, as applied, results in judicial sanction of a policy of racial discrimination. Therefore, just as the State, in *Turner* [*Turner v. City of Memphis,* 369 U.S. 350 (1962)] may not enact a statute which supports racial discrimination, the courts may not apply a statute which results in the fostering of racial discrimination. Therefore, the argument advanced in such cases as [citations omitted], that a trespass prosecution is merely a neutral framework for a vindication of a private property right is

> untenable. The State, by intervening on the side of private discrimination, cannot be considered to be acting in a neutral or indifferent manner."

Since the adoption of the Fourteenth Amendment, it has never, we submit, been the law that the owner of a place of business open to the public has the right to discriminate on the basis of race. When, in the *Civil Rights Cases*, 109 U.S. 3 (1883), the Civil Rights Act of 1875 was held unconstitutional, to the extent that it sought to regulate private action, this Court held only that the refusal to any persons of the accommodations of an inn, public conveyance or place of public amusement by an individual *without any sanction or support from any state law or regulation* did not violate the Fourteenth Amendment, because the Fourteenth Amendment relates only to state action. The *Civil Rights Cases* further decided that the Thirteenth Amendment did not sustain the Act since the private discrimination, even though unlawful, did not amount to slavery or involuntary servitude. The Court said, 109 U.S. at p. 24:

> "Now, conceding, for the sake of the argument, that the admission to an inn, a public conveyance, or a place of public amusement, on equal terms with all other citizens, is the right of every man and all classes of men, is it any more than one of those rights which the states by the Fourteenth Amendment are forbidden to deny to any person? And is the Constitution violated until the denial of the right has some State sanction or authority? Can the act of a mere individual, the owner of the inn, the public conveyance or place of amusement, refusing the accommodation, be justly regarded as imposing any badge of slavery or servitude upon the applicant, or only as inflicting an ordinary civil injury, properly cognizable by the laws of the State, and presumably subject to redress by those laws until the contrary appears?
>
> "After giving to these questions all the consideration which their importance demands, we are forced to the

> conclusion that such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it is violative of any right of the party, his redress is to be sought under the laws of the State; or if those laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of State laws, or State action, prohibited by the Fourteenth Amendment . . ."

This Court, thus, did not hold that the owner of an inn, public conveyance or place of public amusement had a constitutional right to discriminate on the basis of race. On the contrary, this Court assumed that there was a right in all citizens to frequent such places without discrimination on grounds of race or color. See also 109 U.S. at pp. 19, 21, 23, and Justice Harlan's dissent, 109 U.S. at 41-43. This Court merely held that the Federal Government was without power to impose sanctions for violation of the federally created right against the private persons who were the owners of such places of business. Several of the states have remedied the situation in which Federal law creates a right, which is, nevertheless, imperiled by lack of an adequate remedy, through the passage of civil rights acts patterned on the Federal statute. That Maryland did not have such a civil rights act at the time of the events with which we are here concerned meant no more than that the federally created right not to be discriminated against in a place of public amusement did not have, in Maryland, adequate enforcement machinery against purely private discrimination.[2] This did not mean, however, that the owner of a place of public amusement had a right to discriminate. A fortiori, it did not mean that he could call

[2] Accustomed as we now are to enforcement of federally created rights by direct federal action, we should not lose sight of the fact that such a technique for a federal government marked a great inno-

on the State of Maryland for aid in discriminating. As was said in *Shelley v. Kraemer, supra,* 334 U.S. at 22:

> "It would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment."

For a state to create and enforce a "right" of an owner of a business open to the public to discriminate on the basis of race would be state action within the meaning of the Fourteenth Amendment, and, therefore, subject to the restrictions of that amendment. And even though it be assumed that the owner of purely private property has a constitutional right to the enjoyment of his property without interference from others, it must be remembered that the property here involved has been thrown open to public use. The statute under which appellants were convicted required an express determination that the amusement

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vation when adopted in 1789. As that acute observer of the American political system, Alexis deTocqueville, pointed out with respect to the Constitution:

> "This Constitution, which may at first sight be confounded with the Federal constitutions which preceded it, rests upon a novel theory, which may be considered as a great invention in modern political science. In all the confederations which had been formed before the American Constitution of 1789 the allied States agreed to obey the injunctions of a Federal Government; but they reserved to themselves the right of ordaining and enforcing the execution of the laws of the Union. The American States which combined in 1789 agreed that the Federal Government should not only dictate the laws but that it should execute its own enactments. In both cases the right is the same, but the exercise of the right is different; and this alteration produced the most momentous consequences." deTocqueville, *Democracy in America* (Oxford University Press, 1947), pages 88-89.

Adoption of the Fourteenth Amendment represented a return, in one limited instance, to the earlier general practice of committing enforcement of a federally created right to the several states. That a state might fail in its obligation to enforce such a right does not create a "right" in those who thereupon flaunt the federal right.

park was a *place of public resort or amusement.* The effect of the conduct by the owner of a business open to the public must be considered. This Court in *Marsh v. Alabama,* 326 U.S. 501, 506 (1946), pointed out that:

> "Ownership does not always mean absolute dominion. The more the owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it . . ."

It is apparent, therefore, that the basic premises of the Maryland Court of Appeals in the instant case concerning the supposed rights of the owner of a business to discriminate on the basis of race — and to seek state assistance in such discrimination — have never been supported by this Court.

This issue was the subject under discussion in the concurring and dissenting opinions of members of this Court in *Bell v. Maryland,* 378 U.S. 226, 242, 286, 318 (1964). The views expressed in that case on this issue were reaffirmed in the various concurring opinions of members of this Court in *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241 (1964) and *Katzenbach v. McClung,* 379 U.S. 294 (1964). Appellants respectfully submit that the constitutional issue raised by this question is not only of substantial merit but also of great national importance meriting therefore plenary consideration by this Court with briefs on the merits and oral argument.

2. The arrest and conviction of the appellants are the denial of the rights of the appellants to freedom of speech and freedom of assembly.

The attendance of the white and Negro appellants together at a celebration named "All Nations Day" was more than merely an attempt to enjoy a public amusement park.

Their very association together symbolized the idea expressed by an "All Nations Day" celebration. They were, therefore, exercising their rights of freedom of speech and freedom of association, and the arrest and conviction of the appellants for disorderly conduct for exercising these rights is in contravention of the Fourteenth Amendment. If the appellants were, when arrested, carrying signs proclaiming the idea expressed by their association together, they would clearly be protected from arrest and conviction by the interpretation given the Fourteenth Amendment in *Marsh v. Alabama, supra,* and in *Terminiello v. Chicago,* 337 U.S. 1 (1949). Yet no placard could have expressed with greater eloquence the point of view which appellants displayed by appearing together in public despite their difference in color. The effect of the *Marsh* decision is that, where a private property owner invites the general public onto his property for his own benefit, the owner relinquishes his right to exclude members of the public at will where their activities are peaceful and in furtherance of the rights of freedom of speech and assembly. In the instant case, the owner of the amusement park, by admitting members of the public at large (except for Negroes) relinquished his right to exclude the appellants while they, by their very act of associating together, exercised the right of free speech to advocate the breaking down of artificial barriers based upon race.

3. The arrest and conviction of the appellants without any evidence that the appellants acted in any way in a disorderly manner to the disturbance of the public peace are a denial of the rights of the appellants under the Fourteenth Amendment.

The record in this case is clear that appellants, prior to their arrest for acting in a disorderly manner, did no more than politely refuse to leave a public amusement park when

asked to leave as a result of the owner's policy to exclude Negroes. Appellants did nothing that was in any way disorderly and the hostile crowd did not assemble until after the park officials themselves had created a scene by calling attention to the appellants and by seeking to put the owner's discriminatory policy into effect.

To allow individuals who have behaved in a peaceful manner to be convicted of acting in a disorderly manner because of the effect of their peaceful conduct on a crowd of hostile onlookers would make a mockery of our concepts of criminal conduct. One is reminded of the hapless soul who, upon being strangled, is told by his assailant that unless he removes his neck from the assailant's hands, the assailant will not be responsible for the consequences. Their convictions clearly run counter to the decision in *Barr v. City of Columbia*, 378 U.S. 146 (1964), where this Court was reluctant to assume that a State breach-of-peace statute would be applicable in view of the frequent occasions on which the Court had reversed under the Fourteenth Amendment convictions of peaceful individuals who were convicted of breach of the peace because of the acts of hostile onlookers. *Henry v. City of Rock Hill*, 376 U.S. 776 (1964); *Wright v. Georgia*, 373 U.S. 284 (1963); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Taylor v. Louisiana*, 370 U.S. 154 (1962); *Garner v. Louisiana*, 368 U.S. 157 (1961); *Terminiello v. Chicago, supra.*

It is clear from the record here that there is no evidence of disorderly conduct on the part of appellants. The convictions should therefore not stand. *Barr v. City of Columbia, supra; Thompson v. City of Louisville*, 362 U.S. 199 (1960). Cf. *Niemotko v. Maryland, supra*, which upset a conviction under the same criminal statute here involved. There the defendants' actions were taken in the face of

police orders and threats of arrest if the orders were disobeyed. See *Niemotko v. State*, 194 Md. 247, 250, 71 A. 2d 9, 10 (1950).

4. The arrest and conviction of the appellants for disorderly conduct in face of the failure of the State to arrest and convict members of the crowd who were actually engaged in disorderly conduct are a denial to the appellants of equal protection of the laws.

The evidence clearly shows that the members of the crowd which surrounded the appellants and the police actually engaged in the only disorderly conduct which took place. The crowd spat, kicked and used improper language. The appellants were polite and mannerly at all times. Neither the park owner nor the police made any attempt to quell the disorder or to arrest any of the members of the crowd engaged in such conduct. The arrest and conviction of the appellants under such circumstances denied appellants equal protection of the law. *Pace v. Alabama*, 106 U.S. 583 (1882).

5. The singling out of appellants for prosecution and conviction while the State has proceeded to discontinue and dismiss prosecutions in approximately 200 other cases arising out of demonstrations at the same place of public resort or amusement is a denial to appellants of due process and equal protection of the laws under the Fourteenth Amendment.

The manner in which a law is enforced may render an otherwise constitutionally valid measure invalid. While a statute may not be rendered ineffective solely through non-use, e.g., *Louisville & N. R. Co. v. United States*, 282 U.S. 740, 759 (1931); *Snowden v. Snowden*, 1 Bland (Md. Chan.) 550, 556-58 (1829), it may not be applied discrim-

inatorily to members of the same class. The Fourteenth Amendment prevents the unequal enforcement of valid laws as well as any enforcement of invalid laws. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). See also *Hillsborough v. Cromwell,* 326 U.S. 620, 623 (1946), and the cases cited therein.

Gwynn Oak Park, the scene of the alleged offenses of appellants, was the subject of a number of sit-in demonstrations in the summer of 1963. The demonstrations achieved their objective, for the park abandoned its segregation policy. In the course of the demonstrations approximately 200 arrests were made. The State's Attorney of Baltimore County has done nothing about bringing these other cases on for trial, and has proceeded to discontinue and dismiss said prosecutions. Considerations of due process and equal protection under the Fourteenth Amendment should prohibit the continuation of the convictions of Appellants.

6. The Federal Civil Rights Act of 1964, 78 Stat. 241, requires the abatement of the pending convictions and the dismissal of the prosecutions of the appellants.

Appellants were convicted in the Circuit Court for Baltimore County, Maryland on May 6, 1960, and those convictions were originally affirmed by the Court of Appeals of Maryland on January 18, 1961. Both the convictions and the affirmance took place well prior to the enactment of the Federal Civil Rights Act of 1964 which was signed into law on July 2, 1964. The case was, however, on appeal to this Court or on remand to the Maryland Court of Appeals throughout the intervening period.

On June 22, 1964, this Honorable Court vacated the judgment entered by the Court of Appeals of Maryland on January 18, 1961 and remanded the case to the Court of Appeals

for consideration in light of *Griffin v. Maryland,* 378 U.S. 130 and *Bell v. Maryland,* 378 U.S. 226. On July 31, 1964, the Court of Appeals ordered the case set for hearing upon the matters to be considered in accordance with the remand. In view of the terms of the remand and the order of the Court of Appeals, matters arising from the enactment of the Federal Civil Rights Act have not heretofore been considered in this proceeding.

However, it is clear that the judgments in this case are not yet final, *Bell v. Maryland, supra,* and that these convictions which are now on direct review must abate since the conduct in question is rendered no longer unlawful by the Civil Rights Act of 1964. *Hamm v. Rock Hill,* 379 U.S. 306 (1964). As Chief Justice Hughes noted in *United States v. Chambers,* 291 U.S. 217, 226 (1934):

> "Prosecution for crimes is but an application or enforcement of the law, and if the prosecution continues the law must continue to vivify it."

See also *United States v. Schooner Peggy,* 1 Cranch 103 (1801); *Yeaton v. United States,* 5 Cranch 281 (1809); *Maryland v. Baltimore & O. R. Co.,* 3 How. 534 (1845); *United States v. Tynen,* 11 Wall. 88 (1870); *United States v. Reisinger,* 128 U.S. 398 (1888); *Massey v. United States,* 291 U.S. 608 (1934).

Appellants assert that there are a number of incontrovertible facts establishing that the Gwynn Oak public amusement park is covered by the Federal Civil Rights Act of 1964, 78 Stat. 241:

1. The operations of the cafeteria on the premises of the amusement park (a cafeteria being an establishment described in paragraph (2) of section 201(b) of the Act) affect commerce in that a substantial portion of the food

which it serves has moved in commerce (as provided in Sec. 201(c)(2)).

Given that the cafeteria is a covered establishment, the amusement park is also covered under the provisions of Sec. 201(b)(4) and (c)(4) since there is physically located within the premises of the amusement park a covered establishment, the cafeteria, and since the amusement park holds itself out as serving the patrons of such covered establishment.

2. The amusement park is a covered establishment since it is an "other place of exhibition or entertainment" referred to in Sec. 201(b)(3) and its operations affect commerce since it customarily presents performances, exhibitions, or other sources of entertainment which move in commerce as provided in Sec. 201(c)(3) of the Act.

Alternatively, if the view is taken that the amusement park is not a covered establishment as indicated above because the operations discussed do not affect commerce, it is asserted that it nevertheless would have been a covered establishment at the time of the events with which we are here concerned on the following grounds:

1. Discrimination or segregation by the cafeteria was supported by State action (as provided in Section 201(b) and (d)) since such discrimination or segregation was carried on under color of a custom or usage required or enforced by officials of the State or political subdivision thereof. In this case, the discriminatory custom or usage was enforced by the police officers of Baltimore County, Maryland and by the courts of the State of Maryland.

Since state action enforced discrimination by the cafeteria, thereby making it a covered establishment, the amusement park was also a covered establishment since

there was physically located within its premises a covered establishment and since it held itself out as serving the patrons of said covered establishment (as provided in Sec. 201(b)(4)).

2. The amusement park itself was an "other place of exhibition or entertainment" under Section 201(b)(3) of the Act and was a place of public accommodation thereunder since discrimination or segregation by it was supported by State action.

Said discrimination or segregation by the amusement park was supported by State action within the meaning of the Act in that such discrimination or segregation was carried on under color of a custom or usage required or enforced by officials of the State or a political subdivision thereof (as provided by Sec. 201(d)).

CONCLUSION

It is submitted that the decisions of the Court of Appeals of Maryland fail to recognize the limitations imposed by the Fourteenth Amendment upon the State's power 1) to enforce discrimination in places of public resort or amusement through the use of its criminal laws; 2) to punish, through the use of its criminal laws, exercises of the right to freedom of speech and freedom of assembly; 3) to convict a person for a violation of a criminal statute without any evidence of the substantial elements of the crime; 4) to arrest and convict a person of violation of a criminal statute when the evidence clearly shows that others were the only persons in violation of said statute and such persons were not proceeded against in any way; 5) to prosecute and convict a person under the criminal laws for acts arising out of sit-in demonstrations when prosecutions in approximately 200 other cases arising out of such demon-

strations at the same place of public resort or amusement are being discontinued and dismissed; and 6) that said decisions fail to give due consideration to the effect upon the prosecutions and pending convictions of the appellants of the enactment of the Civil Rights Act of 1964.

We believe that the questions presented by this appeal are substantial and are of public importance. As this Court noted in *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948):

> "The problem of defining the scope of the restrictions which the Federal Constitution imposes upon exertions of power by the States has given rise to many of the most persistent and fundamental issues which this Court has been called upon to consider."

Respectfully submitted,

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APPENDIX A

Opinion of Court of Appeals of Maryland on Remand from the Supreme Court of the United States

(Decided October 22, 1964)

236 Md. 349, 204 A. 2d 64

Horney, J. (Dissenting Opinion by Oppenheimer, J.)—

The appellants were convicted in 1960 of violating Code (1957), Art. 27, § 123, by "acting in a disorderly manner to the disturbance of the public peace" in a place of "public resort or amusement." On the appeal to this Court, the convictions were affirmed in *Drews v. State*, 224 Md. 186, 167 A. 2d 341 (1961). Having found that Gwynn Oak Amusement Park in Baltimore County was a place of public resort or amusement within the meaning of the statute, we held that the conduct of the appellants — two of whom were white men, one a white woman, and the other a colored woman — during the course of a demonstration protesting the segregation policy of the park, by joining arms and dropping to the ground after they had refused to obey a lawful request to leave the privately owned park, was disorderly in that it "disturbed the public peace and incited a crowd." We also held that the action taken by the county police, in arresting the appellants for disorderly conduct (after the police at the request of the park manager had asked them to leave and again they refused), did not constitute state enforcement of racial discrimination in violation of the Fourteenth Amendment of the United States. A direct appeal was thereafter taken to the Supreme Court of the United States, which, in a *per curiam* filed June 22, 1964, in *Drews v. Maryland*, 378 U.S. 547, vacated the judgments and remanded the case to this Court "for consideration in light of *Griffin v. Maryland* [378 U.S. 130] and *Bell v. Maryland* [378 U.S. 226]," decided on the same day as *Drews*.

In *Griffin v. State*, 225 Md. 422, 171 A. 2d 717 (1961), where the park officer was authorized to make arrests

either as a paid employee of a detective agency then under contract to protect and enforce the racial segregation policy of the operator of Glen Echo Amusement Park in Montgomery County or as a nonsalaried special deputy sheriff of the county, we affirmed the conviction of the appellants for trespassing on private property in violation of Code (1957), Art. 27, § 577, when they refused to leave the premises after having been notified to do so. But the Supreme Court in *Griffin v. Maryland, supra,* held that the arrest of the appellants by the park officer was state action in that he was possessed of state authority and purported to act under that authority, and reversed the judgment. In *Bell v. State,* 227 Md. 302, 176 A. 2d 771 (1962), where the appellants had entered the private premises of a restaurant in Baltimore City in protest against racial segregation, sat down and refused to leave when asked to do so on the theory that their action in remaining on the premises amounted to a permissible verbal or symbolic protest against the discriminatory practice of the owner, we affirmed the convictions for criminal trespass for the reason that the right to speak freely and to make public protest did not import a right to invade or remain on privately owned property so long as the owner retained the right to choose his guests or customers. The Supreme Court granted certiorari. In the interim between the decision of this Court and the decision of the Supreme Court, both the city and state enacted "public accommodation laws." When the Supreme Court decided *Bell v. Maryland, supra,* it reversed the judgment of this Court and remanded the case for a determination by us of the effect of the subsequently enacted public accommodation laws on pending criminal trespass convictions.[1]

On the remand of this *Drews* case, the appellants raise two questions. In effect they contend: (i) that their arrest and conviction constitutes state action in the light of the decision in *Griffin v. Maryland, supra;* and (ii) that to uphold their conviction now for acts arising out of sit-in dem-

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(1) See Bell v. State, 236 Md. 356, 204 A. 2d 54 (1964), decided on the remand on or about the same time as this case.

onstrations at Gwynn Oak Amusement Park would be to deny them due process and equal protection because the State's Attorney for Baltimore County has failed to prosecute approximately two hundred other cases charging the same offense.

(i)

In reconsidering the convictions of the "Drews" appellants in the light of *Griffin v. Maryland, supra,* we find nothing therein which compels or requires a reversal of our decision in *Drews v. State* (224 Md. 186). Significantly, the question as to whether the same result would have been reached by the Supreme Court had the arrests in *Griffin* been made by a regular police officer, as in the *Drews* case, was not decided. The arrests and subsequent convictions of the appellants for criminal trespass were held in *Griffin* to constitute state action because the arresting officer, a park employee, was also a special deputy sheriff. In *Drews,* however, the appellants not only refused to leave the amusement park peacefully after they had been requested to do so, but acted in a disorderly manner when the arresting officers, who were county police officers, not park employees, undertook to eject them. The record in *Drews* does not show, nor has it ever been contended, that the park employee, who assisted the arresting officers, had power (as was the case in *Griffin*) to make arrests. By reversing *Griffin* and remanding *Drews,* the Supreme Court must have had some doubt as to whether the two cases were distinguishable. We think there are important differences in the two cases between the reasons or causes for the arrests and the type of police personnel that made the arrests, and that such distinctions are controlling.

In *Drews,* where the trespassers conducted themselves in a disorderly manner when the police undertook to forcibly eject them from the amusement park in an effort to prevent them from further inciting the gathering crowd by remaining in the park after they had been requested to leave by the park manager as well as the county police, the arrests were made by policemen who were not employed by the park, who were not paid by the park, and

who were under no orders of any park official. The very fact that the police made no move to eject the trespasser from the park until they were requested to do so by the manager shows the complete absence of any cooperative state action. Nor was there any evidence that the State desired or intended to maintain the amusement park as a segregated place of amusement. In these circumstances, it seems clear to us that the arrest of the Drews appellants (who were both white and colored) for disorderly conduct did not constitute state enforcement of racial discrimination. To hold otherwise would, we think, not only deny the park owners equal protection of the laws, but could seriously hamper the power of the State to maintain peace and order and, when imminent as was the case here, to forestall mob violence or riots.

We deem it unnecessary to elaborately discuss the only two cases cited by the appellants — *State v. Brown*, 195 A. 2d 379 (Del. 1963), and *Wright v. Georgia*, 373 U.S. 284 (1963). Neither is apposite here and, assuming they are, both are clearly distinguishable on the facts. Even if the arrest of the Drews appellants for disorderly conduct was the result of or arose out of their ejection from the park for trespassing on private property, there was no violation of a constitutional guarantee. We reiterate what was recently said in *In Matter of Cromwell*, 232 Md. 409, 413, 194 A. 2d 88 (1963), that "we find no violation of the Fourteenth Amendment in the assertion of a private proprietor's right to choose his customers, or to eject those who are disorderly." We see no reason to reverse the convictions in this case.

The reason for the remand of the case for consideration in the light of *Bell v. Maryland, supra*, is not clear. The judgments in *Bell* were vacated and the case remanded to enable this Court to pass upon the effect of supervening public accommodation laws on the criminal trespass law. Since there is no provision in the public accommodation law enacted by the State (Code, 1964 Supp., Art. 49B, § 11) with respect to amusement parks, we need not decide the effect of the supervening legislative enactment on the convictions in this case.

(ii)

The second contention of the appellants — that the failure of the State to prosecute others for the same or similar offenses is a denial of due process or equal protection — is without merit and has no bearing on the convictions in this case. Guilt or innocence cannot be made to depend on the question of whether other parties have not been prosecuted for similar acts. *Callan v. State*, 156 Md. 459, 466, 144 Atl. 350 (1929). Nor is the exercise of some selectivity in the enforcement of a criminal statute, absent a showing of unjustifiable discrimination, violative of constitutional guarantees. *Oyler v. Boles*, 368 U.S. 448 (1962). See also *Moss v. Hornig*, 314 F. 2d 89 (C.A. 2d 1963).

Judgments reinstated and reaffirmed; appellants to pay the costs.

OPPENHEIMER, J. (dissenting)—

In *Griffin v. Maryland*, 378 U.S. 130 (1964), the Supreme Court of the United States reversed the judgments against the defendants affirmed by us in *Griffin v. State*, 225 Md. 422, 171 A. 2d 717 (1961) on the ground that the arrests were the products of State action taken because the defendants were Negroes, and therefore racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. In *Griffin*, the arresting officer, Collins, was a deputy sheriff of Montgomery County employed by and subject to the direction and control of the amusement park. The record shows that in this case the special policeman, Officer Wood, was in the employ of the amusement park but it does not show whether or not he had been deputized by Baltimore County. Pursuant to the instructions of the park's management, Wood told the defendants the park was closed to Negroes, ordered them to leave and, when they did not, sent for the Baltimore County police. He and the county police together removed the defendants from the park.

If Wood, the "special officer" in this case, had virtually the same authority from Baltimore County that Collins had

from Montgomery County, it seems to me immaterial that he called in the Baltimore County police to help him evict the defendants. He was the proximate cause of the arrests. If his authority stemmed from the State, then under *Griffin v. Maryland, supra,* the State was a joint participant in the discriminatory action.

On the facts, it also seems immaterial that the convictions here were for disorderly conduct rather than for trespass as in *Griffin.* In resisting the command of the officers to leave the park, the defendants used no force against the officers or anyone else; they held back or fell to the ground. Such failure to obey the command, if the command itself was violative of the Constitution, would not sustain the convictions. *Wright v. Georgia,* 373 U.S. 284, 291, 292 (1963).

The Baltimore County Code authorizes the county to appoint special police officers to serve for private persons or corporations. Baltimore County Code, Sections 24-13 and 35-3 (1958). I would remand this case to the Circuit Court for Baltimore County for the taking of additional testimony to determine whether or not Wood was appointed by Baltimore County under these sections of its Code. If he was, the convictions should be reversed.

APPENDIX B

Opinion of Court of Appeals of Maryland

(Decided January 18, 1961)

224 Md. 186, 167 A. 2d 341

Hammond, J.:

The four appellants were convicted by the court sitting without a jury of violating Code (1957), Art. 27, Sec. 123, by "acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement." Two of appellants are white men, one is a white woman, and the other a Negress. Accompanied by a Negro who was not tried, they had gone as a group to

Gwynn Oak Amusement Park in Baltimore County, which as a business policy does not admit Negroes, and were arrested when they refused to leave after being asked to do so.

Appellants claim that there was no evidence that the Park is a place of public resort or amusement, that if there were such evidence the systematic exclusion of Negroes prevents the Park from being regarded as such a public place, that they were not guilty of disorderly conduct and, finally, if the Park is a place of public resort or amusement their presence there was in the exercise of a constitutional right, and their arrest and prosecution amounted to State action to enforce segregation in violation of the Constitution of the United States.

There is no direct statement in the record that the Park is a place of public resort or amusement but we think the evidence clearly permitted the finding the trial court made that it is. There was testimony which showed, or permitted the inference, that the Park is owned by a private corporation, that it has been in operation each summer for many years, that among its attractions are a miniature golf course and a cafeteria, that appellants' conduct occurred on "All Nations Day" which usually attracts a large crowd, that on that day the Park was so crowded there was but elbow room to walk, and that the Park's policy was to welcome everyone but Negroes. The trial court properly could have concluded the Park is a place resorted to by the general public for amusement. Cf. *Iozzi v. State*, 224 Md. 42.

A lawmaking body is presumed by the Courts to have used words in a statute to convey the meaning ordinarily attributed to them. In recognition of this plain precept the Courts, in construing zoning, licensing, tax and anti-discrimination statutes, have held that the term place of public resort or amusement included dance halls, swimming pools, bowling alleys, miniature golf courses, roller skating rinks and a dancing pavilion in an amusement park (because it was an integral part of the amusement park), saying that amusement may be derived from participation as well as observation. *Amos v. Prom, Inc.*,

117 F. Supp. 615; *Askew v. Parker* (Cal. App.), 312 P. 2d 342; *Jaffarian v. Building Com'r* (Mass.), 175 N.E. 641; *Jones v. Broadway Roller Rink Co.* (Wis.), 118 N.W. 170, 171; *Johnson v. Auburn & Syracuse Electric R. Co.* (N.Y.), 119 N.E. 72. Section 123 of Art. 27 proscribes conduct which disturbs the public peace at a place where a number of people are likely to congregate, whether it is on governmental property or on property privately owned. This is made clear by the prohibition of offensive conduct not only on any public street or highway but in any store during business hours, and in any elevator, lobby or corridor of an office building or apartment house having more than three dwelling units, as well as in any place of public worship or any place of public resort or amusement. We read the statute as including an amusement park in the category of a place of public resort or amusement.

We find no substance in the somewhat bootstrap argument that the regular exclusion of Negroes from the Park kept it from being within the ambit of the statute. Early in the common law the duty to serve the public without discrimination apparently was imposed on many callings. Later this duty was confined to exceptional callings, as to which an urgent public need called for its continuance, such as innkeepers and common carriers. Operators of most enterprises, including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discrimination, can pick and choose their patrons for any reason they decide upon, including the color of their skin. Early and recent authorities on the point are collected, and exhaustively discussed, in the opinion of the Supreme Court of New Jersey in *Garifine v. Monmouth Park Jockey Club*, 148 A. 2d 1. See also *Greenfeld v. Maryland Jockey Club*, 190 Md. 96; *Good Citizens Community Protective Assoc. v. Board of Liquor License Commissoners*, 217 Md. 129, 131; *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124; *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845.

It has been noted in the cases that places of public accommodation, resort or amusement properly can exclude would-be patrons on the grounds of improper dress or

uncleanliness, *Amos v. Prom, Inc., supra* (at page 629 of 117 F. Supp.); because they are under a certain age, are men or are women, or are unescorted women, *Collister v. Hayman* (N.Y.), 76 N.E. 20; or because for some other reason they are undesirables in the eyes of the establishment. *Greenfeld v. Maryland Jockey Club; Good Citizens Protective Assoc. v. Board of Liquor License Commissioners; Slack v. Atlantic White Tower System, Inc.*, all *supra*. See 86 C.J.S. *Theaters and Shows* Secs. 31 and 34 to 36. We have found no decision holding that a policy of excluding certain limited kinds or classes of people prevents an enterprise from being a public resort or amusement, and can see no sound reason why it should.

Appellants' argument that they were not disorderly is that neither the mere infringement of the rules of a private establishment nor a simple polite trespass constitutes either a breach of the peace or disorderly conduct. We find here more than either of these, enough to have permitted the trier of fact to have determined as he did that the conduct of appellants was disorderly.

It is said that there was no common law crime of disorderly conduct. Nevertheless, it was a crime at common law to do many of the things that constitute disorderly conduct under present day statutes, such as making loud noises so as to disturb the peace of the neighborhood, collecting a crowd in a public place by means of loud or unseemly noises or language, or disturbing a meeting assembled for religious worship or any other lawful purpose. *Hochheimer on Crimes and Criminal Procedure*, Sec. 392 (2nd Ed.); *1 Bishop on Criminal Law*, Sec. 542 (9th Ed.); *Campbell v. The Commonwealth*, 59 Pa. St. Rep. 266.

The gist of the crime of disorderly conduct under Sec. 123 of Art. 27, as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area. 3 Underhill, *Criminal Evidence*, Sec. 850 (5th Ed.), adopts as one definition of the crime the statement that it is conduct "of such a nature as to affect the peace and quiet of persons who

may witness the same and who may be disturbed or provoked to resentment thereby." Also, it has been held that failure to obey a policeman's command to move on when not to do so may endanger the public peace, amounts to disorderly conduct. *Bennett v. City of Dalton* (Ga. App.), 25 S.E. 2d 726, appeal dismissed, 320 U.S. 712, 88 L. Ed. 418. In *People v. Galpern* (N.Y.), 181 N.E. 572, 574, it was said, under a New York statute making it unlawful to congregate with others on a public street and refuse to move on when ordered by the police, that refusal to obey an order of a police officer, not exceeding his authority, to move on "even though conscientious — may interfere with the public order and lead to a breach of the peace," and that such a refusal "can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order." See also *In re Neal,* 164 N.Y.S. 2d 549 (where the refusal of a school girl to leave a school bus when ordered to do so by the authorities was held to be disorderly conduct, largely because of its effect on the other children); Underhill, in the passage cited above, concludes that "failure to obey a lawful order of the police, however, such as an order to move on, may amount to disorderly conduct." See also *People v. Nixon* (N.Y.), 161 N.E. 463; 27 C.J.S. *Disorderly Conduct,* Sec. 1(4) f; annotation 65 A.L.R. 2d 1152; compare *People v. Carcel* (N.Y.), 144 N.E. 2d 81; and *People v. Arko,* 199 N.Y.S. 402.

Appellants refused to leave the Park although requested to do so many times. A large crowd gathered around them and the Park employee who was making the requests, and seemed to "mill in and close in" so that the employee sent for the Baltimore County police. The police, at the express direction of the manager of the Park, asked the appellants to leave and again they refused, even when told they would be arrested if they did not. Admittedly they were then deliberately trespassing. That they intended to continue to trespass until they were forcibly ejected is made evident by their conduct when told they were under arrest. The five joined arms as a symbol of

united defiance and then two of the men dropped to the ground. Two of the appellants had to be carried from the Park, the other three had to be pushed and shoved through the crowd. The effect of the appellants' behavior on the crowd is shown by the testimony that its members spit and kicked and shouted threats and imprecations, and that the Park employees feared a mob scene was about to erupt. The conduct of appellants in refusing to obey a lawful request to leave private property disturbed the public peace and incited a crowd. This was enough to sustain the verdict reached by Judge Menchine.

We turn to appellants' argument that the arrest by the County police constituted State action to enforce a policy of segregation in violation of the ban of the Equal Protection and Due Process clauses of the Fourteenth Amendment against State-imposed racial discrimination. The Supreme Court said in the racial covenant case of *Shelley v. Kraemer*, 334 U.S. 1, 13, 92 L. Ed. 1161, 1180: "The action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful". The Park had a legal right to maintain a business policy of excluding Negroes. This was a private policy which the State neither required nor assisted by legislation or administrative practice. The arrest of appellants was not because the State desired or intended to maintain the Park as a segregated place of amusement; it was because the appellants were inciting the crowd by refusing to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people acted in a disorderly manner and the State, without discrimination, arrested and prosecuted all who were so acting.

While there can be little doubt that the Park could have used its own employees to eject appellants after they refused to leave, if it had attempted to do so there would have been real danger the crowd would explode into riotous action. As Judge Thomsen said in *Griffin v. Collins*, 187 F. Supp. 149, 153, in denying a preliminary injunction and

a summary judgment in a suit brought to end the segregation policy of the Glen Echo Amusement Park near Washington: "Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant, or amusement park, himself or through his own employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights."

The Supreme Court has not spoken on the point since Judge Thomsen's opinion. The issue was squarely presented for decision in *Boynton v. Virginia,* 364 U.S. 454, 5 L. Ed. 2d 206, but the Court chose to decide the case on the basis that the conviction of a Negro for unlawfully remaining in a segregated bus terminal restaurant violated the Interstate Commerce Act, which uses broad language to forbid a carrier from discriminating against a passenger. In the absence of controlling authority to the contrary, it is our opinion that the arresting and convicting of appellants on warrants sworn out by the Park for disorderly conduct, which resulted from the Park enforcing its private, lawful policy of segregation, did not constitute "such action as may fairly be said to be that of the States." It was at least one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.

