

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT

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4th Circuit - District Division - Laconia  
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December 17, 2014

MARK SISTI, ESQ  
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CHICHESTER NH 03258

Case Name: State v. William L. Baer  
Case Number: 450-2014-CR-01152

See enclosed Order dated 12/13/2014

Michelle D. Brown  
Clerk of Court

(450106)

C: Gilford Police Department

BELKNAP,SS.

4<sup>TH</sup> CIRCUIT COURT-DISTRICT DIVISION

LACONIA

STATE OF NEW HAMPSHIRE

V.

WILLIAM BAER

DOCKET #2014-CR-1152

ORDER

The Defendant is accused of 3 counts of Disorderly Conduct. He moves to dismiss the complaints arguing that the complaints are violations of his right to be free from restriction upon his Free Speech Rights of the U.S. and N.H. Constitutions, that Defendant was improperly placed under arrest by Lt. Leach without warning, and that the actions failed to create a breach of the peace as there was no interruption of business meeting.

The facts have been memorialized by way of an audio and video disc which was presented to the Court with the Defendant's Motion to Dismiss. Additionally, the Court granted the Defendant's request for discovery depositions of the people involved in the case. Those depositions were presented with the supplemental Motion of the Defendant.

The May 2014 School Board Business Meeting for the Gilford School meeting was the setting for the alleged complained actions of the Defendant. The Board meeting is conducted in the elementary school.

As a context of the dispute between the Defendant and the school department, the Defendant, father of a daughter in the School District objected to manner in which the book was assigned. The Defendant objected to no prior notice to the parents of the reading assignment. The book contains material concerning a school shooting, suicide, and, what has been described as, sexually explicit descriptions inappropriate for the Defendant's daughter reading.

The School District, in fact, in the past, had maintained a school policy of issuing a letter of notice to the parents as to the reading material. That policy had mistakenly not been engaged with this assignment.

The Defendant had met with Principal Sawyer prior to the meeting discussing the omission of school policy. Ironically, Principal Sawyer indicated

that, as a result of those discussions and follow-up with the school department the school has adopted a similar policy to which the Defendant contributed ideas.

Following the reports of school administrators as well as a Civics Project presentation by a number of students, the Board chairperson, Ms. Allen, announced a period of public input. She further indicated that there were to be 'rules' as to comments made by the public. She defined the restrictions as being a 2 minute public statement; there would be no questions for a response by the board or the administrators of the school district.

The Defendant was the first to address the board. Notwithstanding the instructions of the chair to the contrary, the Defendant requested that the Superintendent read aloud a section of the book which the Defendant found objectionable. The Defendant was corrected by the chair as to request was essentially out of order, given the prefaced rules. The Defendant continued to address the Board beyond the two minute limit. The Defendant took his seat. Another resident addressed the Board.

At a point during the speaker's remarks which were interpreted by the Defendant as alleging the Defendant was attempting to 'censor' the reading material of the students, the Defendant, out of order, objected to the comments.

At that point, Lieutenant James Leach, who had been requested to be in attendance at the meeting by the Superintendent, knowing the controversial nature of the proceeding, approached the Defendant. Lt. Leach sought to remove the defendant from the meeting.

There is a dispute as to what was intended and whether there was some kind of silent nod by the chair to the officer for the removal of the Defendant. Chair Allen confirmed her efforts to alert Lt. Leach for his intervention to silence the Defendant. There appeared both on the video and the depositions that there was no warning that would engage the statute in terms of "in defiance of a legal order of Chair Allen."

The Defendant commented a number of times as to the irony of the presentation by the students as to their civics research project which would be presented in Washington later this academic year and the use of law enforcement to silence the Defendant effectively being an opposite 'civics' lesson.

The Court finds that the Defendant is correct in his assessment that the court has the capacity to analyze the case facts with the video/ audio disc and with the supplementation of that memorialization with the depositions.

Where it is accurate that the State may, under a variety of situations, restrict an individual citizen's freedom of expression, the Courts have maintained

that 'time, place, manner' restrictions are valid. The Courts have found that 'fighting words' are not an acceptable exercise of free speech. "But the character of every act depends upon the circumstances in which it is done." Schenck v. United State, 249 US 47, 52 (1919) citing Aikens v. Wisconsin, 195 U.S. 194,205.

