

**SOUTH EUCLID MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO. CRB 1600738
CITY OF SOUTH EUCLID)	CRB 1700174
)	CRB 1800209
Plaintiff,)	
)	
)	JUDGE GAYLE WILLIAMS-BYERS
VS.)	
)	
)	
CHARLES A. TURNER)	VERDICT AND OPINION
)	
Defendant)	
)	

This matter came before this court pursuant to a bench trial on all cases wherein testimony was taken and this court hereby issues the within OPINION AND VERDICT. This court finds that the defendant’s rights as secured under the First and Fourteenth Amendments of the United States and Ohio Constitutions have been violated and further finds that as to all charges brought by the State of Ohio and the City of South Euclid, the Defendant is found NOT GUILTY.

BACKGROUND AND ANALYSIS

Defendant, Charles Turner was charged with (Criminal) Trespassing on three separate occasions. The first instance was on December 20, 2016, wherein the violation was pursuant to South Euclid Codified Ordinance 541.05(a)(4), a fourth degree misdemeanor. The second occasion occurred on March 7, 2017 where the defendant was charged with Criminal Trespassing pursuant to Ohio Revised Code section 2911.21(A)(3), also a fourth degree misdemeanor and finally on March 27, 2018 the defendant was charged with the offense of Trespassing pursuant to Ohio Revised Code section 2911.21(A)(2), a misdemeanor of the fourth degree.

On December 20, 2016, Defendant Charles Turner stood in the parking lot of the South Euclid Municipal Complex located at 1349 South Green Road, next to a vehicle bearing a raised hood with a sign, wedged between the vehicle body and (raised) hood which read: “Mayor Welo Supports Police Brutality By Police Chief. Off. McCann & Others.” Defendant Turner was asked to remove the sign. He complied and the sign was later confiscated. According to testimony by Chief Kevin Nietert, Defendant Turner was cited for the offense of Trespassing.

On March 7, 2017, Defendant Turner stood in the lobby of the South Euclid Municipal Complex with a sign hanging from a string around his neck which read: “Mayor Welo Supports

Brutality By Police Chief.” In this instance, he was approached by Chief Nietert and informed or reminded of “Rules and Regulations of the South Euclid Municipal Center and Other Buildings Owned By or Under the Control of the City of South Euclid” (hereinafter referred to as “The Rules”) that had been enacted and made effective since his December 2016 citation. Following an exchange related to the removal of the signage and adherence to “The Rules,” Defendant Turner was criminally charged with violating South Euclid’s Trespassing law pursuant to Codified Ordinance 541.05(a)(4) and arrested.

On March 27, 2018, Defendant Turner attended a South Euclid Democratic Club meeting at the South Euclid Community Center located at 1370 Victory Drive. With his vehicle parked in the lot outside, he left four signs on his vehicle. The sign on the windshield read: “Mayor Welo Violates Civil Rights of Veterans.” The sign against the front bumper of the vehicle read: “No Justice, No Welo.” The sign leaning against the driver side back passenger door read: “Mayor Welo Allows Police Brutality By Police Chief,” and finally the sign against the back bumper read: “Mayor Welo Allows Rape Victim Harassment.” On the back passenger side of the vehicle affixed to the window was an American flag.

Officer John Camper testified that he was dispatched to the South Euclid Community Center in response to a concern received from Assistant Chief Mays regarding the signage on Defendant Turner’s vehicle. Body camera video clearly shows that upon immediate arrival, Officer Camper engaged Defendant Turner respectfully but erroneously by reminding him of “The Rules” as they related to his display of signage on his vehicle in the Community Center Parking lot. In fact, both the video and testimony support that the verbal engagement between Officer Camper and Defendant Turner lasted for a considerable period of time with a concerted effort to seek resolution regarding Defendant Turner’s Constitutional right to protest by displaying his signs.

Incredibly, there came a time when Officer Camper called for additional officer support. At which time, the supporting officer inquired as to what Defendant Turner was doing (at the Community Center) “besides being here?” to wit Officer Camper responded “He’s not allowed to do that!” The context of this belief is perhaps what strains this court most when appreciating how Defendant Turner has come to be prosecuted repeatedly and singularly for these actions. The testimony and record is silent as to how, if or when Defendant Turner was provided notice that he could never be in such public places with his signs or rather that his speech in such places would be subject to the draconian limitations which “The Rules” seek to accomplish.

The encounter at the South Euclid Community Center concludes with Defendant Turner reluctantly acquiescing by removing the four signs posted on his vehicle while enjoying broad agreement by South Euclid law enforcement officers that the American flag hanging on Defendant Turner’s back passenger window could remain because they didn’t think “anybody would have any objection about the American flag hanging out of the car.” This court finds that act alone to be the highest form of subjective censorship.

In each instance of prosecution against Defendant Turner, “The Rules” have been used as the “bootstrapping” basis for the (Criminal) Trespassing charges despite the fact that they lack any legislative authority. Said “Rules” have not been codified and yet carry the threat of criminal prosecution for failure to comply.

“The Rules” state in part:

The South Euclid Municipal Center includes the interior walkways, corridors, lobby [and] parking lot, “

Said buildings are restricted to those individuals or groups who have legitimate business dealings with the City of South Euclid and/or who have previously been issued a permit to use said buildings. No person or persons without prior approval of the Mayor and/or Safety Director or his or her designee shall do any of the following in the South Euclid Municipal Center, Community Center or Service Department.....Conduct any protests, demonstrations, carry or possess any type of sign, posted, notice or plaque.....***Failure to cease and desist and vacate the premises when asked to do so by a law enforcement officer may result in the imposition of criminal charges.*** The issuance of a permit to use any of the Municipal Center or Community Center shall not be basis [sic] on or influenced by race, color, creed, religion, gender, age, disability, status, sexual orientation, national origin or political affiliation. Effective this 15th day of December, 2016.