JUDGMENTS AFFIRMED, WITH COSTS.

APPENDIX C

Memorandum Opinion of Circuit Court for Baltimore County

(Filed May 6, 1960)

Unreported

The facts of the case are not in serious dispute. On Sunday, September 6, 1959, at the Gwynn Oak Amusement Park, located in Baltimore County, "All Nations Day" was being celebrated. It was a "right crowdy day * * *. There was just more or less elbow room when you walked anywhere in the park" (Tr. 48). The Park is privately owned by a corporation, known as Gwynn Oak, Incorporated. There is no evidence that there was any sign or signs to indicate that any particular segment of the population would not be welcome, so that for the purpose of this case it is assumed by the Court that there were no such signs.

At about 3 o'clock in the afternoon, a special officer employed by Gwynn Oak Park, Incorporated observed five persons in approximately the center of the Park, near the cafeteria and miniature golf course. This employee approached the group, consisting of three white and two colored persons, and advised them that the Park was closed to colored people, and that the colored people would have to leave (Tr. 19). It was explained that the management of the Park had a policy opposing the use of the Park by colored persons. The request that the colored persons leave was repeated four or five times (Tr. 21). All five persons were very polite (Tr. 22), but, in response to the request that they leave, one of the members of the group stated that he was enjoying himself, and that he thought he would stay and look around. The first request to leave was directed to the two colored people, but when they refused to leave the whole group of five persons was asked to go, but all refused (Tr. 22).

There was no crowd surrounding the group at the time of the initial observation by the special officer, but the crowd began to congregate after the five persons were

asked to leave the Park by the special officer (Tr. 37). The special officer sought the assistance of the Baltimore County Police, who were stationed at the entrance to the Park, after first confirming with the management of the latter's desire to forbid the continued presence of colored persons upon the property. Upon such confirmation, the Baltimore County Police were summoned to the area where the five persons were and by the time of the arrival of the Baltimore County Police a crowd had gathered (Tr. 47). The Baltimore County Police requested the group of five persons to leave the Park two or three times before the arrest (Tr. 35). The period of time between the time of the initial request to leave and the time of actual arrest covered a period of about ten or fifteen minutes (Tr. 36).

Prior to the actual arrest, a good sized crowd gathered around and seemed to mill in and close in on the group and the police. The crowd was milling around and seemed very angry (Tr. 23), and seemed at the point where it would get out of control and became a mob scene (Tr. 26 and 27).

In spite of the requests by the employee of the management and the two or three requests by Baltimore County Police that the group leave the Park, the five persons steadfastly refused to move. They were thereupon placed under arrest and at that time joined their arms together. Two men in the group dropped to the ground in a prone or semiprone position. All were escorted from the premises by the police with a degree of resistance. The resistance took the form in two instances of requiring the police physically to carry them; the resistance as to the other three took the form of merely holding back as they were being walked out of the Park.

On these facts the State has elected to bring this prosecution by way of criminal information on the statutory charge of disturbing the peace under Article 27, Section 123.

The reasonable inference exists that the group was not aware that the management had adopted a policy of barring persons because of color at the time of their entry

upon the property. The evidence is clear, however, that this management policy became known to the accused through statements to them by an employee of the corporation, and by the Baltimore County Police, before the arrest was made.

The first question which arises in the case is the question whether an owner of private property to which substantial numbers of persons are invited has any right to discriminate with respect to persons invited thereon, that is to say, whether such owner may exercise his own arbitrary freedom of selection in determining who will be admitted to and who will be permitted to remain upon his property under circumstances where such private property is being used as a place of resort or amusement. This question has been clearly answered in the affirmative by the authorities. In *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697 (Court of Appeals of New York), it was said at page 698:

> "At common law a person engaged in a public calling, such as innkeeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service. * * * On the other hand, proprietors of private enterprises, such as places of amusement and resort, were under no such obligation, enjoying an absolute power to serve when they please. * * *
>
> "The common-law power of exclusion, noted above, continues until changed by legislative enactment."

The ruling therein announced was precisely adopted in the case of *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, the Court of Appeals, stating at Page 102 of its opinion that:

> "The rule that, except in cases of common carriers, innkeepers and similar public callings, one may choose his customers is not archaic."

The Court of Appeals also carefully pointed out in the *Greenfeld* case that the rule of the common law is not

altered even in the case of a corporation licensed by the State of Maryland. The doctrine of the *Madden* and *Greenfeld* cases, *supra,* announced as existing under the common law, has been held valid, even where the discrimination was because of race or color. See *Williams v. Howard Johnson Restaurant,* 268 F. 2d 845 (restaurant) (CCA 4th); *Slack v. Atlantic White Tower Systems, Inc.,* No. 11073 U.S.D.C. for the District of Maryland, Thomsen, J. (restaurant); *Hackley v. Art Builders, Inc., et al.* (U.S.D.C. for the District of Maryland, D.R. January 16, 1960 (real estate development)).

The right of an owner of property arbitrarily to restrict its use to invitees of his selection is the established law of Maryland. Changes in the rule of law conferring that right are for the legislative and not the judicial branch of government.

The question next arises as to whether or not the State has proved its case under the criminal information on which it elected to proceed. It is a fundamental of our law that the burden rests upon the State to establish guilt beyond a reasonable doubt and to a moral certainty, and this requirement extends to every element of the crime charged. Basically, therefore, consideration must be given to a determination of two questions: (1) Has the State proved beyond a reasonable doubt that the Defendants were acting in a disorderly manner to the disturbance of the public peace? (3) If the answer to the first question is in the affirmative, has the State proved beyond a reasonable doubt that such actions occurred at a place of public resort or amusement?

As to the first question — an able discussion of whether a refusal to comply with directions given by a police officer could be held to be disorderly conduct appears in the case of *People v. Arko,* 199 N.Y.S. 402, in which it was said at page 405:

> "At times even a mere refusal to comply with the directions of a policeman, who may act in an arbitrary and unjustifiable way, does not constitute 'disorderly

> conduct'. Mere disobedience of an officer is not always an offense punishable by law, any more than his command is not always the law. There must be, upon the whole case, something more than a mere whimsical or capricious judgment on the part of the public authorities. * * * The case must present proof of some definite and unmistakable misbehavior, which might stir if allowed to go unchecked, the public to anger or invite dispute, or bring about a condition of unrest and create a disturbance."

In the case of *People v. Nixon*, 161 N.E. 463 (N.Y.), it was said at page 466:

> "Police officers are guardians of the public order. Their duty is not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions."

In the case of *People v. Galpern*, 181 N.E. 572 (N.Y.), it was said at page 572:

> "Failure, even though conscientious, to obey directions of a police officer, not exceeding his authority, may interfere with the public order and lead to a breach of the peace."

And, at page 574, went on to say:

> "A refusal to obey (a police order to leave) can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and not calculated in any way to promote the public order."

The facts and circumstances hereinbefore stated offer clear and convincing proof that public disorder reasonably could be expected to follow if the five persons remained in the Park. The order of the police to leave, therefore, was not arbitrary. The refusal of the Defendants to leave upon request of the police, under the circumstances described

in the evidence, constituted acting in a disorderly manner to the disturbance of the public peace.

We pass then to the second question: Did such action occur at a place of public resort or amusement? This involves a determination of the legislative meaning of the expression "place of public resort or amusement". If the legislative intent was that the words were intended to apply only to publicly owned places of resort or amusement, then, manifestly, the testimony would not support a conviction here. By the same token, if the expression was intended to apply only to places in which all members of the public without exception were authorized or permitted to congregate, again there would be no evidence to support conviction here. On the other hand, if the reasonable intent and purpose of the quoted phrase was to prohibit disorderly conduct in a place where some segment of the public habitually gathers and congregates, the evidence would clearly justify a conviction.

The first suggested interpretation of the words must be rejected, because of the fact that the same statute uses the term "public worship", and this fact utterly destroys a contention that the word "public" has a connotation of public ownership because of our constitutional separation of church and state.

The second suggested interpretation is equally invalid, because its effect, in the light of the rule of law announced in the *Greenfeld* case, *supra*, would be the precise equivalent of the first suggested interpretation of the phrase. Moreover, such an interpretation necessarily would mean that the police authorities would be powerless to prevent disorder or bring an end to conditions of unrest and potential disturbance where large numbers of the public may be in congregation. To suggest such an interpretation is to refute it.

In the opinion of this Court the statute has clear application to any privately owned place, where crowds of persons other than the owner of the premises habitually gather and congregate, and where, in the interest of public safety,

police authorities lawfully may exercise their function of preventing disorder. See *Askew v. Parker*, 312 P. 2d 342 (California). See also *State v. Lanouette*, 216 N.W. 870 (South Dakota).

It is the conclusion of the Court that the Defendants are guilty of the misdemeanor charged.

W. ALBERT MENCHINE,
Judge.

Towson, Maryland

May 6, 1960

APPENDIX D

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment I of the United States Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV of the United States Constitution:

> "SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

* * * * * *

"SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Section 123 of Article 27 of the Annotated Code of Maryland (1957 edition):

"Every person who shall be found drunk, or acting in a disorderly manner to the disturbance of the public peace, upon any public street or highway, in any city, town or county in this State, or at any place of public worship or public resort or amusement in any city, town or county of this State, or in any store during business hours, or in any elevator, lobby or corridor of any office building or apartment house having more than three separate dwelling units in any city, town or county of this State, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than sixty days or be both fined and imprisoned in the discretion of the court; . . ."

Title II of the Federal Civil Rights Act of 1964, 78 Stat. 241:

"SECTION 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

"(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building

which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

"(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

"(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

"(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

"(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, trans-

portation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

"(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

"(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

"SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

"SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202."

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IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 113

DALE H. DREWS, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
(W. ALBERT MENCHINE, Judge)

BRIEF OF APPELLEE

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The Daily Record Co., Baltimore 3, Md.

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(W. ALBERT MENCHINE, Judge)

BRIEF OF APPELLEE

STATEMENT OF THE CASE

The Appellants were charged by criminal information of acting in a disorderly manner to the disturbance of the public peace at the premises of the Gwynn Oak Amusement Park, Inc., a body corporate, a place of public resort and amusement in Baltimore County, on the 6th day of December, 1959 (Article 27, Section 123, Annotated Code of Maryland (1957 Ed.)). Trial was had before Judge W. Albert Menchine, sitting without a jury, on April 8, 1960. At the conclusion of the State's evidence, the Appellants moved for a directed verdict, which motion was later

denied, and the Appellants did not introduce any testimony. Upon the facts before the court, Judge Menchine found that the conduct of the Appellants was disorderly and that the premises upon which this conduct took place was a place of public resort or amusement. The Appellants each were sentenced to pay a fine of $25.00 and costs. From this judgment and sentence, this appeal is taken.

QUESTIONS PRESENTED

1. *Was there sufficient evidence to sustain a conviction?*

2. *Is Gwynn Oak Park a place of public resort or amusement?*

3. *Does the arrest and prosecution of the Appellants amount to State action to enforce segregation in violation of the Federal Constitution?*

STATEMENT OF FACTS

At approximately 3:00 P.M. on Sunday, September 6, 1959, Stanley W. Wood, a special policeman employed at Gwynn Oak Amusement Park, observed a group of people standing in the park near a cafeteria and miniature golf course. He approached this group and advised them that the park was closed to colored persons and that they would have to leave (E. 7). One of the group advised that he was enjoying himself and that he desired to remain and look around. Mr. Wood requested the group to leave four or five times, which request was refused. As a result, a crowd began to gather and Mr. Wood enlisted the assistance of the Baltimore County police in ejecting the group from the park (E. 8). During the conversation between Mr. Wood and Appellants, their conduct was very polite (E. 9). Subsequently, Officer Frederick Newman of the Baltimore County police, with other County policemen, ar-

rived, and the police requested that the Appellants leave the park (E. 19). After approximately ten to fifteen minutes and upon receiving instructions from the park management, Officer Newman advised the Appellants that they had a choice of "getting out of the park or getting locked up" (E. 20). They refused to leave and Officer Newman advised the Appellants that they were under arrest, at which time they interlocked their arms and two of them dropped on the ground, lying down.

By that time, the crowd which had gathered became unruly and began hollering, spitting and kicking at the Appellants as well as the officers, creating a mob scene (E. 11, 12). Appellants were then taken by the County police from the scene to police cars and transported to the Woodlawn Police Station, where a warrant was sworn out (E. 13). One of the officers of the park testified that it was owned by a corporation with private stockholders (E. 33).

Based upon the foregoing facts, Judge Menchine concluded that there was clear and convincing proof that public disorder could reasonably be expected if the five persons were allowed to remain in the park and, therefore, the order of the police to leave was not arbitrary. He further concluded that the failure, under the circumstances, of the Appellants to leave upon the request of the police constituted acting in a disorderly manner to the disturbance of the public peace. Judge Menchine also found that the premises upon which this incident took place was a place of public resort or amusement, as defined in Article 27, Section 123.

ARGUMENT

I.

THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION.

Although this Court, to the knowledge of the Appellee, has never had the opportunity to pass upon or define what acts constitute disorderly conduct, the common law definition seems to be "disturbance of the public order by any act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community." *People v. Most,* 64 N.E. 175, 177 (N.Y.). See also *State v. Reynolds,* 66 N.W. 2d 886, 889 (Minn.); Clark and Marshall, *A Treatise on the Law of Crimes,* 5th Ed., Section 467; 17 Am. Jur. 188. In addition to the general definition aforementioned, it has also been held that the failure of an individual to obey a reasonable direction of a police officer to "move on" may constitute disorderly conduct. See *People v. Galpern,* 181 N.E. 572 (N.Y.), 83 A.L.R. 785. More recently, in *People v. Carcel,* 144 N.E. 2d 81 (N.Y.), 65 A.L.R. 2d 1145, it was recognized that disorderly conduct could be caused by the disobedience of a policeman's order which was not arbitrary. In that case, however, the court found that there was insufficient proof that the appellant was congregating with others and also that there was no showing of any serious annoyance to others or that their manner was threatening or abusive. In this case, however, there was a congregation of persons, and clearly there was a serious annoyance to others. The facts in this case show that the conduct of the Appellants when they joined arms and also sprawled on the ground was such as to cause indignation of the crowd and also, as testified to, by creating a mob scene. Mr. Wood testified, "it was sure on a point where this crowd could have gotten out of control" (E. 11). It is

therefore respectfully submitted that there were sufficient facts upon which a court could find that the Appellants' refusal to leave the park upon the request of the police under the circumstances constituted acting in a disorderly manner to the disturbance of the public peace.

Therefore, under Rule 741, this Court should not set aside the conviction because there has been no showing that the findings of the trial judge were clearly erroneous.

II.

GWYNN OAK PARK IS A PLACE OF PUBLIC RESORT OR AMUSEMENT.

Article 27, Section 123, *supra*, provides that any person "acting in a disorderly manner to the disturbance of the public peace * * * at any place of public worship or public resort or amusement * * * shall be deemed guilty of a misdemeanor". It seems clear that the legislative intent was to authorize the application of this statute to non-publicly owned places, such as churches or other places, where crowds of persons other than the owner of the premises habitually gather and congregate, for the purpose of preventing disorder in the interest of the public safety. Although there has been no direct finding in Maryland as to what constitutes a public place, certain decisions are most helpful. In *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, this Court recognized that the operation of race tracks was a private business but that it was regulated in the public interest. See also *Good Citizens Community Protective Asso. v. Board of Liquor License Commissioners*, 217 Md. 129. In other jurisdictions it has been held that a public place of amusement, even though privately owned, is where crowds habitually gather. See *Askew v. Parker*, 312 P. 2d 342 (Cal. App.); and *State v. Lanouette*, 216 N.W. 870 (S.D.).

An interesting situation was presented in *Amos v. Prom, Inc.*, 117 F. Supp. 617, where the court was called on to interpret the Iowa Civil Rights Act. In that case it was held that a privately owned ballroom or dance hall was a place of amusement within the protection of the Iowa Civil Rights Act. Also, in *Central Amusement Company v. District of Columbia,* 121 A. 2d 865, it was held that the term "a place of public amusement of any kind" was broad enough to include privately owned bowling alleys. See also *Browning v. Slenderella,* 341 P. 2d 859 (Wash.). Thus, in enforcing civil rights legislation, the words "places of public amusement" have been construed to include privately owned premises where persons habitually gather for recreation and amusement.

As pointed out by the trial judge, the interpretation suggested by the Appellants would limit the words "place of public amusement" to those which are publicly owned. However, in the same clause the term "places of public worship" is used, and the word "public", if similarly construed, would have a connotation of public ownership of churches, which, of course, would be unconstitutional under the First Amendment to the Constitution. This Court has many times stated that interpretations of a statute which would render it unconstitutional should be avoided.

The Appellants also assert that the State has failed to prove that Gwynn Oak Park was a place of public resort or amusement. The testimony repeatedly shows that the premises was a park and that there was at least a miniature golf course and cafeteria located on the premises (E. 7). The questions and answers clearly infer the premises was an amusement park (E. 7, 15). It is also respectfully submitted that the Court could take judicial notice of matters of common knowledge such as the usage of a privately owned park. See *Glickfield v. State,* 203 Md. 400; *Smart v. Graham, Comptroller,* 179 Md. 476.

III.

THE ARREST AND PROSECUTION OF THE APPELLANTS DOES NOT AMOUNT TO STATE ACTION TO ENFORCE SEGREGATION IN VIOLATION OF THE FEDERAL CONSTITUTION.

The Appellants contend that the sole reason for their arrest and prosecution was the insistence of the owners of Gwynn Oak Park to enforce a private policy of segregation and discrimination against Negroes. They therefore argue that such action squarely violates the Fourteenth Amendment to the Federal Constitution.

The Appellee cannot agree with the major premise of the Appellants in that action by the State was not enforcement of the private policy of the owners of Gwynn Oak Park, but was rather action to prevent a public disorder arising out of a private dispute between the Appellants and the owners of the park. It should be clearly pointed out that the decision not to admit Negroes was made by the private action of the corporation. The State in no way participated in this decision. There is nothing in any State or public local law which prohibits such action. The Baltimore County police, in making the arrests, did not discriminate against colored persons, since both colored and white persons were arrested as a result of the disturbance. The statute involved prohibits disorderly conduct by all persons, regardless of race, and is designed to protect the public safety and does not authorize State officials to control the management of private corporations, nor to dictate what persons such private corporations shall serve.

The opinions in many recent cases in the Federal courts have stated that the Fourteenth Amendment is restricted to public action and does not affect private action. In *Hackley v. Art Builders, Inc.*, 179 F. Supp. 851, Chief Judge Roszel C. Thomsen, sitting in the United States District Court for the District of Maryland, held that a Negro Army

reserve officer was not entitled to relief when he attempted to purchase a house in a housing development near the Army Chemical Center at Aberdeen, but where he was denied ownership by the developer purely for racial reasons. Judge Thomsen stated:

> "It is elementary that 'the action inhibited by the First Section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.' Shelley v. Kraemer, 334 U.S. 1, 13; Williams v. Howard Johnson's Restaurants, 4 Cir., 268 F. 2d 845. The developers of Edgewood Meadows are private corporations, engaged in the business of selling real estate to private individuals. As such, they are legally entitled to deal with whom they please."

In *Williams v. Howard Johnson's Restaurants,* 268 F. 2d 845, Judge Soper, speaking for the United States Court of Appeals for the Fourth Circuit, held that the defendant who operated a private restaurant in the State of Virginia was not required to serve Negro patrons and that there was no State action in excluding the plaintiffs from this restaurant and, therefore, no violation of the Fourteenth Amendment. To the same effect is an opinion of Chief Judge Thomsen in *Slack v. Atlantic White Tower System, Inc.,* 181 F. Supp. 124. The rule expounded by these Federal courts is supported by the statements of the honorable Court in *Greenfeld v. Maryland Jockey Club, supra;* and *Good Citizens Community Protective Association v. Board of Liquor License Commissioners, supra.*

See also Bayshore v. Monmouth Park 148 A.2d 1 (N.J.)

The State has not only the right, but the duty, to protect the public against disorders which may occur, regardless of the race of the participants. It was clearly recognized in the case of *Bernstein v. Real Estate Commission of Maryland,* 221 Md. 221, that general State laws apply to

all with equal force, regardless of their race, and that violation of the general public laws cannot be shielded from State action by a claim of discrimination on account of race. The Appellants here were not discriminated against because of race since the uncontradicted testimony shows that the disturbance was created by both white and Negro persons, who were all charged and convicted.

The Appellants further argue that they were not the only disorderly persons at Gwynn Oak Park, but that there were others who were disorderly who were not arrested and prosecuted. The mere fact that the Appellants alone were prosecuted does not show any discrimination on account of race; therefore, there was no violation of the Fourteenth Amendment.

The Appellants' last claim is that they have been denied freedom of speech and assembly. This contention was apparently not raised in the lower court; nevertheless, there is no authority shown for the right to use private property against the will of the owner as a place of assembly and the exercise of free speech.

CONCLUSION

For the reasons hereinbefore set forth, the action of Judge Menchine was supported by competent evidence and his findings should be affirmed.

Respectfully submitted,

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IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No 113

DALE H. DREWS, ET AL.,

Appellants,

VS.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
(W. ALBERT MENCHINE, JUDGE)

BRIEF AND APPENDIX OF APPELLANTS

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IN THE

Court of Appeals of Maryland

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No 113

DALE H. DREWS, ET AL.,

Appellants,

VS.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CRIMINAL COURT FOR BALTIMORE COUNTY
(W. ALBERT MENCHINE, JUDGE)

BRIEF OF APPELLANTS

STATEMENT OF THE CASE

Appellants were charged in a Criminal Information filed by the State's Attorney for Baltimore County that on September 6, 1959, they "were found acting in a disorderly manner, to the disturbance of the public peace, at, in or on Gwynn Oak Amusement Park, Inc., a body corporate, a place of public resort and amusement in Baltimore County."

The applicable language of Article 27, Section 123 of the Annotated Code of Maryland (1957 edition), under which the Information was framed, reads:[1]

> "Every person who shall be found drunk, or acting in a disorderly manner to the disturbance of the public peace, upon any public street or highway, in any city, town or county in this State, or at any place of public worship or public resort or amusement in any city, town or county of this State, *or in any store during business hours, or in any elevator, lobby or corridor of any office building* OR APARTMENT HOUSE HAVING MORE THAN THREE SEPARATE DWELLING UNITS *in any city, town or county of this State,* shall be deemed guilty of a misdemeanor; . . . "

The Information was filed on April 5, 1960.[2] On April 8, 1960, Appellants were arraigned, pleaded not guilty and waived a jury trial. The trial took place on April 8, 1960. At the conclusion of the State's case, Appellants moved for a directed verdict, which motion was taken under advisement by the Court. On May 6, 1960, the Court denied Appellants' motion for a directed verdict. Appellants introduced no testimony and renewed their motion for a directed verdict.

The Court thereupon entered a verdict of guilty against each of the Appellants and passed sentence thereon.

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[1] The language of the statute as originally enacted by Chapter 24 of the Acts of 1880 is shown in regular type. Language added by Chapter 6 of the Acts of 1949 is italicized; additions made by Chapter 520 of the Acts of 1957 are capitalized.

[2] The Information under which Appellants were tried was supplementary to one initially filed by the State's Attorney charging acts by Appellants on a public street and highway in Baltimore County. The initial Information was ultimately dismissed. It was because of Appellants' wish to avoid disruption of their preparations for appearing and defending the charge under the initial Criminal Information that trial under the Information here involved took place on April 8, 1960, only three days after the filing of the Information. April 8, 1960, was the date set for trial of the initial Information.

QUESTIONS PRESENTED

1. What constitutes a place of public resort or amusement within the meaning of Article 27, Section 123 of the Annotated Code?

2. Was there evidence to establish the public character of Gwynn Oak Park, the scene of the actions with which Appellants were charged?

3. Did any acts of Appellants constitute acting in a disorderly manner to the disturbance of the public peace?

4. Did conviction of Appellants infringe upon the rights, privileges and immunities guaranteed to them by the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF FACTS

The testimony showed that the location of the events on which the charge is based was a place in Baltimore County known as Gwynn Oak Park. The scene was thus referred to by witnesses, but the evidence introduced did not disclose the nature of the area bearing the appellation "Gwynn Oak Park". The State's Attorney, in three questions to his witnesses, characterized the park as an amusement park (E. 7, 18, 28). The only testimony concerning the character of the park was as follows: The owner of the park has established and enforces a policy of excluding Negroes (E. 13, 17, 28). The owner of the park is a stock corporation owned by private persons (E. 28, 32-33). The only reference to facilities at the park were to a cafeteria and miniature golf course (E. 7, 8, 15).

On Sunday, September 6, 1959, at about 3:00 o'clock P.M., the Appellants, three whites and one Negro, together with James Lacy, also Negro, were observed at approxi-

mately the center of Gwynn Oak Park by a private park guard (E. 7, 15). They were standing in a group to themselves and had attracted no attention from any others present on the park premises (E. 15, 17). The guard approached them, told them that the park was closed to colored persons, and that they would have to leave (E. 7). The initial direction to leave was given to the two Negroes; when they remained all five individuals were asked to leave, but they refused (E. 9). Appellants were very polite to the park guard; Lacy stated that he was enjoying himself and was going to stay and look around a little bit more (E. 8, 9). It was All Nations Day at the park (E. 15). It was a "right crowdy day, with just more or less elbow room when you walked anywhere in the park" (E. 23). A crowd first congregated after the approach by the park guard to the Appellants and his requirement that they leave the park (E. 15, 16-17).

Baltimore County Police were summoned by the park owner and directed to arrest the Appellants if they would not voluntarily leave (E. 18, 24, 30). Two or three requests that the Appellants leave the park were made by the County Police (E. 16, 19-20). When the Appellants failed to do so, they were arrested at the request of a park official (E. 20). The Baltimore County Police did not arrest on their own or prefer charges against Appellants and would not have arrested Appellants but for the request of the park official (E. 24-25). It was an employee of the owner of Gwynn Oak Park acting in the course of his employment who initiated charges against Appellants (E. 31).

The crowd which assembled as a result of the owner's efforts to exclude Appellants from Gwynn Oak Park appeared to become angry and engaged in certain unruly activities, including spitting, kicking and the use of im-

proper language (E. 9, 11, 12). There was no attempt by the owner of the park or by the police to exclude any members of the crowd from the park or to arrest any of those who engaged in such conduct (E. 17, 24, 33).

When arrested, Appellants locked arms (E. 20). Appellants Drews and Sheehan were passively resistant and lay on the ground, at which point the locking of arms with the other two Appellants, Joyner and Brown, ceased (E. 17, 21, 22, 26). Appellants Joyner and Brown left the park premises in the custody of the police under their own power (E. 22, 26). The others were carried out (E. 18). None of the Appellants offered positive resistance and they made no remarks other than a compassionate plea by Drews for forgiveness of someone who was mistreating him (E. 11, 13, 22, 30, 31).

The learned trial Judge inferred from the absence of any evidence to the contrary that Appellants were not aware when they entered Gwynn Oak Park that the management had a policy barring Negroes, but that they were informed of such policy prior to their arrest (E. 35-36).

ARGUMENT

I.

THE RESERVATION BY THE OWNER OF GWYNN OAK PARK OF THE RIGHT TO EXCLUDE PERSONS AT WILL PREVENTS CLASSIFICATION OF GWYNN OAK PARK AS A PLACE OF PUBLIC RESORT OR AMUSEMENT UNDER A STATUTE CREATING A CRIMINAL OFFENSE IN SUCH A PUBLIC PLACE.

Courts have frequent occasion to observe that meanings of words vary in accordance with the particular purpose for which they are construed. No words better illustrate the point than "public" and its antonym "private". If one considers the fact that a "private" school in these United States is the substantial equivalent of a "public" school in England, the obviousness of the proposition is established.

The word "public" is used for many purposes, and its connotations vary according to the purposes for which definition is undertaken. E.g. *Gulas v. City of Birmingham*, 39 Ala. App. 86, 94 So. 2d 767 (1957); *Askew v. Parker*, 151 Cal. App. 2d 759, 312 P. 2d 342 (1957). Cf. *Bennetts, Inc. v. Carpenter*, 111 Colo. 63, 137 P. 2d 780 (1943). Even the circumstances of the particular case may cause the meaning to vary. In *Messina v. State*, 212 Md. 602, 605 (1957), involving a conviction for the common law offense of indecent exposure, the Court observed:

> "What constitutes a public place within the meaning of this offense depends on the circumstances of the case."

Courts, when they are concerned with remedial statutes, may find that "public" was employed to signify merely a place in which a substantial number of persons may be present thereby creating a situation serious enough to warrant supervisory regulation by the State. Typical of such cases is *Askew v. Parker*, 151 Cal. App. 2d 759, 312 P. 2d 342 (1957). The case involved the power of a public health official to inspect a swimming pool. Acknowledging the variable character of the term "public" the Court recognized the remedial character of the legislation, and, in order to effectuate its purposes, determined that any pool to which a large or indeterminate group was commonly and regularly invited was a public pool.

Other statutes which are commonly recognized as remedial and in which "public" is consequently interpreted to mean "frequented by any substantial number of people" are civil rights statutes enacted by several of the States, prohibiting discrimination by reason of race or color in places of public amusement. See e.g. *Burks v. Bosso*, 81 App. Div. 530, 81 N.Y.S. 384 (1903); *Suttles v. Hollywood*

Turf Club, 45 Cal. App. 2d 283, 114 P. 2d 27 (1941); *New Jersey v. Rosecliff Realty Co., Inc.*, 1 N.J. Super. 94, 62 A. 2d 488 (1948). Manifestly, it would frustrate the entire purpose of such statutes to reason that the owner's retention of the right to admit or exclude whom he pleased would prevent definition of a place as public. In such a case one charged with violation of a civil rights act could rely on the very acts which constituted the violation as proof that the place was not "public" and, therefore, not within the reach of the act.

Even when such broad construction of the word "public" is appropriate, nevertheless, courts have sometimes stopped short in situations very similar to the present one. Thus, Ebbetts Field, then the home of the Brooklyn Dodgers, was held not to be a public place within the meaning of a civil rights statute in *Mandel v. Brooklyn National League Baseball Club*, 179 Misc. 27, 37 N.Y.S. 2d 152 (1942).

In the absence of reasons for giving broad construction to the term "public", it is generally the rule that "public" means "the whole public, and not a particular part of it". E.g. *Public Service Commission v. Philadelphia, Baltimore & Washington R.R.*, 155 Md. 104, 120 (1928). Cf. *Chapman v. Rogan*, 222 Md. 12, 19 (1960), holding that public use means use by the public at large.

When we turn to criminal statutes proscribing action in "public" places, we do much more, of course, than merely depart the area of broad construction. We enter a field in which the interpretative technique is the exact reverse. The rule becomes one of strict construction against the State and in favor of the accused, especially where, as in the present case, the crime charged did not exist at common law. E.g. *People v. Powell*, 280 Mich. 699, 274 N.W. 372 (1937). There was no common law crime of disorderly con-

duct. 17 Am. Jur. 187 (Disorderly Conduct, Section 1). The conduct of Appellants was altogether peaceful, and at common law breach of the peace did not lie without evidence of an affray, actual violence or conduct tending to or provocative of violence by others. *Wanzer v. State,* 202 Md. 601, 609 (1953).

Wanzer v. State, supra, at page 611, itself supports the proposition that a phrase in a criminal statute describing the location where the proscribed acts are forbidden must be strictly construed in favor of the citizen and against the State. The Court doubted that a definition, abstracted from a civil case, of the word town to include all collections of houses from a city down to a village could be used for purposes of a criminal statute punishing certain activities "in a city or town". The same strict construction applies to statutes proscribing acts in places of public amusement or recreation. *Commonwealth v. Roth,* 136 Pa. Super. 301, 7 A. 2d 145 (1939). Cf. *People v. Powell,* 280 Mich. 699, 274 N.W. 372 (1937).

In the *Roth* case, a statute directed against pick-pocketing in places of public amusement or recreation was held inapplicable to a political meeting in a county court house. The Court held it irrelevant that the result might have been undesirable, stating that such a consideration is irrelevant if "the legislature, wisely or unwisely, has not * * * seen fit to do so". The Court wisely refused to "improve" the statutory enactment by judicial amendment. Similarly, the public jail is not a public place under a statute forbidding possession of alcohol, because not accessible to the general public. *Tooke v. State,* 4 Ga. App. 495, 61 S.E. 917 (1908). The public area in a police station is a public place under legislation punishing disorderly conduct only because it is open to the general public and available for use by the general public without limitation except such as may be

required in the interests of safety and good order. *People v. Fine,* 135 N.Y.S. 2d 515 (1954).

The proprietor of Gwynn Oak Park clearly asserted a right to exclude anyone it pleased. If it had not done so, this case, involving whites, as well as Negroes, whom it sought to exclude, would not exist. Throughout the several jurisdictions of the United States it has been generally held that a criminal statute prohibiting acts in public places contemplates that *all* the public must be free to resort to the place before it qualifies to be public. See *Stateham v. State,* 95 Okla. Cr. 232, 243 P. 2d 743 (1952), a case involving a conviction of being drunk in a public place, approving the following definition:

> "A 'Public Place' is any place which is open to general public, and upon use of which by the general public there is no limitation except that required in the interest of safety and good order."

In *People v. Whitman,* 178 App. Div. 193, 165 N.Y.S. 148 (1917), a disorderly conduct conviction was reversed on the grounds that the abusive language used by the defendant was uttered on private property, not in a public place. The Court approved the following definition of a public place:

> "A place openly and notoriously public; a place of common resort; a place where all persons have a right to go and be; a place which is in point of fact public, as distinguished from private; a place that is visited by many persons, and usually accessible to the neighboring public; every place which is for the time made public by the assemblage of people."

The Court alluded to the fact that the activities of the accused might have amounted to a slander for which a civil action would lie, but pointed out that it did not follow that a crime had been committed. Similarly, in the present

case, that the proprietor of Gwynn Oak Park may have grounds for an action of trespass does not establish guilt under a criminal disorderly conduct statute.

Another case exhibiting the principle of strict construction in a criminal case is *People v. Ruthven,* 160 Misc. 112, 288 N.Y.S. 631 (1936), which held that there was no violation of a statute creating the criminal offense of sale of securities to the public without registration, the decision turning on the fact that *public* sales were not proven. The Court said:

> "What is the ordinary signification of the term 'public'? We commonly think of it in terms of people; as inclusive of all the people and inhabitants; not as exclusive, nor as a limited part or portion of the people."

