

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

TOM DEFOE, a minor by and through his)
parent and guardian, PHIL DEFOE,)
)
Plaintiffs,)
)
v.) No.: 3:06-CV-450
) (VARLAN/SHIRLEY)
SID SPIVA, *et al.*,)
)
Defendants.)

MEMORANDUM OPINION

This civil action is before the Court on the Plaintiffs’ Motion and Memorandum in Support of Motion to Reconsider Plaintiffs’ Motion for Summary Judgment [Doc. 340] and defendants’ request for judgment as a matter of law contained within Defendants’ Post-trial Memorandum of Facts and Law [Doc. 341]. The Court has reviewed all relevant filings, including the transcripts of the trial of this matter [Docs.336; 337; 338], and for the reasons stated herein, defendants’ request for judgment as a matter of law will be granted and Plaintiffs’ Motion and Memorandum in Support of Motion to Reconsider Plaintiffs’ Motion for Summary Judgment [Doc. 340] will be denied.

I. Relevant Background¹

Plaintiff Tom Defoe was a high school student who attended Anderson County High School (“ACHS”) and Anderson County Career and Technical Center (“ACCTC”) until at least December 20, 2007. All Anderson County schools have a dress code policy in effect which states in part:

Apparel or appearance, which tends to draw attentions to an individual rather than to a learning situation, must be avoided.

Clothing and accessories such as backpacks, patches, jewelry, and notebooks must not display (1) racial or ethnic slurs/symbols, (2) gang affiliations, (3) vulgar, subversive, or sexually suggestive language or images; nor, should they promote products which students may not legally buy; such as alcohol, tobacco, and illegal drugs.

[Doc. 341.]

On October 30, 2006, Tom Defoe wore a t-shirt to school bearing the image of the Confederate flag. School officials informed Tom Defoe that his shirt violated the school’s dress code policy, and he was asked to remove the shirt or turn it inside out. Tom Defoe refused to comply and was sent home. On November 6, 2006, Tom Defoe wore a belt buckle depicting the Confederate flag to school. Again, a school official informed Tom Defoe that his clothing violated the dress code policy and when Tom Defoe refused to comply with the dress code, he was suspended for insubordination. Prior to these two instances, Tom Defoe

¹Because of the extensive history of this case, only the relevant facts and background are included in this discussion. Because much of the Court’s analysis focuses on whether defendants reasonably forecasted a material and substantial disruption, the facts discussed here focus on the testimony related to this issue.

wore clothing depicting the confederate battle flag to school on several occasions but complied with requests to remove or cover the clothing.

Plaintiffs sued defendants claiming that Tom Defoe's constitutional rights were violated by the schools' ban on displays of the Confederate flag. The case proceeded to trial but ended in a mistrial after the jury was unable to reach an unanimous verdict.

At trial, Tom Defoe testified that he wore depictions of the Confederate flag to display his pride for his southern heritage. Trial Tr. vol. 2, 49-50, 69, Aug, 12, 2008. He stated that his father told him about his ancestors and his heritage and that the flag represents part of who he is. *Id.* at 50. He also testified that he did not believe his displays of the Confederate flag would cause any disruption at the school if there was no rule against such displays. *Id.* at 62.

Greg Deal, principal of ACHS, testified at trial that there had been some racially motivated incidents and interactions before the 2006-2007 school year that caused him to be concerned about students displaying the Confederate flag. *Id.* at 104. He further stated that he believed that a disruption or interference with the learning environment would likely occur if the ban was lifted tomorrow. *Id.* at 148. However, he admitted that he previously stated in a deposition that he would not expect a disruption to occur in the school at that time because of the Confederate flag's presence. *Id.* at 104; 148. He clarified at trial that he meant that he did not think a display of the flag would cause fight or a riot because there was only one African-American student and he could not do much on his own, but that student may have felt threatened or intimidated. *Id.* at 105-06. Specifically, he stated,

I think that if a student comes into your school, a minority student comes into your school, and he walks down a hallway and there's a group of young men standing there with rebel flags on their t-shirts, and they call him the 'n' word or they tell him, 'get your ass out of our hallway,' that's a disruption. That has happened.

Id. at 106.

He also described an incident when students used the Confederate flag to intimidate others. *Id.* at 108. He stated that two days after two African-American young men enrolled in the school, he found a big Confederate flag hanging in the hallway of the school. *Id.* He testified that when he went to take it down, there was a group of "good ol' boys" laughing and snickering. *Id.* at 109. From the circumstances, Mr. Deal stated that he concluded the flag was hung to send the message that the African-American men were not welcome at the school. *Id.*

Additionally, Mr. Deal stated that he has observed racism both in the community and at the school, including people telling him that they are lucky not to have any black people at ACHS. *Id.* at 118. He stated that he went into the 2005-2006 school year anticipating trouble because of his experience in the community and the fact that he had an African-American student enrolling. *Id.* at 119.

Mr. Deal described an incident that occurred at a basketball game in January 2005 between ACHS and Clinton High School. During the warm-up, Oreo cookies were thrown onto the court from the ACHS student section. *Id.* at 123. During his investigation of the incident, students told Mr. Deal that they had thrown the cookies on the floor because a player from Clinton High School was bi-racial. *Id.* at 124. The Clinton High School

student's father wrote a letter to the editor that was printed in the Clinton Courier stating that the ACHS students were racist and the school administration needed to do something about it. *Id.*

Mr. Deal recalled an incident that occurred in September 2003 when some Hispanic students were harassed by self-proclaimed "rednecks" on the basis of their race. *Id.* at 124-26. Mr. Deal stated that the Hispanic students came in to talk to him and reported "the rednecks are harassing us. When we walk by they called us dirty niggers, sand niggers and dirty Mexicans and said you need to leave, get out of our school." *Id.* at 126. The Hispanic students complained that some of the harassing students were wearing shirts with an image of the Confederate flag. When Mr. Deal went to investigate, the group referred to as the rednecks denied the name calling, but those wearing Confederate flag shirts agreed to turn them inside out. *Id.*

Mr. Deal described a situation in which an African-American student from Clinton High School attended at Leadership class at ACHS and was called a "nigger" by several white students. *Id.* at 130-31. He investigated the situation but was unable to identify the responsible students. *Id.* at 131-32.

Mr. Deal stated that he has observed several instances of racially charged graffiti at ACHS. *Id.* at 132-142. He described graffiti in the auditorium as being a swastika with "the 'F' bomb, 'hell yeah,' 'niggers,' [and] 'white power'" written near it. *Id.* at 133. On the football bleachers, he discovered graffiti reading, "White 4 Life" and "I Hate Niggas, J/K AVM." *Id.* at 135-40. He indicated that he understood J/K to mean "joking" and AVM to

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