

Lawsuit over students' memorial T-shirts can proceed

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Posted By David L. Hudson Jr. On November 15, 2011 @ 11:48 am

Three siblings who sought to honor a slain family friend and fellow student with T-shirts, armbands and other insignia can have their day in court, as a federal judge in Nebraska refused to dismiss their lawsuit.

The case arose out of tragic circumstances — the June 2008 shooting death of Julius Robinson, a student at Millard South High School in Omaha. He allegedly was shot and killed by a member of the Omaha Mafia Bloods, a gang. His family and friends insist that Julius was not a gang member, and in fact had formed “Loc’ed Out Criminals” or “LOC 228,” a group that encouraged other kids to leave gangs.

Dan Kuhr was close friends with Robinson. “Dan and Julius were best friends since the 7th grade and they wrestled together,” said Kuhr’s attorney, [Brian Jorde](#). “They were literally like brothers.” Robinson often stayed at the Kuhr home.

Kuhr and others created memorial T-shirts, key chains and wristbands to honor Robinson and raise money for the Robinson family. The shirt featured two pictures of Robinson on the front with the text, “Julius, R.I.P, 6-18-90, 6-15-08.” The back of the shirt read, “Only God Can Judge Me Now.” The wristbands and key chains read, “In Loving Memory, Julius Robinson, #33,” which was Robinson’s football jersey number.

Dan wore the T-shirt to his school at the time, Millard Learning Center. His younger brother, Nick, wore one to Millard South High School several times. Their sister, Cassie, also wore a shirt and wristbands to Millard South.

School officials informed the Kuhr siblings that they could not wear the memorial T-shirts because of a fear that they suggested gang affiliations. School police officers said the Omaha Police Department Gang Unit had warned them about “R.I.P” T-shirts worn by gangs honoring slain members.

In September 2008, school officials suspended Nick and Cassie for two days for continuing to wear the shirts. In protest against the school’s ban, a group of other Millard South students wore the shirts and held signs at a church across the street from the school. Although the principal feared that gang members might retaliate against the demonstration, nothing happened.

When the school opened on the day of the protest, 30 students wore the T-shirts to school. Officials suspended 26 of them. They then banned the wearing of any items featuring the name Julius. Later at Dan’s school, he also was told he couldn’t wear the shirt.

Jeanne Kuhr, the siblings' mother, filed a lawsuit on behalf of her children in federal court, alleging a violation of their constitutional rights. The lawsuit contended that the ban on the T-shirts and wristbands infringed on the siblings' free speech.

School officials argued that the clothing ban was justified because the principal reasonably feared that gang members might retaliate against individuals who wore the R.I.P. shirts.

U.S. District Judge Laurie Smith Camp refused to dismiss the Kuhrs' claims in her Nov. 8 opinion in *Kuhr v. Millard Public Schools*.

Camp recognized that school officials often have to act quickly when student safety is involved. However, she reasoned that a jury could find that the school officials overreacted out of fear rather than reasonably forecasting a substantial disruption by student expression, as required under the U.S. Supreme Court's 1969 student-speech precedent in *Tinker v. Des Moines Independent Community School District*.

Camp wrote that "in the present case, questions of fact remain whether [the Kuhrs'] speech occurred in a context likely to provoke gang violence or other disruptions of school activities." She noted that school officials had failed to show that there were actual gang problems caused by the Omaha Mafia Bloods or LOC 228 at Millard South High School.

"We are encouraged that the judge recognized the importance of school officials being very clear when they make a determination that student expression will likely constitute a substantial disruption," [Jorde](#) said. "The law has very specific standards. Unfortunately, the school district did not have the requisite information that would have reasonably allowed them to forecast a substantial disruption."

"The question I have for the school officials is this: What interferes with students' educational process more - taking them out of school by a suspension or the students exercising their first amendment rights?" [Jorde](#) said. "I would submit that the suspension of [26] students harms the educational process more than a particular item of clothing."

He said the case was scheduled for a jury trial in late January.

The school district attorney did not respond to a request for comment. But http://journalstar.com/news/local/crime-and-courts/judge-oks-lawsuit-against-millard-school-district/article_97d84de2-cd19-5abf-98b0-08f024a9c53e.html JournalStar.com reported that the school district issued a statement:

"To protect students and staff and maintain the security of the school, the decision was made to not allow students to wear T-shirts commemorating the death of a student from a drive-by shooting. School officials do not have to wait for disruptions to actually occur. Instead, they can properly act based on information which reasonably forecasts a disruption. District officials here reasonably acted in compliance with the law."

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