

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL ANTHONY MARCAVAGE,)	Cause Number:
)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
CITY OF PHILADELPHIA, PENNSYLVANIA;)	
SERGEANT WARREN EDWARDS,)	
individually, and in his official capacity as a)	
Philadelphia police officer; OFFICER JOHN)	
DOE , individually, and in his official capacity as)	
a Philadelphia Police Officer; OFFICER JANE)	
DOE , individually, and in her official capacity as)	
a Philadelphia Police Officer,)	
)	
Defendants.)	

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 to protect the constitutional rights of the Michael Anthony Marcavage (hereinafter "Plaintiff") from the unconstitutional policies, practices and customs of the City of Philadelphia (hereinafter "Defendant"), and its duly appointed and/or elected officials. These policies, as evinced through Defendant's unlawful arrests, harassment, and intimidation, have the effect of frustrating and interfering with the exercise of Plaintiff's constitutionally protected speech activities and free exercise of religion. In particular, in enforcing such policies, Defendant has, in effect, forbidden Plaintiff from expressing his constitutionally

protected religious viewpoint on the public ways in the City of Philadelphia, Pennsylvania, without the constant fear of arrest, sanction or harassment.

2. This action is also brought pursuant to various state laws. Plaintiff seeks a declaratory judgment, preliminary and permanent injunctive relief, nominal damages for actions of Defendants that violated their constitutional rights, and compensatory and punitive damages for other injuries suffered as a result of Defendant's actions.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343 (a)(3), (4), which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights, privileges and immunities as set forth in paragraphs one (1) through two (2). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1367 (a), which confers supplemental jurisdiction over state claims on federal district courts.

4. This action is also authorized by 42 U.S.C. § 1983, because Defendant is a state actor who has abridged Plaintiffs' constitutional rights. The Court may address declaratory relief requested pursuant to 28 U.S.C. § 2201 and 2202 and 42 U.S.C. § 1983.

5. Venue is proper in the Eastern District of Pennsylvania, pursuant to 28 U.S.C. § 1391(b), because the claims arose in the district.

III. IDENTIFICATION OF PARTIES

6. Plaintiff Michael Anthony Marcavage is a citizen of the United States and a resident of Lansdowne, Pennsylvania.

7. Defendant City of Philadelphia, Pennsylvania, is a municipal corporation existing under the laws and Constitution of the State of Pennsylvania, and is a corporate

entity capable of suing and being sued. Defendant City operates and maintains the Philadelphia Police Department, whose officials have relied upon unconstitutional practices, policies and/or customs that is infringing upon Plaintiffs' constitutional and statutory rights.

8. Upon information and belief Defendant Sergeant Warren Edwards is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint he was employed by the Philadelphia Police Department. He is sued both in his individual and official capacities.

9. Upon information and belief, Defendant Officer John Doe is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint he was employed by the Philadelphia Police Department. He is sued both in his individual and official capacities.

10. Upon information and belief, Defendant Officer Jane Doe is a citizen of the United States and a resident of Pennsylvania. At all times relevant to this complaint she was employed by the Philadelphia Police Department. She is sued both in his individual and official capacities.

VI. ALLEGATION OF FACT

11. Plaintiff is a devout Christian who believes that it is his duty to be in God's Will and adhere to the teachings of the Bible. Among those teachings is the Biblical mandate to spread the Gospel of Jesus Christ through evangelism.

12. Included in Plaintiff's evangelistic ministry, is his duty to educate the American populace of the inherent harm caused by the sinful nature of our country. Such sin includes, but not limited to, sexually oriented businesses, homosexuality and abortion.

13. Plaintiff believes that the activities and establishments on South Street, a common point of social gathering and tourism, is not only harmful to those partaking in the activities, but also inflicts harm on all those in the community.

14. Plaintiff also believes that homosexual behavior is inherently sinful and harmful to those partaking in such a lifestyle.

15. Plaintiff further believes that a person can be freed from such harmful consequences if they repent from such a lifestyle and embrace the love of Jesus Christ. Thus, the need for Plaintiff to evangelize at any large public gatherings, such as busy street corners, that provides Plaintiff with an environment to preach the Gospel to as many people as possible.

