



State v. Bessey

Superior Court of New Jersey, Appellate Division

October 8, 2014, Argued; June 23, 2015, Decided

DOCKET NO. A-0554-13T2

Reporter

2015 N.J. Super. Unpub. LEXIS 1516 *

STATE OF NEW JERSEY, Plaintiff-Respondent, v.
MARIANNE BESSEY, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY [RULE 1:36-3](#) FOR
CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from Superior Court of New
Jersey, Law Division, Mercer County, Municipal Appeal No.
2012-32.

Core Terms

crosswalk, obstructing, Arena, sidewalk, traffic, arrest, ten
feet, Circus, knowingly, gathering, pedestrians, highway,
disorderly person, public safety, instructions, Street, mental
state, culpability, activities, officer's, vehicular, petty,
pedestrian traffic, refuse to obey, dispersing, distribute,
protestors, entrance, leaflets, passages

Counsel: Alexander R. Shalom argued the cause for appellant
(American Civil Liberties Union of New Jersey Foundation,
attorneys; Edward Barocas, Jeanne LoCicero and Mr. Shalom,
on the brief).

John P. Boyle argued the cause for respondent (Joseph L.
Bocchini, Jr., Mercer County Prosecutor, attorney; Mary E.
Sparkman, Assistant Prosecutor, of counsel and on the brief).

Judges: Before Judges Fuentes, Ashrafi and Kennedy.

Opinion

PER CURIAM

Defendant Marianne Bessey is a resident of Pennsylvania and

an attorney.¹ She engages in "political activism" and
advocates on behalf of animal rights. On May 18, 2012,
defendant was outside the Sun National Bank Center Arena
(Center Arena) in Trenton distributing leaflets which
described the abuse suffered by the animals used in circus
acts. On that day, the Ringling Brothers and Barnum and
Bailey Circus (Circus) was performing in the Center Arena.
Because the event generated significant vehicular and
pedestrian traffic, Mercer County Sheriff's Officers were on
site to facilitate the flow of traffic and ensure the safety of the
people walking by, including many families with young [*2]
children.

According to Mercer County Sheriff's Department
Investigator Edward Michael DiNatale, he arrested defendant
after she ignored his repeated and clear instructions not to
hand out pamphlets to people entering the sidewalk from the
crosswalk. Defendant was charged with disorderly conduct,
[N.J.S.A. 2C:33-2\(a\)\(2\)](#), obstructing the administration of law
or other governmental function, [N.J.S.A. 2C:29-1\(a\)](#),
obstructing highways and other public passages, [N.J.S.A.
2C:33-7\(b\)\(1\)](#), and threatening the health and welfare of the
community, in violation of Trenton Ordinance 257-3B.

Represented by private counsel, defendant was tried on these
charges in the Trenton Municipal Court. She was found guilty
of obstructing highways and other public passages, in
violation of [N.J.S.A. 2C:33-7\(b\)\(1\)](#), a petty disorderly persons
offense, and was acquitted on the remaining charges.
Defendant appealed her conviction to the Law Division. *See*
[R. 3:23-2](#). After conducting a de novo review of the record
developed before the municipal court as provided for under
[Rule 3:23-8\(a\)\(2\)](#), the Law Division Judge found
defendant [*3] guilty of violating [N.J.S.A. 2C:33-7\(b\)\(1\)](#).

On appeal to this court, defendant argues the Law Division's

¹ A review of judiciary records indicates defendant is not admitted to
practice law in New Jersey. N.J. Courts, *N.J. Attorney Index Search*,
<https://njcourts.judiciary.state.nj.us/web15z/AttyPAWeb/pages/attorneySearch.faces> (last visited June 11, 2015).

judgment must be reversed as a matter of law because the State did not prove, beyond a reasonable doubt, that she "knowingly" disregarded the officers' instructions. Defendant also argues the officer's decision to arrest her under these circumstances did not constitute the least restrictive alternative available to regulate vehicular and pedestrian traffic, resulting in an infringement of her *First Amendment* rights. We are not persuaded by these arguments and affirm.

We gather the following facts from the record developed before the trial court.

