

1 IN THE COMMON PLEAS COURT OF PHILADELPHIA  
2 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
3 CRIMINAL COURT DIVISION

4 - - -  
5 COMMONWEALTH : MOTION #03-000920  
6 V. :  
7 MICHAEL MARCAVGE :

8 - - -  
9 February 25, 2003

10 Hearing

11 - - -  
12 Courtroom 501

13 Criminal Justice Center

14 - - -  
15 BEFORE: THE HONORABLE JOYCE S. KEAN

16 - - -  
17 A P P E A R A N C E S :

18 MELISSA RIGNEY, ESQUIRE  
19 Assistant District Attorney  
20 For the Commonwealth

21 BRIAN FAHLING, ESQUIRE  
22 Counsel for the Defendant,  
23 Michael Marcavage  
24 - - -

25 REPORTED BY: JULIE DAVIS, R.P.R.  
OFFICIAL COURT REPORTER

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I N D E X

COMMONWEALTH EVIDENCE

WITNESS

DR. CR. RDR. RCR.

MELVIN BROOKS

By Ms. Rigney 4 16

By Mr. Fahling 8

- - -

1 THE COURT CRIER: Your Honor,  
2 next, if we may, we'll call No. 38,  
3 Michael Marcavage.

4 MR. HOPPE: Your Honor, Ted  
5 Hoppe for Mr. Marcavage. We have  
6 an outstanding motion for pro hac  
7 vice with regard to allowing Mr.  
8 Fahling to represent Mr. Marcavage  
9 in this proceeding. That motion  
10 had not been ruled on prior to  
11 today, which is why I have  
12 appeared. I just wanted to see if  
13 the Court would approve that motion  
14 so Mr. Fahling could handle Mr.  
15 Marcavage's representation.

16 THE COURT: The Court will  
17 allow it.

18 MR. HOPPE: Thank you, Your  
19 Honor.

20 MR. FAHLING: Thank you, Your  
21 Honor.

22 THE COURT REPORTER: Your  
23 full name, sir.

24 MR. FAHLING: Brian Fahling,  
25 F-A-H-L-I-N-G.

1 MS. RIGNEY: Melissa Rigney  
2 for the Commonwealth, Your Honor.

3 The Commonwealth would call  
4 Police Officer Brooks to the  
5 stand.

6 THE COURT CRIER: Officer,  
7 state your full name, spell your  
8 last name, your badge number and  
9 division, please.

10 THE WITNESS: My name is  
11 Melvin Brooks, B-R-O-O-K-S, Badge  
12 No. 2388, 3rd District.

13 - - -

14 OFFICER MELVIN BROOKS, sworn.

15 - - -

16 THE COURT CRIER: Thank you.

17 MS. RIGNEY: May I, Your  
18 Honor?

19 - - -

20 DIRECT EXAMINATION

21 - - -

22 BY MS. RIGNEY:

23 Q. Officer Brooks, were you  
24 employed as a Philadelphia police officer on  
25 October 31, 2002, at approximately 11:45

1 a.m.?

2 A. 11:45 p.m. Yes, I was.

3 Q. I'm sorry. And did your tour  
4 of duty take you to the area of 401 South  
5 Street?

6 A. That's correct.

7 Q. Is that within the County of  
8 Philadelphia?

9 A. That's correct.

10 Q. Do you recognize anyone in  
11 court today from that date, time, and  
12 location?

13 A. The gentleman sitting over  
14 there.

15 Q. Could you indicate with point  
16 of finger? There are several gentlemen  
17 sitting over there.

18 A. The gentleman sitting right  
19 there behind you (pointing).

20 MS. RIGNEY: Indicating the  
21 defendant, Your Honor, Michael  
22 Marcavage.

23 BY MS. RIGNEY:

24 Q. Could you please explain to Her  
25 Honor the circumstances of your contact with

1 this defendant?

2           A.       Yes.    When I first came in  
3 contact with the defendant, he was standing  
4 at 4th and South.  He was yelling -- you  
5 know, he was reciting the Bible, but he was  
6 yelling at the top of his voice like across  
7 the street and at people walking by him.

8                    I approached him.  I said, I  
9 don't mind if you're talking about, you know,  
10 religion, but you've got to keep it down  
11 because it's real late and people are trying  
12 to sleep.

13                   THE COURT:   What time was it?

14                   THE WITNESS:   11:45 p.m.

15           A.       (Continued)  The defendant  
16 disagreed with me for a minute, and then  
17 sometime after that he left.

