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IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 6132-02
vs. :
MICHAEL MARCAVAGE :

Wednesday, March 12, 2003

BEFORE: HONORABLE ROBERT J. SHENKIN
Chester County Courthouse
Courtroom No. 2
West Chester, Pennsylvania

APPEARANCES:

ALEX SILOW,
For Commonwealth

MICHAEL MARCAVAGE,
Pro se.

Reported By: HELEN M. CONOVER
Official Court Reporter

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I N D E X

COMMONWEALTH'S TESTIMONY

<u>WITNESS</u>	<u>DR</u>	<u>CR</u>	<u>RDR</u>	<u>RCR</u>
Seargeant Thomas Sjostrom	8	16	--	--

DEFENDANT'S TESTIMONY

<u>WITNESS</u>	<u>DR</u>	<u>CR</u>	<u>RDR</u>	<u>RCR</u>
Linda Beckman	29	--	--	--
Michael Marcavage	35	38	--	--

E X H I B I T S

COMMONWEALTH'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MRKD</u>	<u>ADMTD</u>
C-1	- Bull Horn	15	16

1 P R O C E E D I N G S

2
3 THE COURT: Commonwealth versus
4 Michael Marcavage, on the charge of disorderly
5 conduct? Is that the charge?

6 MR. SILOW: That's correct, your
7 Honor.

8 THE COURT: You're Mr. Marcavage?

9 MR. MARCAVAGE: Yes, your Honor. I
10 was under the impression that this was an
11 arraignment. The case was heard in the district
12 court in my absence, because the hearing
13 information was sent to the wrong address.

14 I stand before you today and ask for
15 a continuance based on these facts: I have not
16 had the opportunity to file pretrial motions. In
17 addition, I intend on subpoenaing Governor Rendell,
18 since he is the one who authorized and asked me to
19 speak at his rally. Because of his executive
20 privileges, I will need some time to do this. Once
21 again, your Honor, I ask that the Court grant me a
22 continuance based on these reasons.

23 (Pause.)

24 THE COURT: All right. There was a

1 hearing before the district justice, apparently in
2 your absence; is that correct?

3 MR. MARCAVAGE: That is correct, your
4 Honor.

5 THE COURT: And you say you didn't
6 know anything about that until you were notified
7 that you had been convicted?

8 MR. MARCAVAGE: Exactly.

9 THE COURT: And then you took an
10 appeal?

11 MR. MARCAVAGE: Yes.

12 THE COURT: And for some reason you
13 thought this was an arraignment?

14 MR. MARCAVAGE: Yes.

15 THE COURT: The basis for your
16 request for a continuance is what?

17 MR. MARCAVAGE: On the understanding
18 -- misunderstanding that this was an arraignment,
19 and that this was not heard in the district court
20 with my presence; therefore, I did not have an
21 opportunity to plead guilty or not guilty or
22 request a hearing.

23 THE COURT: Well, you have an
24 opportunity now. If you want to plead guilty, you

1 can do it now.

2 MR. MARCAVAGE: Well, I'm pleading
3 not guilty, your Honor.

4 THE COURT: Well, now you had the
5 opportunity to plead not guilty, that takes care of
6 that.

7 The fact that there was a hearing
8 held in your absence is a non-event. Had you not
9 been notified of it in time to file an appeal, that
10 would have been a different story, but since you
11 did find out about it in time, you filed the
12 appeal, this is a hearing de novo, so the only
13 issue is whether you are prepared to present your
14 defense. If the only thing you're missing is the
15 opportunity to subpoena Governor Rendell, you'll
16 have to do something better, because we're not
17 going to continue the matter for you to try to do
18 something that isn't going to happen. What's
19 next?

20 MR. MARCAVAGE: Well, understand I am
21 not fully prepared.

22 THE COURT: Why is that?

23 MR. MARCAVAGE: Because I was under
24 the understanding that this was an arraignment.

1 THE COURT: Well, fine, so if the
2 matter is continued, what is it you're going to do
3 to prepare yourself to defend?

4 MR. MARCAVAGE: I would like to file
5 pretrial motions and also the opportunity to
6 subpoena Governor Rendell. Those are the two
7 requests.

8 THE COURT: Was Governor Rendell
9 there? Is he a witness to this?

10 MR. MARCAVAGE: Yes. He's the one
11 who had asked me to speak at his rally and is
12 involved directly in this matter. Therefore, it's
13 important that his presence or that he responds to
14 the questions I present in order for me to defend
15 myself in this matter. It is only right that the
16 Court would allow me to take action on the
17 subpoena.

