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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INDEX

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Constitution, Statutes and Rules of Court

Other Authorities

Appendix

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DALE H. DREWS, ET AL.,

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(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[1] The language of the statute as originally enacted by Chapter 24 of the Acts of 1880 is shown in regular type.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).

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.

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.

INDEX

Table of Contents

Table of Citations

Cases

Statutes

Miscellaneous

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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.*

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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