18                    He came back with a bull horn.  
19 He then went to 5th and South and started  
20 doing the same thing with the bull horn, real  
21 loud.  So my sergeant and some other  
22 officers, you know, advised him he had to  
23 stop.

24                    He then proceeded to walk  
25 eastbound toward 4th Street, where I came in

1 contact with him at 401 South Street. I  
2 asked him to stop with the bull horn; stop  
3 yelling. You know, he's drawing a large  
4 crowd. The defendant ignored me. I made an  
5 attempt to tell him again; he ignored me  
6 again. He wouldn't acknowledge me.

7                   Then I went to place him under  
8 arrest. And as soon as I put my hands on  
9 him, the defendant dropped to the ground.  
10 And then we put him in handcuffs, and he  
11 refused to stand. And then we carried him  
12 over to the police vehicle, where we placed  
13 him in.

14               Q.       Do you recall what day of the  
15 week October 31, 2002, was?

16               A.       I believe it was a Thursday.

17               Q.       Did the defendant drop to the  
18 ground of his own free will, or did you force  
19 him to the ground?

20                       MR. FAHLING:  Objection, Your  
21 Honor, as to relevance.

22                       THE COURT:  Sustained.

23                       MS. RIGNEY:  I have nothing  
24 further of this witness at this  
25 time, Your Honor.  I reserve the

1 right to redirect.

2 MR. FAHLING: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 - - -

6 BY MR. FAHLING:

7 Q. Good morning, Officer Brooks.

8 How are you doing?

9 A. How are you?

10 Q. October 31 -- I'll state the  
11 obvious -- is Halloween, isn't it?

12 A. That's correct.

13 Q. Is the area of South Street or  
14 5th Street in South Philadelphia, is that a  
15 pretty busy area normally?

16 A. It's busy mostly on Fridays and  
17 Saturdays.

18 Q. What about on Halloween? It's  
19 pretty busy then as well, isn't it?

20 MS. RIGNEY: Objection, Your  
21 Honor. If counsel is directing him  
22 to this specific Halloween, that  
23 would be fine.

24 MR. FAHLING: I'll be more  
25 specific. I'm sorry.



1 BY MR. FAHLING:

2 Q. Officer Brooks, on this  
3 specific Halloween in question, October 31,  
4 2002, it was busy in South Philly on 5th  
5 Street, wasn't it?

6 A. It was the normal business day  
7 on South Street.

8 Q. In fact, there was music  
9 streaming out of some of the bars, wasn't  
10 there?

11 MS. RIGNEY: Objection as to  
12 relevance, Your Honor.

13 THE COURT: I'll allow it.

14 A. There may have been. I do not  
15 recall.

16 Q. Okay. There were people  
17 milling about, weren't there?

18 A. Excuse me?

19 Q. There were people walking up  
20 and down the sidewalks?

21 A. Yes.

22 Q. And there was traffic going up  
23 and down the roadways, wasn't there?

24 A. Yes.

25 Q. And you indicated you first saw

1 Mr. Marcavage about 11:35, correct, p.m.?

2 A. Excuse me?

3 Q. I believe you indicated you saw  
4 Mr. Marcavage at approximately 11:35 p.m.; is  
5 that correct?

6 A. Are you talking about when I  
7 put him under arrest, or when I first came in  
8 contact with him?

9 Q. When you first came in contact  
10 with him.

11 A. I believe it was like maybe 20,  
12 30 minutes prior to that.

13 Q. Would you describe what you saw  
14 when you came into contact with Mr. Marcavage  
15 at that point?

16 A. The defendant was screaming,  
17 yelling, and reciting the Bible real loud;  
18 screaming across the street; screaming, you  
19 know, where he was standing at, at 4th and  
20 South.

21 Q. Let me ask you: It's your  
22 testimony that he was screaming at the top of  
23 his lungs; is that correct?

24 A. That's correct.

25 Q. Did anybody come up to you and

1 complain about Mr. Marcavage?

