



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SEPTEMBER TERM, 2026

State of Vermont v. Carl Holcomb, Jr.*	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	CASE NO. 22-CR-00912
		Trial Judge: Jennifer L. Barrett

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conviction of aggravated disorderly conduct following a jury trial. On appeal, defendant argues that the State did not present sufficient evidence to demonstrate that his conduct was violent, tumultuous, or threatening, or to show that he had the intent to cause irritation or annoyance. We affirm.

The State submitted the following evidence at trial. On December 31, 2021, defendant was outside his home drinking heavily throughout the day. At the time, the complainant was residing at the neighboring property. The complainant had been watching defendant throughout the day and had seen him in the field next to her house partially clothed and appearing very drunk. She heard defendant cursing and ranting and heard him say that he was “trained to kill.” Midafternoon, defendant entered the complainant’s property without an invitation, banged on the door, and demanded someone come out and talk to him. The complainant told defendant to “go away.” Instead of leaving, defendant continued to call out to the complainant and moved to a different part of the house where he banged on and clutched the window.

Complainant was frightened and told defendant that she was filming him and was going to call the police. She went upstairs and recorded defendant below her in the driveway screaming at her, name calling, and saying he did not like the complainant. There was also camera footage from the complainant’s security system showing defendant outside the complainant’s home waving his arms, speaking, and falling down. The complainant testified that she was very frightened because she was home alone. She also stated that she did not leave the house as she had planned that afternoon because she was too scared to go out. The complainant contacted police and defendant was eventually charged with unlawful trespass into an occupied residence, aggravated disorderly conduct, and unlawful trespass onto land.

At the close of the State's case, defendant moved for judgment of acquittal, arguing that the State's evidence was insufficient on all counts. As to the aggravated disorderly conduct, defendant argued that there was no evidence to support it because he had not used any threatening language or threatening behavior towards the complainant. The court denied the motion, concluding that there was evidence showing that defendant engaged in behavior that caused inconvenience or annoyance and interfered with the complainant's right to peace, quiet, and privacy. The court pointed to defendant's behavior earlier in the day swearing and threatening to kill, as well as his acts of yelling at the complainant, banging on the door, and insisting to speak with the complainant, which caused her not to leave the house.¹

Defendant testified in his own defense, stating that the complainant's husband was at the house that day and that he left after the husband asked him to do so. He stated that he did not speak to the complainant. In rebuttal, the complainant's husband testified that he was not in the home during the incident. The complainant testified that during the encounter defendant used her name, stating he did not like her and calling her a profane name. The complainant recorded defendant's behavior on her cell phone and the video was entered into evidence.

Defendant renewed his motion at the close of the evidence and in a post-trial motion. Again, he contended that the State had failed to present evidence to show that defendant intended to cause annoyance or inconvenience. The trial court denied the motions, concluding that defendant's pattern of conduct of banging on the door, approaching and banging on the window, refusing to leave, insisting that the complainant go outside, and using profanities directed at the complainant provided circumstantial evidence of defendant's intent to cause inconvenience or annoyance and to disturb the peace and quiet. The jury found defendant guilty of aggravated disorderly conduct and not guilty as to unlawful trespass onto the complainant's land. Defendant appeals.

On appeal, defendant argues that the State's evidence was not sufficient to convict him of aggravated disorderly conduct. This Court reviews the denial of a motion for judgment of acquittal "de novo, using the same standard as the trial court." State v. McMahon, 2024 VT 67, ¶ 7, 220 Vt. 180. In evaluating the motion, this Court considers "whether the evidence, when viewed in the light most favorable to the State and excluding any modifying evidence, fairly and reasonably tends to convince a reasonable trier of fact that the defendant is guilty beyond a reasonable doubt." Id. (quotation omitted). A motion for acquittal is granted "only if the prosecution has failed to put forth any evidence to substantiate a jury verdict." State v. Russell, 2011 VT 36, ¶ 11, 189 Vt. 632 (mem.) (quotation omitted).

Here, the State charged defendant with committing aggravated disorderly conduct by engaging in "a course of conduct directed at a specific person with the intent to cause the person inconvenience or annoyance, or to disturb the person's peace, quiet, or right of privacy," and engaging "in fighting or in violent, tumultuous, or threatening behavior." 13 V.S.A. § 1026a(a), (a)(1).

Defendant argues on appeal that the State's evidence was insufficient to establish his guilt. He contends that he did not engage in violent, threatening, or tumultuous behavior and the State failed to show that he intended to annoy or irritate the complainant or to disturb her peace, quiet, and right of privacy.