I

The Mercer County Improvement Authority (MCIA) owns and operates the Center Arena. The Circus contracted with the MCIA to perform at the Center Arena from Wednesday, May 16, 2012, to Friday, May 18, 2012. Defendant testified that as an animal rights activist, she has gone to circuses "hundreds" of times since 2002 to protest the abuse of circus animals and educate the public on animal rights issues. According to defendant, the methods she uses are both "peaceful [and] legal." Her "most important objective . . . is to educate."

Defendant began her information dissemination [*4] campaign involving the Circus at the Center Area on Wednesday, May 16, 2012. She intended to distribute written material to the people who were going to the Circus during the three-day period it was scheduled to perform. There were a number of people protesting the Circus on Friday, May 18, 2012, but defendant was not affiliated with any of these protesters. She was there only as an individual.

The Center Arena is located at 81 Hamilton Avenue, which is on the Arena's western side. Route 129 is to the north of Center Arena, South Broad Street is to the south, and to the east is the Front Street on-ramp from Route 129. Hamilton Avenue is a four-lane thoroughfare that ends at South Broad Street. According to Sergeant Sean Lavin of the Mercer County Sheriff's Department, Hamilton Avenue was created

to allow for the cars to get in quickly to clear the roadway because this area is an emergency route to St. Francis Hospital and for Trenton Police to get from the north side of the city to the south side. They use Hamilton Avenue because it's the largest, quickest road.

On the evening of May 18, 2012, pedestrian and vehicular traffic was especially heavy around the area where the Center Arena [*5] is located. This increase in traffic was primarily due to a combination of normal rush hour traffic and the additional traffic generated by the Circus. The River Line Light Rail (River Line) runs parallel to Route 129, and stops about every fifteen minutes near the Center Arena, causing vehicular traffic to slow down at the railroad crossing gates.

Investigator DiNatale was one of the officers assigned to provide traffic control and assist with pedestrian security. He testified that in addition to people who were using Hamilton Avenue to access the Circus, many people used that road to travel between South Broad Street and Route 129.

Sergeant Lavin was in charge of the eight Sheriff's Officers deployed that night to provide security and traffic control. All of the officers were in uniform. The Circus was scheduled to start at 7:00 p.m. Sergeant Lavin estimated that "in the neighborhood of 3500 to 4000 people were expected to attend." Sergeant Lavin testified that based on his experience, the largest number of people would arrive approximately thirty minutes before the start of the show.

The general public was directed to park in lot 2, which is located behind the MCIA building on Hamilton [*6] Avenue and across the street from the Center Arena. Lot 2 is accessed from Hamilton Avenue. Lot 2's parking staff directed patrons to park on the eastern side of lot 2. After this parking area was full, parking staff directed patrons to park behind the MCIA building. There are two crosswalks on Hamilton Avenue allowing pedestrians to cross from the MCIA side of the street to the Center Arena side.

Sergeant Lavin gave the following explanation for his decision to post officers to direct traffic flow and stop vehicular traffic when necessary to ensure the safety of pedestrian traffic:

We have two officers, one in the northbound lane and one in the . . . southbound lane. They work in concert and they call to stop traffic in unison. All traffic is stopped. All the people are crossed from here which is the upper right-hand side, straight across around the corner, down onto the sidewalk. Right here is the entrance to the [Center Arena] Gate C . . . [and] [on] the other side is Gate B[.]

Officers were directed to wait until a large group of pedestrians gathered, stop all traffic, and instruct pedestrians to cross the entrance to lot 2, walk on the sidewalk around the corner of the MCIA building, [*7] and then cross Hamilton Avenue.

Sergeant Lavin testified that he has worked circus events at the Center Arena for the last six years. As a result, he has come to know many of the protestors, including defendant. On the evening of May 18, 2012, there were initially eleven protestors on the side of Hamilton Avenue where the Center Arena is located. Sergeant Lavin testified that prior to an event, he receives an email from the officials of the MCIA, the administration of the Center Arena, or his chief "which usually dictates and declares what areas are off limits to everyone and what areas are off limits specifically to

protestors."

Sergeant Lavin testified that on the night of May 18, 2012, he apprised the protestors that they

weren't allowed within 15 feet of what's arena property and that would be 15 feet from the curb sidewalk here where . . . this double crosswalk is. They weren't allowed 15 feet into the parking lot because that was the property of MCIA. And they weren't allowed 15 feet from the edge of the building . . . anywhere on Hamilton -- anywhere where the physical structure of the building is. . . .

