

FILED

FEB 28 2018

Hon. Alberto Rivas, Assignment Judge
Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903

HON. ALBERTO RIVAS, A.J.S.C.

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	MIDDLESEX COUNTY
Plaintiff	:	LAW DIVISION—CRIMINAL PART
	:	COMPLAINT NO. S-2017-23
v.	:	
THERESA MULLEN	:	
	:	OPINION
Defendant	:	

ATTORNEYS:	Brian Gillet Assistant Prosecutor Middlesex Prosecutor's Office 25 Kirkpatrick St New Brunswick, NJ 08903	Edward Kologi Defense Attorney 500 North Wood Ave Suite 4B Linden, NJ 07036
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BEFORE: Hon. Alberto Rivas, A.J.S.C.

DECIDED: February 27, 2018

On February 2, 2017, Theresa Mullen ("Mullen") went to her children's school, St. Theresa's, located in Kenilworth. Mullen's behavior at the school resulted in criminal charges against her. Specifically, she was charged with violating N.J.S.A. 2C:18-3(b), which states:

b. Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (1) Actual communication to the actor; or
- (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosure manifestly designed to exclude intruders.

The trial on the charges took place on January 24-25, 2018, before this court. This opinion represents the court's findings of fact and verdict.

The issue at the trial was whether Mullen violated 2C:18-3(b)(1). In order to find Mullen guilty, the State must prove beyond a reasonable doubt that "the defendant was directly advised against trespass." State in Interest of L.E.W., 239 N.J. Super. 65, 71-72 (App. Div. 1990). State v. Brennan, 344 N.J. Super. 136 (App. Div. 2001) establishes the parameters in evaluating the evidence in this case to determine whether Mullen was guilty of violating the law.

In Brennan, a citizen attending a city council meeting became disruptive. He was advised that the police would be called to remove him from the meeting; Brennan's defiant response was that he welcomed police involvement. Brennan, 344 N.J. Super. at 139. The police responded, and Brennan refused to leave after the police told him he had to leave the meeting. Id. Following his refusal, they arrested Brennan. Id. at 142. The court noted that Brennan had focused his defense on whether he had been disruptive and whether City officials acted properly toward him. Id. at 143. The court found that when evaluating a charge of defiant trespassing, the focus was not on the behavior of the municipal officials but instead on the reasonableness of the police behavior and defendant's response to the requests of the police. Id. With this background, the court will review the proofs at trial.

Prior to February 2, 2017, Mullen and her family were involved in contentious litigation with St. Theresa's School. A civil lawsuit was pending at the time. On February 1, 2017, the Superintendent of Catholic Schools for the Archdiocese of Newark, which includes St. Theresa's School, wrote a letter to

Mullen and her husband. In the letter, the Superintendent quoted a portion of the St. Theresa's Parent/Student Handbook, which stated:

If a parent implicates St. Theresa's School in a legal matter, or names St. Theresa's as a defendant in a civil matter, the parent/guardian will be requested to remove their children immediately from the school.

A copy of the page of the handbook, which contained this provision, was included with the letter, along with a copy of the acknowledgement of receipt of the handbook form signed by Mullen's husband at the start of the school year.

A literal, fair and objective reading of the documents sent to Mullen on February 1, 2017 makes it abundantly clear that Mullen's children were no longer welcome at St. Theresa's School.

Turning now to the proofs offered at trial, three separate police officers testified as to the events of February 2, 2017. The first officer to testify was Detective Sergeant Grady. He stated that he was asked to go to St. Theresa's by his chief because of the animosity that developed between the Mullen family and the school. His initial encounter with Mullen took place at the back entrance of the school regularly used by students to enter the building. Mullen thereafter spoke to school officials. After the meeting, he informed Mullen that she had to leave the premises. Mullen's response was that the officer should handcuff and arrest her. He further testified that he observed school officials and the police chief specifically inform Mullen that she was not welcome at the school and that she had to leave.

Police Chief John Zimmerman testified at trial. He indicated that school officials had communicated to Mullen that she had to leave the premises. According to Zimmerman, Mullen responded by stating that she was not going to

leave the premises and that if a criminal complaint had to be filed so be it. Mullen said unless she was handcuffed she was not going to leave. The Chief testified that he and his officers exercised extraordinary forbearance in the situation because of the presence of Mullen's children and in deference to her employment status. He testified that had it been any other person he would have authorized her immediate arrest. He testified that he handled the situation with "kid gloves." However, because of Mullen's continuous obstinacy, he summoned a uniformed officer to the school in order to arrest Mullen if she continued to be uncooperative.

Father Joe Begrowicz ("Father Joe"), the parish priest, took the stand. He indicated he was acquainted with Mullen and her family for an extended period dating back to Mullen's wedding, which he officiated. He was aware of the February 1, 2017 letter to Mullen. He stated he was present at the back entrance to the school when Mullen was told that the children could not come into the school, consistent with the prior day's correspondence. Mullen and/or her husband, who accompanied her to the back entrance, informed Father Joe that they were video recording the confrontation. The defense did not introduce any video recording of the conversation that occurred at the back entrance of the school.

