

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

MARK CANNON, and)
LATRESE ALLEN,)
)
Plaintiffs,)
)
v.) CIVIL ACTION NO. _____
)
CITY OF SARASOTA; a Florida)
Municipal corporation, PETER)
ABBOTT, in his official capacity as)
Chief of Police for the City of Sarasota)
)
Defendants.)
_____)

COMPLAINT

Plaintiffs, MARK CANNON and LATRESE ALLEN, by and through undersigned counsel, sue Defendants, CITY OF SARASOTA, and PETER ABBOTT, and alleges:

INTRODUCTION

1. This is a civil rights action challenging a noise ordinance that targets noise heard more than 25 feet from vehicles in the City of Sarasota. The continued use and enforcement of the unconstitutional 25-foot ban prevents MARK CANNON and LATRESE ALLEN from expressing speech protected by the First Amendment.

2. Plaintiffs MARK CANNON and LATRESE ALLEN seek injunctive and declaratory relief, nominal and actual damages, and attorneys fees pursuant to 42 U.S.C. §§ 1983 and 1988, against Defendant CITY OF SARASOTA, and PETER ABBOTT, in his official capacity of Chief of Police of the City of Sarasota.

3. This action is premised on the deprivation of the Plaintiffs' free speech rights under the United States Constitution.

4. Defendant's policy and actions have already deprived Plaintiffs of their rights and guarantees provided under the United States Constitution and will continue to do so until relief is secured.

5. Each and every act alleged was committed by Defendants under the color of state law and municipal authority.

JURISDICTION AND VENUE

6. This action arises under the United States Constitution, namely, the First and Fourteenth Amendments, and 42 U.S.C. §§ 1983 and 1988.

7. This Court has concurrent jurisdiction over claims brought under 42 U.S.C. § 1983. *See Howlett v. Rose*, 496 U.S. 356 (1990).

8. This Court has authority to grant the requested injunctive relief under rule 1.610, Fla. R. Civ. P., the requested declaratory relief pursuant to chapter 86.011, Fla. Stat., and Plaintiff's prayer for costs, including reasonable attorney's fees under 42 U.S.C. § 1988.

9. Venue is proper in Sarasota County, Florida, because the claims arise in Sarasota County and the Defendants reside in Sarasota County.

10. Plaintiff MARK CANNON ("CANNON") is a resident of Sarasota, Florida.

11. Plaintiff LATRESE ALLEN ("ALLEN") is a resident of Bradenton, Florida.

12. Defendant City of Sarasota ("CITY") is a municipal authority, a subdivision of the State of Florida.

13. Defendant PETER ABBOTT ("CHIEF ABBOTT") is the Chief of Police of the Sarasota Police Department. In his official capacity, CHIEF ABBOTT is responsible for the enforcement of the CITY's laws and ordinances and for training Sarasota Police Officers in the enforcement of those laws and ordinances. CHIEF ABBOTT is also a decisionmaker with

power to bind the CITY in establishing its customs and practices for enforcement of the CITY's laws and ordinances.

FACTUAL BACKGROUND

The Ordinance & Section 316.3045, Fla. Stat.

14. On or about May 18, 2008, the CITY enacted Ordinance No. 08-4816 ("Ordinance"). The Ordinance provides for the impoundment of vehicles found to be in violation of certain offenses, including the unlawful use of radios or other soundmaking devices.

15. In particular, the Ordinance provides that a vehicle is subject to seizure and impoundment whenever an officer has probable cause to believe that the vehicle was used to facilitate the commission of any violation of § 316.3045, Florida Statutes.

16. Section 316.3045(1), Fla. Stat., makes it unlawful to operate or occupy a motor vehicle on any street or highway where the amplified sound produced by a radio or other mechanical soundmaking device is plainly audible at a distance of 25 feet or more from the motor vehicle; or louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

17. Section 326.3045(3), Fla. Stat., provides an exception for "motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices."

18. Section 326.3045(4), Fla. Stat., directs the Department of Highway Safety and Motor Vehicles ("DHSMV") to promulgate rules defining the terms "plainly audible" as well as standards for the measurement of sound by law enforcement personnel.

