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State of New Jersey,

Plaintiffs,

v.

Amy Spizer,

Defendant(s).

MUNICIPAL COURT OF: HOBOKEN,
NEW JERSEY
DOCKET NO. 04-00607
QUASI-CRIMINAL ACTION

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT AMY SPIZER'S MOTION
TO DISMISS**

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On behalf of the American Civil Liberties
Union of New Jersey Foundation

On the Brief:
Bruce S. Rosen

Dated: May, 26, 2004

INTRODUCTION

On the morning of January 12, 2004, New Jersey Transit Police arrested defendant Amy Spizer, a homeless woman, and charged her with defiant trespass, 2C:18-3b, a petty disorderly persons offense. The Complaint alleges that Ms. Spizer did “enter into and remain there in the Hoboken Train Terminal, One Hudson Place, Hoboken, N.J., operated by N.J. Transit, a place to which notice against trespassing was given by actual communications to the defendant, knowing that she was not licensed or privileged to do so, in violation of N.J.S. 2C:18-3b.” (See Complaint attached hereto as Exhibit A)

N.J. Transit Police state in their investigative report that it was Ms. Spizer’s purported panhandling that brought her to their attention, and when an officer arrived to investigate, she was blocking the PATH stairs inside the terminal building with her belongings. Ms. Spizer would prove at trial that there was no probable cause for police to order her to leave; that she was not panhandling, that she had a valid NJ Transit ticket for that morning and that she was not blocking any commuters. Ms. Spizer’s activities are protected by her First Amendment rights as well. However, the Court need not delve into the merits of this matter and this brief does not address those points. Instead, this motion seeks to dismiss the Complaint because the statute cited within cannot be applied to the allegations charged.

There can be no dispute from the Complaint, attached hereto as Exhibit A and the Investigative Report, attached hereto as Exhibit B, that Ms. Spizer is accused of defiant trespass while *inside* the Hoboken Train Terminal. For the reasons as set forth below, N.J.S.A. 18-3b can only be properly charged when defiant trespass occurs on open land and as such Ms. Spizer’s arrest was illegal and must be dismissed.

ARGUMENT

As stated above, both the Complaint and Investigative Report on their face make the unequivocal statement that the alleged defiant trespass took place *within* the Hoboken Terminal Building. See Exhibits A and B. Ms. Spizer is charged with N.J.S.A. 2C:18-3b, defiant trespass, which applies to alleged unauthorized entry on open lands.

The Criminal Trespass statute N.J.S.A. 2C:18-3 has three distinct offense sections¹ and a fourth section that enumerates the available affirmative defenses. N.J.S.A. 2C:18-3a is denominated “unlicensed entry of structures,” and provides that unprivileged entry into a variety of *structures* is a disorderly persons offense, unless the entry occurred at a dwelling or research facility, making the offense a fourth degree crime. “Structure” is defined in N.J.S.A. 2C:18-1 as “any building, room, ship, vessel, car vehicle or airplane, and also means any place adopted for overnight accommodations of persons, or for carrying on business therein, whether or not a person is actually present.” A person violates 2C:18-3a if he knowingly enters or remains in a *structure* without authorization.

The next section, 2C:18-3b, states:

Defiant trespasser. A person commits a petty disorderly persons offense if, knowing 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 communications to the actor;
- (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.

¹ Subsection a is denominated “the unlicensed entry of structures”; Subsection b is “defiant trespasser” and subsection c is “peering into windows or other openings of dwelling places.” The issues herein deal with “b” but must be understood in relation to section “a.” Subsection c is irrelevant and subsection d provides affirmative defenses to subsection a.

In State v. Braxton, 330 N.J. Super 561 (App. Div. 2000), the Appellate Division, considering whether subsection b was a lesser included offense of section a, ruled that subsection b could not be a lesser included offense because subsection a applies only in offenses that occur within *structures* and subsection b applies only for offenses that occur *on open land*:

Manifestly, from the plain language of subsections a and b of N.J.S.A. 18-3 and their juxtaposition, subsection a was designed to deal with one type of trespass crime, “unlicensed entry of structures”, while subsection b was designed to deal with another type of trespass upon open land, rather than a structure, despite notice prohibiting entry.

330 N.J. at 188.

The Braxton Court concluded that the proofs in the matter were that the defendant – without permission of any sort – entered a *structure* and that “there is no sense within the legislative scheme to invite a jury to find him guilty of the lesser offense of entering open land in defiance of a notice.” Id. Such a result would violate the legislative design, the Court said: “Defiant trespass is not a lesser included offense of unlicensed entry of structures where the proofs clearly establish that if a trespass was committed at all it involved entry into a structure.” Id.

The Braxton Court relies in part upon State in the Interest of L.E.W., 239 N.J. Super 65 (App. Div. 1990) to show that only subsection a applies to offenses that occur within structures. In that case, a juvenile was appealing a conviction of 2C:18-3b, claiming that the municipal judge incorrectly ruled that affirmative defenses found in subsection d were inapplicable to subsection b because they all make reference to a “structure.” The appellate panel disagreed and went through a detailed analysis of how the statute evolved during the criminal law revisions of 1978 and 1980 so that the affirmative defenses are applicable only to subsection a, involving structures, and not subsection b. 239 N.J. Super at 74-75.

The language of Braxton is crystal clear: 2C:18-3b, defiant trespass, is meant for prosecutions of persons who enter and remain in open land where trespassing signs are posted or where they have been told to leave. It was not designed by the legislature for arrests of persons who are in a public structure.

CONCLUSION

For the reasons stated above, this Court should dismiss the Complaint against Amy Spizer for defiant trespass.

Dated: May 26, 2004

**On behalf of the American Civil Liberties
Union of New Jersey Foundation**

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