As in the case of criminal legislation, strict construction of statutes occurs when tax exemptions are before the courts. Thus, in *State v. Browning,* 192 Minn. 25, 255 N.W. 254 (1934), a hospital was denied tax exemption on the grounds that it was not a public hospital. One of the tests which the Court set up was whether there was "free access to the public without discrimination".

Finn v. Schreiber, 35 F. Supp. 638 (W.D.N.Y. 1940), considered the question of whether a privately owned garage and parking area was a public place, public driveway or any other public way. The owner invited the public to use the parking area and garage and they were being used in a public way and by the public. The Court determined that the place was not public under a statute conferring jurisdiction, saying:

> "Was this garage or its parking place a 'public place, public driveway or any other public way'? The plaintiff invited the public to use the parking way and the garage. It was being used in a public way and by the public. The same may be said of any privately

> owned store or amusement place. The public is freely invited to these places. It is invited for business purposes. The same situation exists as regards the gas station. The plaintiff invited the public there for his own benefit, but plaintiff, as the storekeeper or as the owner of the amusement place, has the right at any time to bar the public, or in other words, close the doors or gates to the place of business. Not so with the public highway or public way as it is believed that term should be construed. Such is a place to which the public has the right to go, and the use of which it has the right to have, under reasonable restrictions at all times. *The distinction is between the right of individual control of the use and the uniform right to use to all. The former is private; the latter public.* Section 52 is in derogation of the Common Law, and it must be strictly construed." (Emphasis supplied.)

Cf. *Playland Holding Corp. v. Nunley*, 186 Misc. 864, 65 N.Y.S. 2d 465 (1946), holding that an amusement park is not a place of public assembly for purposes of exemption from a business rent statute.

The rule of strict construction of the word "public" to mean the general public without limitation particularly applies in a case such as the present one, where the phrase "public resort or amusement" follows, and is connected with, the phrases "public street or highway" and "place of public worship". Then the doctrine of construction, *ejusdem generis*, comes into play. Thus, in *Madison Products Co., Inc. v. Coler*, 242 N.Y. 467, 152 N.E. 264 (1926), an ordinance made it a criminal offense to solicit funds "upon the streets or in public places" without a license. The ordinance further required the labeling of solicitation containers with the name of the organization if used in "streets, factories, shops, offices, theaters, hotels, restaurants, railway stations, ferry houses, or other public places". Despite the specific listing in the labeling section

of the ordinance, the Court held that the ordinance did not prohibit solicitation in factories, shops or offices, stating:

> "The words 'public places' used in the ordinance must be interpreted in the light of their association with the connecting word 'streets' and thus interpreted we do not think it was intended to mean or include homes, private offices and factories. The meaning of the words 'streets' and 'public places' naturally suggests those places in a city which are open to the general public and upon the use of which by the general public there is no limitation except that which may be required in the interest of safety and good order. We can take judicial notice that this is not the character of a home, private office or factory. These are under control and are not open to the unrestricted entrance and use of the public. No one comes there except by the permission of the owner or proprietor and if he desires to close the door against all comers at any time he is at liberty to do so. These are not the characteristics of 'streets or public places' and I do not think that such places are within the contemplation of the ordinance."

The *Madison Products* case was followed in *Sylvester v. Brockway Motor Truck Corp.*, 232 App. Div. 364, 250 N.Y.S. 35 (1931), where a road on the Saratoga Race Track was held not to be a public street or place, although people were generally allowed on it, because the owner had the right to close it at any time.

The doctrine of *ejusdem generis* was similarly applied in *People v. Powell*, 280 Mich. 699, 274 N.W. 372 (1937), to reverse a conviction of sale of milk to the public without a license. The Court stated:

> "Where no intention to the contrary appears, general words used after specific terms are to be confined to things *ejusdem generis* with the things previously specified. (Citations omitted.)

> "When, after an enumeration, the statute employs some general term to embrace other cases, the other cases must be understood to be cases of the same general character, sort or kind with those named."

Applying the rule, the Court stated that selling milk to the public for the purposes of the statute would only occur if the defendant offered milk "to all those who have occasion to purchase, within the limits of the defendant's capacity or ability to furnish it."

The fact that "public" as used in Article 27, Section 123 means the public generally and not merely any substantial congregation of people is clearly indicated by the Legislature's amendments of the statute; by Chapter 6 of the Acts of 1949 and Chapter 520 of the Acts of 1957, to make specific reference to "stores during business hours, * * * any elevator, lobby or corridor of any office building or apartment house * * * ". Specific listing of places would not have been needed if a meaning of "public", such as that for which the State argues, was intended.

The statutory phrase "place of public worship" similarly reinforces this contention. The phrase "public worship" "refers to the usual church services upon the Sabbath, open freely to the public and in which anyone may join". *Y.M.C.A. of New York v. City of New York*, 113 N.Y. 187, 21 N.E. 86 (1889). The Y.M.C.A. was held not entitled to a tax exemption as a place of public worship Cf. *Bloch v. Board of Tax Appeals*, 144 Oh.St. 414, 59 N.E. 2d 145 (1945). There, a non-profit Orthodox Jewish theological seminary, which charged no tuition, gave free lodging to all students and where 90% of the students paid no board fees, was denied an exemption as a public school or college on the grounds that it was private in character.

In *Association for Benefit of Colored Orphans v. City of New York*, 104 N.Y. 581, 12 N.E. 279 (1887), the religious

services held in the orphanage were held not to constitute it a place of public worship since they were attended by inmates only, with visitors admitted only by consent of the superintendent. The Court said:

> "How can worship be called public to which the public is not admitted?"

The testimony of Baltimore County Police Officer Newman eloquently demonstrates the applicability of the doctrine *ejusdem generis* to Article 27, Section 123 in such a way to limit its application to places of resort or amusement which are "public" in the same way streets or highways are public, i.e. open to all. Officer Newman stated that the police would not have arrested or prosecuted the Appellants on their own, because the locale was a place other than and different from a public highway or street (E. 25).

Disregarding occasional general obiter dictum expressions in cases where defendants were, in fact, found "not guilty", *Nelson v. Natchez,* 197 Miss. 26, 19 So. 2d 747 (1944), is the only case which we have been able to discover which appears to contradict the proposition that the phrase "public place" in a criminal statute does not extend to a place which reserves and exercises a right to exclude the Negro portion of the public. The case affirmed a conviction for "cursing in any public place" where the scene of the offense was a restaurant. Cf. *Schaff v. R. W. Claxton, Inc.,* 144 F. 2d 532 (C.A. D.C. 1944) holding that a restaurant's parking space is not a "public place". To minimize the management's policy of excluding Negroes and the logical deduction therefrom that the restaurant was "private", the Mississippi Court simply observed that, under the conditions of life in Mississippi, so few places would be covered by the ordinance that its enactment would not have been necessary at all, if it was intended to apply only

to places open to both Negroes and whites. We submit that the Court reflected an attitude, not lightly to be imputed to the Maryland Legislature, that Negroes are second class citizens, not normally to be regarded as part of the public. Cf. *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, 127 (D. Md. 1960. Appeal pending):

> "Such segregation of the races as persists in restaurants in Baltimore is not required by any statute or decisional law of Maryland, nor by any general custom or practice of segregation in Baltimore City, but is the result of the business choice of the individual proprietors, catering to the desires or prejudices of their customers."

The extremely different nature of the situation in Mississippi is emphasized by the language of a Mississippi statute in force when *Nelson v. Natchez* was decided, making it a misdemeanor to circulate arguments in favor of social equality between whites and Negroes. Mississippi Code Annotated (1942), Section 2339.

For present purposes, whether *Nelson v. Natchez* was wrongly decided it is distinguishable on the grounds that the ordinance there involved referred to public places in general. Unlike Article 27, Section 123, the phrase is not coupled with a phrase such as "public street or highway" which would bring into play the doctrine of *ejusdem generis* to which reference is earlier made.

The learned trial judge relied on *Greenfeld v. Maryland Jockey Club of Baltimore*, 190 Md. 96 (1948). He did so to establish a proposition with which we have no quarrel, namely, that the owner of private facilities may exclude or admit people at will. That is not the question, however, in this case. Rather, the question is whether such a privately owned place, in which the right to exclude is asserted is a place of *public* resort or amusement within the

meaning of the criminal statute. We earnestly urge that the *Greenfeld* case itself suggests a negative answer. The argument of the unsuccessful party in that case was that a race track is not a private enterprise, but instead is virtually a public utility. The Court held that, despite extensive State regulation, the nature of race courses has not been changed from "a private business" to "a public business". In the *Greenfeld* case, the licensing to which race tracks were subjected was shown to be extensive. The situation there is to be strongly contrasted with the situation in the present case. Baltimore County is exempted from the provisions of Article 25, Section 27 of the Annotated Code requiring a license to operate a public amusement park. Thus, if a race track is private, an amusement park is all the more so.

It is not, of course, the function of this Court to extend application of criminal statutes merely because of a belief that it would have been wise for the Legislature to have done so. The Legislature, in its wisdom, created two distinct disorderly conduct crimes. Article 27, Section 123 concerns acts in places of public resort or amusement. Article 27, Section 124 covers acts upon private land or premises, and is inapplicable to Baltimore County. On the theory of the lower court, Appellants' acts constituted disorderly conduct subject to prosecution under both sections in any county to which Section 124 applies. This, we submit, the Legislature did not intend.

Disorderly conduct was not a crime at common law. 17 Am. Jur. 187 (Disorderly Conduct, §1). Nor was trespass, without riot or forceable entry, a common law crime. *State v. Wheeler*, 3 Vt. 344 (1830). Cf. *Krauss v. State*, 216 Md. 369, 372 (1958). Whether the Legislature, in enacting Sections 576 and 577 of Article 27 of the Annotated Code whereby certain trespasses are classified as

crimes, intended to include such a peaceable entry as the one here involved is, of course, not presented in this case, where the charge is disorderly conduct. However, Sections 576 and 577 demonstrate the legislative intent to deal directly with trespass and not to permit its punishment by strained application of a statute directed at disorderly conduct to the disturbance of the public peace. Dealing with criminal statutes in derogation of the common law, it is not to be assumed that the Legislature intended some properties to be protected under both the trespass and the disorderly conduct statutes, or that the same properties be protected under both the disorderly conduct statute applicable to public places and the disorderly conduct statute applicable to private lands. This conclusion is eloquently borne out by the Legislature's determination, when it enacted Chapter 6 of the Acts of 1949 and Chapter 520 of the Acts of 1957, that the general language of Article 27, Section 123 relating to places of public resort or amusement would not extend to such private premises as stores, office buildings and apartment houses, even though substantial numbers of the public might be expected to frequent them.

In *State v. Wheeler,* 3 Vt. 344 (1830), the Court wisely pointed out the undesirability of stretching the definition of a crime to fit situations not reasonably encompassed within it:

> "In exercising jurisdiction in common law cases, courts should be under the guidance and restraint of established principles and precedents, and should not allow themselves to go beyond them. An undefined jurisdiction, or an unlimited discretion, in criminal cases, is an arbitrary and dangerous power, incompatible with civil liberty, and ought never to be assumed or exercised; and unless an act is made criminal by some statute, or is clearly defined to be an offence

> by the common law, it ought not to be treated or punished as such. The civil remedy which the law affords for trespasses to property, is, in ordinary cases, a sufficient corrective; but if the interest or protection of society requires that any class of them, not now indictable, should, on account of their mischievous nature or tendency, be proceeded against and punished criminally, the legislature can make the necessary provision."

Thus, in the case before this Honorable Court, the question is not whether private owners should be aided in enforcing a right to exclude others. The question is whether aid in accomplishing such a purpose may be found in a statute clearly directed to actions, not on property devoted and restricted to *private* purposes, but at places of *public* resort and amusement.

II.

THE STATE FAILED TO MEET THE BURDEN OF SHOWING THAT GWYNN OAK WAS A PLACE OF PUBLIC RESORT OR AMUSEMENT.

Whatever definition is given to the word "public" as used in Article 27, Section 123, we earnestly contend that the public character of the place where the supposed disorderly conduct of Appellants occurred was not shown by the State. The burden to do so clearly rested on the State. *Commonwealth v. Roth,* 136 Pa. Super. 301, 7 A. 2d 145 (1939); *People v. Simcox,* 379 Ill. 347, 40 N.E. 2d 525 (1942). The burden was not met.

No evidence was offered as to the size or extent of Gwynn Oak Park. The facilities at the park were not described; the only references to facilities were to a cafeteria and miniature golf course (E. 7, 8, 15). The nature of such facilities and whether they were operating was not disclosed. Except

for the testimony as to the policy concerning exclusion of Negroes, there was no evidence to show the admission policy of the owner of Gwynn Oak Park. At no time during the trial was it established that Caucasians were generally welcomed to the park, or that Gwynn Oak Park had ever been open for admission or visited at any other time than September 6, 1959. The only references in the testimony to the park as "public" were stricken out by the Court as conclusions (E. 19, 25).

Despite references in the opinion of the learned trial judge to Gwynn Oak Park as a place where "some segment of the public habitually gathers and congregates", the record is utterly devoid of evidence that anyone had ever attended Gwynn Oak Park before or after September 6, 1959. There is indeed no evidence that it was even an amusement park, unless characterizations as such in questions by the State's Attorney can be construed as evidence. Perhaps the State will argue that the reference to the existence of a miniature golf course and of a cafeteria would permit an inference that the area was an amusement park. This was hardly proof beyond a reasonable doubt, however, since no testimony was introduced to show that such facilities were open and operating.

In any event, the burden to be met under the statute is to show a place of *public* resort or amusement and not merely a place of amusement. The existence of a miniature golf course and of a cafeteria and the fact that a crowd was present are hardly proof of the public character of a place. Such eating and recreation facilities are not infrequently provided by large employers for the benefit of their employees. Restricted to such a group of users, the facilities could not be defined as public. Indeed, the usual country club — as private an institution as can be

imagined — provides eating facilities and a golf course which is not merely miniature. To anyone who has attended a club's Saturday night dance, the fact is self-evident that crowds are possible without making the place a public one.

In short, what the learned trial judge did was to extract sufficient proof to meet the statutory requirement from the evidence which he construed as showing a place of resort or amusement. He gave no significance to the word "public" as employed in Article 27, Section 123. Of course, it is an elementary rule of statutory construction that, if possible, every word must be given meaning. E.g., *Armco Steel Corp. v. State Tax Commission,* 221 Md. 33, 44 (1959); 2 Sutherland, *Statutory Construction,* §4705 (3rd ed. 1942).

In doing so, it is entirely possible, although the record contains no indication to this effect, that the trial judge was relying on some special knowledge of his own as to the nature of Gwynn Oak Park. For the finder of fact to go beyond the record on matters of this sort is manifestly improper. Cf. *Hedin v. County Commissioners of Prince Georges County,* 209 Md. 224 (1956). If the trial judge so acted, we submit that he was tempted to follow such a course by the failure of the State's Attorney to fulfill his elementary obligation to prove the entire corpus delicti. We respectfully submit that it does not serve the ends of justice so to excuse and encourage inadequate preparation and trial of criminal cases. Criminal justice will best be administered when the State's Attorney is strictly held to his duty to establish guilt beyond a reasonable doubt and to a moral certainty. This is especially so since to convict without evidence of guilt amounts to a denial of due process. *Thompson v. Louisville,* 362 U.S. 199 (1960) Cf. Maryland Rule 741(b).

III.

THE ACTS OF APPELLANTS WERE NOT DISORDERLY.

We submit that the lack of evidence that Gwynn Oak Park was a public place was not the only failure of proof in the State's case. In addition, no acts of the Appellants were shown which were disorderly. The polite refusal to remove themselves on the owner's demand may or may not have constituted a trespass, criminal or civil. That question is not present in this case concerned only with a conviction for disorderly conduct.

Disorderly conduct implies something more than a simple trespass. The mere infringement of rules established by a private owner for the use of his premises does not amount to a breach of the peace. E. g. *People v. Goldstein,* 150 Misc. 101, 268 N.Y.S. 50 (1933), where sale of newspapers on a private subway train in violation of the company's rule was found not to amount to disorderly conduct:

> "The court realizes that the company has a right to forbid the vending of newspapers in their trains and on their stations to any but those having a concession to do so, still this right cannot be enforced by an arrest on the charge of disorderly conduct when no other facts but the mere selling of papers has been proven.
>
> "There is no evidence in this case of any other acts or conduct on the part of the appellant that tended to annoy, disturb, interfere with, obstruct or be offensive to others, nor do any of the acts proven tend to a breach of the peace. The judgment must, therefore, be reversed on the law, facts examined, and, no errors found therein, complaint dismissed."

In *People v. Barisi,* 193 Misc. 934, 86 N.Y.S. 2d 277 (1948), picketing in Pennsylvania Station was held not to amount to disorderly conduct, even though continued in the face of a direction to stop from a New York State railroad police-

man. The Court reached this result on the grounds that the place, though privately owned, was public, so that the activities of the defendant were constitutionally protected. The Court, however, went on to advance an alternative holding that, even if the premises were private, still the charge of disorderly conduct could not be sustained in the absence of actions tending to annoy or to be offensive to others or tending to a breach of the peace.

In *People v. Galpern*, 259 N.Y. 279, 181 N.E. 572, 83 A.L.R. 785 (1932), it was held to be disorderly conduct where someone on the public street disobeyed an order of a policeman to move on. The case makes crystal clear, however, that it rests on the precise statutory definition of the term "disorderly conduct" to include "congregation with others on a public street and refusal to move on when ordered by the police." The Court stated that the conviction could not have been sustained under other language of the applicable statute punishing disorderly conduct generally. In the instant case, the order of the policeman was not his own, given to enforce the interests of the public. Instead he was merely seeking compliance with a rule of the private owner of Gwynn Oak Park.

Furthermore, the Maryland statute contains no similar provision that a mere refusal to comply with the directions of a policeman amounts to disorderly conduct. Even under the New York statute, it has been held:

> "Mere disobedience of an officer is not always an offense punishable by law, any more than his command is not always the law." *People v. Arko*, 40 N.Y. Cr. 149, 199 N.Y.S. 402 (1922).

Appellants' actions were orderly and polite from beginning to end. Their conduct, however else it might be characterized, does not merit a description as disorderly.

IV.

IF GWYNN OAK PARK IS, ARGUENDO, A PLACE OF PUBLIC RESORT OR AMUSEMENT, THE PRESENCE OF APPELLANTS WAS IN THE EXERCISE OF CONSTITUTIONALLY GUARANTEED RIGHTS OR THEIR ARREST AND PROSECUTION AMOUNTED TO STATE ACTION TO ENFORCE SEGREGATION IN VIOLATION OF THE FEDERAL CONSTITUTION.

Until now, we have argued that the character of Gwynn Oak Park as a place of public resort or amusement was not established. If this Honorable Court should conclude that we are wrong in this contention, the determination that it was, in fact, a place of public resort or amusement creates constitutional difficulties so serious in character as to provide an additional grounds for determining that the construction of Article 27, Section 123 for which we have heretofore argued is the correct one. A decision that Article 27, Section 123 did not reach Appellants will give effect to the principle that a statute should be interpreted in such a way as to avoid serious constitutional questions as to its validity. See e.g. *Miller v. State,* 174 Md. 362, 373 (1938); *Baltimore County v. Missouri Realty, Inc.,* 219 Md. 155, 159 (1959).

There are at least three constitutional objections to the convictions of Appellants here challenged. In the first place, the testimony is uncontradicted that the sole reason for arrest and prosecution of Appellants was the insistence of the owner of Gwynn Oak Park on enforcement of a private policy of segregation and discrimination against Negroes. State action to enforce such a policy squarely violates the Fourteenth Amendment to the Federal Constitution. It was so held in the restrictive covenant cases: *Shelley v. Kraemer,* 334 U.S. 1 (1948); *Hurd v. Hodge,* 334 U.S. 24 (1948); *Barrows v. Jackson,* 346 U.S. 249 (1953). In *Shelley v. Kraemer,* the Court pointed out that the re-

strictions on the right of occupancy involved could not be squared with the requirements of the Fourteenth Amendment if imposed by State statute or local ordinance. The same, of course, would be true of any statute or ordinance attempting to establish a prohibition on entry by Negroes into places of public resort and amusement. Just as those seeking to enforce restrictive covenants which would endeavor to keep Negroes off privately owned property were denied the assistance of State Court action so too is the owner of Gwynn Oak Park limited.

It is to be observed that the Supreme Court in *Shelley v. Kraemer* recognized that, as between the private parties, restrictive covenants establishing racial grounds for exclusion may be perfectly valid, but that, nevertheless, State action to enforce them is prohibited. Cf. *Meade v. Dennistone,* 173 Md. 295 (1938) with *Goetz v. Smith,* 191 Md. 707 (1948). Thus, the force of the holding in *Shelley v. Kraemer* is such as to block the conviction of Appellants even though the owners of Gwynn Oak Park were exercising a right to exclude them. It thus becomes unnecessary to decide whether, in fact, there was a constitutional right of Appellants to enter and remain on a place of public resort or amusement, which would override the usual privilege of the private owner to exclude whom he pleased. Existence of such a constitutionally protected right in the Appellants would demonstrate, however, that the situation is an even stronger one than that presented in *Shelley v. Kraemer* for application of the principle that State action to enforce a private policy of discrimination is forbidden.

In *Valle v. Stengel,* 176 F. 2d 697 (C.A. 3, 1949), the Court considered a situation indistinguishable from the present one, if it is assumed that Gwynn Oak Park was a

place of public amusement. The Court squarely held that the action of a Chief of Police in arresting Negroes and whites for seeking admission to a facility at Palisade Amusement Park in New Jersey was improper State action in violation of the constitutionally protected right under the Fourteenth Amendment to be present at a place of public amusement. This decision is merely a reiteration of what was assumed by the Supreme Court to be the law in *Civil Rights Cases,* 109 U.S. 3 (1883). That case considered the constitutionality, as enforced against private individuals, of a Federal statute making it illegal to discriminate for reasons of race or color in places of public amusement. While the case declared the statute unconstitutional, in so far as it involved Congressional efforts to regulate individual, rather than State, action, it was assumed by the majority (see 109 U.S. at pages 19 and 24) and forcibly argued by Justice Harlan in his dissent (see Id. at page 41) that the Constitution does create a right, privilege and immunity for American citizens, regardless of race or color, to attend places of public amusement.

The State will perhaps assert that the thrust of our argument would leave a private owner helpless to exclude from his land persons he regards as undesirable. There is no basis for such a conclusion, since our entire argument is predicated on the assumption of a *public* place, an essential ingredient of the State's case in view of the provisions of Article 27, Section 123. It is here perhaps that the essential distinction between "public" and "private" is most starkly placed in focus. A private owner exercising his right to exclude permits only a few to enter for reasons of friendship or business. He excludes the rest of the world, whites as well as Negroes and other non-Caucasians. The basis of his discrimination is, therefore, not racial and he may seek support of the State police power to protect him in

his private enjoyment of his lands. The Constitutional inhibition applies solely to the owner of a place of public resort or amusement, who, in contradistinction to the private owner, would permit and, indeed, welcome anyone, so long as his race or creed were not objectionable. It is forbidden for an owner to seek State aid when his only purpose in exercising an asserted right to exclude is to exclude on the basis of race or color.

The State may also assert that riots and other disorders may occur, which it will be powerless to protect against, under the rule of law advanced here on behalf of Appellants. In the first place, it is important to point out that the instant case presented no such situation. The arresting police officer unequivocally testified that the situation at Gwynn Oak Park was not one in which, as a maintainer of public order, he would have arrested the Appellants or charged them. His testimony was that it was solely on the basis of the private owner's request, made to enforce a racial discrimination, that the arrest took place (E. 24-25). The private owner, not the police, applied for the warrant and preferred charges against the Appellants (E. 31). There was, consequently, no State interest in maintaining order which would have been effectuated by arrest of Appellants.

Second, and more basically, whatever threats to public order existed, they emanated not at all from Appellants, whose demeanor was very polite throughout. The crowd which congregated originated whatever disorder there was, and neither the owner of Gwynn Oak Park nor the police took steps to quiet them by threat of exclusion from the park or of arrest. Such improper threats of violence are no basis for subverting the constitutional guarantees to

which Appellants were entitled. In the Little Rock school situation, the Supreme Court stated in the recent case of *Cooper v. Aaron*, 358 U.S. 1, 16 (1958):

> "The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some 41 years ago in a unanimous opinion in a case involving another aspect of racial segregation: 'It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.' *Buchanan v. Warley*, 245 U.S. 60, 81. Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights."

The failure of the owner or the police to proceed against the only disorderly persons at Gwynn Oak Park on September 6, 1959, provides the second constitutional grounds rendering invalid the conviction of Appellants. Singling Appellants out for punishment, while ignoring the actions of the crowd, denied Appellants equal protection of the law. *Pace v. Alabama*, 106 U.S. 583 (1882); *State v. Howard*, Criminal Court of Baltimore City, Niles, C.J., Daily Record of April 22, 1957.

The third constitutional bar to conviction of Appellants is related to the first such bar described above; for it would protect Appellants in the exercise of still other constitutionally guaranteed rights, those of free speech and assembly. The situation of the Appellants is completely analogous to that of picketers. They needed to carry no signs, for the complexion of the Negro Defendant and the association of the white Defendants with the Negro De-

fendant were as eloquent statements of their position as any placards would have been.

In *Niemotko v. Maryland,* 340 U.S. 268 (1951), a conviction for disorderly conduct under what is now Article 27, Section 123 of the Annotated Code was reversed because of its invasion of the constitutional rights of the defendants. The disorderly conduct charge had been based on the action of Jehovah's Witnesses in persisting to preach in a park in Havre de Grace, despite refusal of a permit by the City authorities and over a police warning to desist. See *Niemotko v. State,* 194 Md. 247 (1950). Appellants were equally exercising their rights of free speech and assembly, and conviction for disorderly conduct violated the Constitution as much in their case as in that of the Jehovah's Witnesses.

The private ownership of Gwynn Oak Park does not remove it from the scope of the constitutional guarantee, inasmuch as its purely private character must, under the assumption, essential to the State's case, have been relaxed sufficiently for it to have become a "place of public resort or amusement". Otherwise, the crime charged has not been made out. In permitting Gwynn Oak Park to become a place of public resort or amusement, the owner relinquished its right to exclude members of the public at will, where their activities are peaceful and in furtherance of the rights of freedom of speech and assembly. *Marsh v. Alabama,* 326 U.S. 501 (1946) (invalidating trespass conviction of Jehovah's Witnesses for distributing literature on the streets of a company-owned town); *People v. Barisi,* 193 Misc. 934, 86 N.Y.S. 2d 277 (1948) (acquitting defendants charged with disorderly conduct who picketed in Pennsylvania Station in New York City); *State v. Williams,* Criminal Court of Baltimore City, Harlan, J., Daily Record, August 25, 1959 (acquitting defendant

charged with criminal trespass who picketed on Mondawmin Shopping Center despite posting and direct prohibition by the owner).

Furthermore, in *Terminiello v. Chicago*, 337 U.S. 1 (1949), the Supreme Court upset a conviction for disorderly conduct growing out of a speech made in a private auditorium. The Court held that an ordinance was unconstitutional which permitted conviction of someone whose speech stirred people to anger, invited public dispute or brought about a condition of unrest.

Even in New York, where the pertinent statute contains a specific definition, making refusal to obey a policeman's order disorderly conduct, the fact that a defendant who refused to obey a policeman's order was exercising his constitutionally guaranteed rights of free speech and assembly, has been held to prevent conviction for disorderly conduct. E.g. *People v. Trumbul*, 63 N.Y.S. 2d 720 (1946); *People v. Barisi*, 193 Misc. 934, 86 N.Y.S. 2d 277 (1948). Cf. *Kunz v. New York*, 340 U.S. 290 (1951).

CONCLUSION

The essential inherent difficulty of the State's position in this proceeding is the necessity to provide completely antagonistic characterizations of Gwynn Oak Park. It must insist on a *public* character to bring the case within the statutory language under which the information is laid. It must insist on the *private* character in order to lend any support to the contention that the altogether peaceable and polite behavior of the Appellants was disorderly or not in furtherance of constitutionally protected rights. The word "public", as we have shown, already is imprecise enough in definition without adding such additional complication and confusion. If the State insists that the statute

really should be read to mean a public-private or a private-public place of amusement, then the language of the Court of Appeals in *State v. Magaha,* 182 Md. 122, 125 (1943), applies:

> "A statute which either commands or forbids the doing of an act in terms so vague that persons of ordinary intelligence must necessarily guess at its meaning and differ as to its application violates the constitutional guaranty of due process of law."

We, therefore, respectfully submit that the judgment below should be reversed.

Respectfully submitted,

ROBERT B. WATTS,
FRANCIS D. MURNAGHAN, JR.,
ROBERT J. MARTINEAU,
VENABLE, BAETJER AND HOWARD,
Attorneys for Appellants.

APPENDIX

APPENDIX TO APPELLANTS' BRIEF NO. 113

DOCKET ENTRIES AND JUDGMENT

CHARGE — DISORDERLY CONDUCT

April 5, 1960—Criminal information fd.

April 6, 1960—Bail (Joyner, Sheeham, Brown, Drews) Shff's. ret. fd. Copy of criminal inf. sd.

April 8, 1960—Not guilty. (Drews, Sheeham, Joyner, Brown).

April 8, 1960—Hon. W. Albert Menchine, Issue joined (Short) on plea. Jury trial waived by the Traversers (Drews, Sheeham, Joyner, Brown).

April 8, 1960—At the end of State's case, Defendants' Motion for Directed Verdict. Sub Curia.

May 6, 1960—Motion for a Directed Verdict denied.

May 6, 1960—At the end of the entire case, Defendants' Motion for a Directed Verdict renewed and denied.

May 6, 1960—Verdict, Guilty as to Dale Drews, Joseph C. Sheeham, Juretha Joyner, Helen W. Brown, Opinion fd.

May 6, 1960—Judgment and sentence that each Traverser pay a fine of $25.00 and costs of this case.

June 2, 1960—Defendants' (Drews, Sheeham, Joyner & Brown) Appeal fd.

June 23, 1960—Testimony fd.

E. 2

INFORMATION

(Filed April 5, 1960)

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

The State of Maryland vs. Dale H. Drews, Joseph C. Sheeham, James L. Lacy, Juretha Joyner and Helen W. Brown.

In the Circuit Court for Baltimore County.

CRIMINAL INFORMATION

The above entitled case having been referred to Frank H. Newell, III, State's Attorney for Baltimore County, under and by virtue of an order of said Court, dated the 7th day of December, A.D. 1959, with full power and authority to investigate and deal with said case so referred to him upon order of this Court, and he was especially authorized and empowered to prosecute said case by Criminal Information on behalf of the State of Maryland filed by him in this Court and the said Frank H. Newell, III, the State's Attorney for Baltimore County, having investigated said case after it had been referred to him as aforesaid, now comes into the said Court and for and on behalf of the State of Maryland gives the Court here to understand and be informed that Dale H. Drews, Joseph C. Sheeham, James L. Lacy, Juretha Joyner and Helen W. Brown, late of Baltimore County aforesaid, on the sixth day of September in the year of our Lord nineteen hundred and fifty-nine at Baltimore County aforesaid, were found acting in a disorderly manner, to the disturbance of the public peace, in or on Gwynn Oak Amusement Park, Inc., a body corporate, a place of public resort and amusement in Baltimore County; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

PROCEEDINGS

Now, Criminal Information 20084, which is the disorderly manner and disturbance of the public peace in or on Gwynn Oak Amusement Park, Incorporated, a body corporate, do you waive the reading of that indictment?

(Mr. Murnaghan) No, we do not.

(Mr. Probst) You do not?

(Mr. Murnaghan) We do not.

(Mr. Probst) All right. Will the Defendants please rise. Dale H. Drews, Joseph C. Sheeham, James L. Lacey, Juretha Joyner and Helen W. Brown, it's been said—

(The Court) Now, just a moment. What were the names again?

(Mr. Probst) Dale H. Drews—

(Mr. Watts) Do you want them in the order of the indictment?

(The Court) That is Criminal Information 20084?

(Mr. Watts) Right.

(The Court) The Court observes that five names were called by the Clerk, and the Court sees only four Defendants present. Is Dale H. Drews here?

(Mr. Murnaghan) Your Honor, Mr. Lacey, James L. Lacey is not present. The other four are present.

(The Court) All right.

(Mr. Murnaghan) And let the record show, your Honor, that neither Mr. Watts nor myself represent Mr. Lacey.

(The Court) Very well.

(Mr. Probst) It has been said that on the 6th day of September, 1959, you were found acting in a disorderly manner to the disturbance of the public peace at, in or on Gwynn Oak Amusement Park, Incorporated, a body corpo-

rate, a place of public resort and amusement in Baltimore County. What do you say to these charges, are you guilty or not guilty, sir?

(Mr. Murnaghan) Now, your Honor, before we plead we wish to move that the Information be stricken and not received, and the reasons why we make this motion are the following: This matter — there has already been the reading of the Information in Number 19767 which was filed in December 1959. A hearing under that Information was first set for March 24th, 1960. One of the Defendants, Mr. Drews, is in Washington, and arrangements had to be made for him to be present. It is not easy for him to get away, and he made his arrangements. On the 22nd of March I called the State's Attorney's office to ascertain who it was in the State's Attorney's office who would be handling the matter. There was a subject that I wanted to discuss with him, actually the fact that Mr. Lacey would probably not be present. At that time I was told that the case had been taken out of the assignment. I had had no prior knowledge to this effect. Mr. Watts, who is my co-counsel in the matter, had to rearrange his trial schedule in order to be present on the 24th, and we were summarily advised on the 22nd, two days before the scheduled trial, that the matter had been taken out of the assignment. We next received, on March 31st, 1960, notice that the matter was again scheduled for trial today. Again I called to find out who it was in the State's Attorney's office to whom the matter had been assigned, and I called on Tuesday. The reason I didn't call sooner was that in discussing the matter with Mrs. Scagg in the State's Attorney's office, I was advised that it would do me no good to call before Tuesday of the week in which the case was set for trial because it would not have been assigned, and there would be no one in the State's Attorney's office who would know about the matter. Again I called on Tuesday in order to try and apprise the State's Attorney of the fact that Mr. Lacey would not be present to the best of my knowledge, and at that time I first learned that Mr. Green was to handle the matter. I spoke to him and at that time he told me

that he planned to file a new Information in the matter. Again we had made arrangements for trial today including the arrangements which Mr. Drew had to make to come from Washington, and all the other Defendants and our witnesses had to be apprised and notified that they should make arrangements to be here. I again, for the second time, had to issue summons for witnesses whom we wished to appear. All these arrangements were made, and at that late date we were told that there would be a new charge and a new Information that would be produced at this time. Actually, the matter, as far as I know, it was not filed until Wednesday. It was first served on us by mail to Mr. Watts who only received it yesterday.

