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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?

Sjostrom - cross

1 A. Do I understand why you were there?

2 Q. Yes.

3 A. I had an idea.

4 Q. What was I speaking into the megaphone?

5 MR. SILOW: Objection, your Honor.

6 THE WITNESS: I don't recall

7 exactly.

8 MR. SILOW: That would be calling for

9 hearsay, your Honor.

10 THE COURT: Not at all. Why is it

11 hearsay?

12 MR. SILOW: Because it's made by

13 him. If he would like to testify to what he

14 said, your Honor, then he would have the

15 chance.

16 THE COURT: But he's being asked the

17 fact of what was said.

18 MR. SILOW: I thought he asked what I

19 said.

20 THE COURT: Yes. He was being asked,

21 what were the words that were being used. The

22 issue is, what were the words being used, not

23 whether they were true or not, not whether it's

24 a truthful statement, but the issue here would

Sjostrom - cross

1 be what words were used. That's not hearsay.
2 Overruled. Do you remember the question? Do
3 you recall the words that the defendant used?

4 THE WITNESS: Not exactly, no.

5 BY MR. MARCAVAGE:

6 Q. Is Reeves Park a public park?

7 A. Yes, it is.

8 Q. Officer, obviously, do you agree that we
9 have a constitutionally protected right of freedom
10 of speech?

11 A. That's correct.

12 Q. Do you remember anything that I was
13 shouting as you had stated in your previous
14 testimony?

15 A. I don't recall exactly what you were
16 saying.

17 Q. Did the speakers on the stage use a
18 microphone to voice their opinion?

19 A. That's correct.

20 Q. And why was it that they were not
21 arrested?

22 A. They had previous permission from the
23 Borough of Phoenixville to utilize the park for
24 their purpose.

Sjostrom - cross

1 Q. It is a public park?

2 A. That's correct.

3 Q. Did I ever -- let me just rephrase this
4 question here.

5 Was the person who grabbed the sign
6 from me arrested?

7 A. At that point we didn't identify that
8 person, no.

9 Q. Was he still at the rally?

10 A. I don't recall.

11 Q. Is there a reason the police didn't move
12 in to arrest the gentleman who took the sign from
13 me?

14 MR. SILOW: Objection, your Honor, I
15 don't see the relevance of this line of
16 questioning.

17 THE COURT: Sustained.

18 BY MR. MARCAVAGE:

19 Q. Does the law --

20 THE COURT: Questions are for facts,
21 not to obtain this witness's opinions of the
22 law.

23 BY MR. MARCAVAGE:

24 Q. Sergeant, how did you determine that I

Sjostrom - cross

1 intended to cause a public inconvenience,
2 annoyance, or alarm? How was that determined on
3 your behalf?

4 A. When I first approached you, I warned you
5 that if you continued to disrupt this gathering in
6 the way that you're doing it, then you would be
7 asked to leave the park. When I saw you approach
8 the second time, then I knew you had intentions on
9 disrupting that meeting.

10 Q. Did you speak to me prior -- you said you
11 spoke with me. And what did I say to you during
12 that --

13 A. At which point?

14 Q. After you had said that you had spoke with
15 me and I stopped using the megaphone, I wanted to
16 know what did I say to you in return? You said I
17 created, you said, some kind of argument? I was
18 arguing with you? What did I argue with you on?

19 A. You refused to, at first, step down and
20 stop talking on the loud speaker. It took me
21 several times to get your attention for you to step
22 down. When I asked you to stop using the loud
23 speaker and stop disrupting the meeting, or the
24 gathering, you continued to explain that you had

Sjostrom - cross

1 your specific rights of speech and that you were
2 there for a specific purpose. And I advised you
3 that was fine, that's not my intention. My
4 intention was for you to do it peacefully and so it
5 does not affect other people.

6 Q. So according to your own testimony you
7 would say that I did inform you what my intent
8 was.

9 THE COURT: He said what he said.
10 That's not a question. That's an argument. Do
11 you have any more questions of this witness?

12 MR. MARCAVAGE: Yes, I do, Your
13 Honor.

14 THE COURT: How many?

15 MR. MARCAVAGE: Well, I do have
16 several more here.

17 THE COURT: You have a few more
18 minutes, at most, to cross-examine the
19 witness.

20 BY MR. MARCAVAGE:

21 Q. You said you heard Mr. Rendell offer me
22 the microphone; is that correct?

23 A. That's correct.

24 Q. Well, according to Section 5503, talking

Sjostrom - cross

1 about creating a hazardous or physically offensive
2 condition, do you think Mr. Rendell saw it that
3 way? If he would offer me a microphone --

4 MR. SILOW: I would have to object.

5 THE COURT: Sustained. This witness
6 can't know what someone else is thinking.
7 Again, sir, if you want to question the
8 witness, the purpose of questioning is to
9 elicit facts. So you can ask him facts about
10 what happened, if you have any more questions
11 about that.