18 THE COURT: Mr. Silow, what's the
19 Commonwealth's position?

20 MR. SILOW: We are opposed to any
21 continuance whatsoever in this matter, your Honor.
22 The sergeant in this case has come out and made his
23 appearance here today. We would ask --

24 THE COURT: What's the nature of your

1 evidence going to be?

2 MR. SILOW: Excuse me, your Honor?

3 THE COURT: What is the nature of
4 your evidence going to be?

5 MR. SILOW: Testimony on behalf of my
6 witness.

7 THE COURT: Yes, but I have to have
8 some idea what it is to be able to judge --

9 MR. SILOW: That he was creating a
10 disturbance during a public speaking engagement for
11 the now Governor Rendell, your Honor.

12 THE COURT: All right. Request
13 denied. We'll proceed.

14 MR. MARCAVAGE: Your Honor, I would
15 like the record to show that the defendant is not
16 fully prepared for trial today to represent
17 himself, to represent himself and to proceed would
18 be an issue raised by the defendant on appeal, if
19 necessary, to the Superior Court.

20 THE COURT: Call your first witness,
21 please.

22 MR. SILOW: Your Honor, I would first
23 ask for sequestration.

24 THE COURT: Excuse me?

Sjostrom - direct

1 MR. SILOW: We would also ask for
2 sequestration.

3 THE COURT: Of who?

4 MR. SILOW: If the defendant has any
5 witnesses, which I believe he does.

6 THE COURT: Do you have witnesses
7 here with you?

8 MR. MARCAVAGE: Yes, I do have
9 witnesses, your Honor.

10 THE COURT: Request is denied. Let's
11 go.

12 MR. SILOW: We call Sergeant Sjostrom
13 to the stand, your Honor.

14 COMMONWEALTH'S TESTIMONY

15 ...SERGEANT THOMAS SJOSTROM,
16 S-J-O-S, as in Sam, T-R-O-M, having been duly
17 sworn, was examined and testified as follows...

18 DIRECT EXAMINATION

19 BY MR. SILOW:

20 Q. Sergeant, can you please state where
21 you're currently employed?

22 A. With the Phoenixville Borough Police
23 Department in Chester County, Pennsylvania.

24 Q. And how long have you been employed in

Sjostrom - direct

1 that capacity?

2 A. About 13 and a half years.

3 Q. And did you say that you were a sergeant?

4 A. Yes.

5 Q. Have you been an officer anywhere else
6 before this?

7 A. No, I was not.

8 Q. I would like to now direct your attention
9 to May 19th of last year, 2002, around 3 p.m., and
10 I believe it was a Sunday afternoon. What if
11 anything significant happened that day that brought
12 you into court here today?

13 A. I'm a patrol sergeant. We were scheduled
14 day shift that day. I was notified ahead of time
15 of a democratic rally that was to take place at the
16 Reeves Park, which is located at Third Avenue and
17 Starr Street in Phoenixville.

18 Q. If I may just interrupt you for a second.
19 Is that in Chester County, Pennsylvania?

20 A. Yes, it is.

21 Q. While you were at the park, did you come
22 in contact with anybody in the courtroom that day
23 that brought you into court here today?

24 A. Yes, I did.

Sjostrom - direct

1 Q. And can you please state what the person
2 is wearing and where he is sitting for the record?

3 A. The defendant is wearing a black suit,
4 light colored shirt.

5 Q. Where is he sitting?

6 A. At the defense table.

7 MR. SILOW: Let the record reflect
8 that the witness did identify the defendant,
9 your Honor.

10 THE COURT: Noted.

11 MR. SILOW: Thank you, your Honor.

12 BY MR. SILOW:

13 Q. And what happened then?

14 A. I had two bike officers assigned to the
15 park for observation and any problems that may
16 occur at this rally. They were under instructions
17 that if anything was to happen they were to notify
18 me immediately so I may respond to the scene.

19 I was notified, I did respond to the
20 scene at that time.

21 Q. What happened then?

22 A. I did observe Mr. Marcavage to the rear of
23 the benches where people were sitting. There were
24 people on stage giving speeches. I did observe

Sjostrom - direct

1 Mr. Marcavage standing on the rear of the bench,
2 actually standing on the bench to the rear of the
3 crowd, with a small microphone, and he was shouting
4 through the microphone into the crowd.

5 Q. Okay. And what did you do with the
6 microphone -- excuse that. Strike that.

7 And what happened next?

8 A. I also observed the crowd yelling back at
9 him to stop his actions so they can proceed to hear
10 the speech. There were other protestors also with
11 signs, et cetera, to the back where Mr. Marcavage
12 was standing. My concern, at that point, because
13 the crowd was getting hostile towards
14 Mr. Marcavage, and because of the fact that he was
15 using a PA system or a small microphone to voice
16 his opinion. I did approach Mr. Marcavage, I asked
17 him to step down off the bench so I may proceed to
18 talk to him.