Now, the position of the State's Attorney, when I spoke to him about the matter, was, "Well, you can get a postponement if you want, but we are certainly going to file the Information." And I spoke to Mr. Newell about it as well as to Mr. Green. Now, your Honor, the matter has been pending since September 6, 1959. We are ready for trial. We are ready for trial on the Information that has been pending since December of 1959. We respectfully submit that to attempt to, in effect, modify and alter the charges against the Defendant at so late a date before the trial denies us our right to a speedy trial on the charges as originally framed in Information Number 19767. Certainly in any civil case no plaintiff will be permitted to wait until two or three days before trial and amend its Declaration or Complaint, and I don't believe that the proceedings in a criminal matter should be any more lax than in a civil proceeding, and for those reasons I move that this Information be stricken because it will, in effect, achieve either a denial of our rights to a speedy trial or force us, in order to avoid all the dislocations of people's lives who are involved, to go to trial with so short, an unreasonably short notice of a new Information.

(The Court) Well, does your motion imply that there are such differences in the initial and the second Criminal Information as to present the Defendants with difficulty with respect to the trial of both together?

(Mr. Murnaghan) Well, there is this difficulty, your Honor. The Information, the first Information charges acts on a public street. As to that, our proof will be simple. There was no activity of any kind in a public street. The new charge refers a little inartistically but I believe to activities at a place of public resort and amusement. Now, your Honor, the proof of whether that venue in which the alleged acts took place is or is not a public place of resort and amusement, is one which, frankly, investigation might disclose a number of things.

* * * * * *

(T. 9-10):

(The Court) All right, what is the State's position on that?

(Mr. Green) Well, I think basically, Mr. Murnaghan is being truthful. He did talk to me for about a minute, and I told him I would prefer to have Mr. Newell talk to him about the problem. Mr. Newell did tell him that the new Information would be filed. As for the service of the matter, I asked Mr. Leavy if he would come up to explain as to the service of the matter. I have no knowledge about the service of the papers. Quite frankly, the State feels that it would have to try the case on both Informations.

* * * * * *

(T. 18-67):

TESTIMONY

(Mr. Green) Officer Wood, take the stand, will you please.

STANLEY M. WOOD,

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. Green:

Q. Officer Wood, what is your occupation? A. At this particular time I was employed as a special police at the Gwynn Oak Park.

Q. What is your general occupation? A. I work for Baltimore County.

Q. Now, were you at Gwynn Oak Amusement Park on or about Sunday, September 6, 1959? A. I was.

Q. And would you tell the Court please where that is located? A. Gwynn Oak Park is located on Gwynn Oak Avenue.

Q. Is that in Baltimore County? A. Yes, sir.

Q. Now, why were you at Gwynn Oak Park on that day? A. I was put there as a special officer hired by the Park.

Q. Are you there on more than one occasion? A. Well, I work there part-time, I mean, Saturdays and Sundays I am there quite a bit.

Q. Now, Officer, on or about Sunday, September 6th, did anything unusual occur at Gwynn Oak Park? A. Yes, sir.

Q. Would you tell the Court what happened, if anything? A. Well, at this particular time in this instance, I approached these four people setting there, and there was another gentleman with them. I think his name was Mr. Lacey, and they were standing about in the center of the Park right near the cafeteria and the miniature golf course. I approached them and told them that the Park was closed to colored, and we were very sorry but they would have to leave.

Q. Now, you told who? A. I told the whole group which consisted of five.

Q. Can you identify the people you told that to? A. Those four and Mr. Lacey who isn't here.

Q. Do you know the names of these people? A. I know them indirectly, yes.

Q. Could you identify any of them today? A. I can identify them by sight, yes, sir.

Q. By sight. Would you come over and tap on the shoulder the four people that you talked to? A. Which would be all four of them.

(Mr. Green) As he touches you on the shoulder, would you rise, please, and give your name.

(Mr. Murnaghan) Your Honor, I think we can waive this.

(The Court) I beg your pardon?

(Mr. Murnaghan) If your Honor please, I think we can waive this. I have no objection to having the record show that he is referring to the four Defendants.

(The Court) Each of the four Defendants?

(Mr. Murnaghan) Each of the four defendants.

(The Court) You may return to the stand.

(Mr. Green) Let the record so indicate.

Q. Now, continue with your story, Officer. A. I asked them, and told them, we are very sorry but the Park was closed to colored, and that the colored people would have to leave the premises, and I got an answer from a Mr. Lacey that he was enjoying himself and he thought he would stay and look around. Again I requested them to leave the Park, and I think we can very clearly state they were asked about four or five times to leave the Park.

Q. By you? A. By myself, yes, sir, which they refused to do, and being by myself, there was another Officer came up just about the same time. The crowd — it was a good-sized crowd around, and when all this started, the crowd seemed to mill in and close in on us, so I asked for the assistance of the Baltimore County Police in ejecting them from the Park.

Q. Now, let's go back to the Park. Describe the area in detail where these people were? A. Well, if you are familiar with the Park, it was right in front of the miniature golf course which goes downgrade towards the end of

the Park. I'd say it was centrally located, the position that they were in.

Q. What, if any, conversation did you have with any one individual here? A. Well, when I spoke, I spoke to them all as a group, not to any one individually.

Q. Do you remember any remarks they made to you, if any? A. Well, their remarks were very polite. They were all very polite at that particular incident, but Mr. Lacey was the one that made the statement that he was enjoying himself, and he was going to stay and look around a little bit more, and the rest, they just refused to move also.

Q. You say you called for assistance, what do you mean by that? A. Well, I mean, for help, to help to get them out of the Park.

Q. Tell exactly what happened? A. Well, all right. Then, we asked them to move. I asked the colored people to leave first. When they refused to leave, I asked the whole group to leave. Then the whole group refused to leave, so then I called for the assistance and waited for the assistance of the Police Officers that come down. When they come, we tried to move them out of the Park, and in trying to move them out of the Park, we just had to pick them up and carry them or anyway we could get them out.

Q. What do you mean you had to pick them up? A. Well, they just all joined arms and laid down on the ground. I mean, I know this one particular gentleman sitting right over on the end, I had him, and he just laid right down on the ground.

Q. That is the gentleman on the far right? A. Yes.

Q. In the meantime, there were other people around, I assume? A. The crowd was milling around, and I got spit on two or three times and kicked once, and I don't remember some of the remarks, but there was remarks passed from the crowd at us or at them, I don't know which one

it was, but they weren't very kind remarks. The crowd seemed like it was very angry.

Q. You say you got kicked? A. Well, I got kicked. I don't know who they were kicking at, but I sure got kicked.

Q. You mean, the crowd? A. Uh-huh, milling in. In other words, the crowd just closed in right around us, and you almost had to fight your way out of it.

Q. You mean — you don't mean the Defendants, though? A. No. I mean the crowd that was in the Park at that particular time.

Q. All right then, the Police, your assistance, came down, and what happened? You said you had to pick them up. A. Well, generally, I couldn't tell you. I was so busy having him and trying to protect both of us getting out of the Park, that I can only account really for what happened when I had him, and I think he will testify that we had quite a little bit of trouble getting to the head of the Park on account of the crowd.

Q. What specifically did you observe about the four Defendants, Mr. Wood?

(Mr. Murnaghan) I will object to the question if we can't have something of a specific nature. The question seems to me to be irrelevant. He might have observed whether they were married or whether they weren't married or whether their hair was red. I think it should be directed to some specific point.

(The Court) Well, overruled. I am afraid if more pointed questions were asked, it might be objectionable as a leading question.

(Mr. Green) Answer the question.

A. Is that my personal opinion?

(The Court) No, not your opinion.

Q. What you observed.

(The Court) What you saw or heard.

A. Well, what I saw and what I heard, that they were very determined that they were not going to leave the Park.

Q. Why do you say that? A. Because — why do I say it?

Q. Yes. A. Because when we asked them to move, they made no attempt to move whatsoever, and when we tried to eject them from the Park, they just all joined arms as one group, and we just had to push and shove and get them out anyway we possibly could, and the crowd, they were hollering remarks about different things, you know, and some of them said, "Kill them," "Lynch them," and we almost had quite a mob scene there.

Q. Well, what did these people say to you, if anything? A. These people?

Q. Yes. A. They never said a word to me except this one gentleman, when I had him, made a remark, when I had to let him rest a few minutes up towards the head of the Park, he looked up at the people and said something about, forgive him, he doesn't know what he is doing, and that is the only remark that he passed to me, and I don't know if he passed that to me, but he passed it to anybody in general.

Q. Were any remarks made to other people in your presence by any other member in your presence? A. There was one or two remarks made, but I can't recall them at this particular time because there was just so much turmoil going on, and trying to get him out of the Park, that it was just for public safety's sake, we just had to get him out as quickly as possible.

Q. Why do you say for public safety's sake? A. I don't know if you know how a crowd can react when it gets angry, but it was sure on a point where this crowd could have gotten out of control.

Q. Why? A. Well, it could have gotten out of control.

(Mr. Murnaghan) Your Honor, I will object to this line because he is only speculating, he is not testifying.

(Mr. Green) Well, he observed what happened.

(The Court) Sustained. I will allow him to describe what he observed about the crowd, but I think the current question didn't quite call for that answer.

Q. What did you observe about the crowd? A. Well, I observed this about the crowd. The crowd was at a point where either one way or the other it could be turned, could have been turned into a mob violence.

(Mr. Murnaghan) I move to strike that answer as purely a conclusion.

(The Court) I will strike that out as a conclusion. I will allow you to describe the crowd, what it looked like to you, but the conclusions must be drawn by the Court.

A. Well, the crowd moved in very close to us. They was hollering, some of them were passing remarks into us, if I may use this expression as, "Nigger lovers," "Lynch them," and one or two times, maybe more, we were spit at. Now, I don't know who the spit was meant for, but I got it a couple of times, and one or two tried to kick. I got kicked one or two times, and what I am trying to put across is, the group or the mob that was there or the people were getting to a point where they could have been out of hand.

Q. Well, was the spitting and kicking from the crowd or from the Defendants? A. From the crowd.

Q. All right now, when you got them out, were taking them out of the Park, what actually happened there, if anything? A. Well, when we got them to the head of the Park, the Police wagon was waiting there, and they were put in. I think your name is Drews, isn't it? Mr. Drews was put in the Police wagon, and I went in the wagon with him, and we set there a while until the others were brought up.

Q. Was there any conversation with the Defendants up there? A. None at all.

Q. Did they make any comment at all to anybody in your presence? A. No.

Q. What happened to them from there? A. And from there the group — the men was put in the Police wagon. They were taken to Woodlawn Police Station where the warrant was taken out for them.

Q. Were you there at the Police Station? A. I was.

Q. Were any statements made in your presence by the Defendants there? A. No, sir.

Q. Any comments at all? A. No comments at all.

Q. And what happened after you were at the Station, did you stay there or did you leave? A. I stayed there until the warrant was taken out, and then I left.

Q. Did you ever see them again after that? A. I saw them at the Woodlawn Police Station. We were supposed to have a hearing there.

Q. Did you have any conversation with them there? A. Not a bit.

(Mr. Green) Witness with you.

CROSS EXAMINATION

By Mr. Murnaghan:

Q. Who is your employer when you are working at Gwynn Oak Park? A. Mr. Price.

Q. Who is Mr. Price? A. Mr. Price is sitting right there.

Q. Has Mr. Price ever given you instructions about steps you are to take with regard to admitting or refusing admission to the Park? A. The Park, I was told, was closed to the colored people.

Q. Who told you that? A. And we were not to allow them in there.

Q. Who told you this? A. Well, that was told to me when I first went there about six or seven years ago, that it was told by the management, I will put it that way.

Q. And that was six or seven years before this occurrence in September? A. No, that was told us every year.

Q. When were you last told that prior to the occasion which you have described in your testimony?

(Mr. Green) Objection.

(The Court) Overruled.

A. Well, I can't give you an exact date.

(Mr. Newell) Could the State be heard on that?

(The Court) Yes.

(Mr. Newell) The only reason I object, if the Court pleases, is because, as I understand it, the Defendants are charged with acting disorderly, and I don't see where the relevancy of what an employer told an employee has to do with the Defendants themselves acting disorderly.

(The Court) Your associate thought there was relevance because the subject was brought up on direct testimony by the witness.

(Mr. Newell) Well, I didn't hear that, sir. The question when it first came in, that is the first time I have heard it. I was here since the beginning of the case, and I didn't hear that.

(The Court) It was developed—

(Mr. Newell) But I—

(The Court) —in the course of the direct testimony. Overruled.

(Mr. Newell) All right, sir, I will withdraw the motion.

Q. When was the last time prior to the event in September of 1959 that you have described in your testimony that you were given instructions as to admission or exclusion of people from the Park? A. I would say that Mr.

Stewart, who is the Manager of the Park, gave me those instructions at the beginning of the year which is the beginning of their season.

Q. And when was that? A. I will say May, June of '59.

Q. When did you first become aware that the Defendants were on the premises at Gwynn Oak Park? A. You mean, the time?

Q. That's right. A. It was approximately about 3:15, 3:30, something like that, maybe closer to 3 o'clock.

Q. Did you learn that by personal observation or were you told? A. No, sir, I learned that by merely patrolling the grounds.

Q. Where did you first see them? A. Right in front of the miniature golf course in the center of the Park, about the center of the Park.

Q. Was there any special observation or ceremony going on at Gwynn Oak Park that day? A. Well, there is a usual affair that goes on every year.

Q. And does it have a particular name? A. All Nations Day.

Q. Have you any idea of what the number of persons on the Park grounds was at the time you first observed the four Defendants? A. No, sir, I wouldn't even attempt to guess.

Q. Now, when you saw them, were they surrounded by a crowd? A. No, they had a good deal of room around them at that particular time. They seemed to be standing quite to themselves.

Q. Now, you stated that you communicated with the Baltimore County Police. How did you communicate with them? A. Officer Shuman, I sent him to the head of the Park to ask assistance, and the Police were out at the head of the Park.

Q. And who was Officer Shuman? A. He is a Special Police Officer at Gwynn Oak Park.

Q. Is he here today? A. No, sir, he is not.

Q. Is he still in the employ of the Park? A. Yes, sir.

Q. Now, you sent him for assistance, and the Police arrived. Who were the Police that did arrive? A. Well, I know Officer, this Officer setting right here was one of them, and I don't know — I wouldn't even attempt to guess except it was more than two or three.

Q. There were more than two or three? A. About four.

Q. When they arrived, what happened? A. Then we tried to move the group out of the Park.

Q. Did you—

Q. (The Court) Well, what do you mean by that? A. Well, we asked them to leave, sir, and they wouldn't leave, so then we just started to pick them up by their arms and carry them.

Q. Now, did you and the Police begin to try and move the Defendants as soon as the Police arrived? A. No. They were asked to leave the Park by the Baltimore County Police also on maybe two or three occasions. I don't know exactly how many times.

Q. How long a time transpired between the arrival of the Police and the attempts that you have referred to to remove them? A. About 10 or 15 minutes.

Q. Now, when you first approached, as you individually first approached the Defendants, you said that there was no crowd. When did the crowd around them, when did the crowd first begin to congregate? A. Well, when I say there wasn't any crowd around them, I mean there was the usual amount of people around, but not insofar as when I say crowds, I mean they weren't attracted to this specific spot at that particular time.

Q. The people that you referred to who were around were pursuing their own interests? A. That's correct, yes.

Q. They weren't directed, their attention was not directed to these particular Defendants? A. That is correct.

Q. When did the crowd, which was interested in these particular Defendants, or yourself or the focal point that you provided, when did that crowd first begin to congregate? A. I think they began to congregate around the people when I asked them to move, just slightly after maybe the second or third time I asked them to move out of the Park.

Q. What are the instructions with regard to removal of persons from the Park? You have referred to instructions to remove or not to permit colored people on the ground. Do you have instructions with regard to anyone else? A. No, sir.

Q. But you testified that subsequently you requested all five of the people that you found there to leave, did you not? A. That is quite right.

Q. But the only instructions you had was to ask colored people to leave? A. That's correct.

Q. Did you make any endeavor to cause the people that you described as spitting and as making rude remarks to desist from what they were doing? A. Very definitely.

Q. What did you do? A. I asked them to stand back, give us room so we could get out up to the head of the Park.

Q. Did you ask any of them to leave the Park? A. At that particular time I had my hands full.

Q. Just answer the question. A. No.

Q. Now, when you and the Police endeavored to remove the Defendants you referred to the fact that they locked their arms together. Did they make any active resistance to whatever steps you took? A. The resistance that they offered was merely of collapsing and laying down, and I

can only say for Mr. Drews. I had Mr. Drews, and we had to carry him. I say we, we had to carry him clean to the head of the Park. He made no attempt whatsoever to walk.

(Mr. Murnaghan) That's all.

(Mr. Newell) Thank you very much. Step down. Officer Newman.

FREDERICK NEWMAN,

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. Newell:

Q. You are a member of the Baltimore County Police Department? A. That is correct.

Q. And I believe you are attached to the Woodlawn Station, is that correct, sir? A. Yes, sir.

Q. Were you on duty on the 6th of September, 1959? A. Yes, sir.

Q. And did you have occasion to visit the Gwynn Oak Park Amusement— A. I did.

Q. You did? A. Yes.

Q. Would you tell the Court about what time you arrived at the Amusement Park and on what occasion were you there? A. I guess we were down the Park maybe 1, 1:30 or something like that, and we was right out in front of the Park up there by the parking lot.

Q. (The Court) That was shortly after midday? A. Yes, sir, and just as we were around in front of the Park there when some — it was Officer Shuman who was the Special Officer at the Park — came up and said, "We need some assistance down at the Park." He said they had a disorderly crowd, so myself and another Officer went down

there, and it was five people in the group down there. This Officer Wood stated he wanted them out of the Park, and they wouldn't leave. I asked them to leave the Park, and they still refused to leave.

Q. Do you see the people who refused to leave in Court today? A. I do.

Q. Point them out, please? A. The four over there.

Q. Let the record indicate the Defendants. Did you have any conversation with them? A. I did.

Q. What was your conversation? A. I asked them to leave the Park. They wasn't allowed in the Park, the colored wasn't. The white, I believe, I stated they could stay.

Q. Did they say anything to you? A. They just refused to leave.

Q. Did they give you an explanation for refusing? A. They figured it was a public park, and they had a right there.

(Mr. Murnaghan) Well now, if your Honor please, I will object to the answer.

(The Court) I will strike it out, at least until it is developed as something other than a conclusion.

Q. Yes, sir. What did they say to you; don't tell us what you thought, just what they said?

(Mr. Murnaghan) If your Honor please, I don't think he can answer the question because they can say anything. I think unless he refers to each individual and what he or she may have said—

(Mr. Newell) We will get to that.

Q. (The Court) What, if anything, did anyone of the Defendants say? A. That they didn't feel that they had to leave the Park.

Q. (The Court) And who made that statement? A. I couldn't say which one, sir.

Q. Do you know whether it was, the person who said it, was one of the group of the Defendants here today? A. It could have been, yes, sir.

Q. (The Court) What do you mean by that? A. Well, Mr. Lacey is not here. Like I say, I don't know which one it was. If I had all five of them here, then it would have to be one of them would have had to have said it, but Mr. Lacey is not here, and I couldn't say which one.

Q. Would you lean up closer to the microphone; we're having a hard time hearing what you said. Did you have any further conversation there at the Park other than that? A. No other than that I asked them to move, get out of the Park.

Q. What did you do? A. I told them they had to get out of the Park or get locked up.

Q. And what did they say to that? A. They still refused to move.

Q. What, if anything, did they do after you had advised them to leave or you would lock them up? A. They didn't do anything, they just stood there.

Q. What did you do then? A. Then I sent someone up to Mr. Price's office to find out if he would get a warrant for them for disorderly conduct.

Q. And what is the next thing that you did? A. We waited around maybe 10, 15 minutes until we got back the answer, and he stated he wanted them out of the Park.

Q. Then what did you do then? A. So then I told them to get — they'd have another choice of getting out of the Park or getting locked up. They still refused to leave, so I placed my hand on one of them, and told them they were all under arrest, at which time they all locked their arms and just dropped on the ground.

Q. What did you say to them when they dropped on the ground? A. I just told them they were under arrest.

Q. I can't hear you, sir. A. The girls, I think, broke loose when the fellows dropped to the ground.

Q. Yes. A. And I proceeded to take them up to the head of the Park.

Q. And were they on the ground when you left the scene, still on the ground? A. Yes, they were.

Q. And can you tell the Court and point out which two were on the ground at that time? A. That would be the two males.

Q. The two males. Point them out, please. A. That would be Mr. Drews on the end and Mr. Sheeham.

Q. Let the record indicate Drews and Sheeham, the Defendants. And how were they on the ground, can you describe their position? A. Somebody laying on the ground, that's all I can tell you.

Q. Straightened out? A. No, just fell down like they was just fainted or something like that.

Q. Well, were they in a sitting position or kneeling position or, describe the position? A. Laying down.

Q. Straight out? A. You might say straight out, yes, sir.

Q. When you—

(Mr. Murnaghan) What did you say?

Q. Tell us what you mean. A. You are either sitting or you are lying. If you are sitting, you are not lying down.

Q. (The Court) What were they doing? A. Just laying there.

Q. (The Court) Laying? A. Just laying there.

Q. (The Court) Not sitting? A. No, not sitting.

(The Court) All right.

Q. When you took the two women, where did you go? A. I had went up on the front parking lot and placed them in the police car.

Q. All right, then what did you do? A. Just sat around and waited until they brought the other three up.

Q. Did you have any conversation with the two women as you were going up to the police car? A. I did not.

Q. Did they have any conversation with you, say anything? A. I don't believe so, no, sir. I don't recall.

Q. (The Court) Did I understand that the women did not lie down? A. They were half, just halfway down. They broke loose as they were falling down; as the male fell down, the women, I believe, broke loose.

Q. (The Court) When you say— A. They didn't go all the way to the ground.

Q. (The Court) What did they do then? A. They tried to pull away, but then I believe I put the handcuffs on the colored girl, and she was in turn holding on to the white girl, and I proceeded to go up through the crowd to the head of the Park.

Q. Now, at the time when all this was going on, did a crowd gather? A. The crowd had already been there when I got there.

Q. And did you accompany the Defendants to the Police Station after they were all brought up to the police car? A. I brought the two women up in one of the police cars. The three males were brought up in the wagon.

Q. Did you have any conversation with them on the way to the Police Station? A. I don't believe so, no, sir. I don't recall.

Q. They never said anything to you? A. I don't think so, no, sir.

Q. Was there any conversation with them when you arrived at the Police Station? A. Other than that they

was locked up and arrested for disorderly conduct in Gwynn Oak Park.

(The Court) Repeat that last question and answer.

(Whereupon the reporter read back the last question and answer.)

Q. (The Court) Who made that statement? A. I did, sir.

Q. And what was the name of the Officer who was with you at the time? A. Corporal Reese.

(Mr. Newell) All right, witness with you.

CROSS EXAMINATION

By Mr. Murnaghan:

Q. Is Corporal Reese still a member of the Baltimore County Police Department? A. Yes, sir.

Q. Is he in Court today? A. No, he is not.

Q. You testified that when you arrived on the scene, there already was a crowd. Can you describe the crowd? How large was the crowd? A. Well, they had a right crowdy day there. There was just more or less elbow room when you walked anywhere in the Park, more or less.

Q. This was the time that you arrived in response to the request for aid from the Park Police? A. Yes, sir.

Q. Did you observe any actions of the crowd directed towards the Defendants? A. They were making remarks like they wanted to go and grab the Defendants or something like that.

Q. Did they make any overt acts towards the Defendants? A. They stated closing in a little bit.

Q. What did you do when that happened? A. Just asked them to step back, and we started — I took the two girls through the crowd, and went up to the head of the Park.

Q. You asked Mr. Price for some advice, did you not? What was it you asked Mr. Price? A. I sent someone up to ask Mr. Price if he wanted them out of the Park, if he would obtain a warrant for them.

Q. Did you ask him the same question with respect to the people in the crowd who were making remarks and making gestures towards the Defendants? A. I did not.

Q. Who was it that you sent to Mr. Price? A. I believe it was Special Officer Shuman.

Q. And what answer did the Officer bring from Mr. Price? A. He said he wanted them out of the Park; if they had to be locked up, that is the way they would get out of the Park.

Q. When you sent your emissary to Mr. Price, did you specify all, or any particular persons that the inquiry was directed towards or what was exactly the extent of your request of Mr. Price? A. I just assumed Mr. Price knew who was in the Park there because they are the ones that called us. We didn't go there without a call, and I assumed that one of the Special Officers told him what the story was down there.

Q. Now, when the Officer came back, what did he say to you? A. He said he wanted them out of the Park; if we had to lock them up, he wanted them out of the Park.

Q. Did he just say, "them"? A. That's right.

Q. And you are not sure whether he was referring to the five Defendants or people in the crowd? A. They are the only ones that were acting disorderly.

Q. (The Court) Who was the only one acting disorderly? A. The Defendants over here.

Q. (The Court) What do you mean by that? A. By refusing to leave the Park?

Q. (The Court) Was that the act that you consider disorderly? A. It was disorderly when they dropped on the ground, as far as I was concerned, and refused to leave the Park.

Q. Now, the dropping on the ground occurred only after you arrested them, did it not? A. That's correct.

Q. Now, Officer, you could have arrested them yourself if you had concluded that they were acting disorderly, could you not? A. On a public place like that, we don't usually. We let the owner obtain the warrant.

(Mr. Murnaghan) I move that answer be stricken as being unresponsive, particularly as to the nature of the Park.

(The Court) Repeat the question.

(Whereupon the reporter read back the last question.)

(The Court) I will strike it.

A. I would not have.

Q. (The Court) Why do you say that? A. Because it is not on a public highway or street.

Q. (The Court) Well, when was the warrant obtained? A. After we took them up to the Station.

Q. Now—

(The Court) All right.

Q. Officer, you testified that you placed handcuffs on one of the Defendants? A. Yes, sir.

Q. Which one of the Defendants was that? A. I said I believed it was the colored girl, I'm not sure.

Q. By that do you mean Juretha Joyner? A. That's correct.

Q. Now, Officer, do you always place handcuffs on persons whom you have arrested? A. When I have a little trouble getting them through the Park or any — when I have a little trouble with them, yes.

Q. What trouble did you have with Juretha Joyner? A. By refusing to leave.

Q. Did you place handcuffs on any of the other Defendants? A. No, I don't recall.

Q. Did you or did you not? A. No, sir.

Q. Now, did the two female Defendants leave the Park, did they leave under their own power? A. I had to pull them through the crowd.

Q. They walked out? A. They walked out, but I had to pull them through.

Q. (The Court) Why did you have to pull them through? A. Because they didn't want to leave voluntarily.

Q. They came when you pulled? A. They did, yes, sir.

(Mr. Murnaghan) That's all.

REDIRECT EXAMINATION

By Mr. Newell:

Q. Officer, you say that you placed them under arrest, and you placed your hand on one of the Defendants at that time? A. I did.

Q. Which one was that, Officer? A. I believe it was Mr. Drews, I'm not sure.

Q. As you were doing that, what did the other Defendants do? A. They started, began — that is when they locked arms and dropped to the ground.

Q. And did you arrest the other Defendants as a result of that? A. I told them they were all under arrest, but then as they dropped to the ground, the two girls broke loose and I taken them, walked them through the crowd to the head of the Park, and Corporal Reese was there. I couldn't tell you how they got out of the Park.

(Mr. Newell) All right, thank you very much.

RECROSS EXAMINATION

By Mr. Murnaghan:

Q. One more question, Officer. You talk about breaking loose. Do you mean they simply separated their arms from one another, from the link of their arms one to the other? They had their arms linked with one of the boys, and they simply separated their arms. A. I'd say they got pulled apart from the one falling and the other one more or less not falling.

(Mr. Murnaghan) That's all, your Honor.

(The Court) Just a few moments ago you used the expression that you told them they were all under arrest, and I am not sure that I am clear in my mind as to when you told them that.

A. I give them the choice that the whites could stay in the Park, but the colored would have to leave, but one wouldn't do anything without the other, so as a whole they all refused to leave, and at which time they were told that they were under arrest. That was after we got the authority from Mr. Price that he wanted them out of the Park even if they had to be arrested.

Q. (The Court) But that statement by you actually took place sometime before some of the Defendants dropped to the ground? A. Just prior, just before, just before.

(The Court) All right.

(Mr. Newell) Thank you, Officer, step down. Mr. Price.

ARTHUR B. PRICE, JR.,

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. Newell:

Q. Mr. Price where do you live, sir? A. In Randallstown.

Q. And what is your occupation, Mr. Price? A. I am one of the owners of Gwynn Oak Park.

Q. Mr. Price, were you at your Park on the 6th of September of 1959? A. Yes, sir.

Q. And the property, I believe, it is the Gwynn Oak Park, Incorporated, is that correct? A. That's right.

Q. Gwynn Oak Park and Amusement? A. That's right.

Q. And in what capacity do you serve in that corporation, sir? A. I am Executive Vice-President and Treasurer, and one of the Managers.

Q. Now, directing your attention to the 6th of September of 1959, sir, did you have occasion to see the four Defendants in Court today at your Park? A. I believe so, yes. I think I recognize each.

Q. What were they doing when you saw them, Mr. Price? A. They were in the Park attempting to stay there, and apparently, ostensibly to enjoy the Park.

Q. And did you observe anything else of them when you saw them, sir? A. When I was told that their—

Q. Now, don't tell us — you can't tell what you were told, only what you observed. A. I saw them there.

Q. What were they doing? A. I issued an order — I saw them there after I had issued an order that the colored folks were to be removed.

Q. And what did they do when you saw them? A. They resisted removal.

(Mr. Murnaghan) I will move to—

Q. Now—

(Mr. Murnaghan) Just a moment. I move to strike the answer.

(The Court) Well, I will allow it in subject to exception. You understand, Mr. Price, that you are to testify as to what you personally observed? A. Yes, sir.

(The Court) Not what you heard.

A. Yes, sir.

(The Court) All right. Now, bearing that in mind, do you intend that answer to stand? Repeat the answer.

(Whereupon the reporter read back the last answer.)

A. Yes, that answer can stand.

Q. Did you tell them—

(Mr. Murnaghan) Your Honor, I still would move to strike the answer on the ground that it embodies only a conclusion and not a description of fact.

(The Court) Well, I will overrule the objection and leave it in subject to exception, but will ask the question immediately, what do you mean by that?

Q. What do you mean by that, Mr. Price? A. The Special Officers reported to us—

(Mr. Watts) Objection.

A. —that these folks were in the Park.

Q. Wait a minute.

Q. (The Court) You can't tell what the Special Officer reported to you because that would be hearsay. What did you observe thereafter? A. I observed the folks were not leaving as it was our desire.

Q. Now, what did you say to them, sir, to the Defendants, the four Defendants? What did you say to them? A. Actually, I asked them, I stated that if they would see fit to move along peaceably and go without any problem, we had no desire to have them arrested.

Q. All right now, what did they do after you advised them of that? A. This just—

(The Court) Do I understand—

A. They refused to do it.

Q. (The Court) You advised them of that? A. Yes, sir.

Q. (The Court) You were present? A. Yes, sir.

(The Court) All right.

Q. And what did they do after that, after you advised them of that? A. They would not go.

Q. And why do you say that they would not go? A. We asked for an answer. They would not give us an answer in the affirmative.

Q. What did they do? A. They would not answer in a way that we wanted to hear.

Q. How did they answer? A. They wouldn't answer.

Q. You mean, they remained mute? A. That's right.

Q. Said nothing? A. That's right, just about.

Q. What did you do after they remained mute; what did you do then to them? Did you say anything to them? A. No. I said I have one alternative, and we must have you removed.

Q. And was that before the Officer placed his hand on one of the Defendants' arm? A. I am not sure of that.

Q. Well, I will ask you this. Do you know whether or not they were— A. Because we had already said that we would arrest them. We had already told the Officer to tell the County Police that we would arrest them if—

Q. If they didn't leave? A. That's right.

Q. At the time you were there, though, and when you had this conversation yourself with them, were they at that time, from your observation, placed under arrest? A. Yes.

Q. Was that prior to your conversation with them or subsequent? A. Subsequent.

Q. They were already under arrest? A. No, they were not.

Q. Well, that is what I am asking you. A. They were arrested immediately after.

Q. After you advised them to leave? A. That's right.

Q. All right, then what happened? They stood mute, and then what did you observe that followed? A. They continued to resist not only our own Officers, but the Officers of the County.

Q. Well now, you say—

(Mr. Murnaghan) Just a moment.

(Mr. Newell) I will follow it up.

Q. You said they resisted, in what way? How can you say that? A. They wouldn't move. There was a problem getting them up the hill, actually.

Q. Well then, what did you observe happen after that? A. Very little. There was a terrible crowd and a very big crowd, actually.

Q. Well, was anything said by the Defendants while they were in the process of being moved? A. I heard very little, almost nothing, from the Defendants.

Q. What did you do after that? A. I knew that they would have to swear a warrant, and I accompanied Mr. Woods to the Woodlawn Police Station, and he swore a warrant out with our permission, that we were making the charge.

Q. You charged them with disturbing the peace, is that correct? A. That is correct.

Q. Were they disturbing the peace at the Park before you arrived at the Woodlawn Police Station?

(Mr. Murnaghan) I will object to the question as calling for a conclusion.

(The Court) Sustained.

Q. Let me ask you this, Mr. Price. From your observation at the time this all occurred and while the Defendants

were on your Park, what, if anything, did the crowd do that were observing what was going on? A. Well, I saw that the crowd was becoming quite unruly on my way.

Q. You say unruly. Tell us what you mean by that? Tell us what you observed. A. By crowding and calling names, and they were stirring and milling about in what appeared — and this may be an opinion — to be in a riotous fashion.

(Mr. Murnaghan) I object, and move to strike.

(The Court) I will strike the last phrase.

Q. Were the Defendants making any comments in reply to these remarks? A. I didn't get that close to them. There was one conversation where I thought that one of the Defendants—

(Mr. Murnaghan) I don't want to hear—

A. I'm not sure. Perhaps I'd better answer it that way.

(Mr. Newell) Witness with you.

CROSS EXAMINATION

By Mr. Murnaghan:

Q. Are you a stockholder in Gwynn Oak Park, Incorporated? A. Yes.

(Mr. Newell) Objection.

(The Court) Sustained.

Q. Are there other stockholders than yourself in Gwynn Oak Park?

(Mr. Newell) Objection.

(The Court) Sustained.

Q. Gwynn Oak Park, Incorporated, is a stock corporation?

(Mr. Newell) Objection.

(The Court) Overruled.

A. Yes, it is.

Q. Were you present at the time that the Defendants were arrested, Mr. Price? A. Yes, sir.

Q. Did you have any conversation with Officer Newman at the time? A. Well, there are two Officer Newmans. I'd say one is a Special Officer.

Q. You saw the one who testified here today? A. Yes, sir.

Q. The County Police Officer. Did you have any conversation with him — you were present when they arrested the Defendants. Did you have any conversation with him prior to the arrest? A. I don't remember a specific conversation I had with him.