16. In order to rectify this harm, spread his constitutionally protected message and persuade fellow citizens to the negative side effects of the of the above listed activities, Plaintiff engages in constitutionally protected activities on the public ways of Philadelphia that include, but are not limited to, open-air preaching, distributing Gospel literature, sidewalk ministering/counseling, and the displaying of signs relating to the salvific power of Jesus Christ

17. Because of the unconstitutional policies, practices and customs of Defendant and its duly appointed and/or elected officials, Plaintiff has been denied his rights under the First, Fourth and Fourteenth Amendments of the United States Constitution and has suffered various injuries under the protections bestowed to him by the State of Pennsylvania.

Preaching the Word of God is Disorderly Conduct in Philadelphia

18. On or about October 31, 2002, Plaintiff arrived at the corner of Fourth Street

and South Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as open-air preaching.

19. While Plaintiff was preaching and handing out Gospel literature to those individuals passing by, Officer Melvin Brooks approached Plaintiff and informed Plaintiff that he could not be engaged in such activities.

20. Plaintiff then asked Officer Brooks what specific conduct was causing the disturbance/problem. Officer Brooks responded that "it," i.e. street preaching open-air preaching, was not appropriate.

21. In an attempt to resolve the problem without incident, Plaintiff asked Officer Brooks whether there would be a more "acceptable" place to engage in his constitutionally protected activities.

22. Officer Brooks ignored Plaintiff's inquiry.

23. Plaintiff then volunteered to cross the street to the corner of Fifth and South, an idea agreeable to Officer Brooks.

24. Once Plaintiff relocated across the street he began to engage in his constitutionally protected street preaching activities.

25. On October 31, 2002, Halloween night, loud noise from the local bars and various vehicles was high, drowning out Plaintiff's message. In order to make his message understandable and available to the ears of the public, Plaintiff decided to use sound amplification.

26. Shortly after Plaintiff's use of sound amplification, he was approached by two Philadelphia Police Officers.

27. Another officer informed the Plaintiff that he could not use the sound

amplification because he was in violation of a city ordinance proscribing use of sound amplification specifically on South Street.

28. Plaintiff immediately volunteered to lower the megaphone, but the offer was refused by the police officers. The police officer then reiterated the statement that no sound amplification was permitted on South Street.

29. At this time Plaintiff agreed to stop using the megaphone.

30. Plaintiff, attempted to locate the statute forbidding the use of sound amplification on South Street referred to by police officer.

31. While Plaintiff had others searching for the ordinance, Plaintiff continued to hand out religious tracts Gospel literature and preach without the benefit of his megaphone.

32. On the date of the incident, the City of Philadelphia had no ordinance banning the use of sound amplification.

33. At this point Plaintiff telephoned the Philadelphia Police Department and asked if there was any known ordinance proscribing the use of sound amplification of the public ways of South Street.

34. The operator responded by dispatching a Supervisor to Plaintiff's location.

35. The supervisor dispatched was the same officer who had previously told Plaintiff he was prohibited from using the megaphone.

36. Plaintiff approached the police officer and asked, specifically, which statute bans the use of sound amplification on South Street.

37. The police officer responded by stating he was not going to provide Plaintiff with the information requested.

38. Plaintiff inquired as to why the police officer would not provide the ordinance information and the police officer responded by pointing his finger in Plaintiff's face and stating that if the Plaintiff used the megaphone again, Plaintiff would be arrested immediately.

39. Again, Plaintiff specifically inquired as to what law was being broken.

40. At this time the police officer began to yell and demanded that Plaintiff move because Plaintiff was not permitted to stand on the public sidewalk.

41. The police officer then left the scene.

42. Plaintiff prayed and decided that he was being called to continue his evangelistic ministry.

43. Plaintiff relocated to the original intersection, the corner of Fourth and South, and began to preach with his megaphone.

44. The megaphone was on a low setting and at a comparable noise level with the music emanating from Pomodoro Bar and Pizza, an eatery located directly behind Plaintiff.

45. Immediately after Plaintiff began to engage in the constitutionally protected activity of open-air preaching, three police officers, two female, one male, approached Plaintiff.

46. The male officer grabbed Plaintiff, placed his hands behind his back, handcuffed him, and placed Plaintiff under arrest.