So they had actually drawn [with paint] a line on the sidewalk here, in [*8] the parking lot, that they weren't allowed to go past and a line down the length of the sidewalk.

Sergeant Lavin specifically informed defendant of these restrictions. In addition to these particular areas where protestors were restricted, Sheriff's Officers also did not permit anyone to obstruct the flow of traffic in a crosswalk. According to Sergeant Lavin, after speaking with defendant about these restrictions, she walked onto Hamilton Avenue, approached a stopped motorist, and handed him a pamphlet. Sergeant Lavin admonished defendant that he considered that conduct dangerous. Defendant then walked to the sidewalk located on the Center Arena side of Hamilton Avenue.

According to Sergeant Lavin, defendant's activities were entirely proper after this initial encounter. Sergeant Lavin's assessment of defendant's conduct changed, however, when he noticed defendant "increasingly started stepping to the actual curb itself on the area of Hamilton Avenue where the crosswalk was to engage people." Sergeant Lavin again spoke with defendant, explaining "if you just step back about ten feet and allow these people to safely enter the sidewalk, you can give them whatever literature or talk to [*9] them or . . . engage them . . . but I'm merely concerned with people safely getting on the sidewalk."

In an attempt to dispel any perception of bias or arbitrariness on his part, Sergeant Lavin explained to defendant that two years earlier a young child had been struck by a car and killed while standing approximately 150 feet from the crosswalk. He was thus concerned that her presence at this location would create a backlog of pedestrians in the street or would cause pedestrians to walk beyond the lines of the crosswalk, around cars, in order to reach the sidewalk.

Defendant thereafter crossed Hamilton Avenue to the MCIA side of the street and stood at the corner of the sidewalk, where the lot 2 entrance crosswalk and the Hamilton Avenue crosswalk meet, and resumed distributing leaflets. She

extended her hand with the leaflet to pedestrians while saying, "flyer" or "information." According to Investigator DiNatale, pedestrian traffic was heavy in that area and began to back up between the curb and the MCIA building. Vehicular traffic was also backed up in all directions, and included motorists who were waiting to turn into parking lot 2. DiNatale concluded defendant's activities were [*10] contributing to, if not actually exacerbating, this traffic congestion.

DiNatale testified he approached defendant as she stood on the corner of the sidewalk between the parking lot 2 entrance crosswalk and the Hamilton Avenue crosswalk. He told her to stay ten feet from the crosswalk and requested she stand away from the sidewalk area between the crosswalks.² The following colloquy between defendant and DiNatale formed the basis for defendant's arrest:

DINATALE: This is your second warning to stay away from the crosswalks. You're welcome to come like I told your other gentlemen, anywhere on the sidewalk.

DEFENDANT: I'm not obstructing.

DINATALE: You're not to give out flyers as they're crossing, if one blows out of their hand.

DEFENDANT: I'm - there's nobody.

DINATALE: I'm telling you, do not give out in the crosswalk again, or you will be ticketed.

DEFENDANT: I was not in the crosswalk, I was right here . . .

DINATALE: You cannot . . .

DEFENDANT: . . . I've been sitting here, I've been standing here.

DINATALE: . . . Within ten feet. Same rule there, same rule here. Ten feet.

DEFENDANT: Okay, where's the ten feet?

DINATALE: Ten feet? We're gonna cone it off for you in a bit.

DEFENDANT: Okay, good. [*11]

DINATALE: One, two, three, four, five, six. This crack here will be safe. Ten is probably over there, we'll give you a little leeway there.

DEFENDANT: And what will happen if I go . . . passed this crosswalk?

DINATALE: You're [going to] be arrested.

DEFENDANT: For what?

DINATALE: For failure to comply. Public safety.

DEFENDANT: And what's the — what's the . . .

DINATALE: Public safety. If you're standing out . . .

DEFENDANT: . . . failure to comply in public, sir.

²Defendant video/audio recorded her interaction with Investigator DiNatale. The Law Division Judge viewed the DVD recording as part of the evidence admitted by the municipal court. The DVD is also part of the appellate record.