Q. Did you speak to any of the County Police concerning the activities of the crowd that you have described? A. I may have.

Q. Did you ask the Police to take any action against the crowd? A. Yes, I think I was present at the time that the arrest was made, and it was on our order that it be so.

(Mr. Murnaghan) I point out that the answer is not responsive to the question.

Q. I asked you whether you requested the Police to take any action against the members of the crowd? A. No, I did not.

(Mr. Murnaghan) No further questions.

(Mr. Green) No further questions, Mr. Price. That's the State's case, if the Court please.

(Mr. Murnaghan) If your Honor please, I'd like to move for a directed verdict in all cases on two specific grounds.

* * * * * *

MEMORANDUM OPINION

(Filed May 6, 1960)

The facts of the case are not in serious dispute. On Sunday, September 6, 1959, at the Gwynn Oak Amusement Park, located in Baltimore County, "All Nations Day" was being celebrated. It was a "right crowdy day * * *. There was just more or less elbow room when you walked anywhere in the park." (Tr. 48) The Park is privately owned by a corporation, known as Gwynn Oak, Incorporated. There is no evidence that there was any sign or signs to indicate that any particular segment of the population would not be welcome, so that for the purpose of this case it is assumed by the Court that there were no such signs.

At about 3 o'clock in the afternoon, a special officer employed by Gwynn Oak Park, Incorporated observed five persons in approximately the center of the Park, near the cafeteria and miniature golf course. This employee approached the group, consisting of three white and two colored persons, and advised them that the Park was closed to colored people, and that the colored people would have to leave (Tr. 19). It was explained that the management of the Park had a policy opposing the use of the Park by colored persons. The request that the colored persons leave was repeated four or five times (Tr. 21). All five persons were very polite (Tr. 22), but, in response to the request that they leave, one of the members of the group stated that he was enjoying himself, and that he thought he would stay and look around. The first request to leave was directed to the two colored people, but when they refused to leave the whole group of five persons was asked to go, but all refused (Tr. 22).

There was no crowd surrounding the group at the time of the initial observation by the special officer, but the crowd began to congregate after the five persons were asked to leave the Park by the special officer (Tr. 37). The special officer sought the assistance of the Baltimore County Police, who were stationed at the entrance to the Park, after first confirming with the management of the latter's

desire to forbid the continued presence of colored persons upon the property. Upon such confirmation, the Baltimore County Police were summoned to the area where the five persons were and by the time of the arrival of the Baltimore County Police a crowd had gathered (Tr. 47). The Baltimore County Police requested the group of five persons to leave the Park two or three times before the arrest (Tr. 35). The period of time between the time of the initial request to leave and the time of actual arrest covered a period of about ten or fifteen minutes (Tr. 36).

Prior to the actual arrest, a good sized crowd gathered around and seemed to mill in and close in on the group and the police. The crowd was milling around and seemed very angry (Tr. 23), and seemed at the point where it would get out of control and become a mob scene (Tr. 26 and 27).

In spite of the requests by the employee of the management and the two or three requests by Baltimore County Police that the group leave the Park, the five persons steadfastly refused to move. They were thereupon placed under arrest and at that time joined their arms together. Two men in the group dropped to the ground in a prone or semi-prone position. All were escorted from the premises by the police with a degree of resistance. The resistance took the form in two instances of requiring the police physically to carry them; the resistance as to the other three took the form of merely holding back as they were being walked out of the Park.

On these facts the State has elected to bring this prosecution by way of criminal information on the statutory charge of disturbing the peace under Article 27, Section 123.

The reasonable inference exists that the group was not aware that the management had adopted a policy of barring persons because of color at the time of their entry upon the property. The evidence is clear, however, that this management policy became known to the accused through statements to them by an employee of the cor-

poration, and by the Baltimore County Police, before the arrest was made.

The first question which arises in the case is the question whether an owner of private property to which substantial numbers of persons are invited has any right to discriminate with respect to persons invited thereon, that is to say, whether such owner may exercise his own arbitrary freedom of selection in determining who will be admitted to and who will be permitted to remain upon his property under circumstances where such private property is being used as a place of resort or amusement. This question has been clearly answered in the affirmative by the authorities. In *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697 (Court of Appeals of New York), it was said at Page 698:

> "At common law a person engaged in a public calling, such as innkeeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service. * * * On the other hand, proprietors of private enterprises, such as places of amusement and resort, were under no such obligation, enjoying an absolute power to serve when they pleased. * * *
>
> "The common-law power of exclusion, noted above, continues until changed by legislative enactment."

The ruling therein announced was precisely adopted in the case of *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, the Court of Appeals, stating at Page 102 of its opinion that:

> "The rule that, except in cases of common carriers, innkeepers and similar public callings, one may choose his customers is not archaic."

The Court of Appeals also carefully pointed out in the *Greenfeld* case that the rule of the common law is not altered even in the case of a corporation licensed by the State of Maryland. The doctrine of the *Madden* and *Greenfeld* cases, *supra*, announced as existing under the common

law, has been held valid, even where the discrimination was because of race or color. See *Williams v. Howard Johnson Restaurant,* 268 F 2d 845 (restaurant) (CCA 4th); *Slack v. Atlantic White Tower Systems, Inc.,* No. 11073 U.S.D.C. for the District of Maryland, Thomsen, J. (restaurant); *Hackley v. Art Builders, Inc.,* et al (U.S.D.C. for the District of Maryland, D.R. January 16, 1960 (real estate development)).

The right of an owner of property arbitrarily to restrict its use to invitees of his selection is the established law of Maryland. Changes in the rule of law conferring that right are for the legislative and not the judicial branch of government.

The question next arises as to whether or not the State has proved its case under the criminal information on which it elected to proceed. It is a fundamental of our law that the burden rests upon the State to establish guilt beyond a reasonable doubt and to a moral certainty, and this requirement extends to every element of the crime charged. Basically, therefore, consideration must be given to a determination of two questions: (1) Has the State proved beyond a reasonable doubt that the Defendants were acting in a disorderly manner to the disturbance of the public peace? (3) If the answer to the first question is in the affirmative, has the State proved beyond a reasonable doubt that such actions occurred at a place of public resort or amusement?

As to the first question—an able discussion of whether a refusal to comply with directions given by a police officer could be held to be disorderly conduct appears in the case of *People v. Arko,* 199 N.Y.S. 402, in which it was said at page 405:

> "At times even a mere refusal to comply with the directions of a policeman, who may act in an arbitrary and unjustifiable way, does not constitute 'disorderly conduct'. Mere disobedience of an officer is not always an offense punishable by law, any more than his command is not always the law. There must be, upon the

> whole case, something more than a mere whimsical or capricious judgment on the part of the public authorities. * * * The case must present proof of some definite and unmistakable misbehavior, which might stir if allowed to go unchecked, the public to anger or invite dispute, or bring about a condition of unrest and create a disturbance."

In the case of *People v. Nixon*, 161 N.E. 463 (N.Y.), it was said at page 466:

> "Police officers are guardians of the public order. Their duty is not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions."

In the case of *People v. Galpern*, 181 N.E. 572 (N.Y.), it was said at Page 572:

> "Failure, even though conscientious, to obey directions of a police officer, not exceeding his authority, may interfere with the public order and lead to a breach of the peace."

And, at Page 574, went on to say:

> "A refusal to obey (a police order to leave) can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and not calculated in any way to promote the public order."

The facts and circumstances hereinbefore stated offer clear and convincing proof that public disorder reasonably could be expected to follow if the five persons remained in the Park. The order of the police to leave, therefore, was not arbitrary. The refusal of the Defendants to leave upon request of the police, under the circumstances described in the evidence, constituted acting in a disorderly manner to the disturbance of the public peace.

We pass then to the second question: Did such action occur at a place of public resort or amusement? This in-

volves a determination of the legislative meaning of the expression "place of public resort or amusement". If the legislative intent was that the words were intended to apply only to publicly owned places of resort or amusement, then, manifestly, the testimony would not support a conviction here. By the same token, if the expression was intended to apply only to places in which all members of the public without exception were authorized or permitted to congregate, again there would be no evidence to support conviction here. On the other hand, if the reasonable intent and purpose of the quoted phrase was to prohibit disorderly conduct in a place where some segment of the public habitually gathers and congregates, the evidence would clearly justify a conviction.

The first suggested interpretation of the words must be rejected, because of the fact that the same statute uses the term "public worship", and this fact utterly destroys a contention that the word "public" has a connotation of public ownership because of our constitutional separation of church and state.

The second suggested interpretation is equally invalid, because its effect, in the light of the rule of law announced in the *Greenfeld* case, *supra*, would be the precise equivalent of the first suggested interpretation of the phrase. Moreover, such an interpretation necessarily would mean that the police authorities would be powerless to prevent disorder or bring an end to conditions of unrest and potential disturbance where large numbers of the public may be in congregation. To suggest such an interpretation is to refute it.

In the opinion of this Court the statute has clear application to any privately owned place, where crowds of persons other than the owner of the premises habitually gather and congregate, and where, in the interest of public safety, police authorities lawfully may exercise their function of preventing disorder. See *Askew v. Parker*, 312 P. 2d 342 (California). See also *State v. Lanouette*, 216 N.W. 870 (South Dakota).

Amos v Prom, Inc 117 F. Supp 615
Central Amusement Co v D. of C 171 A 2d 865

It is the conclusion of the Court that the Defendants are guilty of the misdemeanor charged.

W. ALBERT MENCHINE,

Judge.

Towson, Maryland

May 6, 1960.

171 A 2d 865

11 F Supp 615

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SUPREME COURT OF THE UNITED STATES
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June 28, 1965

Hon. Thomas B. Finan
Attorney General of Maryland
1200 One Charles Center
Baltimore, Maryland 21201

RE: Drews et al. v. Maryland, No. 1010, Oct. Term, 1964

Dear Mr. Finan:

A certified copy of the judgment of this Court in the above-entitled case has been mailed today to the Clerk of the Court of Appeals of Maryland.

Very truly yours,

JOHN F. DAVIS, Clerk

By Evelyn R Limstrong

(Mrs) Evelyn R. Limstrong
Assistant

RECEIVED
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STATE LAW DEPT.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 1, 1965

RE: DREWS, ET AL. v. MARYLAND,
No. 1010, Oct. Term, 1964

Dear Sir:

Enclosed is a copy of the opinion per curiam entered by the Court today in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk
By
C. T. Lydana
Assistant

Enclosure

Honorable Thomas B. Finan
Attorney General of Maryland
1200 One Charles Center
Baltimore, Md. 21201

RECEIVED
JUN 2 1965
STATE LAW DEPT.

SUPREME COURT OF THE UNITED STATES

DREWS ET AL. *v.* MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

No. 1010. Decided June 1, 1965.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

MR. CHIEF JUSTICE WARREN, with whom MR. JUSTICE DOUGLAS joins, dissenting from the denial of certiorari.[1]

On Sunday, September 6, 1959, Juretha Joyner and James L. Lacey, who are Negroes, and Helen W. Brown, Dale H. Drews and Joseph C. Sheeham, who are white, went to Gwynn Oak Park, an amusement park in Baltimore County, Maryland. Ironically, the park was celebrating "All Nations Day." Shortly after 3 p. m. they were standing in a group by themselves and had, a park guard testified, attracted no attention from other patrons. The guard approached the group and told them, "we are very sorry but the park was closed to colored, and that the colored people would have to leave the premises . . . ." Mr. Lacey answered that he was enjoying himself and would like to look around some more, and neither he nor

[1] I agree with appellee that this is not a proper appeal. However, in 28 U. S. C. § 2103 (1958 ed.), Congress has provided, in pertinent part:

"If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken."

Miss Joyner complied with the request to leave. The guard then asked all five to leave, but they refused. He testified, however, that they "were all very polite." During this interchange between the guard and petitioners, other patrons of the park began to gather around.

Upon the refusal of petitioners to leave, the guard summoned the Baltimore County police, who, after asking petitioners to leave, placed them under arrest. Meanwhile, the crowd surrounding the petitioners grew larger and more hostile, even going so far as to kick, spit, and yell "Lynch them!" Neither the park officials nor the county police made any attempt to exclude from the park or arrest any of those who engaged in such conduct. Upon being informed of their arrest, the five joined arms briefly, and the three men then dropped to the ground and assumed a prostrate position. Petitioners Joyner and Brown remained on their feet. The police placed handcuffs on Miss Joyner, and escorted her and Miss Brown from the park. Though the police encountered some difficulty in pulling the women through the crowd, they left under their own power. The men, on the other hand, had to be carried out, but offered no active resistance. The only remark by any of the petitioners was made by one of the men, who, responding to mistreatment by someone in the crowd, said ". . . forgive him, he doesn't know what he is doing . . . ."

On April 5, 1960, petitioners Brown, Joyner, Drews and Sheeham were charged with "acting in a disorderly manner, to the disturbance of the public peace, at, in or on Gwynn Oak Amusement Park, Inc., a body corporate, a place of public resort and amusement in Baltimore County" in violation of 27 Md. Code Ann. § 123 (1957 ed.).[2] Mr. Lacey was not prosecuted. Petitioners

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[2] Section 123 provides, in pertinent part:

"Drunkenness and disorderly conduct generally; habitual offenders.

"Every person who shall be found drunk, or acting in a disorderly manner to the disturbance of the public peace, [in any of a number

waived jury trial, were found guilty by the court, and each was fined $25 plus costs.[3] On January 18, 1961, the Maryland Court of Appeals, defining disorderly conduct as "the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area," [4] affirmed the convictions. On June 22, 1964, this Court vacated the judgment and remanded the case to the Court of Appeals for consideration in light of *Griffin* v. *Maryland*, 378 U. S. 130, and *Bell* v. *Maryland*, 378 U. S. 226. 378 U. S. 547. On remand, the Court of Appeals, purporting to distinguish *Griffin* and *Bell*, reinstated and reaffirmed the prior judgments of conviction, Judge Oppenheimer dissenting.

I cannot concur in the Court's refusal to review this case. (1) There is in my mind serious question as to whether the conduct of petitioners can constitutionally be punished under a disorderly conduct statute. (2) It seems to me apparent from the record that petitioners' conduct is protected under the Civil Rights Act of 1964, and that, under our decision in *Hamm* v. *City of Rock Hill* and *Lupper et al.* v. *Arkansas*, 379 U. S. 306, the passage of the Act must be deemed to have abated the convictions.

I.

In *Thompson* v. *Louisville*, 362 U. S. 199, the only evidence supporting the petitioner's disorderly conduct conviction was to the effect that, after being arrested on

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of specified locations, including places of public resort or amusement] shall be deemed guilty of a misdemeanor; and upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than sixty days or be both fined and imprisoned in the discretion of the court. . . ."

[3] This Court has never (and I hope it never does) let the fact that the criminal penalty is relatively small stand in the way of reviewing a case presenting important constitutional questions. *E. g., Thompson* v. *Louisville*, 362 U. S. 199, 203-204 ($10 fine); *Yick Wo* v. *Hopkins*, 118 U. S. 356 ($10 fine).

[4] Compare *Cox* v. *Louisiana*, 379 U. S. 536, 551–552.

another charge, he was "very argumentative" with the arresting officers. We set aside the conviction on the ground that it was "so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment." *Thompson* was followed in *Garner* v. *Louisiana*, 368 U. S. 157, where the evidence showed that the petitioners, who were Negroes, had taken seats at a lunch counter where only white people were served, and had refused to leave upon request. For this they were convicted of disturbing the peace. For purposes of our decision, we gave the statute under which the petitioners were convicted its broadest possible readings, and assumed that it outlawed even peaceful and orderly conduct which foreseeably might cause a public commotion, *id.*, at 169. Nonetheless, we found the petitioners' conduct constitutionally insufficient to support the conviction.[5] And in *Barr* v. *City of Columbia*, 378 U. S. 146, we reversed a breach of the peace conviction based on conduct similar to that involved in *Garner*. In doing so, we observed that

> "because of the frequent occasions on which we have reversed under the Fourteenth Amendment convictions of peaceful individuals who were convicted of breach of the peace because of the acts of hostile onlookers, we are reluctant to assume that the breach-of-peace statute covers petitioners' conduct here. . . . Since there was no evidence to support the breach-of-peace convictions, they should not stand." *Id.*, at 150–151.

I do not find this case meaningfully distinguishable from *Garner* and *Barr*. Clearly, nothing petitioners did prior to being placed under arrest could be called dis-

[5] In *Garner* the Court noted that the record did not support the allegation that the trial judge had taken judicial notice of the fact that the petitioners' presence in a segregated establishment was likely to cause a disturbance. 368 U. S., at 173. Neither the trial transcript in the instant case nor the trial judge's memorandum opinion indicates that he took that sort of notice here.

orderly conduct: their only "sins" to that point were being Negro or being in the company of Negroes, and politely refusing to leave the park. Nonetheless, they were arrested. *Then* all five members of the group briefly linked arms, and, in a further show of passive resistance, the three men dropped to the ground. They did not, the police officers testified, offer anything in the way of active resistance to either arrest or ejection. As Judge Oppenheimer observed: "In resisting the command of the officers to leave the park, the defendants used no force against the officers or anyone else; they held back or fell to the ground." Nor did they argue with the police, cf. *Thompson* v. *Louisville, supra,* or use profanity, cf. *Sharpe* v. *State,* 231 Md. 401, 190 A. 2d 628, cert. denied, 375 U. S. 946; indeed, the only words spoken were in the nature of a plea for forgiveness of one of the mob. All they did was refuse to assist in their own ejection from a segregated amusement park.

The two women did not even lie down. The only bit of testimony from which the trial judge could possibly have inferred disorderly behavior is the following:

> "Q. Now, Officer, do you always place handcuffs on persons whom you have arrested?
>
> "A. When I have a little trouble getting them through the Park or any—when I have a little trouble with them, yes.
>
> "Q. What trouble did you have with Juretha Joyner?
>
> "A. By refusing to leave.
>
> "Q. Did you place handcuffs on any of the other Defendants?
>
> "A. No, I don't recall.
>
> "Q. Did you or did you not?
>
> "A. No, sir.
>
> "Q. Now, did the two female Defendants leave the Park, did they leave under their own power?
>
> "A. I had to pull them through the crowd.

"Q. They walked out?

"A. They walked out, but I had to pull them through.

"THE COURT: Why did you have to pull them through?

"A. Because they didn't want to leave voluntarily.

"Q. They came when you pulled?

"A. They did, yes, sir."

There is undoubtedly some truth to the officer's surmise: I am sure neither woman liked being ejected from the park solely because of her race or the race of her friend. I suspect that their reluctance also resulted in no small measure from a fear of being pulled through a shouting, spitting, kicking mob.

Even if it be assumed that the arrest of petitioners was lawful,[6] I have great difficulty distinguishing the conduct

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[6] It is far from clear that the arrest was lawful. In view of the fact that § 24–13 of the Baltimore County Code (1958) authorizes the appointment of special police officers "for the protection of persons and property in the county," it may well be that the guard who asked petitioners to leave the park enjoyed the same status as the officer involved in *Griffin* v. *Maryland*, 378 U. S. 130. When this case was here the first time, we remanded it for consideration in light of *Griffin*. However, only Judge Oppenheimer, dissenting, drew from our remand the meaning that, until today, I too had thought it was supposed to carry, and voted to remand the case to the trial court for an investigation of the relation between the guard and the county:

"If Wood, the 'special officer' in this case, had virtually the same authority from Baltimore County that Collins [the guard involved in *Griffin*] had from Montgomery County . . . then under *Griffin* v. *Maryland, supra*, the State was a joint participant in the discriminatory action.

. . . . . .

"The Baltimore County Code authorizes the county to appoint special police officers to serve for private persons or corporations. Baltimore County Code, Sections 24–13 and 35–3 (1958). I would remand this case to the Circuit Court for Baltimore County for the taking of additional testimony to determine whether or not Wood

of the women, and, to a lesser extent, that of the men, from the refusals to leave segregated establishments which were before us in *Garner* and *Barr*. I cannot see how a statute outlawing "drunkenness and disorderly conduct" [7] can be said to have given petitioners fair warning, cf. *Bouie* v. *City of Columbia*, 378 U. S. 347, that the conduct (or, in the case of the women, lack of conduct) in which they engaged was criminally punishable.[8] I cannot, at least not without argument and full consideration by the Court, join in letting stand a decision which holds that police can arrest persons who are doing nothing remotely disorderly, secure in the knowledge that if the persons refuse wholeheartedly to cooperate in their own arrest and removal to a waiting squad car, their conviction for disorderly conduct will be forthcoming.[9]

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was appointed by Baltimore County under these sections of its Code. If he was, the convictions should be reversed." 236 Md., at 355; 204 A. 2d, at 68 (Oppenheimer, J., dissenting).

Thus we still do not know whether the guard's action constituted state action, thereby rendering his command to leave the park unconstitutional. Yet it is axiomatic that "one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." *Wright* v. *Georgia*, 373 U. S. 284, 291–292. Moreover, a strong argument can be made that, under Maryland law, resisting an unlawful arrest does not constitute disorderly conduct. See *Sharpe* v. *State*, 231 Md. 401, 403, 404, 190 A. 2d 628, 630, cert. denied, 375 U. S. 946.

[7] With the conduct of petitioners herein, compare that of the defendants in *Sharpe* v. *State*, *supra*, note 6, and *In re Cromwell*, 232 Md. 409, 194 A. 2d 88. Also, compare *Niemotko* v. *State*, 194 Md. 247, 250, 71 A. 2d 9, 10, with *Niemotko* v. *Maryland*, 340 U. S. 268, 271.

[8] Whether or not petitioners' conduct would support a conviction for something other than disturbing the peace I do not know. Nor do I inquire, for "[c]onviction upon a charge not made would be sheer denial of due process." *De Jonge* v. *Oregon*, 299 U. S. 353, 362. See also *Garner* v. *Louisiana*, 368 U. S. 157, 164; *Thompson* v. *Louisville*, 362 U. S. 199, 206; *Cole* v. *Arkansas*, 333 U. S. 196, 201.

[9] It seems to me that the persons who were in fact guilty of disorderly conduct were the members of the crowd; however, none of them was prosecuted.

II.

In *Hamm* v. *City of Rock Hill* and *Lupper et al.* v. *Arkansas*, 379 U. S. 306, 308, we held:

> "The Civil Rights Act of 1964 forbids discrimination in places of public accommodation and removes peaceful attempts to be served on an equal basis from the category of punishable activities. Although the conduct in the present cases occurred prior to enactment of the Act, the still-pending convictions are abated by its passage."

The convictions in this case did not become final until today. That the amusement park is an establishment covered by § 201 of the Civil Rights Act, 78 Stat. 241, 243, seems clear.[10] I take it, therefore, that the Court does not regard petitioners' conduct as a "peaceful attempt to be served on an equal basis." I cannot agree. Surely the attempt to be served was completely orderly, and, as I indicated above, I think petitioners' post-arrest conduct amounted to no more than a natural and fully understandable reaction to their arbitrary exclusion from the park.

In two recent decisions, we have, rightly in my opinion, recognized that people denied service because of their race are likely to react with less than wholehearted cooperation. Today, I fear, the Court forgets that elemental

[10] There is a restaurant at Gwynn Oak Park; indeed, petitioners were standing next to it when they were arrested. If a substantial portion of the food served in that restaurant has moved in interstate commerce, the entire amusement park is a place of public accommodation under the Act. §§ 201 (b)(2), 201 (b)(4), 201 (c). See also § 201 (b)(3). If the Court were unwilling to assume that the restaurant serves a substantial portion of such food, the proper course would be to remand the case for a hearing on the issue. Since the Court denies certiorari, I assume that it is for some other reason that it regards petitioners' conduct as not protected by the Act. I further assume that the fact that three of the petitioners are white is not the decisive factor, cf. *Walker* v. *Georgia*, —— U. S. ——, since certiorari is denied as to the Negro petitioner too.

principle of human conduct, and demands, on pain of criminal penalty, the patience of Job. In *Blow* v. *North Carolina*, 379 U. S. 684, the evidence adduced at trial showed that the petitioners, two Negroes, were refused service in a restaurant, whereupon one proceeded to sit down on the floor mat outside the door, and the other stood near the door. They were convicted under a statute making it a crime to enter upon the lands of another without a license after being forbidden to do so. We held that the Civil Rights Act abated their convictions. In *McKinnie* v. *Tennessee*, 380 U. S. 449, the petitioners, eight Negroes, entered the vestibule of a restaurant, were refused entrance into the restaurant proper, whereupon they remained in the vestibule, which measured 6′ x 6′ 4″, for approximately 20 minutes. There was testimony that the petitioners had engaged in some pushing and shoving, but the evidence was unclear as to whether the pushing was initiated by the Negroes or was attributable to white people who, during the 20 minutes, entered the restaurant through the vestibule. Again, we held that the convictions (for conspiracy to injure trade or commerce) had been abated by the passage of the Civil Rights Act. In each case we concluded that the conduct of the petitioners constituted no more than a peaceful refusal to acquiesce in a denial of their federal rights. I think we should draw the same conclusion here.

In dissenting, I of course do not suggest that a civil rights demonstrator, or anybody else, has a right to block traffic, or bar access to a man's home or place of business. I fully concur in the Court's observation in *Cox* v. *Louisiana*, 379 U. S. 536, 554–555:

> "The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public con-

> venience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the rights to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

But such examples are a far cry from what happened here. Juretha Joyner, a Negro, went with some friends to celebrate "All Nations Day" at Gwynn Oak Park. Despite the facts that she behaved with complete order and dignity, and that her right to be at the park is protected by federal law, she was asked to leave, solely because of her race. She refused and, upon being handcuffed, displayed some reluctance (though no active resistance) to being pulled through an actively hostile mob. For this she was convicted of "acting in a disorderly manner, to the disturbance of the public peace." Today the Court declines to review her conviction, and the convictions of her three companions. I cannot join.

Courtesy Appeals Mutual

Mr. Murphy

SUPPLEMENTAL

MANDATE

Court of Appeals of Maryland

No. 113 **, September Term, 19** 60

Dale H. Drews, et al

v.

State of Maryland

(continued from Mandate dated February 17, 1961)
June 24, 1964: Opinion received from Supreme Court of United States, dated June 22, 1964. Judgment vacated and remanded to this Court.
July 20, 1964: Mandate dated July 17, 1964, received from the Supreme Court of the United States.
July 31, 1964: Order of this Court filed setting case for hearing during 1964 September session.
October 22, 1964: Judgments reinstated and reaffirmed; appellants to pay the costs. Opinion by Horney, J. in which Oppenheimer, J. dissents.
Dissenting Opinion by Oppenheimer, J.

STATEMENT OF COSTS:

In Circuit Court:

Record
Stenographer's Costs

In Court of Appeals: ON REMAND

Filing Record on Appeal	
Printing Brief for Appellant	$42.33
Reply Brief	
Portion of Record Extract — Appellant	
Appearance Fee — Appellant	10.00
Printing Brief for Appellee	84.35
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	10.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this twenty-third *day of* October *A. D. 19*64.

J. Lloyd Young

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

4809

Court of Appeals of Maryland

No. 113, September Term, 1960—Filed January 18, 1961

DALE H. DREWS ET AL.

vs.

STATE OF MARYLAND

Appeal from the Circuit Court for Baltimore County. W. Albert Menchine, Judge.

Argued by *Francis D. Murnaghan, Jr.* (*Robert B. Watts, Robert J. Martineau* and *Venable, Baetjer & Howard* on the brief), all of Baltimore, Maryland, for appellants.

Argued by *Joseph S. Kaufman*, Assistant Attorney General (*C. Ferdinand Sybert*, Attorney General, both of Baltimore, Maryland, and *Frank H. Newell, 3rd*, State's Attorney for Baltimore County, Towson, Maryland, on the brief), for appellee.

Argued before BRUNE, C. J.; HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

Criminal Law—Disorderly Conduct—Amusement Park—Desegregation Of Races.

Two white men, a white woman and a negress entered Gwynn Oak Park, an amusement park owned by private individuals. They refused to leave when requested. A crowd assembled around them. Police were called in and forcibly removed them. They were convicted of disorderly conduct. They contended they were not disorderly and their arrest and prosecution amounted to state action to enforce segregation in violation of the Constitution of the United States.

HELD: Operators of most enterprises including places of amusement can pick and choose patrons for any reason they decide upon, including the color of their skin. The action of the police was taken not to enforce segregation, but because the appellants were inciting the crowd by refusing to obey a lawful order to move from a place they had no lawful right to be.

Judgments affirmed.

HAMMOND, J.—

The four appellants were convicted by the court sitting without a jury of violating Code (1957), Art. 27, Sec. 123, by "acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement." Two of appellants are white men, one is a white woman, and the other a Negress. Accompanied by a Negro who was not tried, they had gone as a group to Gwynn Oak Amusement Park in Baltimore County, which as a business policy does not admit Negroes, and were arrested when they refused to leave after being asked to do so.

Appellants claim that there was no evidence that the Park is a place of public resort or amusement, that if there were such evidence the systematic exclusion of Negroes prevents the Park from being regarded as such a public place, that they were not guilty of disorderly conduct and, finally, if the Park is a place of public resort or amusement their presence there was in the exercise of a constitutional right, and their arrest and prosecution amounted to State action to enforce segregation in violation of the Constitution of the United States.

There is no direct statement in the record that the Park is a place of public resort or amusement but we think the evidence clearly permitted the finding the trial court made that it is. There was testimony which showed, or permitted the inference, that the Park is owned by a private corporation, that it has been in operation each summer for many years, that among its attractions are a miniature golf course and a cafeteria, that appellants' conduct occurred on "All Nations Day" which usually attracts a large crowd, that on that day the Park was so crowded there was but elbow room to walk, and that the Park's policy was to welcome everyone but Negroes. The trial court properly could have concluded the Park is a place resorted to by the general public for amusement. Cf. *Iozzi vs. State*, — Md. —.

A lawmaking body is presumed by the Courts to have used words in a statute to convey the meaning ordinarily attributed to them. In recognition of this plain precept the Courts, in construing zoning, licensing, tax and anti-discrimination statutes, have held that the term *place of public resort or amusement* included dance halls, swimming pools, bowling alleys, miniature golf courses, roller skating rinks and a dancing pavilion in an amusement park (because it was an integral part of the amusement park), saying that amusement may be derived from participation as well as observation. *Amos vs. Prom, Inc.*, 117 F. Supp. 615; *Askew vs. Parker* (Cal. App.), 312 P. 2d 342; *Jaffarian vs. Building Com'r* (Mass.), 175 N. E. 641; *Jones vs. Broadway Roller Rink Co.* (Wis.), 118 N. W. 170, 171; *Johnson vs. Auburn & Syracuse Electric R. Co.* (N. Y.), 119 N. E. 72. Section 123 of Art. 27 proscribes conduct which disturbs the public peace at a place where a number of people are likely to congregate, whether it is on governmental property or on property privately owned. This is made clear by the prohibition of offensive conduct not only on any public street or highway but in any store during business hours, and in any elevator, lobby or corridor of an office building or apartment house having more than three dwelling units, as well as in any place of public worship or any place of public resort or amusement. We read the statute as including an amusement park in the category of a place of public resort or amusement.

We find no substance in the somewhat bootstrap argument that the regular exclusion of Negroes from the Park kept it from being within the ambit of the statute. Early in the common law the duty to serve the public without discrimination apparently was imposed on many callings. Later this duty was confined to exceptional callings as to which an urgent public need called for its continuance, such as innkeepers and common carriers. Operators of most enterprises, including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discrimination, can pick and choose their patrons for any reason they decide upon, including the color of their skin. Early and recent authorities on the point are collected, and exhaustively discussed, in the opinion of the Supreme Court of New Jersey in *Garifine vs. Monmouth Park Jockey Club*, 148 A. 2d 1. See also *Greenfeld vs. Maryland Jockey Club*, 190 Md. 96; *Good Citizens Community Protective Assoc. vs. Board of Liquor License Commissioners*, 217 Md. 129, 131; *Slack vs. Atlantic White Tower System, Inc.*, 181 F. Supp. 124; *Williams vs. Howard Johnson's Restaurant*, 268 F. 2d 845.

It has been noted in the cases that places of public accommodation, resort or amusement properly can exclude would-be patrons on the grounds of improper dress or uncleanliness, *Amos vs. Prom, Inc., supra* (at page 629 of 117 F. Supp.); because they are under a certain age, are men or are women, or are unescorted women, *Collister vs. Hayman* (N. Y.), 76 N. E. 20; or because for some other reason they are undesirables in the eyes of the establishment. *Greenfeld vs. Maryland Jockey Club; Good Citizens Community Protective Assoc. vs. Board of Liquor License Commissioners; Slack vs. Atlantic White Tower System, Inc.*, all *supra*. See 86 C. J. S. *Theaters and Shows* Secs. 31 and 34 to 36. We have found no decision holding that a policy of excluding certain limited kinds of classes of people prevents an enterprise from being a place of public resort or amusement, and can see no sound reason why it should.

Appellants' argument that they were not disorderly is that neither the mere infringement of the rules of a private establishment nor a simple polite trespass constitute either a breach of the peace or disorderly conduct. We find here more than either of these, enough to have permitted the trier of fact to have determined as he did that the conduct of appellants was disorderly.

It is said that there was no common law crime of disorderly conduct. Nevertheless, it was a crime at common law to do many of the things that constitute disorderly conduct under present day statutes, such as making loud noises so as to disturb the peace of the neighborhood, collecting a crowd in a public place by means of loud or unseemly noises or language, or disturbing a meeting assembled for religious worship or any other lawful purpose. *Hochheimer on Crimes and Criminal Procedure*, Sec. 392 (2nd Ed.); *1 Bishop on Criminal Law*, Sec. 542 (9th Ed.); *Campbell vs. The Commonwealth*, 59 Pa. St. Rep. 266.

The gist of the crime of disorderly conduct under Sec. 123 of Art. 27, as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area. 3 Underhill, *Criminal Evidence*, Sec. 850 (5th Ed.), adopts as one definition of the crime the statement that it is conduct "of such a nature as to affect the peace and quiet of persons who may witness the same and who may be disturbed or provoked to resentment thereby." Also, it has been held that failure to obey a policeman's command to move on when not to do so may endanger the public peace, amounts to disorderly conduct. *Bennett vs. City of Dalton* (Ga. App.), 25 S. E. 2d 726, appeal dismissed, 320 U. S. 712, 88 L. Ed. 418. In *People vs. Galpern* (N. Y.), 181 N. E. 572, 574, it was said, under a New York statute making it unlawful to congregate with others on a public street and refuse to move on when ordered by the police, that refusal to obey an order of a police officer, not exceeding his authority, to move on "even though conscientious — may interfere with the public order and lead to a breach of the peace," and that such a refusal "can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order." See also *In re Neal*, 164 N. Y. S. 2d 549 (where the refusal of a school girl to leave a school bus when ordered to do so by the authorities was held to be disorderly conduct, largely because of its effect on the other children); Underhill, in the passage cited above, concludes that "failure to obey a lawful order of the police, however, such as an order to move on, may amount to disorderly conduct." See also *People vs. Nixson* (N. Y.), 161 N. E. 463; 27 C. J. S. *Disorderly Conduct* Sec. 1(4) f; annotation 65 A. L. R. 2d 1152; compare *People vs. Carcel* (N. Y.), 144 N. E. 2d 81; and *People vs. Arko*, 199 N. Y. S. 402.

