

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION

JESSE MORRELL,	}	
	}	
PLAINTIFF,	}	
	}	
vs.	}	NO.: 3:06-cv-00619-MRK
	}	
CITY OF HARTFORD, DARYL K. ROBERTS, in his official capacity as Chief of Police of the City of Hartford Police Department, and JOSEPH M. FARGNOLI, II, individually and in his official capacity as police officer,	}	FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF DECLARATORY RELIEF AND DAMAGES PURSUANT TO 42 U.S.C. § 1983
	}	
DEFENDANTS.	}	February 16, 2007

Comes now Jesse Morrell, Plaintiff in this cause, and for this his First Amended Complaint, avers the following:

INTRODUCTION

1. This is a civil rights action brought by Plaintiff Jesse Morrell, seeking injunctive relief, declaratory relief, and damages pursuant to 42 U.S.C. §§ 1983 and 1988, against Defendants City of Hartford, Daryl K. Roberts, in his official capacity as Chief of Police of the City of Hartford Police Department, and Joseph M. Fagnoli, II, individually and in his official capacity as police officer.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff Jesse Morrell’s fundamental rights of due process and free speech, as well as the right to be free from unreasonable seizure by Defendants named herein.

3. Defendants’ actions have deprived, and will continue to deprive, Plaintiff Jesse Morrell of his paramount rights and guarantees provided under the United States Constitution.

4. Each and every act alleged herein was committed by the Defendants, each and every one of them, under the color of state law.

JURISDICTION AND VENUE

5. This action raises federal questions under the United States Constitution, namely the First, Fourth, and Fourteenth Amendments, and under federal law, 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

6. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

7. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202; and Plaintiff's prayer for relief regarding costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

8. Venue is proper in the District Court of Connecticut, pursuant to 28 U.S.C. § 1391(b), because the claims arise in this district and Defendants reside in this district.

PLAINTIFF

9. Plaintiff Jesse Morrell ("Mr. Morrell") is currently a resident of Garden Valley, Texas.

DEFENDANTS

10. Defendant City of Hartford is a municipal governmental authority, a subdivision of the State of Connecticut.

11. Defendant Chief Daryl K. Roberts ("Chief Roberts") is the current Chief of Police for Hartford Police Department for the City of Hartford, Connecticut. In his official capacity, he is responsible for the enforcement of laws and ordinances as they pertain to the City of Hartford. Chief Roberts is sued in his official capacity only.

12. Defendant Joseph M. Fagnoli, II (“Officer Fagnoli”) is a police officer with the City of Hartford in the City of Hartford, Connecticut. In his official capacity, he enforces the laws and ordinances pertaining to City of Hartford. Officer Fagnoli is sued in both his official and individual capacities.

STATEMENT OF FACTS

13. Mr. Morrell is a professing Christian, and as a tenet of his faith, he attempts to share his religious beliefs with others on public ways.

14. Mr. Morrell considers it a religious duty to publicly proclaim and orally communicate his Christian beliefs.

15. Mr. Morrell engages in speech activities for numerous reasons, namely, to express his views about his faith, to object to activities contrary to the tenets of his faith, to counsel individuals regarding his faith, and to engage in religious activities, such as singing of hymns, reading and quoting the Bible, preaching and praying.

16. In furtherance of his religious beliefs and convictions, as set out herein, Mr. Morrell wishes to convey his message in public areas and ways in the Hartford, Connecticut area. He does this primarily through preaching, which consists of open-air speaking on religious topics.

17. Mr. Morrell believes he is called by his religious faith to preach. Mr. Morrell also believes preaching to be his most effective means of communicating his message.

18. Preaching necessarily involves speaking with a raised voice, and thus, allows Mr. Morrell to reach more people with the message. It also attracts attention to Mr. Morrell’s message, helping him to facilitate discourse about his religious beliefs.

19. Mr. Morrell has no intent to physically touch or harass anyone, or to express himself in any way other than in a peaceful manner. Although some may find his religious viewpoints offensive, he has no intention of insulting anyone.