DINATALE: . . . and you're taking their attention away from what — where they're instructing them to do. As you hand a child a flyer, no problem, if it blows out of their hand, their instinct is to chase after it. We have many cars turning in here. All the officers, all three have to be in sync. The people have to hear us say to stop at a crosswalk. If you take their attention away as you're handing them something — especially a small child, they don't know what you're giving them. If it blew, their instinct is gonna be run and get it. And — and we're here for the safety of my officers, for yourself, and for the people crossing. So give them out freely here, just not as they're crossing. We need them to watch us, and to watch . . . [*12] [INAUDIBLE.]

DEFENDANT: Okay, well I . . . [INAUDIBLE] . . . I'll be on ten foot on this way. Because if I have to be on ten feet, this is probably right — this is probably ten feet from equidistant. So, this is probably just as good. Ten feet from that crosswalk, ten feet from this one. It's — ten feet. It's at least ten feet.

DINATALE: Alright. We're [going to] ticket you.

DEFENDANT: Okay[.]

DINATALE: I'm [going to] place you under arrest . . . [INAUDIBLE] . . . in my custody at this time. And — I'll take you to my vehicle, and you're [going to] be ticketed. Like to put that away?

DiNatale arrested defendant at 6:35 p.m., approximately twenty-five minutes before the start of the Circus.

II

On this evidence, the Law Division Judge found defendant guilty of the petty disorderly persons offense of obstructing highways and other public passages, in violation of *N.J.S.A. 2C:33-7(b)(1)*. He explained his reasoning in a memorandum of opinion. The trial judge found both Sergeant Lavin and [*13] Investigator DiNatale gave defendant clear and specific instructions demarcating the area where it was safe for her to stand and distribute the leaflets. The judge found the limitations imposed by the Sheriff's Officers reflected legitimate public safety concerns because defendant's interactions with the public included children of various ages.

Under *N.J.S.A. 2C:33-7(b)*, a person "in a gathering" is guilty of "obstructing highways and other public passages" if he or she "refuses to obey a reasonable official request or order to move: (1) To prevent obstruction of a highway or other public passage; or (2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard."

Defendant argued before the trial court that she was not within the "crosswalk," as she understood that term to mean, when DiNatale directed her to move. In rejecting this argument, the trial judge held defendant

was put on notice not to impede the flow of pedestrians by handing out her pamphlets as the swarm of pedestrians traversed across the driveway entrance to Lot 2 using the crosswalk to reach the public sidewalk by the MCIA building and to continue their journey across Hamilton Avenue [*14] via the crosswalk to the Arena. . . .

The court agrees [defendant] literally complied with Officer DiNatale's order to remain ten feet from the two-converging crosswalks. . . . Although the sidewalk may not be defined as a "crosswalk," [defendant] was within a public passage contrary to the officer's order.

The Law Division Judge also found defendant's arrest was not overly restrictive. The restrictions imposed by the Sheriff's Officers were reasonably based on the safety of the large number of people who were converging on this location. The officers exhausted less restrictive means of redirecting defendant's activities by providing her with appropriate areas where she could safely exercise her right to express her views. Although the sidewalks and crosswalks near the arena are public fora, the restrictions imposed were grounded on public safety concerns, not on the content of the message.

III

In this appeal, defendant raises the following arguments:

POINT I

DEFENDANT'S CONVICTION MUST BE REVERSED BECAUSE THE COURT FAILED TO REQUIRE PROOF THAT THE DEFENDANT KNOWINGLY REFUSED AN ORDER.

POINT II

DEFENDANT'S CONVICTION MUST BE REVERSED BECAUSE SHE DID NOT KNOWINGLY DISOBEY THE OFFICERS [*15] COMMAND.

A. Defendant Abided By That Which Was Actually Commanded By The Officer, Even If She Did Not Obey That Which He Intended To Communicate.

B. To The Extent That Defendant Disobeyed An Order, She Did Not Believe She Had Done So And Therefore Did Not Act Knowingly.