2 MS. RIGNEY: Objection as to  
3 relevance, Your Honor.

4 THE COURT: I'll allow it.

5 A. No.

6 Q. Do you recall specifically the  
7 direction that Mr. Marcavage was addressing  
8 when he was speaking?

9 A. There was no, you know,  
10 specific -- he was just screaming at  
11 everyone.

12 Q. And you indicated, I believe,  
13 that some people stopped to observe him; is  
14 that correct?

15 A. That's correct.

16 Q. And did those people eventually  
17 move on?

18 A. The first time; yes.

19 Q. And the second time is when he  
20 was arrested; isn't that true?

21 A. That's correct.

22 Q. Was anybody else with you when  
23 you first approached Mr. Marcavage the first  
24 time?

25 A. No.

1 Q. Was there anybody with you when  
2 you approached Mr. Marcavage the second time,  
3 at 11:35 roughly?

4 A. That's correct.

5 Q. And who all came with you?

6 A. There was another police  
7 officer with me. And then my sergeant came  
8 there shortly afterwards.

9 Q. And what was the name of the  
10 police officer who was with you?

11 A. I believe Police Officer Crosby  
12 and Sergeant Grier.

13 Q. Officer Crosby and Sergeant  
14 Grier?

15 A. Right.

16 Q. And did they observe the  
17 behaviors that you've described for the court  
18 today?

19 MS. RIGNEY: Objection.

20 THE COURT: Sustained.

21 BY MR. FAHLING:

22 Q. Officer Brooks, you indicated  
23 they were with you when you approached Mr.  
24 Marcavage?

25 A. The second time; yes.

1 Q. The second time. Okay. And  
2 did either one of them speak with Mr.  
3 Marcavage?

4 A. No. I initiated the  
5 conversation.

6 Q. Now, Mr. Marcavage, was he ever  
7 asked by yourself or one of the other  
8 officers to turn the megaphone down?

9 A. That's correct; myself and  
10 Sergeant Grier.

11 Q. And did he comply with that?

12 A. No.

13 Q. Are you positive about that?

14 A. When I asked him, he did not  
15 turn it down.

16 Q. What specifically did you ask  
17 Mr. Marcavage?

18 A. I told him to stop yelling on  
19 the bull horn, stop yelling, and he just  
20 completely ignored me.

21 Q. Had you had a conversation  
22 earlier where Mr. Marcavage had asked you  
23 specifically what ordinance he might be in  
24 violation of?

25 MS. RIGNEY: Objection.

1 THE COURT: Sustained.

2 BY MR. FAHLING:

3 Q. Did you tell Mr. Marcavage what  
4 ordinance he was in violation of, Officer?

5 MS. RIGNEY: Objection.

6 MR. FAHLING: Your Honor,  
7 it's a question of due process,  
8 whether or not Mr. Marcavage  
9 complied.

10 MS. RIGNEY: At what point,  
11 Your Honor?

12 MR. FAHLING: At 11:35 p.m.  
13 I'm sorry.

14 THE COURT: I'll allow the  
15 question.

16 BY MR. FAHLING:

17 Q. Officer, did you ever identify  
18 for Mr. Marcavage what law he was in  
19 violation of?

20 A. I informed him that he was  
21 speaking loud and people were trying to  
22 sleep.

23 THE COURT: He was what?

24 THE WITNESS: He was yelling  
25 on the bull horn, and that people

1           were trying to sleep. He was  
2           yelling right below people's  
3           apartments.

4 BY MR. FAHLING:

5           Q.       Would these be apartments that  
6           are in the area of the bars?

7                    MS. RIGNEY: Objection.

8                    THE COURT: I'll allow it.

9           A.       Yes.

10          Q.       In the area where the traffic  
11          is passing by underneath?

12                   MS. RIGNEY: Objection, Your  
13          Honor.

14                   THE COURT: I'll allow it.

15 BY MR. FAHLING:

16          Q.       In the area where the people  
17          are walking and talking about on the  
18          sidewalk?

19          A.       Yes.

20          Q.       Do you know how long Mr.  
21          Marcavage spent in jail?

22                   MS. RIGNEY: Objection.

23                   THE COURT: Sustained.

24 BY MR. FAHLING:

25          Q.       Officer Brooks, how many

1 officers assisted you in the arrest of Mr.  
2 Marcavage?

3 THE COURT: Sustained.

4 MR. FAHLING: Your Honor, I'm  
5 just attempting to find out if  
6 there were more present; more than  
7 the three.

8 THE COURT: Not relevant.

9 MR. FAHLING: All right.  
10 Just one second, Your Honor.  
11 (Brief pause.)

12 MR. FAHLING: Your Honor, I  
13 have no further questions of  
14 Officer Brooks at this time.

15 Thank you.

16 MS. RIGNEY: Your Honor, just  
17 brief redirect.

18 THE COURT: That's fine.

19 - - -

20 REDIRECT EXAMINATION

21 - - -

22 BY MS. RIGNEY:

23 Q. In the area where you saw the  
24 defendant and where you heard the defendant  
25 yelling, what was the loudest noise that you



1 heard?