Appellants refused to leave the Park although requested to do so many times. A large crowd gathered around them and the Park employee who was making the requests, and seemed to "mill in and close in" so that the employee sent for the Baltimore County police. The police, at the express direction of the manager of the Park, asked the appellants to leave and again they refused, even when told they would be arrested if they did not. Admittedly they were then deliberately trespassing. That they intended to continue to trespass until they were forcibly ejected is made evident by their conduct when told they were under arrest. The five joined arms as a symbol of united defiance and then two of the men dropped to the ground. Two of appellants had to be carried from the Park, the other three had to be pushed and shoved through the crowd. The effect of the appellants' behavior on the crowd is shown by the testimony that its members spit and kicked and shouted threats and imprecations, and that the Park employees feared a mob scene was about to erupt. The conduct of appellants in refusing to obey a lawful request to leave private property disturbed the public peace and incited a crowd. This was enough to sustain the verdict reached by Judge Menchine.

We turn to appellants' argument that the arrest by the County police constituted State action to enforce a policy of segregation in violation of the ban of the Equal Protection and Due Process clauses of the Fourteenth Amendment against State-imposed racial discrimination. The Supreme Court said in the racial covenant case of *Shelley vs. Kraemer*, 334 U. S. 1, 13, 92 L. Ed. 1161, 1180: "The action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." The Park had a legal right to maintain a business policy of excluding Negroes. This was a private policy which the State neither required nor assisted by legislation or administrative practice. The arrest of appellants was not because the State desired or intended to maintain the Park as a segregated place of amusement; it was because the appellants were inciting the crowd by refusing to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people acted in a disorderly manner and the State, without discrimination, arrested and prosecuted all who were so acting.

While there can be little doubt that the Park could have used its own employees to eject appellants after they refused to leave, if it had attempted to do so there would have been real danger the crowd would explode into riotous action. As Judge Thomsen said in *Griffin vs. Collins*, 187 F. Supp. 149, 153, in denying a preliminary injunction and a summary judgment in a suit brought to end the segregation policy of the Glen Echo Amusement Park near Washington: "Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant, or amusement park, himself or through his own employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights."

The Supreme Court has not spoken on the point since Judge Thomsen's opinion. The issues was squarely presented for decision in *Boynton vs. Virginia*, — U. S. — 5 L. Ed. 2d 206, but the Court chose to decide the case on the basis that the conviction of a Negro for unlawfully remaining in a segregated bus terminal restaurant violated the Interstate Commerce Act, which uses broad language to forbid a carrier from discriminating against a passenger. In the absence of controlling authority to the contrary, it is our opinion that the arresting and convicting of appellants on warrants sworn out by the Park for disorderly conduct, which resulted from the Park enforcing its private, lawful policy of segregation, did not constitute "such action as may fairly be said to be that of the States." It was at least one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.

Judgments affirmed, with costs.

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SALES TODAY

Hugh J. Monaghan, II, Attorney
1200 Mercantile Trust Building.

ADMINISTRATRIX'S SALE DESIRABLE LEASEHOLD DWELLING PROPERTY 1717 COVINGTON ST.

Pursuant to an order of the Orphans' Court of Baltimore City, passed in the matter of the estate of Edna Dowlin, deceased, the undersigned, Administratrix, will sell at public auction, on the premises, on

TUESDAY, FEBRUARY 28, 1961, AT 2 O'CLOCK P. M.

ALL THAT LOT OF GROUND AND THE IMPROVEMENTS thereon, situate in Baltimore City and described as follows:

All that leasehold premises on the east side of Covington street about 97 feet south of Heath street fronting on said first mentioned street about 12 feet with a depth of about 85 feet to an alley, said lot of ground being subject to an annual ground rent of $41.75 and known as 1717 Covington street and more particularly described in a deed recorded in the Land Records of Baltimore City in Liber S. C. L. 5314, folio 187.

Improved by a 2-STORY BRICK DWELLING.

Terms of Sale: Cash. A deposit of $500 will be required of the purchaser at the time and place of sale; balance of purchase money in cash upon final ratification of sale by the Orphans' Court of Baltimore City. Interest to be charged on balance of unpaid purchase money from day of sale to day of settlement. Taxes, water rent, ground rent, and all other public charges, including special paving taxes, if any, to be adjusted to day of sale. Documentary stamps to be paid by purchaser.

WINIFRED COX,
Administratrix.

E. J. Newell & Co. Inc Auctioneers
Member of Auct. Assn. of Md., Inc.
JOHN M. MILLER, JR., President
PL. 2-3580 120-26 W. North Avenue
f3,10,17,24,28

Anthony S. Federico, Attorney-at-Law, 1308 Munsey Building.

ADMINISTRATOR'S SALE OF VALUABLE STORE AND DWELLING PROPERTY INCLUDING RESTAURANT FIXTURES THEREIN

Pursuant to an order of the Orphans' Court of Baltimore City passed in the matter of the Estate of Angelo V. Inqui, deceased, the undersigned Administrator will sell at public auction, on the premises

1101 SOMERSET ST. (Corner Of Chase Street) TUES., FEB. 28, 1961 AT 3 O'CLOCK P. M.

ALL THAT LOT OF GROUND AND THE IMPROVEMENTS thereon situate in Baltimore City and described as follows:

Beginning for the same at the northeast corner of Chase and Somerset streets and running thence northerly binding on the east side of Somerset street 16 feet to the center of the partition wall there being, thence easterly through the center of said partition wall and continuing the same course parallel with Chase street in all 58 feet, thence southerly parallel with Somerset street 16 feet to Chase street and thence westerly binding on the north side of Chase street 58 feet to the place of beginning. Subject to an annual ground rent of $48 and improved by a STORE AND DWELLING PROPERTY.

Terms of Sale: Cash. A deposit of $500 will be required of purchaser at time and place of sale; balance in cash upon final ratification of sale by the Orphans' Court of Baltimore City. Taxes, interest on unpaid portion of purchase price, and all other adjustments to be computed as of date of sale.

LOUIS INQUI,
Administrator.

alex cooper
AUCTIONEER
Member of Auct. Assn. of Md., Inc.
PL. 2-4868 212 N. Calvert St.
f6,14,20,27,28

MINCHA SERVICES
Kaddish Observers
212 N. CALVERT STREET
MON. — THURS. 1 P. M.

SALES TODAY **SALES TODAY**

THEODORE C. DENICK, Solicitor,
1811 Munsey Building.

TRUSTEE'S SALE OF VERY VALUABLE COMPLETE AIR-CONDITIONED NIGHT CLUB AND BAR PROPERTY Known As SURF CLUB NOS. 3315-17 PULASKI HIGHWAY IN FEE-SIMPLE

INCLUDING FIXTURES AND EQUIPMENT CONTAINED THEREIN USED IN CONNECTION WITH SAID BUSINESS ALSO

7-DAY BEER, WINE AND LIQUOR WITH SPECIAL AMUSEMENT LICENSE (AS AN ENTIRETY)

By virtue of a decree of the Circuit Court of Baltimore City (100C—367), the undersigned, Trustee, will sell at public auction, on the premises, on

TUESDAY, FEBRUARY 28, 1961, AT 1 O'CLOCK P. M.

ALL THAT FEE-SIMPLE LOT OF GROUND AND IMPROVEMENTS thereon, situate in Baltimore City, and described as follows:

Beginning for the same on the south side of Pulaski Highway at the beginning of that parcel of land which by deed dated June 18, 1951, and recorded among the Land Records of Baltimore City in Liber A.W.B. No. 470, folio 300 was conveyed by Mary Allender, widow et al. to Andrew Hardner which point of beginning is distant 298 feet 7 inches westerly from the southwest corner of Pulaski Highway and Highland avenue and running thence binding on the south side of Pulaski Highway north 85 degrees 44 minutes east 74 feet running thence south 4 degrees 59 minutes west 264 feet running thence south 85 degrees 52 minutes west 65 feet thence running north 3 degrees 22 minutes east 263 feet to the place of beginning. Known as Nos. 3315-17 Pulaski Highway. Improved by a ONE-STORY BRICK BUILDING.

Including fixtures and equipment located on the said premises, owned by and used in the conduct and operation of the Night Club and Bar Business by Surf Club Enterprises, Inc., viz.: 1 7-day Beer, Wine and Liquor with Special Amusement license; 70 stools; 140 chairs; 69 tables; 1 Kranich Back Piano; 1 Speaker System; 1 set of booths (4); 26 Liquor Dispensers; 18 mirrors; 8 sinks; 1 ice machine, Crystal Tipt; 2 bottle boxes, Beverage-Air; 2 sanitizers; 1 round bar; 100 Whiskey dispensers, Auto Bar; 1 bar; 1 bottle box, G.E.; 1 bottle box, Nor-Lake; 1 grill, South Bend; 1 gas stove; 1 liquor meter; 1 Emerson T.V. Set; 1 National Cash Register No. 5127707-1944755(1B)ILC; 1 National Cash Register No. 4363069 model 1944C5S-1B(1S); 1 National Cash Register No. 4591175 model 1944(5S-1BC15), and all other assorted and sundry fixtures and equipment now on the premises and used or useful in the conduct and operation of the aforementioned business.

Terms of Sale: Cash. A deposit of 10% of the purchase price will be required at time of sale, balance in cash upon final ratification of sale by the Circuit Court of Baltimore City and transfer of liquor license; interest to be charged on unpaid purchase money from date of sale to date of settlement. Taxes, water rent, and all other public charges, including special paving taxes, if any, to be adjusted to day of sale.

ZELL C. HURWITZ,
Trustee.

MICHAEL FOX, Auct.
Member of Auct. Assn. of Md., Inc.
f6,14,20,27,28

John J. Neubauer, Solicitor, Keyser Building.

TRUSTEES' SALE OF VALUABLE LEASEHOLD PROPERTY 3730 BONVIEW AVE.

By virtue of a decree of the Circuit Court No. 2 of Baltimore City, the undersigned, Trustees, will sell at public auction, on the premises, on

TUESDAY, FEBRUARY 28, 1961, AT 4 O'CLOCK P. M.

ALL THAT LOT OF GROUND AND IMPROVEMENTS thereon, situate in Baltimore City, and described as follows:

Beginning for the same on the northern side of Bonview avenue at the distance of 315 and 42/100ths feet easterly measured along the northern side of Bonview avenue from the eastern side of Brendan avenue, which place of beginning is at a point in line with the center line of a partition wall there erected and running thence easterly binding on the northern side of Bonview avenue 18 feet to a point in line with the center line of another partition wall there erected; thence running northerly to, through and along the center line of said last mentioned partition wall to the end thereof and continuing the same course in all 99 and 5/10ths feet to the southern side of an alley 16 feet wide there situate; thence running westerly binding on the southern side of said alley with the use thereof in common with others 18 feet to meet a line drawn northerly from the place of beginning to, through and along the center line of the partition wall first above mentioned in this description; thence running southerly reversing said line so drawn and binding thereon 99 and 5/10ths feet to the place of beginning. The improvements thereon being now known as No. 3730 Bonview avenue. Subject to the payment of an annual ground rent of Ninety-six and 00/100 Dollars ($96.00), payable in equal semi-annual installments on the 2nd days of February and August, in each and every year; subject also to the following: (1) Restrictions and provisions in a Deed from The Radnor Company to The Thomas Company, dated October 1, 1953, and recorded among the Land Records of Baltimore City in Liber M.L.P. No. 9306, folio 211, restricting the use of the land; (2) Agreement between The Radnor Company and Consolidated Gas, Electric Light and Power Company, dated December 2, 1952, and recorded as aforesaid in Liber M.L.P. No. 9199, folio 88, re: poles and wires. The improvements consist of a TWO-STORY BRICK DWELLING, containing six rooms and one bath with forced warm air heat, gas fired.

Terms of Sale: Cash. A deposit of $500 will be required at time of sale, balance in cash upon final ratification of sale by the Circuit Court No. 2 of Baltimore City; interest to be charged on unpaid purchase money from date of sale to date of settlement. Taxes, water rent, ground rent and all other public charges, including special paving taxes, if any, to be adjusted to day of sale.

JOHN J. NEUBAUER,
ROBERT J. NEUBAUER,
Trustees.

E. J. Newell & Co. Inc Auctioneers
Member of Auct. Assn. of Md., Inc.
f3,10,17,24,28 PLaza 2-3580

Eugene Hettleman, Solicitor, 5 Guilford Avenue.

TRUSTEE'S SALE OF VALUABLE LEASEHOLD PROPERTY NO. 1717 RUXTON AVENUE

By virtue of a decree of the Circuit Court of Baltimore City (101C—37), the undersigned, Trustee, will sell at public auction, on the premises, on

TUESDAY, FEBRUARY 28, 1961, AT 2 O'CLOCK P. M.

ALL THAT LOT OF GROUND AND IMPROVEMENTS thereon, situate in Baltimore City and described as follows:

Beginning for the same on the east side of Ruxton avenue at the distance of 143 feet 11½ inches southerly from the corner formed by the intersection of the east side of Ruxton avenue with the south side of Westwood avenue which place of beginning is designed to be at the center of a partition wall between the house on the lot now being described and the house on the lot immediately adjoining and north thereof running thence southerly and binding on the east side of Ruxton avenue 14 feet 3 inches to the center of a partition wall between the house on the lot now being described and the house on the lot immediately adjoining and south thereof and running thence easterly through the center of the last mentioned partition wall and continuing the same course in all 109 feet 6 inches to the center of an alley 10 feet wide there situate thence northerly along the center of said alley with the use thereof in common with all the other lots binding thereon 14 feet 3 inches thence westerly parallel with Westwood avenue and through the center of the partition wall first mentioned in this description 109 feet 6 inches to the east side of Ruxton avenue the place of beginning. The improvements thereon being known as 1717 Ruxton avenue. Subject to an annual ground rent of $90 and subject to a prior mortgage the balance of which may be deducted by the purchaser at time of settlement, thereby determining the purchase price. Improved by a TWO-STORY BRICK DWELLING.

Terms of Sale: A cash deposit of $300 will be required at time of sale, balance in cash upon final ratification of sale by the Circuit Court of Baltimore City. Interest to be paid on unpaid purchase money from date of sale to date of settlement. Taxes, water rent, ground rent, and all other public charges, including special paving taxes, if any, to be adjusted to date of sale. Baltimore City transfer tax to be borne by purchaser.

EUGENE HETTLEMAN,
Trustee.

A. J. BILLIG & CO., AUCTIONEERS
Member of Auct. Assn. of Md., Inc.
f3,10,17,24,28

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4809

IN THE COURT OF APPEALS OF MARYLAND

No. 113

September Term, 1960

DALE H. DREWS, et al.

v.

STATE OF MARYLAND

Brune, C. J.
Henderson
Hammond
Prescott
Horney,
JJ.

Opinion by Hammond, J.

Filed: January 18, 1961

The four appellants were convicted by the court sitting without a jury of violating Code (1957), Art. 27, Sec. 123, by "acting in a disorderly manner to the disturbance of the public peace" in a "place of public resort or amusement." Two of appellants are white men, one is a white woman, and the other a Negress. Accompanied by a Negro who was not tried, they had gone as a group to Gwynn Oak Amusement Park in Baltimore County, which as a business policy does not admit Negroes, and were arrested when they refused to leave after being asked to do so.

Appellants claim that there was no evidence that the Park is a place of public resort or amusement, that if there were such evidence the systematic exclusion of Negroes prevents the Park from being regarded as such a public place, that they were not guilty of disorderly conduct and, finally, if the Park is a place of public resort or amusement their presence there was in the exercise of a constitutional right, and their arrest and prosecution amounted to State action to enforce segregation in violation of the Constitution of the United States.

There is no direct statement in the record that the Park is a place of public resort or amusement but we think the evidence clearly permitted the finding the trial court made that it is. There was testimony which showed, or permitted the inference, that the Park is owned by a private corporation, that

it has been in operation each summer for many years, that among its attractions are a miniature golf course and a cafeteria, that appellants' conduct occurred on "All Nations Day" which usually attracts a large crowd, that on that day the Park was so crowded there was but elbow room to walk, and that the Park's policy was to welcome everyone but Negroes. The trial court properly could have concluded the Park is a place resorted to by the general public for amusement. Cf. Iozzi v. State, ___ Md. ___.

A lawmaking body is presumed by the Courts to have used words in a statute to convey the meaning ordinarily attributed to them. In recognition of this plain precept the Courts, in construing zoning, licensing, tax and anti-discrimination statutes, have held that the term place of public resort or amusement included dance halls, swimming pools, bowling alleys, miniature golf courses, roller skating rinks and a dancing pavilion in an amusement park (because it was an integral part of the amusement park), saying that amusement may be derived from participation as well as observation. Amos v. Prom, Inc., 117 F. Supp. 615; Askew v. Parker (Cal. App.), 312 P. 2d 342; Jaffarian v. Building Com'r (Mass.), 175 N. E. 641; Jones v. Broadway Roller Rink Co. (Wis.), 118 N. W. 170, 171; Johnson v. Auburn & Syracuse Electric R. Co. (N. Y.), 119 N. E. 72. Section 123 of Art. 27 proscribes conduct which disturbs the public peace at a place where a number of people are likely to congregate, whether it

is on governmental property or on property privately owned. This is made clear by the prohibition of offensive conduct not only on any public street or highway but in any store during business hours, and in any elevator, lobby or corridor of an office building or apartment house having more than three dwelling units, as well as in any place of public worship or any place of public resort or amusement. We read the statute as including an amusement park in the category of a place of public resort or amusement.

We find no substance in the somewhat bootstrap argument that the regular exclusion of Negroes from the Park kept it from being within the ambit of the statute. Early in the common law the duty to serve the public without discrimination apparently was imposed on many callings. Later this duty was confined to exceptional callings, as to which an urgent public need called for its continuance, such as innkeepers and common carriers. Operators of most enterprises, including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discrimination, can pick and choose their patrons for any reason they decide upon, including the color of their skin. Early and recent authorities on the point are collected, and exhaustively discussed, in the opinion of the Supreme Court of New Jersey in Garifine v. Monmouth Park Jockey Club, 148 A. 2d 1. See also Greenfeld v. Maryland Jockey Club, 190 Md. 96; Good Citizens Community Protective Assoc. v. Board of Liquor License Commissioners, 217 Md. 129, 131; Slack

v. Atlantic White Tower System, Inc., 181 F. Supp. 124; Williams v. Howard Johnson's Restaurant, 268 F. 2d 845.

It has been noted in the cases that places of public accommodation, resort or amusement properly can exclude would-be patrons on the grounds of improper dress or uncleanliness, Amos v. Prom, Inc., supra (at page 629 of 117 F. Supp.); because they are under a certain age, are men or are women, or are unescorted women, Collister v. Hayman (N. Y.), 76 N. E. 20; or because for some other reason they are undesirables in the eyes of the establishment. Greenfeld v. Maryland Jockey Club; Good Citizens Community Protective Assoc. v. Board of Liquor License Commissioners; Slack v. Atlantic White Tower System, Inc., all supra. See 86 C. J. S. Theaters and Shows Secs. 31 and 34 to 36. We have found no decision holding that a policy of excluding certain limited kinds or classes of people prevents an enterprise from being a place of public resort or amusement, and can see no sound reason why it should.

Appellants' argument that they were not disorderly is that neither the mere infringement of the rules of a private establishment nor a simple polite trespass constitutes either a breach of the peace or disorderly conduct. We find here more than either of these, enough to have permitted the trier of fact to have determined as he did that the conduct of appellants was disorderly.

It is said that there was no common law crime of disorderly conduct. Nevertheless, it was a crime at common law

to do many of the things that constitute disorderly conduct under present day statutes, such as making loud noises so as to disturb the peace of the neighborhood, collecting a crowd in a public place by means of loud or unseemly noises or language, or disturbing a meeting assembled for religious worship or any other lawful purpose. Hochheimer on Crimes and Criminal Procedure, Sec. 392 (2nd Ed.); 1 Bishop on Criminal Law, Sec. 542 (9th Ed.); Campbell v. The Commonwealth, 59 Pa. St. Rep. 266.

The gist of the crime of disorderly conduct under Sec. 123 of Art. 27, as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathened in the same area. 3 Underhill, Criminal Evidence, Sec. 850 (5th Ed.), adopts as one definition of the crime the statement that it is conduct "of such a nature as to affect the peace and quiet of persons who may witness the same and who may be disturbed or provoked to resentment thereby." Also, it has been held that failure to obey a policeman's command to move on when not/to do so may endanger the public peace, amounts to disorderly conduct. Bennett v. City of Dalton (Ga. App.), 25 S. E. 2d 726, appeal dismissed, 320 U. S. 712, 88 L. Ed. 418. In People v. Galpern (N. Y.), 181 N. E. 572, 574, it was said, ~~xxx~~ under a New York statute making it unlawful to congregate with others on a public street and refuse to move on when ordered by the police, that/refusal to obey an order of a police officer, not exceeding his authority, to move on "even though conscientious -

may interfere with the public order and lead to a breach of the peace," and that such a refusal "can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order." See also In re Neal, 164 N. Y. S. 2d 549 (where the refusal of a school girl to leave a school bus when ordered to do so by the authorities was held to be disorderly conduct, largely because of its effect on the other children); Underhill, in the passage cited above, concludes that "failure to obey a lawful order of the police, however, such as an order to move on, may amount to disorderly conduct." See also People v. Nixson (N. Y.), 161 N. E. 463; 27 C. J. S. Disorderly Conduct Sec. 1(4) f; annotation 65 A. L. R. 2d 1152; compare People v. Carcel (N. Y.), 144 N. E. 2d 81; and People v. Arko, 199 N. Y. S. 402.

Appellants refused to leave the Park although requested to do so many times. A large crowd gathered around them and the Park employee who was making the requests, and seemed to "mill in and close in" so that the employee sent for the Baltimore County police. The police, at the express direction of the manager of the Park, asked the appellants to leave and again they refused, even when told they would be arrested if they did not. Admittedly they were then deliberately trespassing. That they intended to continue to trespass until they were forcibly ejected is made evident by their conduct when told they were under arrest.

The five police and a number of [illegible] and [illegible] two of the men dropped to the ground. Two of appellants had to be carried from the Park, the other three had to be pushed and shoved through the crowd. The effect of the appellants' behavior on the crowd is shown by the testimony that its members spit and kicked and shouted threats and imprecations, and that the Park employees feared a mob scene was about to erupt. The conduct of appellants in refusing to obey a lawful request to leave private property disturbed the public peace and incited a crowd. This was enough to sustain the verdict reached by Judge Menchine.

We turn to appellants' argument that the arrest by the County police constituted State action to enforce a policy of segregation in violation of the ban of the Equal Protection and Due Process clauses of the Fourteenth Amendment against State-imposed racial discrimination. The Supreme Court said in the racial covenant case of Shelley v. Kraemer, 334 U. S. 1, 13, 92 L. Ed. 1161,/ 1180: "The action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." The Park had a legal right to maintain a business policy of excluding Negroes. This was a private policy which the State neither required nor assisted by legislation or administrative practice. The arrest of appellants was not because

the State desired or intended to maintain the Park as a segregated place of amusement; it was because the appellants were inciting the crowd by refusing to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people acted in a disorderly manner and the State, without discrimination, arrested and prosecuted all who were so acting.

While there can be little doubt that the Park could have used its own employees to eject appellants after they refused to leave, if it had attempted to do so there would have been real danger the crowd would explode into riotous action. As Judge Thomsen said in Griffin v. Collins, 187 F. Supp. 149, 153, in denying a preliminary injunction and a summary judgment in a suit brought to end the segregation policy of the Glen Echo Amusement Park near Washington: "Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant, or amusement park, himself or through his own employees, notifies the Negro of the policy and orders

him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights."

The Supreme Court has not spoken on the point since Judge Thomsen's opinion. The issue was squarely presented for decision in Boynton v. Virginia, ___ U. S. ___, 5 L. Ed. 2d 206, but the Court chose to decide the case on the basis that the conviction of a Negro for unlawfully remaining in a segregated bus terminal restaurant violated the Interstate Commerce Act, which uses broad language to forbid a carrier from discriminating against a passenger. In the absence of controlling authority to the contrary, it is our opinion that the arresting and convicting of appellants on warrants sworn out by the Park for disorderly conduct, which resulted from the Park enforcing its private, lawful policy of segregation, did not constitute "such action as may fairly be said to be that of the States." It was at least one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.

JUDGMENTS AFFIRMED, WITH COSTS.

4809

HARRY N. BAETJER
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
EDMUND P. DANDRIDGE, JR.
ARTHUR W. MACHEN, JR.
ROBERT M. THOMAS
FRANCIS D. MURNAGHAN, JR.
ROBERT R. BAIR
JACQUES T. SCHLENGER
CHARLES B. REEVES, JR.
WILLIAM J. McCARTHY

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
MERCANTILE TRUST BUILDING
BALTIMORE & CALVERT STS.
BALTIMORE, MARYLAND 21202
AREA CODE 301 · PLAZA 2-6780

RUSSELL R. RENO, JR.
FREDERICK STEINMANN
ROBERT J. MARTINEAU
THOMAS P. PERKINS, III
LUKE MARBURY
C. VAN LEUVEN STEWART
HENRY F. LEONNIG
GERALD M. KATZ
ANTHONY M. CAREY, III

JOSEPH FRANCE
COUNSEL

September 17, 1964

Honorable William L. Henderson, Chief Judge
Court of Appeals of Maryland
Court of Appeals Building
Annapolis, Maryland

RE: Dale H. Drews, et al. v. State of Maryland.
September Term, 1960. No. 113

Dear Judge Henderson:

In argument before the Court on Tuesday, one of the grounds upon which the State sought to distinguish Griffin v. State, 378 U.S. 130 (1964), was that the offense in Drews was disorderly conduct rather than trespass. I pointed out that the distinction was not a valid one because if an arrest for trespass would have been improper State action under the facts involved, an arrest for disorderly conduct must surely be illegal also. The illegality cannot be cured by a subsequent order of the police, itself illegal, which was not obeyed. I suggested that cases decided by the Supreme Court of the United States lend support to my position. More specifically, I would like to direct the Court's attention to Wright v. Georgia, 373 U.S. 284 (1963), particularly the language at pp. 291-92:

> "Obviously, however, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution."

I hope that the Court will see fit to consider the Wright case in its disposition of the case at bar.

Robert C. Murphy, Esq., who argued the case for the State, has been consulted and consents to the sending of this letter.

Respectfully,

Francis D. Murnaghan, Jr.

FDM:mms
29526
cc: The Honorable Hall Hammond
Court of Appeals of Maryland

The Honorable William R. Horney
Court of Appeals of Maryland

The Honorable Stedman Prescott
Court of Appeals of Maryland

The Honorable Charles C. Marbury
Court of Appeals of Maryland

The Honorable Reuben Oppenheimer
Court of Appeals of Maryland

Robert C. Murphy, Esq.
Deputy Attorney General
State Law Department
One Charles Center
Baltimore, Maryland 21201

Court of Appeals of Maryland

No. 113 September Term, 19 60

Dale H. Drews, et al	Francis D. Murnaghan, Jr. Robert B. Watts Attorneys for Appellants
VS.	
State of Maryland	C. Ferdinand Sybert Frank H. Newell, III Attorneys for Appellee

MARYLAND, Sct:

I Hereby Certify, that on the thirtieth day of June nineteen hundred and sixty I received from the Clerk of the Circuit Court for Baltimore County Transcript of Record to the Court of Appeals of Maryland in the above entitled cause.

Brief for Appellant due to be filed August 9, 19 60

J. Lloyd Young

Clerk of the Court of Appeals of Maryland.

KH
JSK

4809

Court of Appeals of Maryland

Annapolis, Maryland

No. 113 , September Term, 1960

Drews, et al.

v

State

Stipulation/Order for Extension of time for filing brief rec'd. October 17, 1960

Brief of Appellant due in Clerk's office on or before

Brief of Appellee due in Clerk's office on or before November 7, 1960

J. Lloyd Young, *Clerk.*

THE COURT OF APPEALS — ANNAPOLIS, MARYLAND

#4809

March 21, 1961

Robert J. Martineau, Esquire
Attorney at Law
1409 Mercantile Trust Building
Baltimore 2, Maryland

Dear Mr. Martineau:

In accordance with your request, we enclose herewith another certified record on appeal to the U. S. Supreme Court in the case of Dale H. Drews et al v. State of Maryland, No. 113 - September Term, 1960, together with bill for same.

With very kind regards, I am,

Sincerely yours,

Chief Deputy

vsh
cc: Joseph S. Kaufman, Esquire
Deputy Attorney General
Encls.

4/809

March 5, 1963

Professor Thomas F. Lewis
College of Law
University of Kentucky
Lexington, Kentucky

Dear Professor Lewis:

In reply to your letter of February 19, 1963, directed to Mr. Robert C. Murphy, Assistant Attorney General, Annapolis, Maryland, requesting copies of briefs in the case of Drews v. Maryland, we regret to advise that our supply of briefs in this particular case is entirely depleted and we are unable to comply therewith.

Very truly yours,

Administrative Assistant

ADMcS:hd

UNIVERSITY OF KENTUCKY

LEXINGTON, KENTUCKY

COLLEGE OF LAW

Robert Send if possible

February 19, 1963

Robert C. Murphy, Esq.
Assistant Attorney General
State of Maryland
Annapolis, Maryland

Dear Mr. Murphy:

I am conducting a seminar in Supreme Court litigation and I ask each of the students to prepare an opinion, acting as a Justice writing for the majority, on a case pending before the Court. If possible, I obtain in advance for the student copies of the petition for certiorari, reply brief and briefs on the merits. One of the cases selected for the seminar this semester is Drews v. Maryland.

If you have extra copies of briefs filed by you or co-counsel in this case, I would be very grateful for any you can spare for use in the seminar. I also make the briefs received available to our Law Journal staff. After this, or sooner if you desire, I will be glad to return the copies to you.

I hope you will be able to help us in this project. It is one the students find very interesting and, I think, helpful.

Sincerely,

Thomas P. Lewis
Professor of Law

tpl/lb

Court of Appeals of Maryland

Annapolis, Maryland

No. 113 , September Term, 1960

Dale H. Drews, et al.

v

State of Maryland

Stipulation/~~Order~~ for Extension of time for filing brief rec'd. August 31, 1964

Brief of Appellant due in Clerk's office on or before September 8, 1964

Brief of Appellee due in Clerk's office on or before September 14, 1964

J. Lloyd Young, *Clerk.*

RECEIVED
SEP 2 1964
STATE LAW DEPT.

DALE H. DREWS, et al.,	:	IN THE
Appellants,	:	COURT OF APPEALS
vs.	:	OF MARYLAND
STATE OF MARYLAND,	:	NO. 113
Appellee.	:	SEPTEMBER TERM, 1960
	:	(ORDER - JULY 31, 1964)

- : - : - : - : - : - : - : -

STIPULATION

Pursuant to Maryland Rule 830 c, the parties, by their counsel, hereby stipulate that the time for filing the brief of the Appellants shall be extended to and including September 8, 1964, and that the time for filing the brief of the Appellee shall be extended to and including September 14, 1964.

Francis D. Murnaghan, Jr.
Attorney for Appellants

Thomas B. Finan
Attorney General
Attorney for Appellee

THE COURT OF APPEALS — ANNAPOLIS, MARYLAND

RECEIVED
AUG 5 1964
STATE LAW DEPT.

5 MLR 2d 120

August 4, 1964

Francis D. Murnaghan, Jr., Esq.
Attorney at Law
1409 Mercantile Trust Building
Baltimore, Maryland 21202

Dear Mr. Murnaghan:

We are enclosing herewith copy of an Order of Court filed on July 31, 1964, in the case of Dale H. Drews, et al. vs. State of Maryland, No. 113, September Term, 1960.

This Order is in conformity with the mandate of the Supreme Court of the United States.

We will notify you later as to the exact date that arguments will be heard in this matter.

Very truly yours,

J. LLOYD YOUNG

Clerk

JLY/ojr
Enclosure
cc: Office of the Attorney General

DALE H. DREWS, ET AL.	*	IN THE
v.	*	COURT OF APPEALS
STATE OF MARYLAND	*	OF MARYLAND
	*	No. 113, September Term, 1960

The judgment of this Court (224 Md. 186, 167 A. 2d 341), having been vacated by the Supreme Court of the United States on the 22nd day of June, 1964 (U.S. , 84 S. Ct. 1900), and the case having been remanded to this Court for reconsideration in the light of Griffin v. Maryland (No. 6, October Term, 1963, in the Supreme Court, U.S. , 84 S. Ct. 1770), and of Bell v. Maryland (No. 12, October Term, 1963, in the Supreme Court, U.S. , 84 S. Ct. 1814), both decided June 22, 1964,

It is ORDERED this 31st day of July, 1964, by the Court of Appeals of Maryland:

1. That this case be set forth for hearing upon the matters to be considered in accordance with said remand at the September, 1964, session of this Court; and

2. That the parties may file briefs in support of their respective positions on or before such date or dates prior to the argument as counsel may agree upon. In the absence of such agreement, briefs may be filed on or before the following dates: Appellants' brief, August 31, 1964; Appellee's brief, September 10, 1964; Appellants' reply brief, September 15, 1964.

/s/ Frederick W. Brune

Chief Judge

9/4 - 11:15

Mr. Murphy -

Mr. Ford

brought this

in and will

have the printed

copy ready on

Tuesday evening.

Julie

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1960

NO. 113

DALE H. DREWS, et al.

Appellants

vs.

STATE OF MARYLAND

Appellee

REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

BRIEF OF APPELLANTS ON REMAND

Francis D. Murnaghan, Jr.

Henry R. Lord

Attorneys for Appellants

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1960

NO. 113

DALE H. DREWS, et al.

Appellants

vs.

STATE OF MARYLAND

Appellees

REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

BRIEF OF APPELLANTS ON REMAND

STATEMENT OF THE CASE

This case has been set for hearing pursuant to a per curiam opinion of the Supreme Court, dated June 22, 1964, and an Order of this Honorable Court, dated July 31, 1964. A full statement of the case is found at pages 1 and 2 of the original Appellants' brief, filed with this court.

QUESTIONS PRESENTED

1. Did the arrest and conviction of Appellants constitute State action, in light of the Supreme Court decision in Griffin v. Maryland?

2. Is there a denial of due process and equal protection in continuing to uphold the conviction of Appellants for acts arising out of sit-in demonstrations at Gwynn Oak Park when the State's Attorney of Baltimore County has failed to prosecute approximately 200 cases charging the same offense?