19 Q. What happened then?

20 A. I then asked him to stop using the
21 microphone, if he wants to be heard -- to be here
22 in a protest or a show of solidarity, solidarity
23 with his other group, that's fine, but the PA
24 system and the disruption has to stop.

Sjostrom - direct

1 Q. And what did the defendant say, if
2 anything, at this time?

3 A. He proceeded to give me an argument at
4 that point in time. And basically I came down to
5 the fact that if he continued to use the microphone
6 and he continued to cause a disturbance, that he
7 would be asked to leave the park.

8 Q. And did he stop at that time using the
9 microphone?

10 A. Yes, he did.

11 Q. Did you later come in contact with the
12 defendant that day?

13 A. Yes.

14 Q. And under what circumstances was that?

15 A. After I observed for a while that things
16 were calmed down, everything was okay, I did leave,
17 and when Mr. Rendell arrived, I was called back to
18 the scene.

19 Q. And why were you called back to the scene?

20 A. I told my officers when Mr. Rendell got
21 there to call me back, I wanted to be present.

22 Q. Did you come in contact with the defendant
23 at that time also?

24 A. Yes, I did. Yes, I did.

Sjostrom - direct

1 Q. And what happened? Under what
2 circumstances did you come in contact with the
3 defendant?

4 A. A few minutes into the -- to Mr. Rendell's
5 speech, Mr. Marcavage was seen running up the
6 center aisle of the benches, carrying a large sign,
7 probably about three-foot-by-four-foot sign, and he
8 was advancing in a quick motion towards Mr. Rendell
9 while he spoke.

10 Q. What happened after that?

11 A. The crowd became, again, angry with
12 Mr. Marcavage's actions. One person in the crowd
13 actually ran up and grabbed the sign and took off
14 running. Mr. Marcavage continued towards
15 Mr. Rendell, who was up on stage. And there's an
16 area between the front of the benches and the
17 stage, I'd say there's about a 20-foot area where
18 nobody else was standing, and Mr. Marcavage
19 advanced to that spot and in front of Mr. Rendell.

20 Q. And was that marked off that you couldn't
21 enter that area?

22 A. No, it was not.

23 Q. What happened next?

24 A. At that time he proceeded, Mr. Marcavage

Sjostrom - direct

1 proceeded to yell and point at Mr. Rendell,
2 insisting that he be heard, as Mr. Rendell was
3 attempting to give a speech.

4 Q. How did the crowd seem at this time?

5 A. At that time the crowd continued to yell
6 and get angry with Mr. Marcavage. Other protestors
7 that were there weren't involved with
8 Mr. Marcavage's actions.

9 At that point in time, I was about to
10 approach and ask Mr. Marcavage to step away from
11 the stage, when Mr. Rendell actually stopped, gave
12 Mr. Marcavage an opportunity to speak. He actually
13 leaned down and handed Mr. Marcavage the
14 microphone. He said -- or whatever. He didn't
15 actually address him as anything. He said, He has
16 something to say, here, I'm going to give you a
17 minute to talk, here's the microphone, it's yours.

18 Mr. Marcavage then proceeded to go on
19 about an incident or incidents at the Phoenixville
20 Hospital, and then after he got done saying what he
21 had to say, he handed the microphone back to
22 Mr. Rendell.

23 Q. And what happened after that?

24 A. Mr. Rendell said, Okay, are you done? And

Sjostrom - direct

1 then he proceeded to give his speech. He gave the
2 man an opportunity to speak, he spoke, and then at
3 that point Mr. Rendell was going to proceed with
4 his speech. I actually thought that was going to
5 be the end of it.

6 Q. But was it the end of it?

7 A. No, it was not.

8 Q. What happened after that?

9 A. When Mr. Marcavage felt that he was
10 ignored, he then continued to yell into the crowd,
11 yell at Mr. Rendell, and proceed to interrupt the
12 speech.

13 Q. And was he using the bull horn at all?

14 A. I don't recall if he was using the bull
15 horn at that point in time. I know at one point
16 one of my officers did confiscate the bull horn
17 from him. We then approached Mr. Marcavage. We
18 got close enough to talk to him to say, look, he
19 needed to stop and leave the park at that point in
20 time.

21 MR. SILOW: Can I have this marked as
22 C-1, for identification purposes, your Honor.

23 (Whereupon, an item was marked, for
24 identification, as Commonwealth's Exhibit C-1

Sjostrom - direct/cross

1 at this time.)