47. Plaintiff was calm, non-argumentative, non-threatening and fully cooperating with the authorities.

48. Despite such cooperation, the police officer pushed and shoved Plaintiff,

literally dragging him to the police cruiser.

49. The officers then took Plaintiff, slammed him up against a storefront window and demanded information and identification.

50. Plaintiff provided his name and address.

51. The Officers then demanded Plaintiff's social security number, which Plaintiff refused to give. This refusal resulted in Plaintiff once again being slammed against the storefront window.

52. After an unsuccessful attempt to obtain Plaintiff's social security number, the Officers threw Plaintiff into the back of their cruiser and took him down for booking and processing.

53. At no time prior to his arrival at the booking station was Plaintiff informed as to what ordinance he had violated and what charges were going to be brought against him.

54. While at the booking station, Plaintiff was continually harassed, intimidated, and mocked because of his religious beliefs.

55. The female officer taking Plaintiff's information threatened Plaintiff that at any time he could be arrested for handing out Gospel literature because in Philadelphia such action is against the law if Plaintiff does not have a permit.

56. Plaintiff has yet to find a statute support such a blatant infringement of one's constitutional rights.

57. When asked what the charging instrument would be, the female officer told Plaintiff that because there is no ordinance specifically addressing sound amplification, he would be charged under Philadelphia's disorderly conduct ordinance. This statement

directly contradicts previous statements by the Philadelphia police Philadelphia had an ordinance specifically proscribing sound amplification on South Street.

58. After processing was completed, Plaintiff was taken to a jail cell in which he was subject to further interrogation.

59. After twelve (12) hours of sitting in jail for exercising his constitutional rights, Plaintiff was released and charged with disorderly conduct.

60. Plaintiff was initially found guilty in Philadelphia Municipal Court, but charges were dismissed on appeal because Plaintiff's conduct was protected by the First Amendment.

Police Muzzle the Gospel Message on March 21, 2003

61. On or about March 21, 2003, Plaintiff arrived at South Street, located within the jurisdiction of the City of Philadelphia, to engage in the constitutionally protected activity commonly referred to as street preaching open-air preaching.

62. On this particular evening, Plaintiff was accompanied by other Christians, who accompanied Plaintiff to South Street in an effort to assist Plaintiff in his evangelistic ministry.

63. While Plaintiff was preaching and handing out tracks Gospel literature to those individuals passing by, Officer Jane Doe approached Plaintiff and informed that he could not be engaging in such activities.

64. Specifically, Officer Jane Doe targeted the alleged loudness of Plaintiff's speech and threatened that Plaintiff was in violation of Philadelphia Municipal Ordinance § 12-1126.

65. Plaintiff attempted to inquire as to the scope of § 12-1126, but Officer Jane

Doe continually met his inquiries with hostilities and threats of arrest.

66. § 12-1126 states “no person, *while driving, parked or in control of any vehicle*, shall operate a radio, tape player, or any other type of sound reproduction device, in any area within the City at a sound level which produces a sound audible at distance greater than twenty-five feet from the location of such radio, tape player, or other sound reproduction device....”

67. At no time during Plaintiff’s open-air preaching activities was Plaintiff driving, parked or in control of any vehicle’s sound system.

68. Hence, Officer Jane Doe, in an attempt to censor Plaintiff’s message, threatened Plaintiff with a citation under an ordinance that was clearly inapplicable.

69. Officer Jane Doe continued by telling Plaintiff he was forbidden from using a megaphone—such activities were subject to arrest.

70. No ordinance was cited to support this assertion.

71. Officer Jane Doe, in a rather loud and boisterous voice, yelled that if she could hear Plaintiff from more than twenty-five (25) feet away, Plaintiff could get a ticket.

72. Officer Jane Doe, at the time, was clearly speaking in a tone of voice clearly audible past twenty-five (25) feet.

73. Shortly after Plaintiff’s dialogue exchange with Officer Jane Doe, Lieutenant Walker arrived on the scene.

74. First, Lt. Walker stated that Plaintiff was creating a disturbance and could not use a megaphone, nor could Plaintiff stand on a chair while he was preaching.

75. After Plaintiff questioned the constitutionality of Lt. Walker’s demands, Lt.