12 BY MR. MARCAVAGE:

13 Q. Did Mr. Rendell tell you or advise you
14 that he was annoyed or alarmed?

15 A. No.

16 Q. If Governor Rendell was annoyed or
17 alarmed, why would he ask --

18 MR. SILOW: Once again, objection,
19 your Honor.

20 MR. MARCAVAGE: I didn't finish the
21 question, but we'll just skip that one.

22 BY MR. MARCAVAGE:

23 Q. How did you determine that I was
24 physically offensive when the governor asked me to

Sjostrom - cross

1 speak for 60 seconds and handed me the microphone?

2 A. Besides the fact that the crowd was
3 becoming hostile towards you, Mr. Rendell's
4 expressions at that point in time.

5 Q. So you made the determination based on
6 expressions?

7 A. He interrupted -- you interrupted him, he
8 stopped. He gave an expression of disgust. At
9 that point we approached.

10 Q. Did you consider that Mr. Rendell was
11 physically offensive when he asked me to come and
12 take the microphone and then I waited for his
13 response? Why did you perceive Mr. Rendell's
14 actions to be in a manner of physically offensive,
15 he was physically offended by them?

16 MR. SILOW: I believe this has
17 already been asked and answered, your Honor.

18 THE COURT: Sustained.

19 BY MR. MARCAVAGE:

20 Q. If the Governor Elect, now Governor, gives
21 me permission to speak on his platform, how,
22 Officer, did you determine the governor's
23 permission for me to speak serves no legitimate
24 purpose?

Sjostrom - cross

1 MR. SILOW: Objection, your Honor.

2 THE COURT: Sustained.

3 MR. SILOW: Thank you, your Honor.

4 BY MR. MARCAVAGE:

5 Q. Do you believe that my acts served no
6 legitimate purpose?

7 A. I don't understand your question.

8 Q. I'm just asking if you believe my acts
9 served no legitimate purpose?

10 A. The purpose that appeared to me was the
11 purpose of disrupting this meeting. So that was,
12 to me, your purpose.

13 MR. MARCAVAGE: I have no further
14 questions, your Honor.

15 THE COURT: Any redirect?

16 MR. SILOW: No further questions,
17 your Honor. The Commonwealth rests at this
18 time.

19 THE COURT: Thank you, you may step
20 down. Please watch your step.

21 (Witness excused.)

22

23 THE COURT: All right. The defendant
24 has an opportunity to testify. If you have

L. Beckman - direct

1 witnesses you want to call on your own behalf, you
2 may do that.

3 MR. MARCAVAGE: I would like to call
4 Linda Beckman to the stand, please.

5 MR. SILOW: The Commonwealth would
6 like to have an offer of proof of what Miss Beckman
7 is about to testify to, your Honor.

8 THE COURT: You'll just have to wait
9 and find out.

10 DEFENDANT'S TESTIMONY

11 ...LINDA BECKMAN, B-E-C-K-M-A-N,
12 having been duly sworn, was examined and
13 testified as follows...

14 DIRECT EXAMINATION

15 BY MR. MARCAVAGE:

16 Q. Good morning, Linda.

17 A. Good morning.

18 Q. I would like to ask you if you could tell
19 the Court briefly what happened on that day in
20 Reeves Park during the Rendell rally. What was the
21 purpose you were there and what happened?

22 MR. SILOW: Objection, your Honor.

23 THE COURT: Sustained. Sustained as
24 to the purpose of why she was there. Who

L. Beckman - direct

1 cares? Well, it could go to bias, but I think,
2 who cares. If your question is, what did she
3 observe, she may answer that question.

4 BY MR. MARCAVAGE:

5 Q. What did you observe in the park?

6 A. Well, I observed not -- you know, there
7 were other people there, Casey supporters in the
8 back yelling also. They weren't talked to about
9 disturbing the peace, or whatever, disorderly
10 conduct. And I observed that Mr. Rendell did hand
11 you the microphone, and you asked him a question,
12 and then you stood back, you handed the mike back
13 to him and stood back, and then waited for his
14 response, which he didn't give you, and then the
15 police just came on and dragged you away.