STATEMENT OF FACTS

The facts of this case are set out in the original Appellants' brief at pages 3 through 5.

ARGUMENT

I.

Reconsideration In Light Of The Opinion Of The Supreme Court In Griffin v. Maryland Should Lead To A Reversal Of The Convictions Of The Appellants

The majority of the Supreme Court in Griffin v. Maryland, 378 U.S. 130, 84 S.Ct. 1770 (1964), found under the facts of that case that there had been sufficient State participation in the arrest of the petitioners to establish "state action" forbidden by the Fourteenth Amendment. It is to be expected that the State will contend that the pivotal point in the Griffin case, distinguishing it from this case, was the special position of the arresting park detective as a deputized police officer, and that, consequently, the State was doing more in Griffin than evenhandedly effectuating the "management's desire to exclude designated individuals from the premises". It had "undertake[n] an obligation to enforce a private policy of racial segregation" by virtue of the fact that the park detective was also a deputy sheriff of Montgomery County and had acted under color of this office.

Such a distinction is thin, and limits Griffin to its particular facts. To make it, therefore, is to render meaningless the action of the Supreme Court in remanding the instant case for consideration in light of Griffin. Obviously the Supreme Court felt that there was doubt about the proposition that there is a substantial constitutional difference between two situations in one of which (Drews) two persons separately perform certain acts, and in the other (Griffin) one person, acting at different times in two different capacities,

performs the same acts. Yet, the position that we expect the State to urge would merely preserve and reiterate the very distinction about which the Supreme Court had doubts.

The distinction is not a viable one. This Honorable Court has already so determined in its holding that Griffin was controlled by Drews. Griffin & Greene v. State, 225 Md. 422, 430 (1961). At that time this Honorable Court reasoned that the arrest and prosecution in one were lawful because the arrest and prosecution in the other were lawful. Now the Supreme Court whose determinations of such constitutional issues under the Fourteenth Amendment take precedence, has ruled that the arrest and conviction in one were constitutionally improper. It follows that the arrest and conviction in the other were unconstitutional, too.

This conclusion is recognized by the recent holding by the Supreme Court of Delaware in a case factually indistinguishable from Drews insofar as the constitutional issue is concerned. State v. Brown, Del. , 195 A.2d 379 (1963). That case involved the constitutionality of the State's entertaining a trespass prosecution against one who refused to leave a hotel restaurant after being requested to do so. The owner obtained a warrant which was executed by the police. Chief Justice Terry, relying on Shelley v. Kraemer, 334 U.S. 1 (1943) and Barrows v. Jackson, 346 U.S. 249 (1953), stated, 195 A.2d at 386, that:

> ". . . the State may not compel the Negro patron to leave the place of public accommodation. To do so would place the weight of State power behind the discriminatory action of the owner or proprietor."

The opinion went on to state that such "judicial sanction of a policy of racial discrimination" through acting on a trespass prosecution is not action within "merely a neutral framework" but rather amounts to the State's "intervening on the side of private discrimination".

II.

There Is A Denial Of Due Process And Equal Protection In Singling Out Appellants For Prosecution And Conviction When The Circumstances Of Their Cases, Involving An Attempt By Peaceful Persuasion To End Discriminatory Practices, Are No Different From Many Other Cases Which The State's Attorney Does Not Prosecute

The Supreme Court remanded this case for reconsideration in the light of Bell v. Maryland, U.S. , 84 S.Ct. 1814 (1964). The Court has suggested in that case that the intervening enactment of legislation making acts such as those for which Appellants were convicted lawful is grounds for reversal. The precise argument cannot be made here inasmuch as Baltimore County has not as yet adopted proposed civil rights legislation, and the act of the State Legislature, Chapter 29 of the Acts of 1964 (Extra Session, March, 1964), does not appear to extend to amusement parks. However, the manner in which the law is enforced is as important as the statutory language. While a statute is not rendered ineffective through non-use [Louisville & N. R. Co. v. United States, 282 U.S. 740, 759 (1931); Snowden v. Snowden, 1 Bland (Md. Chan.) 550, 556-58 (1829)], it may not be applied discriminatorily to members of the same class. The Supreme Court established long ago that the Fourteenth Amendment prevents the unequal enforcement of valid laws as well as any enforcement of invalid laws. Yick Wo v. Hopkins, 118 U.S. 356 (1886). See also Hillsborough v. Cromwell, 326 U.S. 620, 623 (1946), and the cases cited therein.

It is common knowledge of which the court should take judicial notice that Gwynn Oak Park, the scene of the alleged offenses of Appellants, was the subject of sit-in demonstrations in the summer of 1963. The demonstrations

achieved their objective, for the park abandoned its segregation policy. In the course of the demonstrations, however, approximately 200 arrests were made. The State's Attorney has done nothing about bringing the cases on for trial, and it appears extremely unlikely that any prosecutions will ever take place. Considerations of due process and equal protection under the Fourteenth Amendment and the Maryland Constitution, as well as those set forth in the opinion of the Supreme Court in Bell v. Maryland, supra, should prohibit the continuation of the convictions of Appellants. The convictions have never become final, inasmuch as they have been on appeal in the Supreme Court, and, consequently, for reasons stated in Bell v. Maryland, supra, this Court still has jurisdiction to act to reverse.

CONCLUSION

For the foregoing reasons, the convictions of Appellants should be reversed.

Respectfully submitted,

Francis D. Murnaghan, Jr.

Henry R. Lord

Attorneys for Appellants

4809

MANDATE

Court of Appeals of Maryland

No. 113 **, September Term, 19** 60

Dale H. Drews, et al

v.

State of Maryland

Appeal from the Circuit Court for Baltimore County.

Filed: June 30, 1960.

January 18, 1961: Judgments affirmed, with costs. Op. Hammond, J.

February 13, 1961: Notice of appeal to U. S. Supreme Court filed.

February 15, 1961: Papers prepared for direct appeal to U. S. Supreme Court.

STATEMENT OF COSTS:

Record	$15.00
Steno. costs	47.60

Filing Record on Appeal	$ 20.00
Printing Brief for Appellant	388.27
Reply Brief	
Portion of Record Extract — Appellant	
Appearance Fee — Appellant	10.00
Printing Brief for Appellee	75.20
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	10.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this seventeenth *day of* February *A. D. 19* 61.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

February 15, 1961

Robert J. Martineau, Esquire
Attorney at Law
1409 Mercantile Trust Building
Baltimore 2, Maryland

Dear Mr. Martineau:

In accordance with your request, we enclose herewith certified record on appeal to the U. S. Supreme Court in the case of Drews, et al., vs. State of Maryland, No. 113, September Term, 1960, together with bill for same.

With very kind regards, I am

Sincerely yours,

Chief Deputy

VTS/jdb
cc: Joseph S. Kaufman, Esquire
Deputy Attorney General

7 RJM/bah 2/9/61

Rec'd
2/10/61

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1960

NO 113

DALE H. DREWS, JOSEPH C. SHEEHAN,
JURETHA JOYNER, AND HELEN BROWN,

Appellants,

vs.

STATE OF MARYLAND,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Dale H. Drews, Joseph C. Sheehan, Juretha Joyner and Helen W. Brown, the Appellants named above, hereby appeal to the Supreme Court of the United States from the final order of the Court of Appeals of Maryland affirming the judgments of conviction, entered herein on January 18, 1961.

This appeal is taken pursuant to 28 U.S.C.A., Section 1257(2).

Appellants were convicted of the crime of acting in a disorderly manner to the disturbance of the public peace in a place of public resort or amusement in violation of Section 123 of Article 27 of the Annotated Code of Maryland (1957 Ed.); were each sentenced to pay a fine of $25.00 plus costs of the case; and are not now in custody or enlarged on bail.

II. The Clerk will please prepare a transcript of the

record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in the transcript the following:

1. Criminal information
2. Bench warrants with Sheriff's returns
3. Summons with Sheriff's returns
4. Summons
5. Memorandum Opinion (Hon. W. Albert Menchine)
6. Order for appeal to the Court of Appeals of Maryland
7. Testimony
8. The opinion and order of the Court of Appeals of Maryland
9. Notice of Appeal to the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. Whether the Appellants were denied their rights under the privileges and immunities, equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States in that they were arrested and convicted upon the request of a private owner under a statute which was interpreted by the highest court of this State to make a criminal offence the refusal to leave a place of public resort or amusement when the request to leave was based solely on the ground that the presence of the Appellants conflicted with the owner's policy that members of the Negro race should be excluded.

2. Whether the Appellants were denied their rights under the due process clause of the Fourteenth Amendment in that they were arrested and convicted for exercising their rights to freedom of expression and association in a place of public amusement.

3. Whether the Appellants were denied their rights

under the equal protection and due process clauses of the Fourteenth Amendment in that they were arrested and convicted of acting in a disorderly manner to the disturbance of the public peace without any evidence that the Appellants actually engaged in any such conduct.

4. Whether the Appellants were denied their rights under the equal protection clause of the Fourteenth Amendment in that they were arrested and convicted of acting in a disorderly manner to the disturbance of the public peace although the evidence clearly showed that others were the only persons acting in a disorderly manner and such other persons were not proceeded against by the State.

Robert B. Watts
Robert B. Watts

Francis D. Murnaghan, Jr.
Francis D. Murnaghan, Jr.

Robert J. Martineau
Robert J. Martineau

Attorneys for Dale H. Drews, et al., Appellants

Address: 1409 Mercantile Trust Bldg.
Baltimore 2, Maryland

PROOF OF SERVICE

I, , Deputy Attorney General of the State of Maryland, hereby acknowledge receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States this day of February, 1961.

November 7, 1960

Francis D. Murnaghan, Jr., Esq.
Venable, Baetjer and Howard
1409 Mercantile Trust Building
Baltimore 2, Maryland

Dear Mr. Murnaghan: Re: Drews v. State - No. 113
Court of Appeals of Md.
September Term, 1960

Pursuant to the provisions of the Maryland Rules of Procedure, I am enclosing a copy of Brief of Appellee which has been filed in the above matter.

Very truly yours,

Joseph S. Kaufman
Assistant Attorney General

JSK-h

Encl.

DALE H. DREWS, et al	:	IN THE
Appellants	:	COURT OF APPEALS OF MARYLAND
vs.	:	No. 113
STATE OF MARYLAND	:	September Term, 1960
Appellee	:	

STIPULATION

It is stipulated that the time for filing the Appellee's Brief be, and it is hereby extended to and including October 17, 1960.

Robert B. Watts

Francis D. Murnaghan, Jr.

Robert J. Martineau

Attorneys for Appellants

C. Ferdinand Sybert
Attorney General

Joseph S. Kaufman
Assistant Attorney General

Attorneys for Appellee

August 29, 1960

Mr. Lloyd J. Young, Clerk
Court of Appeals of Maryland
Court of Appeals Building
Annapolis, Maryland

Re: Drews, et al v. State
No. 113 - September Term, 1960

Dear Mr. Young:

I enclose herewith a Stipulation extending the time for filing the Appellee's brief to and including October 17, 1960.

Very truly yours,

Joseph S. Kaufman
Assistant Attorney General

JSK:k
encl.

August 29, 1960

Francis D. Murnaghan, Jr. Esq.
Venable, Baetjer and Howard
Mercantile Trust Building
Baltimore 2, Maryland

Re: Dale H. Drews, et al v. State
No. 113 in the Court of Appeals of Maryland

Dear Mr. Murnaghan:

I enclose herewith a Stipulation extending the time for filing the Appellee's Brief in the above case to and including October 17, 1960. Thank you for your cooperation in this matter.

Very truly yours,

Joseph S. Kaufman
Assistant Attorney General

JSK:k

encl.

HARRY N. BAETJER
JOSEPH FRANCE
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
EDMUND P. DANDRIDGE, JR.
ARTHUR W. MACHEN, JR.
ROBERT M. THOMAS
FRANCIS D. MURNAGHAN, JR.
ROBERT R. BAIR

DAVID C. GREEN
WILLIAM J. McCARTHY
RUSSELL R. RENO, JR.

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
1409 MERCANTILE TRUST BUILDING
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BALTIMORE-2, MD.

RICHARD M. VENABLE
1839-1910
CHARLES McH. HOWARD
1870-1942
EDWIN G. BAETJER
1868-1945

TELEPHONE
PLAZA 2-6780

August 8, 1960

Frank H. Newell, III, Esq.
State's Attorney for Baltimore County
Court House
Towson 4, Maryland

Samuel A. Green, Esq.
Assistant State's Attorney for
Baltimore County
Court House
Towson 4, Maryland

The Honorable C. Ferdinand Sybert
Attorney General of Maryland
1201 Mathieson Building
Baltimore 2, Maryland

Gentlemen:

Pursuant to the Maryland Rules, I enclose herewith for each of you a copy of the Brief and Appendix of Appellants this day filed in the matter of Drews v. State, No. 113, September Term, 1960, Court of Appeals of Maryland.

Very truly yours,

Francis D. Murnaghan, Jr.

FDMjr:mad
Enclosure

October 13, 1960

Francis D. Murnaghan, Jr., Esq.
1409 Mercantile Trust Building
Baltimore 2, Maryland

Dear Frank: Re: Drews v. State - No. 113
Court of Appeals of Md.
September Term, 1960

As per our telephone conversation of today, I am enclosing Stipulation in the above matter extending the time for the filing of Appellee's brief to and including November 7, 1960.

I would appreciate it if you would please sign the original of this Stipulation and return same to me in the enclosed envelope, retaining the carbon for your file.

Thank you for your cooperation.

Sincerely yours,

Joseph S. Kaufman
Assistant Attorney General

JSK-h

Encl.

file C

DALE H. DREWS, ET AL., Appellants	:	IN THE
v.	:	COURT OF APPEALS OF MARYLAND
STATE OF MARYLAND, Appellee	:	No. 113
	:	September Term, 1960
	:	

STIPULATION

It is stipulated by the parties to the above entitled case, through their respective counsel, that the time for filing the Appellee's brief be and it is hereby extended to and including November 7, 1960.

Francis D. Murnaghan, Jr.
Attorney for Appellants
1409 Mercantile Trust Bldg.
Balto. 2, Md. (PL-2-6780)

Joseph S. Kaufman
Assistant Attorney General
Attorney for Appellee
1201 Mathieson Bldg.
Balto. 2, Md. (LE-9-5413)

HARRY N. BAETJER
JOSEPH FRANCE
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
EDMUND P. DANDRIDGE, JR.
ARTHUR W. MACHEN, JR.
ROBERT M. THOMAS
FRANCIS D. MURNAGHAN, JR.
ROBERT R. BAIR

DAVID C. GREEN
WILLIAM J. McCARTHY
RUSSELL R. RENO, JR.
ROBERT J. MARTINEAU

VENABLE, BAETJER AND HOWARD
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BALTIMORE-2, MD.

RICHARD M. VENABLE
1839-1910
CHARLES McH. HOWARD
1870-1942
EDWIN G. BAETJER
1868-1945

TELEPHONE
PLAZA 2-6780

October 14, 1960

Joseph S. Kaufman, Esq.
Assistant Attorney General
State Law Department
10 Light Street
Baltimore 2, Maryland

Re: Drews v. State - No. 113 - Court of Appeals of Maryland - September Term, 1960

Dear Joe:

As you requested in your letter of October 13, 1960, I have signed and am returning herewith the original of a Stipulation extending the time for the filing of Appellee's brief to and including November 7, 1960.

Sincerely,

Francis D. Murnaghan, Jr.

FDMjr:mad
Enclosure

DALE H. DREWS, ET AL., Appellants	:	IN THE
v.	:	COURT OF APPEALS OF MARYLAND
STATE OF MARYLAND, Appellee	:	No. 113
	:	September Term, 1960
	:	

STIPULATION

It is stipulated by the parties to the above entitled case, through their respective counsel, that the time for filing the Appellee's brief be and it is hereby extended to and including November 7, 1960.

Francis D. Murnaghan, Jr.
Attorney for Appellants
1409 Mercantile Trust Bldg.
Balto. 2, Md. (PL-2-6780)

Joseph S. Kaufman
Assistant Attorney General
Attorney for Appellee
1201 Mathieson Bldg.
Balto. 2, Md. (LE-9-5413)

4809

Court of Appeals of Maryland

Annapolis, Maryland

No. 113 , September Term, 1960

Drews, et al.

v

State

Stipulation/Order for Extension of time for filing brief rec'd. August 29, 1960

Brief of Appellant due in Clerk's office on or before

Brief of Appellee due in Clerk's office on or before October 17, 1960

J. Lloyd Young, *Clerk.*

STATE OF MARYLAND	:	IN THE CIRCUIT COURT
VS.	:	FOR BALTIMORE COUNTY
DALE H. DREWS ET AL	:	CRIMINAL 24 Case #20084

* * * * * * * * * * *

I N D E X

STATE OF MARYLAND	*	IN THE CIRCUIT COURT
vs.	*	FOR BALTIMORE COUNTY
DALE I. DREWS, JOSEPH C. SHEEHAM, JAMES L. LACY, JURETHA JOYNER, and HELEN W. BROWN	*	CRIMINAL DOCKET 24 Case No. 20084

* * * * * * * * * * * * * * *

DOCKET ENTRIES

CHARGE -- DISORDERLY CONDUCT

Apr. 5, 1960	Criminal information fd.
Apr. 6, 1960	Bail (Joyner, Sheeham, Brown, Drews) Shff's ret. fd. Copy of criminal inf. sd.
Apr. 8, 1960	Not guilty. (Drews, Sheeham, Joyner, Brown)
Apr. 8, 1960	Hon. W. Albert Menchine, Issue joined (Short) on plea. Jury trial waived by the Traversers (Drews, Sheeham, Joyner, Brown)
Apr. 8, 1960	At the end of State's case, Defendants Motion for a Directed Verdict. Sub Curia.
May 6, 1960	Motion for a Directed Verdict denied.
May 6, 1960	At the end of the entire case, Defendants Motion for a Directed Verdict renewed and denied.
May 6, 1960	Verdict, Guilty as to Dale H. Drews, Joseph C. Sheeham, Juretha Joyner, Helen W. Brown, Opinion fd.
May 6, 1960	Judgment and sentence that each Traverser pay a fine of $25.00 and costs of this case.
June 2, 1960	Defendants, (Drews, Sheeham, Joyner & Brown) Appeal fd.
June 23, 1960	Testimony fd.

K

4809

July 13, 1960

William G. Clark, Esq.
930 Bonifant Street
Silver Spring, Maryland

Dear Mr. Clark:

The case to which I was referring is Drews, et al. v. State, No. 113, September Term, 1960, in the Court of Appeals of Maryland.

This case was recently filed in the Court of Appeals and I understand there was a memorandum opinion by Judge Menchine; however, our office does not have a copy of this opinion.

Very truly yours,

James H. Norris, Jr.
Spec. Asst. Attorney General

JHN-h

4 FDMjr:mad 7/8/60

DALE H. DREWS, et al.,	:	COURT OF APPEALS
vs.	:	OF MARYLAND
STATE OF MARYLAND	:	No. 113
	:	September Term, 1960

- : - : - : - : - : - : - : -

DESIGNATION BY APPELLANTS OF PARTS OF THE RECORD PROPOSED TO BE INCLUDED IN THE PRINTED EXTRACT

Pursuant to Maryland Rule 828 c., Appellants hereby designate the following parts of the record to be included in the printed Extract:

1. Criminal information No. 20084.
2. Docket entries.
3. The following excerpts from the transcript of testimony:
   - A. Page 3 line 2 through page 9 line 10.
   - B. Page 9 line 17 through page 10 line 8.
   - C. Page 18 line 2 through page 67 line 12.
4. Memorandum Opinion of the learned trial judge.

S/
Francis D. Murnaghan, Jr.
1409 Mercantile Trust Building
Baltimore 2, Maryland
PLaza 2-6780
Attorney for Appellants

I hereby certify that on this 8th day of July, 1960, service of the foregoing Designation by Appellants of Parts of the Record Proposed to be Included in the Printed Extract was made by mailing copies thereof to Hon. C. Ferdinand Sybert, 1201 Mathieson Building, Baltimore 2, Maryland, and to Frank H. Newell, III, Esq., Court House, Towson 4, Maryland, attorneys for Appellee.

S/
Francis D. Murnaghan, Jr.
Attorney for Appellants

HARRY N. BAETJER
JOSEPH FRANCE
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
H. VERNON ENEY
NORWOOD B. ORRICK
RICHARD W. EMORY
EDMUND P. DANDRIDGE, JR.
ARTHUR W. MACHEN, JR.
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FRANCIS D. MURNAGHAN, JR.
ROBERT R. BAIR

DAVID C. GREEN
WILLIAM J. McCARTHY
RUSSELL R. RENO, JR.

VENABLE, BAETJER AND HOWARD
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1409 MERCANTILE TRUST BUILDING
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BALTIMORE-2, MD.

RICHARD M. VENABLE
1839-1910
CHARLES McH. HOWARD
1870-1942
EDWIN G. BAETJER
1868-1945

TELEPHONE
PLAZA 2-6780

July 5, 1960

not agreed to

Honorable C. Ferdinand Sybert
Attorney General of Maryland
1201 Mathieson Building
Baltimore 2, Maryland

Re: State of Maryland v. Drews
In the Court of Appeals of
Maryland, No. 113, September
Term, 1960

Dear Ferd:

Pursuant to Maryland Rule 828c.1., I am writing to seek stipulation on the part of the record to be included in the printed Extract. The enclosed Stipulation covers what I hope you will agree is everything which needs to be printed. If so, will you please return the Stipulation to me executed on behalf of the State so that I may file it with the clerk. If not, please let me know what additional portions of the record need be printed.

Sincerely,

Frank

Francis D. Murnaghan, Jr.

FDMjr:mad
CC: Frank H. Newell, III, Esq.

4 FDMjr:mad 7/5/60

DALE H. DREWS, et al.,	:	COURT OF APPEALS
vs.	:	OF MARYLAND
STATE OF MARYLAND	:	No. 113
	:	September Term, 1960

- : - : - : - :-- : - : - : -

STIPULATION AS TO PRINTED EXTRACT

Pursuant to Maryland Rule 828 c., the parties, by their counsel, hereby stipulate that the following are the parts of the record to be included in the printed Extract:

1. Criminal information No. 20084.
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3. The following excerpts from the transcript of testimony:
   - A. Page 3 line 2 through page 9 line 10.
   - B. Page 9 line 17 through page 10 line 8.
   - C. Page 18 line 2 through page 67 line 12.
4. Memorandum Opinion of the learned trial judge.

Francis D. Murnaghan, Jr.
1409 Mercantile Trust Building
Baltimore 2, Maryland
PLaza 2-6780
Attorney for Appellants

C. Ferdinand Sybert
1201 Mathieson Building
Baltimore 2, Maryland
LExington 9-5413
Attorney for Appellee

4 FDMjr:mad 7/5/60

DALE H. DREWS, et al.,	:	COURT OF APPEALS
vs.	:	OF MARYLAND
STATE OF MARYLAND	:	No. 113
	:	September Term, 1960

- : - : - : - :-- : - : - : -

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Francis D. Murnaghan, Jr.
1409 Mercantile Trust Building
Baltimore 2, Maryland
PLaza 2-6780
Attorney for Appellants

C. Ferdinand Sybert
1201 Mathieson Building
Baltimore 2, Maryland
LExington 9-5413
Attorney for Appellee

#113-1960

STATE OF MARYLAND * IN THE CIRCUIT COURT
VS. * FOR BALTIMORE COUNTY
DALE H. DREWS * TOWSON, MARYLAND
JOSEPH C. SHEEHAM * CRIMINAL COURT
JURETHA JOYNER and * April 8, 1960
HELEN W. BROWN *

* * * * * * *

BEFORE: THE HONORABLE W. ALBERT MENCHINE

APPEARANCES:

FRANK H. NEWELL, III, State's Attorney, and SAMUEL A. GREEN, Assistant State's Attorney.

FRANCIS D. MURNAGHAN, JR., ESQUIRE, and ROBERT B. WATTS, ESQUIRE, in behalf of the Defendants.

THE COURT: Mr. Watts, who do you represent?

MR. WATTS: Well, I represent all four Defendants, along with Mr. Murnaghan.

THE COURT: You and Mr. Murnaghan represent all four Defendants?

MR. WATTS: All four.

MR. MURNAGHAN: All four.

MR. PROBST: Mr. Watts, Mr. Murnaghan, do you

waive the reading of the criminal information, that is, to the disorderly manner and disturbance of the peace as to Gwynn Oak Avenue?

MR. MURNAGHAN: Yes, we will waive the reading of that one, and the plea is not guilty in all cases.

THE COURT: Is that a waiver of the reading of both informations?

MR. MURNAGHAN: No, only of this information.

THE COURT: Would you record for the record the number of that information so we will know what we are talking about?

MR. PROBST: The number of that information is 19767.

THE COURT: And as to that, the Court understands that the reading of the information is waived?

MR. MURNAGHAN: That is right.

THE COURT: And the plea is not guilty?

MR. MURNAGHAN: That is right.

THE COURT: And a jury trial is waived?

MR. MURNAGHAN: That is correct, your Honor.

MR. PROBST: Now, Criminal Information 20084, which is the disorderly manner and disturbance of the public peace in or on Gwynn Oak Amusement Park, Incorporated, a body corporate, do you waive the reading of that indictment?

MR. MURNAGHAN: No, we do not.

MR. PROBST: You do not?

MR. MURNAGHAN: We do not.

MR. PROBST: All right. Will the Defendants please rise. Dale H. Drews, Joseph C. Sheeham, James L. Lacey, Juretha Joyner and Helen W. Brown, it's been said --

THE COURT: Now, just a moment. What were the names again?

MR. PROBST: Dale H. Drews --

MR. WATTS: Do you want them in the order of the indictment?

THE COURT: That is Criminal Information 20084?

MR. WATTS: Right.

THE COURT: The Court observes that five names

were called by the Clerk, and the Court sees only four Defendants present. Is Dale H. Drews here?

MR. MURNAGHAN: Your Honor, Mr. Lacey, James L. Lacey is not present. The other four are present.

THE COURT: All right.

MR. MURNAGHAN: And let the record show, your Honor, that neither Mr. Watts nor myself represent Mr. Lacey.

THE COURT: Very well.

MR. PROBST: It has been said that on the 6th day of September, 1959, you were found acting in a disorderly manner to the disturbance of the public peace at, in or on Gwynn Oak Amusement Park, Incorporated, a body corporate, a place of public resort and amusement in Baltimore County. What do you say to these charges, are you guilty or not guilty, sir?

MR. MURNAGHAN: Now, your Honor, before we plead, we wish to move that the Information be stricken and not received, and the reasons why we make this motion are the following: This matter --

there has already been the reading of the Information in Number 19767 which was filed in December of 1959. A hearing under that Information was first set for March 24th, 1960. One of the Defendants, Mr. Drews, is in Washington, and arrangements had to be made for him to be present. It is not easy for him to get away, and he made his arrangements. On the 22nd of March I called the State's Attorney's office to ascertain who it was in the State's Attorney's office who would be handling the matter. There was a subject that I wanted to discuss with him, actually the fact that Mr. Lacey would probably not be present. At that time I was told that the case had been taken out of the assignment. I had had no prior knowledge to this effect. Mr. Watts, who is my co-counsel in the matter, had to rearrange his trial schedule in order to be present on the 24th, and we were summarily advised on the 22nd, two days before the scheduled trial, that the matter had been taken out of the assignment. We next received, on March 31st, 1960, notice that the

matter was again scheduled for trial today. Again I called to find out who it was in the State's Attorney's office to whom the matter had been assigned, and I called on Tuesday. The reason I didn't call sooner was that in discussing the matter with Mrs. Scagg in the State's Attorney's office, I was advised that it would do me no good to call before Tuesday of the week in which the case was set for trial because it would not have been assigned, and there would be no one in the State's Attorney's office who would know about the matter. Again I called on Tuesday in order to try and apprise the State's Attorney of the fact that Mr. Lacey would not be present to the best of my knowledge, and at that time I first learned that Mr. Green was to handle the matter. I spoke to him and at that time he told me that he planned to file a new Information in the matter. Again we had made arrangements for trial today including the arrangements which Mr. Drew had to make to come from Washington, and all the other Defendants and our

witnesses had to be apprised and notified that they should make arrangements to be here. I again, for the second time, had to issue summons for witnesses whom we wished to appear. All these arrangements were made, and at that late date we were told that there would be a new charge and a new Information that would be produced at this time. Actually, the matter, as far as I know, it was not filed until Wednesday. It was first served on us by mail to Mr. Watts who only received it yesterday.

Now, the position of the State's Attorney, when I spoke to him about the matter, was, "Well, you can get a postponement if you want, but we are certainly going to file the Information." And I spoke to Mr. Newell about it as well as to Mr. Green. Now, your Honor, the matter has been pending since September 6, 1959. We are ready for trial. We are ready for trial on the Information that has been pending since December of 1959. We respectfully submit that to attempt to, in effect, modify and alter the charges against the Defendant at so late

a date before the trial denies us our right to a speedy trial on the charges as originally framed in Information Number 19767. Certainly in any civil case no plaintiff will be permitted to wait until two or three days before trial and amend its Declaration or Complaint, and I don't believe that the proceedings in a criminal matter should be any more lax than in a civil proceeding, and for those reasons I move that this Information be stricken because it will, in effect, achieve either a denial of our rights to a speedy trial or force us, in order to avoid all the dislocations of people's lives who are involved, to go to trial with so short, an unreasonably short notice of a new Information.

THE COURT: Well, does your motion imply that there are such differences in the initial and the second Criminal Information as to present the Defendants with difficulty with respect to the trial of both together?

MR. MURNAGHAN: Well, there is this difficulty, your Honor. The Information, the first Information

charges acts on a public street. As to that, our proof will be simple. There was no activity of any kind in a public street. The new charge refers a little inartistically but I believe to activities at a place of public resort and amusement. Now, your Honor, the proof of whether that venue in which the alleged acts took place is or is not a public place of resort and amusement, is one which, frankly, investigation might disclose a number of things.

THE COURT: Both as to fact and law, I would assume your position is.

MR. MURNAGHAN: Well, that is quite correct, your Honor. There are a number of factual items that would play a part in deciding this. There are also a number of legal items.

THE COURT: All right, what is the State's position on that?

MR. GREEN: Well, I think basically, Mr. Murnaghan is being very truthful. He did talk to me for about a minute, and I told him I would prefer

to have Mr. Newell talk to him about the problem. Mr. Newell did tell him that the new Information would be filed. As for the service of the matter, I asked Mr. Leavy if he would come up to explain as to the service of the matter. I have no knowledge about the service of the papers. Quite frankly, the State feels that it would have to try the case on both Informations.

THE COURT: Why?

MR. GREEN: You are asking me to admit something.

THE COURT: Well, counsel has indicated to the Court that it is his position that the factual situation and the legal situation as applying to the second Information of which he received notice a very short time before the current scheduled hearing --

MR. GREEN: Well, I think --

THE COURT: -- leaves him in the position where he is in difficulty both factually and from the standpoint of preparation of the law in its

defense.

MR. GREEN: Possibly, your Honor, and I always like to be very fair with counsel on the other side, possibly he could require more time. The acts as explained were set forth in each Information took place, so the State would maintain, in a similar area, and the facts that we would use for one, we would use for the other. It is very difficult to explain. He may need more time to answer the second one.

THE COURT: Well, the Court knows nothing about the facts, but it does seem to the Court that an allegation that an event took place on a public street might very well be controlled by a different factual situation than an allegation that it occurred at some other place.

MR. GREEN: I am trying not to get into any arguments on the facts. I am just trying to point out that in one we alleged the disturbance took place on Gwynn Oak Avenue. On two we alleged that the disturbance took place at, in or on Gwynn Oak

Amusement Park, Incorporated.

THE COURT: All right. Well, I think that the essential differences in the two Criminal Informations are such as reasonably to create the possibility that the second and most recent may require further investigation by counsel for the Defendants, both as to facts and law, and because of that feeling by the Court as to that Criminal Information, the Court will treat Mr. Murnaghan's motion not as a motion to dismiss the Information, but as a request for a postponement of the trial of that Criminal Information.

MR. GREEN: The state would be more than agreeable to that, your Honor.

MR. MURNAGHAN: Well, your Honor, I probably didn't make myself clear. That is really the problem. We are put on the horns of a considerable dilemma because, as I say, the problem of getting our witnesses and our Defendants here is not an easy one, and if your Honor would present me with what I would regard as Hobson's choice, I would

prefer to go ahead and be tried on both indictments or both Informations, but my point is that we have been in this position where we have had an Information for months. We have prepared our defense for that, and then at the very last moment -- I don't think it is an orderly manner of conducting the criminal justice to have a new Information submitted at such a late date, that actually you have made all your plans to be present for trial, and you have to disarrange them all, having had to do so once again with almost no notice. It is a Hobson's choice that we are presented with. It, in effect, denies our right to a speedy trial on a matter that has been pending over a large period of time for which we were prepared for trial, by suddenly filing an Information in this matter at a very short notice, and it is for that reason that I say it is not simply justice to us to grant us a postponement on the second Information.

THE COURT: Well, the Court certainly does not desire counsel for the State or counsel for the

defense to reach any conclusion that the Court desires to impose on either a Hobson's choice. The Court wants to make its position crystal clear, and it is this: As to the second Criminal Information, it seems to the Court that on the basis of statements by counsel, there is a possibility that more time is required for the preparation and trial of the case. Because of that, the Court will, on application, grant a motion postponing the trial of that second indictment.

The Court also wants to make it crystal clear that the Court has no control whatsoever over the acts of the State's Attorney's office in bringing in litigation into the Criminal Court, no control whatever, and the Court will not tell the State's Attorney that he must do a certain thing in a certain way. Now, therefore, that leaves us in this position, in effect: As to the first Criminal Information which has been brought and for which a plea of not guilty and a Court trial has been sought, it will proceed to trial today unless there is agree-

ment of counsel that it not be brought to trial today. As to the second indictment, it is the position of the Court, or, the second Information, it will not be brought to trial today unless counsel agree that it will be brought to trial today. The Court will not take any action to force a Defendant to proceed to trial in a case in which he declares he is not ready, and the circumstances are such as to give a reasonable basis for that conclusion. The Court will not, on the other hand, instruct the State's Attorney that it cannot bring one Criminal Information different from the first at a date later than the first.

Now, that is the position of the Court. I hope that it is clear to counsel for the State and the defense, and the Court will recess at this time until 5 minutes of 2 at which time the Court will return, and the case will proceed or will be postponed in light of desires of counsel.

MR. MURNAGHAN: Your Honor, I don't want to break into the recess time, but I think it might be

easier for the State's Attorney if I can explain my position. We will prefer, under the alternative, to go ahead and try both Informations, but I hope we can clear up the record to show formally that you have overruled our motion to dismiss the second Information.