C. Officer DiNatale's Order Was Not Reasonable Because It Was Not The Least Restrictive Alternative.

We reject these arguments and affirm. Our review of the Law

Division's decision in this appeal is limited to determining whether there is sufficient credible evidence present in the record to uphold the findings of the Law Division, not the municipal court. *State v. Johnson*, 42 N.J. 146, 162, 199 A.2d 809 (1964). As an appellate court, we are not in a position to judge the credibility of witnesses or make our own credibility findings. *State v. Locurto*, 157 N.J. 463, 470, 724 A.2d 234 (1999). Even when the encounter leading to the arrest of defendant is captured in a video/audio recording, as it was in this case, the Supreme Court has made clear we are not at liberty to make our own independent findings based on our assessment of this evidence. *State v. Elders*, 192 N.J. 224, 245, 927 A.2d 1250 (2007). However, we are in no way bound by a trial court's interpretation of the law or the legal consequences that flow from established facts. *State v. Pomianek*, 221 N.J. 66, 80, 110 A.3d 841 (2015).

We begin our analysis by addressing what mental state [*16] or mens rea the State must prove, beyond a reasonable doubt, to find defendant committed the offense of "obstructing highways and other public passages" under *N.J.S.A. 2C:33-7(b)(2)*. Both defendant and the State argue that in order to be found guilty, a person must "knowingly" obstruct a highway or passageway. *Subsection (a) of N.J.S.A. 2C:33-7* requires the State to prove the person acted "purposely" or "recklessly":

a. A person, who, having no legal privilege to do so, *purposely or recklessly* obstructs any highway or other public passage whether alone or with others, commits a petty disorderly persons offense. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

[(Emphasis added).]

Subsection (b) is silent on the question of mens rea:

b. A person in a gathering commits a petty disorderly persons offense if he *refuses to obey a reasonable official request or order to move*:

(1) To prevent obstruction of a highway or other public passage; or

(2) To maintain public safety by dispersing [*17] those gathered in dangerous proximity to a fire or other hazard. [(Emphasis added).]

The parties rely on *N.J.S.A. 2C:2-2(c)(3)* in support of applying a "knowingly" mental state to a *subsection (b)*

offense. *N.J.S.A. 2C:2-2(c)(3)* provides:

Construction of statutes not stating culpability requirement. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. *A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime with the culpability defined in paragraph b.(2) of this section. This provision applies to offenses defined both within and outside of this code.*

[(Emphasis added).]

Both defendant's and the State's reliance on *N.J.S.A. 2C:2-2(c)(3)* in support of a "knowingly"³ mens rea is misplaced, however. As the emphasized section of the statute clearly shows, this provision is intended to apply only to a statute defining a *crime*. Defendant was charged and convicted of a petty disorderly persons offense, [*18] *not a crime*. *N.J.S.A. 2C:1-4(b)* (emphasis added). *See also State v. Dively*, 92 N.J. 573, 585, 458 A.2d 502 (1983).

When the Legislature uses clear language, courts apply the statute "consistent with the plain meaning of the legislative choice of expression," and should not "rewrite a plainly-written enactment of the Legislature [or] presume that the Legislature intended something other than that expressed by way of the plain language." *State v. Fleischman*, 189 N.J. 539, 545, 917 A.2d 722 (2007) (internal citations omitted). The Legislature used the terms "offense" and "crime" distinctly in *N.J.S.A. 2C:2-2(c)(3)*. In using different terms, the Legislature indicated that different states of culpability should be considered depending on the nature of the specific charge.

The State argues that by imposing a mental state of "purposely or recklessly" in [*19] *N.J.S.A. 2C:33-7(a)*, the Legislature revealed its intent to require a "knowing" mens

³ Under *N.J.S.A. 2C:2-2(b)(2)*, a person acts "knowingly"

with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

rea under N.J.S.A. 2C:33-7(b). This approach is equally flawed. "When 'the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.'" In re Plan for the Abolition of the Council on Affordable Hous., 214 N.J. 444, 470, 70 A.3d 559 (2013) (quoting Higgins v. Pascack Valley Hosp., 158 N.J. 404, 419, 730 A.2d 327 (1999)).