This court finds that at no time prior to or following December 15, 2016, has the South Euclid City Council adopted or codified said “Rules and Regulations” thereby providing any legal authority to “bootstrap” these ideals to the very charges used as the basis for prosecution against Defendant Turner.

Notwithstanding, in determining the merits of the case at bar, the court must examine the intricate contours of the evidence presented here. The important question before the court is whether Freedom of speech and the right to petition the government for a redress of grievances, which are protected by the First Amendment of the United States Constitution from infringement by Congress, are among the fundamental personal rights and liberties also protected by the Fourteenth Amendment from invasion by state action. (*Lovell v. City of Griffin*, 303 U.S. 444 (1938). P.303 U.S. 450. In so doing, this court must determine whether the basis for Defendant Turner’s criminal charges - a failure to receive permission to protest pursuant to “The Rules” constitute state action within the meaning of the Fourteenth Amendment.

The First Amendment of the United States Constitution states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Fourteenth Amendment Section 1 of the United States Constitution states:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article 1§§ 3 of the Ohio Constitution states:

“The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the general assembly for the redress of grievances.”

Article 1§§ 11 of the Ohio Constitution states:

“Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.”

Freedom of speech and the freedom to petition the government for a redress of grievances, which are protected by the First Amendment from infringement by Congress, are counted among the fundamental personal rights and liberties which the Fourteenth Amendment protects from invasion by state action. *Gitlow v. New York*, 268 U.S. 652, 268 U.S. 666; *Stromberg v. California*, 283 U.S. 359, 283 U.S. 368; *De Jonge v. Oregon*, 299 U.S. 353, 299 U.S. 364. The U.S. Supreme Court went on to rule in *United States v. Cruikshank*, 92 U.S. 542, 92 U.S. 552 “The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.”

It is well settled law that municipal ordinances when adopted under state authority constitute state action. By extension, these ordinances would fall within the prohibition of the amendment as well. *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20; *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U.S. 278; *Cuyahoga River Power Co. v. Akron* 240 U.S. 462.

In *DeJong*, the court identified the rights as promulgated in the First Amendment of the U.S. Constitution as being so sacred that “the rights themselves must not be curtailed.” The Court further noted that “The greater importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that the changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.” *De Jonge v. Oregon*, 299 U.S. 353, 299 U.S. 365.

Based upon the testimony and facts as this court has determined them to be, “The Rules” are unconstitutional both on its face and as applied. “The Rules” prohibit any protests, demonstrations, carrying or possession of any type of sign, posted, or notice or plaque and by its very use imposes a criminal penalty for noncompliance where a law does not exist. By the very nature of this rule, it directly references, limits and prohibits the actions of Defendant Turner and strikes at the very foundation of free speech principals by requiring licensure and imposing

ensorship. Further given that Chief Nietert testified that during the time that “The Rule” has been in effect, Defendant Turner has been the *only* person prosecuted for such violation, this court finds it equally challenging to believe that the State has not engaged in a pattern of malicious prosecution against the Defendant so as to chill speech it may find unsavory.

While this court appreciates the city’s desire to maintain a safe and peaceful environment to ensure the proper completion of government business such desires must necessarily be balanced against the longstanding and enduring rights of the citizenry as outlined in the U.S. Constitution. In the case at bar, there is no evidence that Defendant Turner’s statements threaten anyone or proposes a violent response such that they should be considered “fighting words.” This court adopts the dicta of Justice Harlan as articulated in *Cohen v. The State of California*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971) where he indicated “...the only ‘conduct’ which the State sought to punish is the fact of the communication.” Justice Harlan went on to outline that “First the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us...one man’s vulgarity is another’s lyric...additionally...much linguistic expression serves a dual communicative function: it conveys not only ideas...but otherwise inexpressible emotions as well...We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for the emotive function which...may often be the more important element of the overall message...” The undisputed facts in the within matter are on balance with Justice Harlan’s observation.

The City of South Euclid must appreciate that the Municipal Complex and the City’s Community Center wherein and around the Defendant was arrested, is the seat of local government and therefore acts as the prime location to engage in the level of redress contemplated by the First Amendment. To limit or forbid protest and redress consistent with “The Rules” is to chill free speech and limit access to government in a manner that denounces the founding principles of our democracy.

Therefore, this court finds that “The Rules” violate the First and Fourteenth Amendments of the United States Constitutions. As such, this court finds Defendant Turner NOT GUILTY on each charge of Criminal Trespassing in CRB 1600738, CRB 1700174 and CRB 1800209. Further, this court finds that insofar as The Rules and Regulations of the South Euclid Municipal Center and Other Buildings Owned and Or Under the Control Of the City of South Euclid referenced as “The Rules” have hereby been determined to be Unconstitutional both on its face and as applied, this court hereby ORDERS their IMMEDIATE REMOVAL from all public places until such time as said ordinance has been properly enacted by the appropriate legislative body in the City of South Euclid.

IT IS SO ORDERED.



JUDGE GAYLE F. WILLIAMS-BYERS

cc: Prosecutor Michael E. Cicero

Attorney for Defendant, Aaron Brockler