20. On or about April 22, 2004, Mr. Morrell traveled to downtown Hartford, Connecticut for the purpose of engaging in the public expression of his Christian beliefs.

21. Particularly, Mr. Morrell started to preach in the open air on a public sidewalk adjoining State House Square, in close proximity to the Old State House and the statue of the City of Hartford's founder, Thomas Hooker.

22. An inscription on the Hooker statue reads: "Leading his people through the wilderness, he founded Hartford, in June 1636. On this site he preached the sermon which inspired the fundamental orders. It was the first written constitution that created a government."

23. This venue where Mr. Morrell sought to speak, the State House Square, is a uniquely suitable location for expression. It has wide open spaces and is frequented by many pedestrians.

24. State House Square is an area that is very often used by persons who wish to express themselves or otherwise exercise their First Amendment rights. It is not at all uncommon for persons to preach in that area, and they do so unimpeded by Hartford police officers.

25. On this day, April 22, 2004, in conjunction with his preaching, Mr. Morrell also wished to hand out portions of the Bible, particularly, the Book of John.

26. Mr. Morrell attempted to share his religious views on the issues of the day. He spoke in general terms and did not single out any individual.

27. Mr. Morrell chose this location because of the access to individuals on the public way and its proximity to the Hooker statue. He wanted to use the statue as a reference point in his message.

28. Shortly after Mr. Morrell began to speak, a Hartford police officer, Officer Fagnoli, arrived on the scene and asked Mr. Morrell to get into the police cruiser so they could talk about his speech.

29. Officer Fagnoli informed Mr. Morrell that he needed a permit to continue using his microphone to speak, but that he was free to speak without the microphone.

30. Mr. Morrell complied with Officer Fagnoli's request and resumed speaking to those around him without the aid of a microphone.

31. However, when he resumed, a nearby street vendor complained that Mr. Morrell was "bothering" his customers.

32. As far as Mr. Morrell could discern, the vendor had no customers at that time. Nevertheless, Officer Fagnoli, who had remained on the scene, instructed Mr. Morrell that he was no longer free to speak in the area.

33. Officer Fagnoli told Mr. Morrell that he could not speak because of complaints.

34. Mr. Morrell then queried Officer Fagnoli: "So I can preach as long as no one complains?" Officer Fagnoli said: "Yes." Officer Fagnoli elaborated to Mr. Morrell that he would not be allowed to bother people.

35. Mr. Morrell then turned to the crowd that had gathered and asked them if he was bothering them.

36. As way of response, those in the area voiced that Mr. Morrell's speech was not bothering them. Yet, Officer Fagnoli abruptly placed Mr. Morrell under arrest.

37. Mr. Morrell was placed in a police cruiser while Officer Fagnoli asked individuals in the area about Mr. Morrell and whether his speech was bothersome to them.

38. Despite Officer Fagnoli's efforts, not one individual supported a basis for arresting Mr. Morrell. All individuals in the area declined to issue a charge against Mr. Morrell.

39. Mr. Morrell was not engaged in fighting, violent, or threatening behavior, nor was he engaged in fighting words.

40. Upon returning to the police cruiser, Officer Fagnoli informed Mr. Morrell that he was free to go under the condition that he voluntarily discontinue his religious message in the area. Mr. Morrell declined this invitation and stated affirmatively that he would continue to express his religious beliefs.

41. Officer Fagnoli then arrested Mr. Morrell. In so doing, Officer Fagnoli transported Mr. Morrell to the police station for booking.

42. In the narrative portion of Officer Fagnoli's incident report, he portrays Mr. Morrell's speech as "annoying" and "disturbing" those in the area with his speech. Officer Fagnoli opines that Mr. Morrell was also preaching too loudly. Mr. Morrell was placed under arrest for what Officer Fagnoli described as "charges."

43. The "charges" listed in the "charge" section of the incident report specify two related state laws, § 53a-181, described by the officer as "Breach of Peace 2nd," a misdemeanor crime subjecting one to arrest, and § 53a-181a, an infraction pertaining to a public disturbance.