¹ The court granted the motion as to the unlawful trespass into an occupied dwelling, concluding that there was no overt act to attempt to enter the complainant's home.

As to the requirement that defendant's behavior be violent, threatening, or tumultuous, the State provided sufficient evidence for a jury to find that defendant's behavior was tumultuous.² In the past, this Court has looked to dictionary definitions to define tumultuous behavior under the disorderly conduct statute, 13 V.S.A. § 1026(a)(1), and explained that it includes a "violent outburst" or actions that might agitate a crowd. In re Lund, 144 Vt. 171, 179 (1984), overruled on other grounds by State v. Begins, 148 Vt. 186, 189 (1987) (relying on dictionary definition to define limits of tumultuous behavior). The dictionary definition of tumultuous also includes behavior that is "loud, excited, and emotional" and marked by "upheaval." Tumultuous, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/tumultuous> (last visited Aug. 27, 2026). Here, defendant's actions were sufficiently loud, agitated, emotional, and confrontational that the jury could find he engaged in tumultuous behavior. Defendant shouted profanities, approached the complainant's home, called repeatedly to the complainant, banged on the door, banged on the window for over two minutes after being told to leave, demanded the complainant come outside, and shouted that he did not like the complainant, using her name and calling her a derogatory term.

Defendant asserts that his actions did not rise to tumultuous behavior and likens his situation to that of the defendant in State v. McEachin, 2019 VT 37, 210 Vt. 259. In that case, the defendant was charged with disorderly conduct based on his conduct of yelling profanities at law enforcement and then changing his direction to walk toward a police officer. This Court held that walking toward the officer was insufficient to show that the defendant "engaged in fighting or violent, tumultuous, or threatening behavior" because the defendant had a normal gait, was not agitated, and did not engage in any violent outburst, or make a comment coupled with an aggressive move. Id. ¶ 14.

Defendant's actions in this case are distinguishable from those of the defendant in McEachin. In contrast, here, defendant did not approach the complainant's home with a "normal gait." Id. ¶ 19. He was yelling, using expletives, and banging on her door and window, even after she told him to leave. He also coupled his actions with a derogatory remark aimed particularly at the complainant. Under these circumstances, the jury could find that he engaged in a "violent outburst," Lund, 144 Vt. at 179, or "loud, excited, and emotional" behavior, Tumultuous, Merriam-Webster Online Dictionary, supra, sufficient to meet the definition of tumultuous.

Defendant next argues that the State failed to provide sufficient evidence that he engaged in a course of conduct directed at a specific person with the intent to cause the person inconvenience, annoyance, or to disturb the person's peace, quiet, or right of privacy. See 13 V.S.A. § 1026a(a). Defendant contends that there was not enough evidence to show that his behavior was directed at the complainant because he claims that he did not know the complainant was home alone and his use of her name came when he was leaving her property.

The State provided enough evidence for a jury to find that defendant's conduct was directed at the complainant and intended to disturb her peace. Defendant approached the

² Defendant also claims that his behavior was not violent because he was not in physical contact with the complainant, and because he made no threatening statement directed at the complainant. Because we conclude that there was enough evidence for the jury to find that defendant's behavior was tumultuous, we do not need to reach the question of whether the evidence also supported a finding that his behavior was threatening or violent.

complainant's home, demanded that someone come outside and speak to him, banged on the door, banged on the window after being asked to leave, and stood in the driveway shouting that he did not like the complainant and calling her a vulgar term. Although defendant testified that he did not know complainant was home, did not direct his actions towards her, and did not intend to try and get into her home, this type of modifying evidence is not considered in evaluating a motion for judgment of acquittal. It was up to the jury to weigh defendant's testimony against the State's evidence; "we are not triers of fact, and we will not substitute our judgment for that of the jury." State v. Diaz, 2025 VT 58, ¶ 12 (quotation omitted). Defendant's actions were sufficiently focused towards the complainant to allow the jury to find that he engaged in a course of conduct directed at the complainant and that he intended to cause her inconvenience, annoyance, or disturb her peace.

Finally, to the extent defendant argues that because he was consuming alcohol that day, he could not form a specific intent to inconvenience or annoy the complainant, we do not address this claim because it was not raised below. See State v. Sole, 2009 VT 24, ¶ 13, 185 Vt. 504 ("Arguments that are neither litigated nor decided below will not be addressed for the first time on appeal." (quotation omitted)).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Christina E. Nolan, Associate Justice