The question thus remains: what mental state is required to violate N.J.S.A. 2C:33-7(b)? The answer lies not in the words the Legislature excluded from the statute, but in the text of the statute itself. N.J.S.A. 2C:33-7(b) provides: "A person in a gathering commits a petty disorderly persons offense if he *refuses* to obey a reasonable official request or order to move [.]" (Emphasis added). To "refuse" is an act of defiance. It is "to express oneself as unwilling to accept; to show or express unwillingness to do or comply[.]"⁴ To refuse is "to say that you will not accept (something, such as a gift or offer); to say or show that you are not willing to do something that someone wants you to do; to not allow someone to have (something)."⁵

One who refuses "to obey a reasonable official request or order to move," N.J.S.A. 2C:33-7(b), is engaging in both a knowing and willful act of defiance. [*20] The refusal under N.J.S.A. 2C:33-7(b) involves a physical act that results in the obstruction of traffic and placing others, including the officer, in physical danger. Cf. State v. Camillo, 382 N.J. Super. 113, 118, 887 A.2d 1151 (App. Div. 2005) (construing "obstruction" by means of flight, intimidation, force, violence, or physical interference or obstacle in N.J.S.A. 2C:29-1(a) as requiring some form of physical interference; failure to provide name and address at the time of arrest does not constitute obstruction).

We find support for this approach in the language used by the Legislature in N.J.S.A. 2C:33-1(b):

Failure of disorderly persons to disperse upon official order. Where five or more persons are participating in a course of disorderly conduct . . . a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who *refuses* or *knowingly fails* to obey such an order commits a disorderly persons offense.
[(Emphasis added).]

⁴ *Refuse*, Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/refuse> (last visited June 13, 2015).

⁵ *Ibid*.

It is a well-settled tenet of statutory construction that "words used by the Legislature have a purpose and a meaning and that we cannot assume that the Legislature used superfluous or meaningless language." In re Adoption of N.J.S.A. 13:38-1.3(f). This approach to [*21] statutory construction is intended to avoid any interpretations "that render any part of a statute inoperative, superfluous, or meaningless." Innes v. Innes, 117 N.J. 496, 509, 569 A.2d 770 (1990). Thus, in N.J.S.A. 2C:33-1(b) the words "refuses" and "knowingly fails" must have different meanings or applications.

We construe the term "refuses to obey a reasonable official request or order to move" as requiring a state of mind in which the actor willfully and knowingly defies the reasonable command of a law enforcement officer intended "(1) [t]o prevent obstruction of a highway or other public passage; or (2) [t]o maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard." N.J.S.A. 2C:33-7(b). We reach this conclusion mindful of the Court's admonition in State v. Lashinsky:

An individual may not, in our view, be arrested for disorderly conduct solely because the arresting officer capriciously or in bad faith finds behavior annoying or distracting. To trigger the application of the statute, conduct must be truly obstructive.

. . . .

The average citizen is, likewise, held to a similar standard and deemed capable of differentiating between permissible and impermissible behavior. Reasonableness is the key. Hence, where an officer's [*22] instructions are obviously reasonable, in furtherance of his duties, an individual toward whom such instructions are directed has a correlative duty to obey them. If his refusal to respond results in an obstruction of the performance of the officer's proper tasks, this will constitute a violation of the disorderly persons statute.

[81 N.J. 1, 10-11, 404 A.2d 1121 (1979) (internal citation omitted).]

These words of caution in Lashinsky is reflected in the Legislature's cautionary provision in N.J.S.A. 2C:33-7(b):

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

Returning to the question at hand, defendant's conduct here violated N.J.S.A. 2C:33-7(b)(2) because she willfully and knowingly refused to obey Investigator DiNatale's command to stay and distribute leaflets in a location where her activities

would not obstruct the flow of pedestrian traffic. DiNatale did not act capriciously or in bad faith. His command was objectively reasonable and in furtherance of objectively reasonable public safety concerns. The record supports the trial judge's findings that [*23] both Sergeant Lavin and the arresting officer gave defendant multiple opportunities to avoid arrest and provided her with a reasonable alternative to exercise her constitutionally protected activities.

Finally, defendant's arrest was the least restrictive means of enforcing the statute because the record shows other methods of obtaining defendant's voluntary compliance proved to be futile. Defendant was utterly unwilling to obey the officers' reasonable instructions that were clearly explained to her several times. Her defiance left the Sheriff's Officer who arrested her with no other alternatives.

Affirmed.

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