In order to avoid causing a scene and disturbance at the school's back entrance where student and parents were present, Father Joe agreed to allow Mullen to come into the school. While in the office, the contents of the February 1 letter were reviewed with Mullen. In the presence of other church officials and the police chief, she was told she had to leave premises. Mullen flatly refused.

Thereafter, school officials asked her to leave the office to allow the school officials to discuss the matter with their counsel. Father Joe accompanied Mullen outside of the office. While they were outside of the office, Father Joe had a conversation with Mullen that reflected his long history with Mullen and her

children. Mullen recorded this exchange with Father Joe, which corroborates his trial testimony.

When Mullen returned to the office, the school officials read the following statement to her:

We understand that you refuse to withdraw the children from school as you have been requested to do pursuant to the Student Handbook you signed on August 16, 2016. Therefore, the children are expelled. You must leave the premises immediately. If you refuse to comply then you will be considered trespassing.

This statement was prepared following the school officials consultation with their lawyer. Notwithstanding this clear communication to Mullen, she continued to indicate that she would not leave the premises. Per Father Joe's testimony, he told her she had to leave at least three times. Each time she refused.

The school principal, Deacon Joe Caporaso ("Deacon Joe"), also testified. He indicated he was aware of the February 1 letter and the attachments thereto. He was present at the back entrance when Mullen was informed that the children were precluded from coming to school. He testified that Mullen's husband indicated he was recording the encounter at the back entrance. Again, no video of this specific encounter was introduced during the trial. He testified that because students and parents use the back entrance at the beginning of the school day, Mullen was asked to come inside to avoid creating a scene.

Deacon Joe was the school official who read the previously referenced statement dictated by the school's attorney to Mullen. He corroborated the Chief's testimony that Mullen indicated that she was not going to leave and challenged those present by stating, "you gonna cuff me?"

Father Vincent D'Agostino ("Father Vincent"), the assistant pastor to Father Joe, also testified. He observed Mullen at the back entrance, and he testified that Mullen had raised her voice in her exchange with Father Joe and Deacon Joe. He too was present in the office when Mullen met with Father Joe, Deacon Joe and Chief Zimmerman. He indicated that when they informed Mullen that they wanted to speak to their counsel privately, she did not want to leave the office. She eventually did leave. After school officials spoke to their counsel, Mullen returned and they read to her the statement dictated by counsel. Father Vincent further testified that Mullen indicated they would need handcuffs before she would leave the school. Per Father Vincent, counsel's statement was read to Mullen three times, and each time she continued to defy the request to leave.

Mullen, as part of her defense, argued that Father Vincent explicitly gave her permission to remain in the school, and therefore she cannot be guilty of trespassing. In support of this assertion, Mullen submitted into evidence a video that captured the conversation in the office with school officials and the police chief.

The recording corroborates the witnesses, who testified that Mullen indicated that she was not going to leave the premises. At one point she states; "if the police want to arrest me and my children for trespassing, they can go ahead and do that." She then repeated herself, stating, "if the police want to bring charges against me for trespassing, or my children, they can do that." Mullen made these statements after she was confronted with the statement drafted by counsel.

Father Vincent, during the recorded portion of the meeting, suggested that Mullen's lawyer communicate with the Archdiocese's lawyer. He initially asked Mullen when her husband was coming back and he indicated they could wait until Mullen's husband returned, presumably to arrange for the lawyers to meet and

confer. Mullen did not agree with this suggestion. Instead, she continued to argue the propriety of her children's expulsion. Father Vincent repeated his suggestion, "let the lawyers talk to the lawyers." Mullen's response was "No." Father Vincent again repeats his statement that the church's lawyer speak to Mullen's lawyer; again, Mullen flatly rejects that suggestion. It was during this portion of the taped conversation that Mullen posits her interpretation of the February 1 letter. She viewed the letter as a request, and she was denying the request. With respect to the signed acknowledgement, she took the position that it did not apply to her because she had not signed it. Again, Father Vincent offered to wait until the lawyers could confer. Mullen rejects the proposition, asking what would happen if she sent her children to class. Again, Father Vincent offers to have the lawyers discuss the situation, and Mullen again rejects the idea. At one point in the conversation, she tells Father Vincent he is not the principal, clearly and unequivocally rejecting his efforts. Mullen's position was "we are not going to go anywhere."

Upon review of Mullen's video recording, there clearly is no agreement or acquiescence by Mullen to have the lawyers confer. The proffered evidence does not establish that she had the right to remain on the school grounds. She continued to be confrontational and challenged the school officials and law enforcement to take her into custody. Repeatedly school officials asked her to leave the premises, and she refused. If anything, the videotape corroborates the testimony of the State's witnesses.

Following the second office meeting, Officer Sean Kavernick confronts Mullen in the school's hallway. He is the uniformed officer who responded to the school at the Chief's request. He testified as to the following: upon his arrival at the school, he entered through the front door and the Chief briefed him as to the situation involving Mullen. He then encounters Mullen in the hallway between the

office and the gym. He testified that Mullen was not in the process of leaving the school. He approached Mullen and asked her to leave the premises. Mullen makes absolutely no effort to comply with the Officer's order. Instead, she indicated that she wanted to be handcuffed. The Officer did not want to handcuff her in the presence of her children, who he noted were crying and upset. He testified that he pointed out her daughter's emotional state to Mullen. He testified that Mullen made no effort to leave until five minutes had elapsed. His clear recollection and unequivocal testimony was that Mullen remained fixed in one spot and was unwilling to leave the premises.