16 Q. Did the police ever approach you and say
17 you can't be here with your message? Did they ever
18 tell you anything?

19 MR. SILOW: Objection, your Honor, I
20 don't see what the grounds --

21 THE COURT: Sustained.

22 MR. MARCAVAGE: Just one moment, your
23 Honor.

24 (Pause.)

L. Beckman - direct

1 BY MR. MARCAVAGE:

2 Q. Do you remember what Mr. Rendell said when
3 he offered the microphone, anything of what he was
4 saying?

5 A. He said, to my knowledge, let's give him a
6 chance. Give him --

7 MR. SILOW: Objection, your Honor,
8 this is hearsay.

9 THE COURT: No, it isn't.
10 Overruled.

11 THE WITNESS: Give him a chance.

12 THE COURT: You'll have to brush up
13 on hearsay. I'll give you a little course
14 later, but we don't have time right now. When
15 the issue is what words were spoken, whether
16 they were true or not, when the issue is
17 simply, as in a disorderly conduct case
18 particularly, are the words offensive, it
19 doesn't matter if they're true or not, it's
20 just, what words are spoken.

21 If the fact at issue is what were the
22 words that were used, then it is not hearsay
23 because they're not being offered for the truth
24 of the statement. So if the witness is being

L. Beckman - direct

1 asked to say what did somebody say not because
2 what they said was true or not true, but
3 because the issue in the case is what words
4 were used or what words were used is relevant
5 -- for instance, here the prosecution is
6 contending that the words that were used had an
7 incendiary effect. That's part of what you're
8 trying to say here. Therefore, the words that
9 are used is the relevant fact. And, as such,
10 they're not being offered for the truth of what
11 is being said. And, therefore, it's not even
12 -- it's not hearsay. It's not a question of
13 finding an exception, it's simply not hearsay
14 because it's not being offered for the truth of
15 the content of the words.

16 MR. SILOW: My belief was it was
17 offered for the proof of what was said.

18 THE COURT: No, no. It is being
19 offered for the proof of what was said, but not
20 for the truth of the underlying statement. In
21 other words, if the statement is, the sky is
22 blue, and the issue is, what did the witness
23 say, it doesn't matter if the sky is blue or
24 isn't blue, it's what did the witness say.

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1 Good article in this month's ABA Journal.
2 Commend it to your attention. I don't know
3 that this witness has much more of relevance to
4 add, however.

5 MR. MARCAVAGE: Can she answer that
6 question?

7 THE COURT: Who knows what the
8 question was?

9 MR. MARCAVAGE: I had asked what do
10 you remember Mr. Rendell speaking?

11 MR. SILOW: And may I object to the
12 relevance of that line of questioning.

13 THE COURT: What is the relevance of
14 what Mr. Rendell said?

15 MR. MARCAVAGE: Well, I think it's
16 important for the Court to understand this was
17 an invitation on behalf of Governor Elect
18 Rendell, and I am not able to produce
19 Mr. Rendell to testify for himself, therefore
20 the Court --

21 THE COURT: What is the relevance of
22 what was said?

23 MR. MARCAVAGE: Well, it gives
24 evidence to the fact that I was offered to

L. Beckman - direct

1 speak. It wasn't I interrupted anything.

2 THE COURT: That's not in dispute.
3 The officer already testified. Does this
4 witness have something different than what the
5 officer testified to about that part of the
6 incident? The testimony thus far is that the
7 then candidate handed you the microphone, said,
8 Here, say what you have to say, and you did,
9 and you gave the microphone back to
10 Mr. Rendell. Now, is this witness going to say
11 something different than that?

12 MR. MARCAVAGE: Well, I don't know.

13 THE COURT: Well, do you expect it?

14 MR. MARCAVAGE: I will just withdraw
15 the question, and we'll just proceed.

16 THE COURT: Good.

17 MR. MARCAVAGE: I have no further
18 questions of this witness.

19 THE COURT: Any questions of this
20 witness?

21 MR. SILOW: May I have one moment,
22 your Honor?

23 (Pause.)

24 MR. SILOW: No questions,

M. Marcavage - direct

1 your Honor.

2 THE COURT: You may step down.

3 (Witness excused.)

4 - - -

5 THE COURT: Any other witnesses?

6 MR. MARCAVAGE: I'm going to call
7 myself.

8 THE COURT: Yes, besides that,
9 anything else?

10 MR. MARCAVAGE: No.

11 THE COURT: Please take the stand.

12 ...MICHAEL MARCAVAGE,
13 M-A-R-C-A-V, as in Victor, A-G-E, having been
14 duly sworn, testified as follows...