44. Conn. Gen. Stat. § 53a-181, entitled "Breach of Peace in the Second Degree," states:

- (a) A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another; or (3) threatens to

commit any crime against another person or such other person's property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public and hazardous or physically offensive condition by any act which such person is not licensed or privileged to do. For purposes of this section, "public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(b) Breach of the peace in the second degree is a class B misdemeanor.

45. According to Defendants, subsections (a) (1) and (6) of the breach of peace statute applied to Mr. Morrell's speech.

46. According to Officer Fargnoli, Mr. Morrell's preaching was "tumultuous," as set out in subsection (a) (1) of the breach of peace statute.

47. "Annoying" and "disturbing" conduct, including creating "unreasonable noise," is governed by Connecticut General Statute § 53a-181a, entitled "Creating a Public Disturbance," which reads:

(a) A person is guilty of creating a public disturbance when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he (1) engages in fighting or in violent, tumultuous or threatening behavior; or (2) annoys or interferes with another person by offensive conduct; or (3) makes unreasonable noise.

(b) Creating a public disturbance is an infraction.

48. City of Hartford asserts that both of these statutes, § 53a-181 and § 53a-181a, applied to Mr. Morrell's speech, as expressed on the day in question.

49. Defendants have defended the legality of the application of both the public disturbance statute (§ 53a-181a) and the breach of peace statute (§ 53a-181) to Mr. Morrell's speech.

50. In application, according to Defendants, either statute (§ 53a-181a or § 53a-181) can be invoked upon one person complaining about the verbal expression of another.

51. At no pertinent time did Mr. Morrell touch anyone or threaten anyone. Mr. Morrell was not physically threatening toward Officer Fagnoli nor anyone else. Mr. Morrell did not assault anyone nor did he harass anyone. Mr. Morrell was not violent, nor was Mr. Morrell vulgar or profane. Mr. Morrell did not convey any personal insults toward anyone.

52. At no pertinent time did anyone in the area in the vicinity of Mr. Morrell's speech appear to be provoked to the point of violence. Officer Fagnoli was not concerned that a fight would break out as a result of Mr. Morrell's speech.

53. If no one had complained to Officer Fagnoli about Mr. Morrell's speech, Officer Fagnoli would not have arrested Mr. Morrell. The complaint served as the singular basis for the arrest.

54. Following the arrest on April 22, 2004, Mr. Morrell was held for the entire afternoon, and then released on his own recognizance.

55. The charges were subsequently dropped by the city prosecutor.

56. As a result of the above described incident, and the threat of arrest, Mr. Morrell has given up any hope of speaking on public ways in Hartford, Connecticut, and has abandoned his First Amendment rights in the area.

57. Mr. Morrell strongly desires to share his religious message on public ways in Hartford again, and would do so, but he is chilled and deterred from expressing his message on public ways in Hartford for fear of arrest.

58. The impact of deterring Mr. Morrell from expressing his religious viewpoints on public ways in Hartford constitutes irreparable harm to Mr. Morrell.

59. Mr. Morrell does not have an adequate remedy at law for the violation of his constitutional rights.

CAUSES OF ACTION

Due Process – Fourteenth Amendment to U.S. Constitution

60. The public disturbance statute (§ 53a-181a) is unconstitutionally vague on its face. The statute contains undefined terms that fail to provide any discernable meaning. As a result, individuals of common intelligence must guess at the meaning and differ as to its application.

61. The term “annoy” found in subsection (2) of § 53a-181a is unconstitutionally vague on its face.

62. The term “unreasonable” found in subsection (3) of § 53a-181a in the statute, which makes the creation of unreasonable noise a crime, is unconstitutionally vague on its face.

63. The breach of peace statute (§ 53a-181) is unconstitutionally vague on its face. The statute contains undefined terms that fail to provide any discernable meaning. As a result, individuals of common intelligence must guess at the meaning and differ as to its application.

64. The term “physically offensive condition” found in subsection (6) of § 53a-181 is unconstitutionally vague on its face.

65. The referenced statutes (§§ 53a-181a & 53a-181) do not adequately notify persons what expression is prohibited and what speech constitutes a crime.