19. Pursuant to the statutory directive, the DHSMV promulgated a definition of “plainly audible” in Rule 15B-13.001, Fla. Admin. Code. (eff. Nov. 21, 2006). That definition provides that:

“Plainly Audible” shall mean any sound produced by a radio, tape player, or other mechanical or electronic soundmaking device, or instrument, from within the interior or exterior of a motor vehicle, including sound produced by a portable soundmaking device, that can be clearly heard outside the vehicle by a person using his normal hearing faculties, at a distance of 25 feet or more from the motor vehicle.

20. The CITY and CHIEF ABBOTT have established a policy to actively enforce the Ordinance and § 316.3045, Fla. Stat.

21. The statutory definition of “plainly audible” upon which the Ordinance relies is imprecise and does not give an ordinary person fair notice of what conduct is prohibited, thus allowing for arbitrary and discriminatory enforcement by CITY officials.

22. The statutory definition of “plainly audible” upon which the Ordinance relies fails to account for existing ambient sound in noise level standards and measurements. The measurement standards fail to account for numerous variables, such as ambient noise, refraction, wind and humidity, reflection from water bodies, building refraction, and other environmental conditions, which leads to difficulty in attributing sound to the source property.

Mark Cannon

23. CANNON likes to play music in his vehicle at a raised volume and to express himself by singing along with that music. CANNON does not seek monetary gain from his expressive activity. He does not try to sell products or services. He merely wants to express himself through music and to be heard by others in doing so. His expression through music includes current social and political topics from his particular viewpoint.

24. In the course of his travels, CANNON frequently travels on the roads in the CITY.

25. On or about November 12, 2008, while traveling on CITY roads, CANNON was stopped for “loud music” by officer KENNETH GOEBEL, an agent and employee of the CITY and subordinate of CHIEF ABBOTT. The initial purpose of the traffic stop was that CANNON was allegedly violating the Ordinance and § 316.3045, Fla. Stat.

26. CANNON was cited for violating section 316.3045 (“Stereo – Loud Car Stereo Heard over 25 Feet Away) and his vehicle was seized under the Ordinance.

27. CANNON had to pay fines and towing fees as a result of the citation issued on November 12, 2008.

28. On or about December 16, 2008, while traveling on the CITY roads, CANNON was stopped by officer MILLER, an agent and employee of the CITY and subordinate of CHIEF ABBOTT.

29. CANNON was cited for violating section 316.3045 (“Stereo – Loud Car Stereo Heard over 25 Feet Away), but his vehicle was not seized under the Ordinance.

30. CANNON had to pay fines relating to the citation issued on December 16, 2008.

31. The Ordinance that bans noise heard from more than 25 feet away from the source inhibits CANNON from expressing himself. The 25-foot noise rule inhibits CANNON to such a point that he cannot express himself without fear of violating the Ordinance.

Latrese Allen

32. ALLEN likes to play music in her vehicle at a raised volume and to express herself by singing along with that music. ALLEN does not seek monetary gain from her expressive activity. She does not try to sell products or services. She merely wants to express

herself through music and to be heard by others in doing so. Her expression through music includes current social and political topics from her particular viewpoint.

33. In the course of her travels, ALLEN frequently travels on the roads in the CITY.

34. On November 26, 2008, ALLEN was traveling in her vehicle on Dr. Martin Luther King, Jr., Way, in and upon the CITY's roads. ALLEN was playing the radio in her vehicle and singing a song in honor of a deceased friend. ALLEN was stopped by officer JAYMI DELCOS, an agent and employee of the CITY and subordinate of CHIEF ABBOTT.

35. The purpose of the traffic stop was that ALLEN was allegedly violating the Ordinance and § 316.3045, Fla. Stat., because the radio in her motor vehicle could be heard more than 25 feet from the source.

36. As a result of the above, ALLEN was given a citation for violating the Ordinance and § 316.3045 ("the ALLEN Citation").