2 A. It was the defendant speaking  
3 on the bull horn.

4 MS. RIGNEY: Nothing further,  
5 Your Honor.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you, Your  
8 Honor.

9 MR. FAHLING: Your Honor, at  
10 this point I would move to  
11 dismiss. I don't believe that the  
12 Commonwealth has made a prima facie  
13 case, especially under the law of  
14 the State of Pennsylvania which  
15 pertains to the disorderly conduct  
16 statute.

17 And I might also move to  
18 dismiss on the basis that the -- my  
19 recollection is that the officer  
20 never identified indeed what it was  
21 that Mr. Marcavage was ultimately  
22 arrested for.

23 In the State of Pennsylvania,  
24 under Commonwealth versus Gowan,  
25 the Supreme Court construed the

1 disorderly conduct statute. In  
2 that particular case a woman had  
3 used the "F" word against an  
4 officer and -- that was Hawk. I'm  
5 sorry, Your Honor. I'm jumping  
6 ahead of myself.

7 In the Gowan case -- and let  
8 me restate, 1990, out of Superior  
9 Court of Pennsylvania, located in  
10 Pittsburgh -- there were a couple  
11 of preachers who were preaching in  
12 Central Park in Pittsburgh, and  
13 they indeed were screaming at the  
14 top of their voice -- that was an  
15 uncontested fact apparently -- and  
16 a crowd gathered and, in some  
17 cases, became a little bit unruly  
18 and objected apparently to some of  
19 the assertions made by these  
20 preachers who were offering  
21 religious speech in the direction  
22 of the listeners.

23 In fact, it was so loud that  
24 a business owner from approximately  
25 150 to 200 feet away complained to

1 the police. And so the police went  
2 and attempted to get the preachers  
3 to quiet down a bit, and apparently  
4 the preachers didn't comply. And  
5 so they were cited with disorderly  
6 conduct and were found guilty in  
7 the lower courts.

8 Then on appeal the Superior  
9 Court stated -- citing the  
10 Mastrangelo case. And I'll get the  
11 cite for you in a moment on that.  
12 In that case the Supreme Court said  
13 explicitly that the disorderly  
14 conduct statute does not apply to  
15 First Amendment speech.

16 In other words, there's a  
17 scienter requirement that says,  
18 loud is not enough. The fact that  
19 somebody may take offense is not  
20 enough. The question is, was there  
21 an intent on the part of the  
22 individuals concerned to disturb  
23 the public peace? Was there  
24 evidence to say that these people  
25 were not proclaiming their message

1 to individuals, but were doing it  
2 simply to create a public  
3 disturbance? And you can't ignore  
4 the scienter requirement.

5 Now, that does afford First  
6 Amendment speech somewhat more  
7 protection than we might otherwise  
8 get in the normal course of our  
9 daily activities, and it does  
10 subject us, all of us, to speech at  
11 a level that perhaps we don't want  
12 to hear. Walking down the street,  
13 you may hear a street preacher or  
14 somebody of some other faith  
15 yelling at the top of their voices  
16 on some issue, or an antiwar  
17 protestor.

18 But our nation is founded on  
19 principles that say, well,  
20 notwithstanding what we might  
21 characterize as obnoxious delivery,  
22 nevertheless this is the First  
23 Amendment. We are forced, as the  
24 court says, or compelled to endure  
25 it. And those are the principles

1           that have been sustained by the  
2           Supreme Court of Pennsylvania and  
3           the Superior Courts in this state.

4           The officer's testimony was  
5           that Mr. Marcavage was loud. And  
6           thus far that's uncontested. He  
7           said he yelled, but he also  
8           acknowledged that it was a public  
9           street in South Philly. And I  
10          would expect the Court can take  
11          judicial notice -- I've been down  
12          there. That's a crazy street. And  
13          on Halloween the bars were in  
14          operation. And he admitted that  
15          there were people milling about and  
16          cars driving back and forth.

17          So the context of Mr.  
18          Marcavage's speech is in the midst  
19          of 5th Street in South Philly,  
20          which is a dynamic, vibrant area  
21          even at 11:30 at night.