2 BY MR. SILOW:

3 Q. Sergeant, I'm now handing you what has
4 been marked as C-1, for identification purposes.
5 Do you recognize what I handed you?

6 A. Yes, I do.

7 Q. And what is that, if you know?

8 A. This is the loud speaker that he was using
9 that day.

10 MR. SILOW: I'll move for the
11 admittance of C-1 into evidence at this time,
12 your Honor.

13 THE COURT: Any objection?

14 MR. MARCAVAGE: No.

15 THE COURT: It's admitted.

16 MR. SILOW: No further questions at
17 this time, your Honor.

18 THE COURT: Cross-examine.

19 CROSS-EXAMINATION

20 BY MR. MARCAVAGE:

21 Q. Officer -- Sergeant Sjostrom; is that
22 correct?

23 A. Yes.

24 THE COURT: Sir, do you want to

Sjostrom - cross

1 remain at the table while you question,
2 please.

3 MR. MARCAVAGE: Yes, Sir.

4 THE COURT: Please sit down.

5 BY MR. MARCAVAGE:

6 Q. Did you receive any complaints from anyone
7 in the park?

8 A. Yes.

9 Q. Okay. Were these just general complaints
10 or were they specific people who complained to you
11 concerning my actions?

12 A. I had more than one person approach me and
13 complain about your actions.

14 Q. Did you record their names?

15 A. At that time, no, I did not.

16 Q. Why was it that you didn't think it was
17 necessary to record individuals who were
18 complaining about my speech?

19 A. Because at that point I was observing the
20 actions.

21 Q. How did you determine that the general
22 complaints were, the annoyance level exceeded the
23 law, the complaints that were made, how did you
24 determine that the individuals were saying my

Sjostrom - cross

1 speech was against the law?

2 A. Could you rephrase the question, please?

3 Q. Sure. What I'm trying to understand is,
4 is there an annoyance level that needs to be met in
5 order for you to make an arrest based on any law?

6 A. We have disorderly conduct, which is
7 unreasonable noise, and unreasonable noise can be
8 anything that affects other people.

9 Q. Was I arrested under that particular law?

10 A. You were cited for disorderly conduct.

11 Q. What do you understand disorderly conduct
12 to be?

13 A. Creating a hazardous condition. Causing
14 annoyance to others.

15 Q. Okay. Well, let me read Section 5503,
16 disorderly conduct, Subsection (a): Offense
17 defined: "A person is guilty of disorderly conduct
18 if, with intent to cause public inconvenience,
19 annoyance, or alarm or recklessly creating a risk
20 thereof, he: No. 1, engages in fighting or
21 threatening or in violent behavior.

22 No. 2: Makes unreasonable noise.

23 No. 3: Uses obscene language or
24 makes an obscene gesture.

Sjostrom - cross

1 Or, No. 4: Creates a hazardous or
2 physically offensive condition by any act which
3 serves no legitimate purpose of the actor."

4 According to the citation --

5 MR. SILOW: I would like to object at
6 this time, your Honor. Is there a question
7 here, or --

8 THE COURT: Well, he's finally
9 getting to it. If you had objected a little
10 bit ago, it might have helped, but I think he's
11 now getting to the question.

12 BY MR. MARCAVAGE:

13 Q. The citation says --

14 THE COURT: Overruled.

15 BY MR. MARCAVAGE:

16 Q. -- I was charged with Section 5503
17 Subsection (a)(4), which would be: Creates a
18 hazardous or physically offensive condition by any
19 act which serves no legitimate purpose of the
20 actor."

21 So, Officer, I wanted to know why I
22 was not charged with Section 5503(a)(2), which is,
23 "Makes unreasonable noise."?

24 THE COURT: Do you want to object

Sjostrom - cross

1 now?

2 MR. SILOW: Yes, objection.

3 THE COURT: Sustained. This isn't a
4 question of what you weren't charged with, it's
5 a question of what you were charged with, so it
6 doesn't matter why you weren't charged with
7 other offenses. Next question.

8 BY MR. MARCAVAGE:

9 Q. Sergeant, did I create a hazardous or
10 physically offensive condition by any act which
11 served no legitimate purpose of the actor?

12 A. Yes.

13 Q. And in what way did I do that?

14 A. Created a hazardous condition by creating
15 a hostile crowd towards your physical well-being.

16 Q. And did I create a physically offensive
17 condition?

18 A. I wouldn't say a physically offensive
19 condition, no.

20 Q. And would you say that my act had no
21 legitimate purpose?

22 A. Correct.

23 Q. Did you understand why I was there at the
24 rally?