37. As a result of the ALLEN Citation, ALLEN had to hire an attorney to represent her to defend against the Citation.

38. The CITY ultimately entered a nolle prosequi in the civil traffic action upon which the Citation was based.

39. The Ordinance that bans noise heard from more than 25 feet away from the source inhibits ALLEN from expressing herself. The 25-foot noise rule inhibits ALLEN to such a point that she cannot express herself without fear of violating the Ordinance.

COUNT I

First Amendment – Mark Cannon

40. CANNON restates paragraphs 1 through 31 as if fully set forth herein.

41. This is an action under 42 U.S.C. § 1983 for violation of CANNON's First Amendment rights.

42. CANNON's right to free speech and expressive conduct is protected under the First Amendment.

43. The City's Ordinance allowing for the seizure of vehicles operated in violation of § 316.3045, Fla. Stat.:

- a. discriminates against speech because of its content;
- b. discriminates against speech on the basis of the speaker's viewpoint;
- c. restrains constitutionally protected speech in advance of its expression, without appropriate guidelines or standards to guide the discretion of officials charged with enforcing the policy;
- d. chills the free speech of CANNON and of other citizens;
- e. lacks narrow tailoring, fails to achieve any legitimate government purpose, and fails to leave open alternative avenues for expression; and
- f. improperly prohibits speech because it is considered "offensive" by others.

44. The CITY has no legitimate reason for relying on an Ordinance that contains a definition that is facially unconstitutional because it is not content-neutral.

45. The CITY's Ordinance, policy and practice, and the enforcement thereof, violates the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, CANNON respectfully prays the Court grant the equitable and legal relief set forth in the Prayer for Relief.

COUNT II

First Amendment – Latrese Allen

46. ALLEN restates paragraphs 1 through 22 and 32 through 39 as if fully set forth herein.

47. This is an action under 42 U.S.C. § 1983 for violation of ALLEN’s First Amendment rights.

48. ALLEN’s right to free speech and expressive conduct is protected under the First Amendment.

49. The City’s Ordinance allowing for the seizure of vehicles operated in violation of § 316.3045, Fla. Stat.:

- a. discriminates against speech because of its content;
- b. discriminates against speech on the basis of the speaker’s viewpoint;
- c. restrains constitutionally protected speech in advance of its expression, without appropriate guidelines or standards to guide the discretion of officials charged with enforcing the policy;
- d. chills the free speech of ALLEN and of other citizens;
- e. lacks narrow tailoring, fails to achieve any legitimate government purpose, and fails to leave open alternative avenues for expression; and
- f. improperly prohibits speech because it is considered “offensive” by others.

50. The CITY has no legitimate reason for relying on an Ordinance that contains a definition that is facially unconstitutional because it is not content-neutral.

51. The CITY’s Ordinance, policy and practice, and the enforcement thereof, violates the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, ALLEN respectfully prays the Court grant the equitable and legal relief set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court enter a declaratory judgment stating that the CITY's policy and practice of prohibiting noise that can be heard 25 feet away from the source, and the underlying ordinances, City of Sarasota Ordinance No. 08-4816, are facially unconstitutional and violate Plaintiffs' rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. That this Court enter a declaratory judgment stating that the CITY's policy and practice of prohibiting noise that can be heard 25 feet away from the source, and the underlying ordinance, City of Sarasota Ordinance No. 08-4816, are unconstitutional as interpreted and applied to Plaintiffs' speech and violate their rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

C. That this Court enter a preliminary and permanent injunction enjoining Defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying and enforcing CITY's policy and practice of prohibiting noise that can be heard 25 feet away from the source, and the underlying ordinances, City of Sarasota Ordinance No. 08-4816, or any other policy or ordinance that serves this same purpose of restricting constitutionally-protected speech in the City of Sarasota;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

E. That this Court award Plaintiffs actual damages for the costs incurred as a result of the seizure of the vehicle, fines, and attorneys fees for defense of the civil court proceedings;

F. That this Court award Plaintiff CANNON damages for loss of the use and enjoyment of the vehicle as a result of the seizure;

G. That this Court award Plaintiffs nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights;

H. That this Court award Plaintiffs their costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

I. That this Court grant such other relief as the Court deems appropriate and necessary.

DATED: March 19, 2009.

Respectfully submitted,

/s Andrea Flynn Mogensen
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