

To: New Jersey Law Revision Commission
From: Wendy Llewellyn
Re: Meaning of “Tumultuous” and “Public” - N.J.S. 2C:33-2 (*State v. Finnemen*)
Date: September 10, 2018

MEMORANDUM

Executive Summary

In *State v. Finnemen*,¹ the Appellate Division considered whether defendant engaged in “tumultuous” behavior as required for a conviction under N.J.S. 2C:33-2(a)(1), as well as whether the definition of “public” as described in N.J.S. 2C:33-2(b) also applies to the word “public” as it appears in N.J.S. 2C:33-2(a).

In this unpublished opinion, the Appellate Division determined that defendant did engage in “tumultuous” behavior as required under N.J.S. 2C:33-2(a)(1), and “for the present purposes,” determined that “public” as defined in N.J.S. 2C:33-2(b) also applied to the use of “public” in N.J.S. 2C:33-2(a).²

Background

Defendant was charged with disorderly conduct under N.J.S. 2C:33-2(a)(1) after he created a disturbance inside a Walgreens, continued to yell obscenities and make obscene hand gestures toward Walgreens employees after exiting the store, and was observed by responding police officers to be “irate and angrily gesturing with his hands,” after which he entered a nail salon after being told not to and “continued to yell and cause a scene.”³

After being convicted of disorderly conduct under N.J.S. 2C:33-2 and resisting arrest under N.J.S. 2C:29-2(a), first at the municipal level and then by the Law Division judge in a trial de novo, defendant appealed, asserting that, among other issues, his behavior did not rise to the level of “tumultuous” under N.J.S. 2C:33-2(a)(1).⁴

The relevant portion of N.J.S. 2C:33-2(a) states the following:

A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
(1) Engages in fighting or threatening, or in violent or tumultuous behavior ...

¹ *State v. Finnemen*, 2017 WL 4448541 (App. Div. Oct. 6, 2017).

² *Id.* at *4-5.

³ *Id.* at *1-2.

⁴ *Id.* at *1-2, *4.

As “tumultuous” is not defined within the statute, the Appellate Division looked to the Webster’s New Collegiate Dictionary definition as it appeared in 1978, the year N.J.S. 2C:33-2 was enacted,⁵ as well as a definition of “tumult” as used in *United Property Owners Association of Belmar v. Borough of Belmar*, which cited the definition of “tumult” as it appeared in the 1995 version of Webster’s New American Dictionary, to determine that defendant’s behavior in this case did indeed rise to the level of “tumultuous” under N.J.S. 2C:33-2(a)(1).⁶

The Appellate Division then considered whether “public,” as defined in N.J.S. 2C:33-2(b) also applied to N.J.S. 2C:33-2(a), and determined that, “[a]lthough [i]t is not clear whether the Legislature intended [the subsection (b)] definition to apply to [the] use of the word ‘public’ in subsection [(a)], ... for present purposes we assume a consistency of meaning.”⁷

Since N.J.S. 2C:33-2 was enacted some time ago, in 1978, and “tumultuous” is not defined within the statute, leading the court in this case to look back to the dictionary definition that was published at the time the statute was enacted, it may be beneficial to address the word “tumultuous,” and whether the statute would be clearer if “tumultuous” were defined within the statute, or whether a different word or phrase might provide a clearer meaning in the present day.

Further, at least two Appellate Division courts noted it was not clear whether or not the definition of “public” applied to both subsections (a) and (b), indicating that it may be beneficial to clarify this within the statute. The definition of “public” appears in a separate paragraph below subsection (b), so it seems it could be read to either belong with subsection (b), or it could be read as a separate paragraph from both sections (a) and (b) that is meant to apply to N.J.S. 2C:33-2 as a whole.

Finally, there is proposed legislation that would, as noted in the statement accompanying the proposed legislation, “enhance[] the penalties for engaging in the petty disorderly person’s offense of improper behavior while in a place of public accommodation.”⁸ This proposed amendment would leave the current language of the statute unchanged, but would add a subsection (c), where a person engaging in the behavior described in subsection (a) (which includes “tumultuous” behavior) in a place of public accommodation “shall be sentenced to a term of imprisonment of not less than one day or more than 30 days; shall be ordered to perform 50 hours of community service; shall be ordered to pay a fine of \$500 in addition to any

⁵ *Id.* at *5.

⁶ *Id.* (citing Webster’s New Collegiate Dictionary 1258 (1977); *United Prop. Owners Ass’n of Belmar v. Borough of Belmar*, 343 N.J. Super. 1, 67 (App. Div. 2001) (quoting Webster’s New American Dictionary 555 (Smithmark 1995)).

⁷ *Id.* at *4 (quoting *State v. Stampone*, 341 N.J. Super. 247, 254 (App. Div. 2001)).

⁸ 2018 New Jersey Assembly Bill No. 1324, New Jersey Two Hundred Eighteenth Legislature - First Annual Session.

restitution ordered; and shall be banned by judicial order from frequenting the place of public accommodation for not less than one year or more than two years.”⁹

If this proposed legislation were enacted, the penalties for “tumultuous” behavior in a “public” place would include imprisonment, as well as fines. Even without enactment of a modification to the statute, it may be beneficial to more concretely define the parameters of “tumultuous” behavior and whether the definition of “public” applies to N.J.S. 2C:33-2 as a whole, and not just to subsection (b).

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue to determine whether defining “tumultuous,” or replacing it with alternate wording, as well as specifying whether the definition of “public” in N.J.S. 2C:33-2(b) applies to N.J.S. 2C:33-2 as a whole, would help provide clarity as to this criminal charge.

⁹ *Id.*