Mullen took the stand during the trial. She referenced the then-existing litigation between her family and the school. She acknowledged receiving the February 1 letter and reading it. She reiterated her position that the letter gave her an option with respect to her children and their continued attendance at St. Theresa's School.

In discussing the significance of the correspondence with school officials, Mullen engaged in grammatical and linguistic gymnastics in an attempt to minimize and disregard the clear import and language of the communication. Her testimony at trial mirrored the statements attributed to her by the State's witnesses.

With respect to the handbook, she testified that she did not sign it and therefore its provisions, including the provision regarding litigation and its effect on her children's ability to continue to attend St. Theresa's, were non-applicable to her. The evidence was clear that her husband signed the form, and he clearly had the ability to bind the family unit to the provisions of the handbook. To suggest otherwise ignores and nullifies his parental authority vis-à-vis the children.

Mullen testified regarding her interpretation of the word "request" in the school handbook. She testified that she interpreted the February 1 letter as a request, and per her testimony, she was denying the request. The clear import of the policy was not to offer a parent an option in the event of litigation, but rather the use of the word "request" was a euphemistic word choice to avoid a harsher word, such as "expulsion." Mullen had no more choice in the matter than someone who is confronted by a bouncer and is "requested" to leave the premises.

Further undermining her interpretation, Mullen testified that in addition to receiving the letter she was also given a copy of an email, dated February 1, 2017, from the Archdiocese's lawyer that specifically stated, "neither Sydney Phillips nor Kaitlyn Phillips should be coming to St. Theresa's School tomorrow morning or any day thereafter." This email eviscerates any notion that the February 1 letter constituted a "request."

None of the two rationalizations put forward by Mullen in her testimony operate as a defense negating the charge of defiant trespassing. While testifying, she repeated her position that her husband's signature on the handbook acknowledgement was not binding on her and that the letter constituted a request. With respect to her exchange with Father Vincent, the record is clear that she adamantly refused the invitation to have the parties' lawyers confer. She recorded on the tape telling Father Vincent he was not the principal, clearly suggesting he had no role in the matter.

Lastly, she specifically testified that she had absolutely no contact with Officer Kaverick, in direct contravention with the Officer's unequivocal testimony. According to Mullen, at no point whatsoever did she encounter or have any communication with Officer Kaverick. Per Mullen, following the meeting in the

office, she immediately went outside, using the front entrance, to call her husband and await his return to the school.

The court has had an opportunity to observe all the witnesses testify and subject themselves to cross-examination. There is a chasm between the testimony given by Mullen and Officer Kaverick. Mullen testified that she had no encounter with Kaverick once she left the office. She said she went outside through the front entrance to call her husband. Officer Kaverick testified that he entered the school through the front entrance and encountered Mullen inside between the office and the gym and despite his request to get her to leave, she did not do so until five minutes had elapsed and after Mullen asked to be handcuffed.

The court finds Officer Kaverick's testimony credible and Mullen's testimony incredible. First, there is video evidence of Mullen asking to be handcuffed during her meeting with school officials in the office. This corroborates the officer's testimony that she made similar references when he encountered her in the hallway outside of the office. She testified that she exited the school immediately following the meeting, and she did so through the front door. Officer Kaverick entered the school through the front door and indicated he encountered her inside the school unwilling to leave. He further testified because of Mullen's position, he was very reluctant to arrest her, despite her request for handcuffs. According to the CAD report, Officer Kaverick arrived at the school at approximately 8:49 a.m., which is consistent with the timeline testified to by the other participants. Mullen ceased taping when she left the office and did not resume until 9:01 a.m. upon her husband's return to the school. Mullen points to the fact that she made calls to her husband once she left the office, but the evidence of the calls do not indicate where she was physically at the time the calls were made. The calls could have easily been made from inside the school. This officer

was a relatively young officer whose testimony clearly evoked his ambivalence of having to deal with a belligerent and confrontational Mullen, which the court relies on to find him credible.

Mullen, on the other hand, testified that she did not know the potential ramifications of not leaving the premises when asked to do so by school officials. It is impossible to reconcile this statement with the fact that Mullen had previously served as a municipal prosecutor. She was combative and evasive on the stand, and her statements about her understanding of the letter and the import of the signed acknowledgment further undermine her credibility.

Based on the foregoing the court finds that the State has proven beyond a reasonable doubt the elements of Defiant Trespass; specifically that Mullen remained in the school knowing she was not licensed or privileged to do so after actual notice to leave was communicated to her several times. The State's witnesses were more credible than Mullen. Mullen is guilty of a violation of 2C:18-3(b). Sentencing for this matter will be scheduled on April 4, 2018 at 9:30 a.m.

Any submissions with respect to sentencing shall be filed with the court no later than March 23, 2018.