22          And the question then  
23          becomes, did the Commonwealth  
24          demonstrate to this Court that Mr.  
25          Marcavage's intent, his intent, was

1 not to preach the gospel of Jesus  
2 Christ, but rather was to speak so  
3 loudly that he wanted to create a  
4 ruckus or a public disturbance?

5 I would submit to the Court  
6 that that was not in evidence at  
7 all.

8 Now, I understand the  
9 police officer -- sometimes it's  
10 difficult. You know, you hear a  
11 loud noise and you think, I need to  
12 deal with this. But there is the  
13 notion of due process and the idea  
14 that you can't simply allow police  
15 officers, on the basis of what they  
16 think is simply loud, to arrest  
17 people or even to force them to  
18 turn down their volume, if you  
19 will.

20 There was no complaining  
21 witness, unlike the Gowan case  
22 where we did have a complaining  
23 witness. But the Court said, you  
24 know, you only have one complaining  
25 witness, in addition to the

1 officer. Here we have no  
2 complaining witnesses. We simply  
3 have the testimony of Officer  
4 Brooks, who appears to be a nice  
5 man and an honest police officer.  
6 And I would concede that he's  
7 attempting to do his job, but would  
8 also submit to the Court that he  
9 was wrong on this occasion.

10 And the Court has said  
11 clearly that the disorderly conduct  
12 statute must not be used as a  
13 dragnet in which to ensnare all  
14 sorts of activity with which we  
15 disagree or don't like or can't  
16 find a particular statute to apply.

17 And so I would move at this  
18 time, Your Honor, to dismiss the  
19 Commonwealth's case; again, on the  
20 basis that they have not made a  
21 prima facie case. There was no  
22 evidence with respect to the intent  
23 by Mr. Marcavage. And not only  
24 that, but in light of the law of  
25 the matter in this state on First

1           Amendment speech, which Officer  
2           Brooks did acknowledge Mr.  
3           Marcavage was engaged in, there  
4           have been no facts that would  
5           warrant proceeding further.

6                     Thank you.

7                     MS. RIGNEY: I'll direct my  
8           response as to the dismissal  
9           portion only. I have not been  
10          given a copy by counsel of the  
11          Gowan case; however, as an officer  
12          of the court I would assume that  
13          defense counsel has represented the  
14          case properly.

15                    I do not know what time is at  
16          issue in the Gowan case; however,  
17          as defense counsel was very  
18          eloquent in pointing out, scienter  
19          is necessary. You must show some  
20          knowledge to establish a prima  
21          facie case that the defendant had  
22          an intent to cause a disturbance.

23                    And, Your Honor, as you  
24          clearly heard from Officer Brooks,  
25          the first encounter with defendant



1 was him using only his voice and  
2 only his vocal cords to project his  
3 message. Officer Brooks told him  
4 even that was too loud, and he  
5 needed to stop; he needed to tone  
6 it down.

7 You also heard Officer Brooks  
8 say that then he came back, and the  
9 defendant was now using a bull horn  
10 to aid his already loud vocal  
11 cords.

12 And, Your Honor, with that  
13 the Commonwealth would contend that  
14 at a minimum we have established  
15 the defendant's demeanor.

16 THE COURT: Established  
17 what?

18 MS. RIGNEY: Established that  
19 the defendant did have an intent at  
20 that point to cause a ruckus. He  
21 was loud initially. And the police  
22 officer told him, you are being too  
23 loud, without the aid of any bull  
24 horn. He came back, and then got  
25 louder, Your Honor.

1                   And with that the  
2                   Commonwealth would contend that at  
3                   a prima facie level, that that is  
4                   sufficient to establish that the  
5                   defendant intended to get even  
6                   louder and cause an even bigger  
7                   ruckus; not to mention that it's  
8                   11:45 at night.

9                   THE COURT:    On South Street.

10                  MS. RIGNEY:   Yes, Your  
11                  Honor.

12                  THE COURT:    The Court takes  
13                  judicial notice of South Street at  
14                  11:30 at night.

15                  MS. RIGNEY:   Yes, Your  
16                  Honor.    And most of us in the  
17                  courtroom have probably been there  
18                  and understands that it is not a  
19                  super quiet place to be.   However,  
20                  the officer did testify that the  
21                  loudest thing that he could hear  
22                  was the defendant's yelling.

23                  With that, Your Honor, we  
24                  would contend that the case is  
25                  rightfully here and should not be

1 dismissed.