15 THE COURT: Go ahead.

16 DEFENDANT'S TESTIMONY

17 THE WITNESS: Your Honor, I'm here
18 today to defend myself in this matter, as you
19 know. I have some facts I need to provide
20 first, and that is the Pennsylvania Crimes
21 Code, Section 5503 --

22 MR. SILOW: Objection, your Honor, he
23 is arguing the law here, I believe. It can go
24 toward argument, not during his testimony, your

M. Marcavage - direct

1 Honor.

2 THE COURT: Well, it's a little hard
3 to know what he's testifying to at this point.
4 Overruled. Go ahead.

5 THE WITNESS: I'll just briefly
6 describe why I'm stating this. I was charged
7 with Section 5503, Subsection (a)(4) of the
8 Disorderly Conduct. I wasn't charged with
9 any --

10 THE COURT: I understand what the
11 charge is and I understand of what the offense
12 occurred, of what the offense consists. Do you
13 want to testify to facts.

14 THE WITNESS: In the public park, my
15 purpose and intent was to preach the gospel of
16 Jesus Christ. I am a street evangelist, and I
17 have done this on many different occasions, and
18 I was in a public park, in the back of the
19 park, and was called to preach the gospel there
20 on that day where the rally was.

21 There are, amongst myself, other
22 people protesting various things, along with
23 Casey supporters, in addition to that.

24 The police, I do not recall them

M. Marcavage - direct

1 approaching me, I'm not denying that they did
2 to tell me that I needed to stop doing so, and
3 they did say I did stop when they asked.
4 Sergeant Sjostrom did state that in his
5 testimony.

6 The other purpose and intent which
7 I'm trying to describe to the Court today, my
8 intent was to preach the word of God, to be
9 obedient to God in accordance with my Christian
10 faith, and to get a brief verbal message across
11 to Governor Elect Rendell, now Governor. So
12 the only intent I had there was not to cause
13 public inconvenience. I wasn't trying to cause
14 an annoyance or alarm, but these things did
15 occur when the police engaged in violating my
16 First Amendment rights to free speech.

17 In fact, even Mr. Rendell did offer
18 me the opportunity, and since he's not here
19 today, I cannot ask what he did say after I
20 left the area, but I'm going to say what I
21 remember him saying, and that is that the
22 democratic party believes in free speech, and
23 that is why we gave this young man an
24 opportunity to speak here today. So

M. Marcavage - cross

1 Mr. Rendell, himself, even acknowledged this as
2 a First Amendment activity.

3 I have to say that I was not in
4 violation of Section 5503, Subsection (a)(4)
5 because my act did serve a legitimate purpose,
6 to preach the gospel of Jesus Christ. And that
7 is all, your Honor.

8 THE COURT: Cross-examine.

9 CROSS-EXAMINATION

10 BY MR. SILOW:

11 Q. Mr. Marcavage, on that day in question you
12 were using a bull horn to so-call preach your
13 message; is that correct?

14 A. Yes, that is correct.

15 Q. And you said you don't deny that the
16 officers asked you to stop using the bull horn
17 because you were causing a disturbance with the
18 other listeners of the rally; is that correct?

19 A. Yes. I was in the back, and they did
20 approach me, I believe. I'm not denying that it
21 did not happen.

22 Q. And after you stopped for awhile, you
23 continued to use the bull horn to preach your
24 message of Jesus Christ; is that correct?

M. Marcavage - cross

1 A. No, I did not continue to use it.

2 Q. Did you continue to voice your opinion in
3 a very loud manner of your belief in Jesus Christ?

4 A. During an opening, when Mr. Rendell was
5 speaking, I did pose a question to him. That was
6 part of my intent.

7 Q. Did you happen to see the other people
8 that were listening to now Governor Rendell's
9 speech, did you happen to see what they were doing
10 at this time?

11 A. No, I did not. I did not see what they
12 were doing.

13 Q. You were asked to stop again, and you
14 continued; is that correct?

15 A. No, I wasn't asked to stop again.

16 Q. When you were up at the stage?

17 A. No, I wasn't asked to stop again. In
18 fact, I just finished, and that's when the police
19 came up and arrested me, after I gave the
20 microphone back to Mr. Rendell, waited for his
21 response, and as I waited for his response, the
22 police came in and arrested me.

23 Q. Isn't it true that after you gave
24 Mr. Rendell back his bull horn or his microphone