Indeed, in each review of the action of the State, the Court is to "evidence(s) some care in balancing community order with the right of free discussion of matter of public concern." State v. Chaplinsky, 91 N.H. 310, 318 (1941)

In the present case, the Court, in analyzing the Defendant's Motion to Dismiss, takes all of the facts in light most favorable to the State and taking all reasonable inferences from those facts, and is asked whether a reasonable trier of fact could find, beyond a reasonable doubt, the Defendant guilty.

"(O)ur constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest so important to the preservation of the freedoms treasured in a democratic society...(But)(t)here is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations." Cox v. Louisiana, 379 U.S. 559, 574 (1965) State v. Albers, 113 N.H. 132, 139 (1973)

**Count #940868C** alleges "purposely cause a breach of the peace by disrupting the orderly conduct of business in any public or government facility, having been asked to desist by School Board Chair Sue Allen", the Court finds that no reasonable fact finder could find beyond a reasonable doubt that the actions by the Defendant 'caused a breach of peace'. And **Count #940869C** alleges "knowingly refused to comply with a lawful order of a Peace Officer, to wit, Lt. James Leach, a Police officer for the Town of Gilford, New Hampshire, to move from any public place, to wit, the Gilford Elementary School library, said offense constituting a Class B Misdemeanor."

The officer's deposition indicates that his actions were designed "to remove him" (Leach Depo. 12) The officer confirmed that he responded with an arrest as the Defendant replied by consenting to arrest. The Court questions the constitutionality of the State's action in the sequence as memorialized by the deposition. The Defendant argues that there should have been some warning as to the arrest of the Defendant. Chair Allen confirmed her desire for the officer's intervention. However, the matter of the Defendant's arrest was not her goal.

Lt. Leach confirmed that he received no complaint of the Defendant's behavior. (State v. Murray 135 NH 369,372 ) Chair Allen confirmed that there were no citizen complaints lodged against the behavior of the Defendant at the meeting. (Allen Depo. Page 13, line 8-11) It is undeniable from the prospective of

Chair Allen that she was requesting the Defendant to refrain. She sought the intervention of Lt. Leach by signaling him.

**Count #940872C** alleged that the Defendant "purposely caused a breach of the peace by disrupting any lawful assembly or meeting of persons, to wit, the Gilford School Board Business meeting, without lawful authority, and having been asked to desist by School Board Chair Sue Allen, said offense constituting a Class B Misdemeanor." Chair Allen confirmed in her deposition that the meeting was completed, that there was no interruption of the meeting, and that there was no recess required due to the Defendant's actions.

The Court finds sufficient basis to consider the Defendant's motion, having been presented the pleadings of each party, the video tape of the meeting of the Gilford School Board, and the depositions of all the individuals connected with the allegations, which may be relevant to the Court discernment of the facts and of the law. At the conclusion of the motion hearing, the State sought the matter to be placed before the trial court for a complete hearing. The Court does not find that any evidence which would be presented during a trial on the matter has been over-looked.

The Court finds that this case is, notwithstanding the cynicism of the Defendant, an excellent 'civics' lesson, a perfect case for modeling free speech guarantees. The Court further finds that there is a paucity of facts from which a reasonable trier of fact could find the Defendant guilty beyond a reasonable doubt. The Court does agree with the Defendant's argument that, often in an official meeting or at the Court, for that matter, individuals, from time to time, may be disruptive but the disruptiveness should not be cause for an arrest in the first instance. The sequence of the arrest actions cause pause by the Court as to the chilling, if not silencing of a citizen by the State, for actions which do not warrant a criminal arrest nor conviction. The Court finds that the actions for "order" by the State do not "balance", in the facts of this particular case, the speech rights of the Defendant.

The Court does not find the actions of the Defendant to be criminal in nature which is necessary in the ordering of restrictions on a citizen's liberties in First Amendment considerations. The Court finds that the Defendant's action never created a breach of peace sustaining a criminal complaint. Further, there is insufficient evidence to sustain that the Defendant knowingly refused to comply with the lawful order of Lt. Leach as he replied consensually to his own arrest.

The Court finds the Defendant's actions to be impolite but not criminal. The Court further finds that if the level of offensiveness of the Defendant's actions were to sustain any one of these criminal allegations, the State would be authorized to limit a citizen's free speech exercise such that it would be purely discretionary.

The Court, taking all the evidence in a light most favorable to the State and taking reasonable inferences from that evidence, finds that a reasonable trier of fact cannot find, beyond a reasonable doubt, that Defendant is guilty of any of the complaints.

The cases are dismissed.

Date: December 13, 2014

  
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Judge James M. Carroll