2 THE COURT: What's the cite  
3 on the Gowan case?

4 MR. FAHLING: Your Honor, the  
5 cite is --

6 THE COURT: Do you have it  
7 with you?

8 MR. FAHLING: I do, Your  
9 Honor.

10 THE COURT: Would you pass it  
11 up?

12 MR. FAHLING: May I hand up  
13 the other as well?

14 THE COURT: May I take a  
15 minute, please?

16 (Whereupon, a short break was  
17 taken.)

18 THE COURT CRIER: Quiet,  
19 please.

20 THE COURT: Commonwealth,  
21 I'll give you a minute if you want  
22 to respond.

23 MS. RIGNEY: Thank you, Your  
24 Honor.

25 MR. FAHLING: Your Honor, may

1 I briefly modify my motion?

2 I apologize to the Court.

3 I'm familiar with the technical  
4 terms. But I guess my motion would  
5 be one for a judgment of acquittal  
6 rather than a motion to dismiss at  
7 this stage of the proceedings.

8 So if the Court will permit,  
9 I would like to bring the proper  
10 motion forward. Thank you.

11 (Brief pause.)

12 MS. RIGNEY: Your Honor, may  
13 I?

14 After having briefly skimmed  
15 as best I could under the  
16 circumstances this case,  
17 Commonwealth versus Daniel W.  
18 Gowan, and Commonwealth versus  
19 Ronnie McRae, the Commonwealth  
20 still holds to the same argument in  
21 this case, that we have met the  
22 level to show that the defendant  
23 intended to breach the public  
24 peace. He was already yelling  
25 loudly. He could already be heard

1 over other things. He was asked to  
2 tone it down in terms of the level  
3 of his volume, at which time he  
4 defiantly went and got something  
5 else to aid his vocal cords in  
6 getting even louder.

7 And at this level the  
8 Commonwealth has met its burden to  
9 withstand a motion for judgment of  
10 acquittal. That action in going to  
11 get yet something else to make his  
12 voice even louder at that hour  
13 shows the intent.

14 And, Your Honor, if the  
15 defendant --

16 THE COURT: It shows the  
17 intent to do what?

18 MS. RIGNEY: Your Honor, make  
19 unreasonable noise and breach the  
20 peace, as required by statute, and  
21 also this case, which, Your Honor,  
22 the Commonwealth would hope is  
23 still good law, but hasn't been  
24 given the opportunity to make sure.

25 However, if the defendant

1           were yelling "supercalifragilis" at  
2           the top of his lungs, we would not  
3           even be at this level. We wouldn't  
4           have to show the intent.

5                     It looks like, from what I  
6           read in this case, that because  
7           it's First Amendment protected  
8           speech, that we are required to  
9           make an additional step to show the  
10          defendant's intent. And at this  
11          level, Your Honor, the Commonwealth  
12          has met that burden and has shown  
13          at a prima facie level that there  
14          was intent by the defendant.

15                    MR. FAHLING: Your Honor,  
16          just briefly, the absence of a  
17          complaining witness is compelling  
18          evidence that Mr. Marcavage was not  
19          causing any significant disruption;  
20          indeed that the noise that he was  
21          making was not causing the type of  
22          problem that the disorderly statute  
23          requires. And that doesn't even  
24          get to the scienter requirement.

25                    If the Court will recall,

1           Officer Brooks indicated that Mr.  
2           Marcavage had been at one location,  
3           and then I believe moved to 5th  
4           Street. And if the Court would  
5           take judicial notice, the Court  
6           would know that that's an area with  
7           bars and moving away from a quieter  
8           area. And the use, of course, of  
9           the megaphone at that point would  
10          be arguably -- the reasonable  
11          inference would be to rise above  
12          the din of the music and the crowd  
13          noise.

14                   And, therefore, again, we  
15          would simply submit that the  
16          Commonwealth has failed to  
17          establish by proof beyond a  
18          reasonable doubt the requirement  
19          that Mr. Marcavage had the intent  
20          to accomplish anything other than  
21          preach the gospel.

22                   THE COURT: That's it. No  
23          more argument.

24                   The Court agrees. Judgment  
25          granted.

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MR. FAHLING: Thank you, Your Honor.

(Whereupon, the hearing concluded.)



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C E R T I F I C A T E

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me in the trial of the above matter, and that this is a correct transcript of the same.

Julie Davis

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)