THE COURT: I will note for the record here and now that the motion to strike the Information from the record is denied, but I want the record also clearly to state that the Court will grant, on application if made, a postponement of the case to permit its more formal and proper presentation by the defense counsel.

MR. MURNAGHAN: Thank you, your Honor.

(Whereupon the Court recessed at 12:55 o'clock, p.m.)

AFTERNOON SESSION

The Court convened at 1:30 o'clock, p.m. The trial was continued.

THE COURT: Mr. Murnaghan, on 20084, is there a request for a postponement?

MR. MURNAGHAN: There is not, your Honor.

THE COURT: All right. Now, will you plead to that?

MR. MURNAGHAN: On behalf of the four Defendants, not guilty, your Honor, and we waive a jury trial and choose to be tried by the Court.

THE COURT: Now, is there a request for a severance of the two Informations?

MR. MURNAGHAN: Yes, your Honor, we will move for a severance of the two.

THE COURT: What is the position of the State with respect to the request for severance?

MR. GREEN: We will accept the severance.

THE COURT: Which case will the State proceed with first?

MR. GREEN: 20084, your Honor.

THE COURT: Very well.

MR. GREEN: Officer Wood, take the stand, will you please.

S T A N L E Y M. W O O D

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Officer Wood, what is your occupation?

A At this particular time I was employed as a special police at the Gwynn Oak Park.

Q What is your general occupation?

A I work for Baltimore County.

Q Now, were you at Gwynn Oak Amusement Park on or about Sunday, September 6, 1959?

A I was.

Q And would you tell the Court please where that is located?

A Gwynn Oak Park is located on Gwynn Oak Avenue.

Q Is that in Baltimore County?

A Yes, sir.

Q Now, why were you at Gwynn Oak Park on that day?

A I was put there as a special officer hired by the Park.

Q Are you there on more than one occasion?

A Well, I work there part-time, I mean, Saturdays and Sundays I am there quite a bit.

Q Now, Officer, on or about Sunday, September 6th, did anything unusual occur at Gwynn Oak Park?

A Yes, sir.

Q Would you tell the Court what happened, if anything?

A Well, at this particular time in this instance, I approached these four people setting there, and there was another gentleman with them. I think his name was Mr. Lacey, and they were standing about in the center of the Park right near the cafeteria and the miniature golf course. I approached them and told them that the Park was closed to colored, and we were very sorry but they would have to leave.

Q Now, you told who?

A I told the whole group which consisted of five.

Q Can you identify the people you told that to?

A Those four and Mr. Lacey who isn't here.

Q Do you know the names of these people?

A I know them indirectly, yes.

Q Could you identify any of them today?

A I can identify them by sight, yes, sir.

Q By sight. Would you come over and tap on the shoulder the four people that you talked to?

A Which would be all four of them.

MR. GREEN: As he touches you on the shoulder, would you rise, please, and give your name.

MR. MURNAGHAN: Your Honor, I think we can waive this.

THE COURT: I beg your pardon?

MR. MURNAGHAN: If your Honor please, I think we can waive this. I have no objection to having the record show that he is referring to the four Defendants.

THE COURT: Each of the four Defendants?

MR. MURNAGHAN: Each of the four Defendants.

THE COURT: You may return to the stand.

MR. GREEN: Let the record so indicate.

Q Now, continue with your story, Officer.

A I asked them, and told them, we are very sorry but the Park was closed to colored, and that the colored people would have to leave the premises, and I got an answer from a Mr. Lacey that he was enjoying himself and he thought he would stay and look around. Again I requested them to leave the Park, and I think we can very clearly state they were asked about four or five times to leave the Park.

Q By you?

A By myself, yes, sir, which they refused to do, and being by myself, there was another Officer came up just about the same time. The crowd -- it was a good-sized crowd around, and when all this started, the crowd seemed to mill in and close in on us, so I asked for the assistance of the Baltimore County Police in ejecting them from the Park.

Q Now, let's go back to the Park. Describe the area in detail where these people were?

A Well, if you are familiar with the Park, it was right in front of the miniature golf course which goes downgrade towards the end of the Park. I'd say it was

centrally located, the position that they were in.

Q What, if any, conversation did you have with any one individual here?

A Well, when I spoke, I spoke to them all as a group, not to any one individually.

Q Do you remember any remarks they made to you, if any?

A Well, their remarks were very polite. They were all very polite at that particular incident, but Mr. Lacey was the one that made the statement that he was enjoying himself, and he was going to stay and look around a little bit more, and the rest, they just refused to move also.

Q You say you called for assistance, what do you mean by that?

A Well, I mean, for help, to help to get them out of the Park.

Q Tell exactly what happened?

A Well, all right. Then, we asked them to move. I asked the colored people to leave first. When they refused to leave, I asked the whole group to leave. Then the whole group refused to leave, so then I called for the assistance

and waited for the assistance of the Police Officers that come down. When they come, we tried to move them out of the Park, and in trying to move them out of the Park, we just had to pick them up and carry them or anyway we could get them out.

Q What do you mean you had to pick them up?

A Well, they just all joined arms and laid down on the ground. I mean, I know this one particular gentleman sitting right over on the end, I had him, and he just laid right down on the ground.

Q That is the gentleman on the far right?

A Yes.

Q In the meantime, there were other people around, I assume?

A The crowd was milling around, and I got spit on two or three times and kicked once, and I don't remember some of the remarks, but there was remarks passed from the crowd at us or at them, I don't know which one it was, but they weren't very kind remarks. The crowd seemed like it was very angry.

Q You say you got kicked?

A Well, I got kicked. I don't know who they were kicking at, but I sure got kicked.

Q You mean, the crowd?

A Uh-huh, milling in. In other words, the crowd just closed in right around us, and you almost had to fight your way out of it.

Q You mean -- you don't mean the Defendants, though?

A No. I mean the crowd that was in the Park at that particular time.

Q All right then, the Police, your assistance, came down, and what happened? You said you had to pick them up.

A Well, generally, I couldn't tell you. I was so busy having him and trying to protect both of us getting out of the Park, that I can only account really for what happened when I had him, and I think he will testify that we had quite a little bit of trouble getting to the head of the Park on account of the crowd.

Q What specifically did you observe about the four Defendants, Mr. Wood?

MR. MURNAGHAN: I will object to the question if we can't have something of a specific nature. The question seems to me to be irrelevant. He might have observed whether they were married or whether they weren't married or whether their hair was red. I think it should be directed to some specific point.

THE COURT: Well, overruled. I am afraid if more pointed questions were asked, it might be objectionable as a leading question.

MR. GREEN: Answer the question.

A Is that my personal opinion?

THE COURT: No, not your opinion.

Q What you observed.

THE COURT: What you saw or heard.

A Well, what I saw and what I heard, that they were very determined that they were not going to leave the Park.

Q Why do you say that?

A Because -- why do I say it?

Q Yes.

A Because when we asked them to move, they made no

attempt to move whatsoever, and when we tried to eject them from the Park, they just all joined arms as one group, and we just had to push and shove and get them out anyway we possibly could, and the crowd, they were hollering remarks about different things, you know, and some of them said, "Kill them," "Lynch them," and we almost had quite a mob scene there.

Q Well, what did these people say to you, if anything?

A These people?

Q Yes.

A They never said a word to me except this one gentleman, when I had him, made a remark, when I had to let him rest a few minutes up towards the head of the Park, he looked up at the people and said something about, forgive him, he doesn't know what he is doing, and that is the only remark that he passed to me, and I don't know if he passed that to me, but he passed it to anybody in general.

Q Were any remarks made to other people in your presence by any other member in your presence?

A There was one or two remarks made, but I can't recall them at this particular time because there was just so

much turmoil going on, and trying to get him out of the Park, that it was just for public safety's sake, we just had to get him out as quickly as possible.

Q Why do you say for public safety's sake?

A I don't know if you know how a crowd can react when it gets angry, but it was sure on a point where this crowd could have gotten out of control.

Q Why?

A Well, it could have gotten out of control.

MR. MURNAGHAN: Your Honor, I will object to this line because he is only speculating, he is not testifying.

MR. GREEN: Well, he observed what happened.

THE COURT: Sustained. I will allow him to describe what he observed about the crowd, but I think the current question didn't quite call for that answer.

Q What did you observe about the crowd?

A Well, I observed this about the crowd. The crowd was at a point where either one way or the other it could be turned, could have been turned into a mob violence.

MR. MURNAGHAN: I move to strike that answer as purely a conclusion.

THE COURT: I will strike that out as a conclusion. I will allow you to describe the crowd, what it looked like to you, but the conclusions must be drawn by the Court.

A Well, the crowd moved in very close to us. They was hollering, some of them were passing remarks into us, if I may use this expression as, "Nigger lovers," "Lynch them," and one or two times, maybe more, we were spit at. Now, I don't know who the spit was meant for, but I got it a couple of times, and one or two tried to kick. I got kicked one or two times, and what I am trying to put across is, the group or the mob that was there or the people were getting to a point where they could have been out of hand.

Q Well, was the spitting and kicking from the crowd or from the Defendants?

A From the crowd.

Q All right now, when you got them out, were taking them out of the Park, what actually happened there, if anything?

A Well, when we got them to the head of the Park, the Police wagon was waiting there, and they were put in. I think your name is Drews, isn't it? Mr. Drews was put in the Police wagon, and I went in the wagon with him, and we set there a while until the others were brought up.

Q Was there any conversation with the Defendants up there?

A None at all.

Q Did they make any comment at all to anybody in your presence?

A No.

Q What happened to them from there?

A And from there the group -- the men was put in the Police wagon. They were taken to Woodlawn Police Station where the warrant was taken out for them.

Q Were you there at the Police Station?

A I was.

Q Were any statements made in your presence by the Defendants there?

A No, sir.

Q Any comments at all?

A No comments at all.

Q And what happened after you were at the Station, did you stay there or did you leave?

A I stayed there until the warrant was taken out, and then I left.

Q Did you ever see them again after that?

A I saw them at the Woodlawn Police Station. We were supposed to have a hearing there.

Q Did you have any conversation with them there?

A Not a bit.

MR. GREEN: Witness with you.

CROSS-EXAMINATION

BY MR. MURNAGHAN:

Q Who is your employer when you are working at Gwynn Oak Park?

A Mr. Price.

Q Who is Mr. Price?

A Mr. Price is sitting right there.

Q Has Mr. Price ever given you instructions about steps you are to take with regard to admitting or refusing admission to the Park?

A The Park, I was told, was closed to the colored people.

Q Who told you that?

A And we were not to allow them in there.

Q Who told you this?

A Well, that was told to me when I first went there about six or seven years ago, that it was told by the management, I will put it that way.

Q And that was six or seven years before this occurrence in September?

A No, that was told us every year.

Q When were you last told that prior to the occasion which you have described in your testimony?

MR. GREEN: Objection.

THE COURT: Overruled.

A Well, I can't give you an exact date.

MR. NEWELL: Could the State be heard on that?

THE COURT: Yes.

MR. NEWELL: The only reason I object, if the Court pleases, is because, as I understand it, the Defendants are charged with acting disorderly, and

I don't see where the relevancy of what an employer told an employee has to do with the Defendants themselves acting disorderly.

THE COURT: Your associate thought there was relevance because the subject was brought up on direct testimony by the witness.

MR. NEWELL: Well, I didn't hear that, sir. The question when it first came in, that is the first time I have heard it. I was here since the beginning of the case, and I didn't hear that.

THE COURT: It was developed --

MR. NEWELL: But I --

THE COURT: -- in the course of the direct testimony. Overruled.

MR. NEWELL: All right, sir, I will withdraw the motion.

Q When was the last time prior to the event in September of 1959 that you have described in your testimony that you were given instructions as to admission or exclusion of people from the Park?

A I would say that Mr. Stewart, who is the Manager

of the Park, gave me those instructions at the beginning of the year which is the beginning of their season.

Q And when was that?

A I will say May, June of '59.

Q When did you first become aware that the Defendants were on the premises at Gwynn Oak Park?

A You mean, the time?

Q That's right.

A It was approximately about 3:15, 3:30, something like that, maybe closer to 3 o'clock.

Q Did you learn that by personal observation or were you told?

A No, sir, I learned that by merely patrolling the grounds.

Q Where did you first see them?

A Right in front of the miniature golf course in the center of the Park, about the center of the Park.

Q Was there any special observation or ceremony going on at Gwynn Oak Park that day?

A Well, there is a usual affair that goes on every year.

Q And does it have a particular name?

A All Nations Day.

Q Have you any idea of what the number of persons on the Park grounds was at the time you first observed the four Defendants?

A No, sir, I wouldn't even attempt to guess.

Q Now, when you saw them, were they surrounded by a crowd?

A No, they had a good deal of room around them at that particular time. They seemed to be standing quite to themselves.

Q Now, you stated that you communicated with the Baltimore County Police. How did you communicate with them?

A Officer Shuman, I sent him to the head of the Park to ask assistance, and the Police were out at the head of the Park.

Q And who was Officer Shuman?

A He is a Special Police Officer at Gwynn Oak Park.

Q Is he here today?

A No, sir, he is not.

Q Is he still in the employ of the Park?

A Yes, sir.

Q Now, you sent him for assistance, and the Police arrived. Who were the Police that did arrive?

A Well, I know Officer, this Officer setting right here was one of them, and I don't know -- I wouldn't even attempt to guess except it was more than two or three.

Q There were more than two or three?

A About four.

Q When they arrived, what happened?

A Then we tried to move the group out of the Park.

Q Did you --

THE COURT: Well, what do you mean by that?

A Well, we asked them to leave, sir, and they wouldn't leave, so then we just started to pick them up by their arms and carry them.

Q Now, did you and the Police begin to try and move the Defendants as soon as the Police arrived?

A No. They were asked to leave the Park by the Baltimore County Police also on maybe two or three occasions, I don't know exactly how many times.

Q How long a time transpired between the arrival of the Police and the attempts that you have referred to to remove them?

A About 10 or 15 minutes.

Q Now, when you first approached, as you individually first approached the Defendants, you said that there was no crowd. When did the crowd around them, when did the crowd first begin to congregate?

A Well, when I say there wasn't any crowd around them, I mean there was the usual amount of people around, but not insofar as when I say crowds, I mean they weren't attracted to this specific spot at that particular time.

Q The people that you referred to who were around were pursuing their own interests?

A That's correct, yes.

Q They weren't directed, their attention was not directed to these particular Defendants?

A That is correct.

Q When did the crowd, which was interested in these particular Defendants, or yourself or the focal point that you provided, when did that crowd first begin to congregate?

A I think they began to congregate around the people when I asked them to move, just slightly after maybe the second or third time I asked them to move out of the Park.

Q What are the instructions with regard to removal of persons from the Park? You have referred to instructions to remove or not to permit colored people on the ground. Do you have instructions with regard to anyone else?

A No, sir.

Q But you testified that subsequently you requested all five of the people that you found there to leave, did you not?

A That is quite right.

Q But the only instructions you had was to ask colored people to leave?

A That's correct.

Q Did you make any endeavor to cause the people that you described as spitting and as making rude remarks to desist from what they were doing?

A Very definitely.

Q What did you do?

A I asked them to stand back, give us room so we could get out up to the head of the Park.

Q Did you ask any of them to leave the Park?

A At that particular time I had my hands full.

Q Just answer the question.

A No.

Q Now, when you and the Police endeavored to remove the Defendants you referred to the fact that they locked their arms together. Did they make any active resistance to whatever steps you took?

A The resistance that they offered was merely of collapsing and laying down, and I can only say for Mr. Drews. I had Mr. Drews, and we had to carry him. I say we, we had to carry him clean to the head of the Park. He made no attempt whatsoever to walk.

MR. MURNAGHAN: That's all.

MR. NEWELL: Thank you very much. Step down. Officer Newman.

F R E D E R I C K N E W M A N

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NEWELL:

Q You are a member of the Baltimore County Police Department?

A That is correct.

Q And I believe you are attached to the Woodlawn Station, is that correct, sir?

A Yes, sir.

Q Were you on duty on the 6th of September, 1959?

A Yes, sir.

Q And did you have occasion to visit the Gwynn Oak Park Amusement --

A I did.

Q You did?

A Yes.

Q Would you tell the Court about what time you arrived at the Amusement Park and on what occasion were you there?

A I guess we were down the Park maybe 1, 1:30 or something like that, and we was right out in front of the Park up there by the parking lot.

THE COURT: That was shortly after midday?

A Yes, sir, and just as we were around in front

of the Park there when some -- it was Officer Shuman who was the Special Officer at the Park -- came up and said, "We need some assistance down at the Park." He said they had a disorderly crowd, so myself and another Officer went down there, and it was five people in the group down there. This Officer Wood stated he wanted them out of the Park, and they wouldn't leave. I asked them to leave the Park, and they still refused to leave.

Q Do you see the people who refused to leave in Court today?

A I do.

Q Point them out, please?

A The four over there.

Q Let the record indicate the Defendants. Did you have any conversation with them?

A I did.

Q What was your conversation?

A I asked them to leave the Park. They wasn't allowed in the Park, the colored wasn't. The white, I believe, I stated they could stay.

Q Did they say anything to you?

A They just refused to leave.

Q Did they give you an explanation for refusing?

A They figured it was a public park, and they had a right there.

MR. MURNAGHAN: Well now, if your Honor please, I will object to the answer.

THE COURT: I will strike it out, at least until it is developed as something other than a conclusion.

Q Yes, sir. What did they say to you; don't tell us what you thought, just what they said?

MR. MURNAGHAN: If your Honor please, I don't think he can answer the question because they can say anything. I think unless he refers to each individual and what he or she may have said --

MR. NEWELL: We will get to that.

THE COURT: What, if anything, did anyone of the Defendants say?

A That they didn't feel that they had to leave the Park.

THE COURT: And who made that statement?

A I couldn't say which one, sir.

Q Do you know whether it was, the person who said it, was one of the group of the Defendants here today?

A It could have been, yes, sir.

THE COURT: What do you mean by that?

A Well, Mr. Lacey is not here. Like I say, I don't know which one it was. If I had all five of them here, then it would have to be one of them would have had to have said it, but Mr. Lacey is not here, and I couldn't say which one.

Q Would you lean up closer to the microphone; we're having a hard time hearing what you said. Did you have any further conversation there at the Park other than that?

A No other than that I asked them to move, get out of the Park.

Q What did you do?

A I told them they had to get out of the Park or get locked up.

Q And what did they say to that?

A They still refused to move.

Q What, if anything, did they do after you had

advised them to leave or you would lock them up?

A They didn't do anything, they just stood there.

Q What did you do then?

A Then I sent someone up to Mr. Price's office to find out if he would get a warrant for them for disorderly conduct.

Q And what is the next thing that you did?

A We waited around maybe 10, 15 minutes until we got back the answer, and he stated he wanted them out of the Park.

Q Then what did you do then?

A So then I told them to get -- they'd have another choice of getting out of the Park or getting locked up. They still refused to leave, so I placed my hand on one of them, and told them they were all under arrest, at which time they all locked their arms and just dropped on the ground.

Q What did you say to them when they dropped on the ground?

A I just told them they were under arrest.

Q I can't hear you, sir.

A The girls, I think, broke loose when the fellows

dropped to the ground.

Q Yes.

A And I proceeded to take them up to the head of the Park.

Q And were they on the ground when you left the scene, still on the ground?

A Yes, they were.

Q And can you tell the Court and point out which two were on the ground at that time?

A That would be the two males.

Q The two males. Point them out, please.

A That would be Mr. Drews on the end and Mr. Sheeham.

Q Let the record indicate Drews and Sheeham, the Defendants. And how were they on the ground, can you describe their position?

A Somebody laying on the ground, that's all I can tell you.

Q Straightened out?

A No, just fell down like they was just fainted or something like that.

Q Well, were they in a sitting position or kneeling position or, describe the position?

A Laying down.

Q Straight out?

A You might say straight out, yes, sir.

Q When you --

MR. MURNAGHAN: What did you say?

Q Tell us what you mean.

A You are either sitting or you are lying. If you are sitting, you are not lying down.

THE COURT: What were they doing?

A Just laying there.

THE COURT: Laying?

A Just laying there.

THE COURT: Not sitting?

A No, not sitting.

THE COURT: All right.

Q When you took the two women, where did you go?

A I had went up on the front parking lot and placed them in the police car.

Q All right, then what did you do?

A Just sat around and waited until they brought the other three up.

Q Did you have any conversation with the two women as you were going up to the police car?

A I did not.

Q Did they have any conversation with you, say anything?

A I don't believe so, no, sir. I don't recall.

THE COURT: Did I understand that the women did not lie down?

A They were half, just halfway down. They broke loose as they were falling down; as the males fell down, the women, I believe, broke loose.

THE COURT: When you say --

A They didn't go all the way to the ground.

THE COURT: What did they do then?

A They tried to pull away, but then I believe I put the handcuffs on the colored girl, and she was in turn holding on to the white girl, and I proceeded to go up through the crowd to the head of the Park.

Q Now, at the time when all this was going on,

did a crowd gather?

A The crowd had already been there when I got there.

Q And did you accompany the Defendants to the Police Station after they were all brought up to the police car?

A I brought the two women up in one of the police cars. The three males were brought up in the wagon.

Q Did you have any conversation with them on the way to the Police Station?

A I don't believe so, no, sir. I don't recall.

Q They never said anything to you?

A I don't think so, no, sir.

Q Was there any conversation with them when you arrived at the Police Station?

A Other than that they was locked up and arrested for disorderly conduct in Gwynn Oak Park.

THE COURT: Repeat that last question and answer.

(Whereupon the reporter read back the last question and answer.)

THE COURT: Who made that statement?

A I did, sir.

Q And what was the name of the Officer who was with you at the time?

A Corporal Reese.

MR. NEWELL: All right, witness with you.

CROSS-EXAMINATION

BY MR. MURNAGHAN:

Q Is Corporal Reese still a member of the Baltimore County Police Department?

A Yes, sir.

Q Is he in Court today?

A No, he is not.

Q You testified that when you arrived on the scene, there already was a crowd. Can you describe the crowd? How large was the crowd?

A Well, they had a right crowdy day there. There was just more or less elbow room when you walked anywhere in the Park, more or less.

Q This was the time that you arrived in response to the request for aid from the Park Police?

A Yes, sir.

Q Did you observe any actions of the crowd directed towards the Defendants?

A They were making remarks like they wanted to go and grab the Defendants or something like that.

Q Did they make any overt acts towards the Defendants?

A They started closing in a little bit.

Q What did you do when that happened?

A Just asked them to step back, and we started -- I took the two girls through the crowd, and went up to the head of the Park.

Q You asked Mr. Price for some advice, did you not? What was it you asked Mr. Price?

A I sent someone up to ask Mr. Price if he wanted them out of the Park, if he would obtain a warrant for them.

Q Did you ask him the same question with respect to the people in the crowd who were making remarks and making gestures towards the Defendants?

A I did not.

Q Who was it that you sent to Mr. Price?

A I believe it was Special Officer Shuman.

Q And what answer did the Officer bring from Mr. Price?

A He said he wanted them out of the Park; if they had to be locked up, that is the way they would get out of the Park.

Q When you sent your emissary to Mr. Price, did you specify all, or any particular persons that the inquiry was directed towards or what was exactly the extent of your request of Mr. Price?

A I just assumed Mr. Price knew who was in the Park there because they are the ones that called us. We didn't go there without a call, and I assumed that one of the Special Officers told him what the story was down there.

Q Now, when the Officer came back, what did he say to you?

A He said he wanted them out of the Park; if we had to lock them up, he wanted them out of the Park.

Q Did he just say, "them"?

A That's right.

Q And you are not sure whether he was referring to the five Defendants or people in the crowd?

A They are the only ones that were acting disorderly.

THE COURT: Who was the only one acting disorderly?

A The Defendants over here.

THE COURT: What do you mean by that?

A By refusing to leave the Park?

THE COURT: Was that the act that you consider disorderly?

A It was disorderly when they dropped on the ground, as far as I was concerned, and refused to leave the Park.

Q Now, the dropping on the ground occurred only after you arrested them, did it not?

A That's correct.

Q Now, Officer, you could have arrested them yourself if you had concluded that they were acting disorderly, could you not?

A On a public place like that, we don't usually.

We let the owner obtain the warrant.

MR. MURNAGHAN: I move that the answer be stricken as being unresponsive, particularly as to the nature of the Park.

THE COURT: Repeat the question.

(Whereupon the reporter read back the last question.)

THE COURT: I will strike it.

A I would not have.

THE COURT: Why do you say that?

A Because it is not on a public highway or street.

THE COURT: Well, when was the warrant obtained?

A After we took them up to the Station.

Q Now --

THE COURT: All right.

Q Officer, you testified that you placed handcuffs on one of the Defendants?

A Yes, sir.

Q Which one of the Defendants was that?

A I said I believed it was the colored girl, I'm not sure.

Q By that do you mean Juretha Joyner?

A That's correct.

Q Now, Officer, do you always place handcuffs on persons whom you have arrested?

A When I have a little trouble getting them through the Park or any -- when I have a little trouble with them, yes.

Q What trouble did you have with Juretha Joyner?

A By refusing to leave.

Q Did you place handcuffs on any of the other Defendants?

A No, I don't recall.

Q Did you or did you not?

A No, sir.

Q Now, did the two female Defendants leave the Park, did they leave under their own power?

A I had to pull them through the crowd.

Q They walked out?

A They walked out, but I had to pull them through.

THE COURT: Why did you have to pull them through?

A Because they didn't want to leave voluntarily.

Q They came when you pulled?

A They did, yes, sir.

MR. MURNAGHAN: That's all.

REDIRECT EXAMINATION

BY MR. NEWELL:

Q Officer, you say that you placed them under arrest, and you placed your hand on one of the Defendants at that time?

A I did.

Q Which one was that, Officer?

A I believe it was Mr. Drews, I'm not sure.

Q As you were doing that, what did the other Defendants do?

A They started, began -- that is when they locked arms and dropped to the ground.

Q And did you arrest the other Defendants as a result of that?

A I told them they were all under arrest, but then as they dropped to the ground, the two girls broke loose and I taken them, walked them through the crowd to the head

of the Park, and Corporal Reese was there. I couldn't tell you how they got out of the Park.

MR. NEWELL: All right, thank you very much.

RECROSS-EXAMINATION

BY MR. MURNAGHAN:

Q One more question, Officer. You talk about breaking loose. Do you mean they simply separated their arms from one another, from the link of their arms one to the other? They had their arms linked with one of the boys, and they simply separated their arms.

A I'd say they got pulled apart from the one falling and the other one more or less not falling.

MR. MURNAGHAN: That's all, your Honor.

THE COURT: Just a few moments ago you used the expression that you told them they were all under arrest, and I am not sure that I am clear in my mind as to when you told them that.

A I give them the choice that the whites could stay in the Park, but the colored would have to leave, but one wouldn't do anything without the other, so as a whole they all refused to leave, and at which time they were told that they

were all under arrest. That was after we got the authority from Mr. Price that he wanted them out of the Park even if they had to be arrested.

THE COURT: But that statement by you actually took place sometime before some of the Defendants dropped to the ground?

A Just prior, just before, just before.

THE COURT: All right.

MR. NEWELL: Thank you, Officer, step down. Mr. Price.

A R T H U R B. P R I C E, J R.

a witness called to testify in behalf of the State, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NEWELL:

Q Mr. Price where do you live, sir?

A In Randallstown.

Q And what is your occupation, Mr. Price?

A I am one of the owners of Gwynn Oak Park.

Q Mr. Price, were you at your Park on the 6th of September of 1959?

A Yes, sir.

Q And the property, I believe, it is the Gwynn Oak Park, Incorporated, is that correct?

A That's right.

Q Gwynn Oak Park and Amusement?

A That's right.

Q And in what capacity do you serve in that corporation, sir?

A I am Executive Vice-President and Treasurer, and one of the Managers.

Q Now, directing your attention to the 6th of September of 1959, sir, did you have occasion to see the four Defendants in Court today at your Park?

A I believe so, yes. I think I recognize each.

Q What were they doing when you saw them, Mr. Price?

A They were in the Park attempting to stay there, and apparently, ostensibly to enjoy the Park.

Q And did you observe anything else of them when you saw them, sir?

A When I was told that their --

Q Now, don't tell us -- you can't tell what you were told, only what you observed.

A I saw them there.

Q What were they doing?

A I issued an order -- I saw them there after I had issued an order that the colored folks were to be removed.

Q And what did they do when you saw them?

A They resisted removal.

MR. MURNAGHAN: I will move to --

Q Now --

MR. MURNAGHAN: Just a moment. I move to strike the answer.

THE COURT: Well, I will allow it in subject to exception. You understand, Mr. Price, that you are to testify as to what you personally observed?

A Yes, sir.

THE COURT: Not what you heard.

A Yes, sir.

THE COURT: All right. Now, bearing that in mind, do you intend that answer to stand? Repeat the answer.

(Whereupon the reporter read back the last answer.)

A Yes, that answer can stand.

Q Did you tell them --

MR. MURNAGHAN: Your Honor, I still would move to strike the answer on the ground that it embodies only a conclusion and not a description of fact.

THE COURT: Well, I will overrule the objection and leave it in subject to exception, but will ask the question immediately, what do you mean by that?

Q What do you mean by that, Mr. Price?

A The Special Officers reported to us --

MR. WATTS: Objection.

A -- that these folks were in the Park.

Q Wait a minute.

THE COURT: You can't tell what the Special Officer reported to you because that would be hearsay. What did you observe thereafter?

A I observed the folks were not leaving as it was our desire.

Q Now, what did you say to them, sir, to the Defendants, the four Defendants? What did you say to them?

A Actually, I asked them, I stated that if they would see fit to move along peaceably and go without any problem, we had no desire to have them arrested.

Q All right now, what did they do after you advised them of that?

A This just --

THE COURT: Do I understand --

A They refused to do it.

THE COURT: You advised them of that?

A Yes, sir.

THE COURT: You were present?

A Yes, sir.

THE COURT: At the location where they were?

A Yes, sir.

THE COURT: All right.

Q And what did they do after that, after you advised them of that?

A They would not go.

Q And why do you say that they would not go?

A We asked for an answer. They would not give us an answer in the affirmative.

Q What did they do?

A They would not answer in a way that we wanted to hear.

Q How did they answer?

A They wouldn't answer.

Q You mean, they remained mute?

A That's right.

Q Said nothing?

A That's right, just about.

Q What did you do after they remained mute; what did you do then to them? Did you say anything to them?

A No. I said I have one alternative, and we must have you removed.

Q And was that before the Officer placed his hand on one of the Defendants' arm?

A I am not sure of that.

Q Well, I will ask you this. Do you know whether or not they were --

A Because we had already said that we would arrest them. We had already told the Officer to tell the County Police that we would arrest them if --

Q If they didn't leave?

A That's right.

Q At the time you were there, though, and when you had this conversation yourself with them, were they at that time, from your observation, placed under arrest?

A Yes.

Q Was that prior to your conversation with them or subsequent?

A Subsequent.

Q They were already under arrest?

A No, they were not.

Q Well, that is what I am asking you.

A They were arrested immediately after.

Q After you advised them to leave?

A That's right.

Q All right, then what happened? They stood mute, and then what did you observe that followed?

A They continued to resist not only our own Officers, but the Officers of the County.

Q Well now, you say --

MR. MURNAGHAN: Just a moment.

MR. NEWELL: I will follow it up.

Q You said they resisted, in what way? How can you say that?

A They wouldn't move. There was a problem getting them up the hill, actually.

Q Well then, what did you observe happen after that?

A Very little. There was a terrible crowd and a very big crowd, actually.

Q Well, was anything said by the Defendants while they were in the process of being moved?

A I heard very little, almost nothing, from the Defendants.

Q What did you do after that?

A I knew that they would have to swear a warrant, and I accompanied Mr. Woods to the Woodlawn Police Station, and he swore a warrant out with our permission, that we were making the charge.

Q You charged them with disturbing the peace, is that correct?

A That is correct.

Q Were they disturbing the peace at the Park before you arrived at the Woodlawn Police Station?

MR. MURNAGHAN: I will object to the question as calling for a conclusion.

THE COURT: Sustained.

Q Let me ask you this, Mr. Price. From your observation at the time this all occurred and while the Defendants were on your Park, what, if anything, did the crowd do that were observing what was going on?

A Well, I saw that the crowd was becoming quite unruly on my way.

Q You say unruly. Tell us what you mean by that? Tell us what you observed.

A By crowding and calling names, and they were stirring and milling about in what appeared -- and this may be an opinion -- to be in a riotous fashion.

MR. MURNAGHAN: I object, and move to strike.

THE COURT: I will strike the last phrase.

Q Were the Defendants making any comments in reply to these remarks?

A I didn't get that close to them. There was one

conversation where I thought that one of the Defendants --

MR. MURNAGHAN: I don't want to hear --

A I'm not sure. Perhaps I'd better answer it that way.

MR. NEWELL: Witness with you.

CROSS-EXAMINATION

BY MR. MURNAGHAN:

Q Are you a stockholder in Gwynn Oak Park, Incorporated?

A Yes.

MR. NEWELL: Objection.

THE COURT: Sustained.

Q Are there other stockholders than yourself in Gwynn Oak Park?

MR. NEWELL: Objection.

THE COURT: Sustained.

Q Gwynn Oak Park, Incorporated, is a stock corporation?

MR. NEWELL: Objection.

THE COURT: Overruled.

A Yes, it is.

Q Were you present at the time that the Defendants were arrested, Mr. Price?

A Yes, sir.

Q Did you have any conversation with Officer Newman at the time?

A Well, there are two Officer Newmans. I'd say one is a Special Officer.

Q You saw the one who testified here today?

A Yes, sir.

Q The County Police Officer. Did you have any conversation with him -- you were present when they arrested the Defendants. Did you have any conversation with him prior to the arrest?

A I don't remember a specific conversation I had with him.

Q Did you speak to any of the County Police concerning the activities of the crowd that you have described?

A I may have.

Q Did you ask the Police to take any action against the crowd?

A Yes, I think I was present at the time that the

arrest was made, and it was on our order that it be so.

MR. MURNAGHAN: I point out that the answer is not responsive to the question.

Q I asked you whether you requested the Police to take any action against the members of the crowd?

A No, I did not.

MR. MURNAGHAN: No further questions.

MR. GREEN: No further questions, Mr. Price. That's the State's case, if the Court please.

MR. MURNAGHAN: If your Honor please, I'd like to move for a directed verdict in all cases on two specific grounds.

THE COURT: Well, there is only one case presently before the Court.

MR. MURNAGHAN: One case, but for all Defendants.

THE COURT: Oh, as to all Defendants; all right.

MR. MURNAGHAN: And I'd like to move on two grounds; the first, that there has been no proof to indicate that the nature of the area in which the

alleged offenses occurred was a place of public resort or amusement; and on the second ground, that there has been no indication of any action on the part of the Defendants which would be described as disorderly.

THE COURT: All right, I'll hear from the State.

(Whereupon counsel argued to the Court.)

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