66. Further, Defendants have applied the aforementioned statutes in an *ad hoc* and arbitrary manner against Mr. Morrell and his speech.

67. On the day in question, Officer Fagnoli applied the “Breach of Peace” statute, § 53a-181, to Mr. Morrell’s speech because he believed the expression to be “tumultuous.” This novel application fails to provide fair notice or warning that someone is committing a crime.

68. Therefore, Conn. Gen. Stat. §§ 53a-181a and 53a-181 are violative of the due process clause of the Fourteenth Amendment to the United States Constitution on their face. Also, in application, §§ 53a-181a and 53a-181 are violative of due process.

Freedom of Speech – First Amendment to U.S. Constitution

69. Conn. Gen. Stat. § 53a-181a inhibits speech, in its application, by prohibiting speech that “annoy[s]” and by prohibiting “unreasonable noise.”

70. This statute (§ 53a-181a) allows police officers to prohibit speech that “annoys” people, or bothers people, thereby creating an illegal heckler’s veto.

71. This statute (§ 53a-181a) supplies police officers with unfettered discretion in judging whether speech is “unreasonable” and whether speech can constitute a crime.

72. Conn. Gen. Stat. § 53a-181 inhibits speech, in its application, by prohibiting speech considered “tumultuous” and by prohibiting any “physically offensive condition.”

73. This statute (§ 53a-181) supplies police officers with unfettered discretion in judging whether certain speech can constitute a crime.

74. Defendant Joseph M. Fagnoli, II, on behalf of Defendant City of Hartford, arbitrarily applied the breach of peace statute (§ 53a-181) to Mr. Morrell’s free speech by unduly characterizing his expression as “tumultuous.”

75. Therefore, Conn. Gen. Stat. §§ 53a-181a and 53a-181 are unconstitutional on their face and as applied, in violation of the free speech clause of the First Amendment of the United States Constitution.

False Arrest- Fourth Amendment to U.S. Constitution

76. According to Officer Fagnoli, he arrested Mr. Morrell pursuant to subsection (1) of § 53a-181, the breach of peace statute, upon finding Mr. Morrell's expression to be "tumultuous."

77. In so doing, Officer Fagnoli arrested Mr. Morrell without probable cause to believe he was violating this provision.

78. Mr. Morrell's actions were not "tumultuous." He was not engaged in violent or threatening conduct or speech. He was not fighting, nor was he engaged in fighting words.

79. Defendant Fagnoli had no knowledge or information sufficient to warrant an arrest.

80. Defendant Fagnoli intentionally confined Mr. Morrell without his consent and without justification.

81. The charge against Mr. Morrell was eventually abandoned, and a judgment of conviction was never entered against him.

82. Defendant Fagnoli therefore violated Mr. Morrell's Fourth Amendment right to be free from unreasonable seizure.

Injury

83. As a direct result of Defendants' violation of Mr. Morrell's rights set out in First, Fourth, and Fourteenth Amendments to the United States Constitution, as alleged herein, he has suffered legal injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jesse Morrell requests the following relief:

A. That this Court enter a declaratory judgment stating that CONN. GEN. STAT. §§ 53a-181a and 53a-181 are facially unconstitutional and violate the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. That this Court enter a declaratory judgment stating that CONN. GEN. STAT. §§ 53a-181a and 53a-181 are unconstitutional as applied to Plaintiff Jesse Morrell and violates the Plaintiff's rights as guaranteed under the First, Fourth and Fourteenth Amendments to the United States Constitution;

C. That this Court enter a preliminary and permanent injunction enjoining Defendants, their agents, employees and all persons in active concert or participation with them, or any of them, from enforcing CONN. GEN. STAT. §§ 53a-181a and 53a-181 against Mr. Morrell's peaceful speech activities;

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 Plaintiff actual damages for injuries sustained in this matter;

F. That this Court award Plaintiff nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights at stake;

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

H. That this Court grant such other and further relief as appears to the Court to be equitable and just; and

I. That this Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

Respectfully submitted this 16th day of February, 2007.

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ATTORNEYS FOR PLAINTIFF

Certificate of Service

I hereby certify that on the 16th day of February, 2007, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

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