

“PHILLY JESUS” HANDCUFFED AT LOVE PARK CHRISTMAS FESTIVAL

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In the case of *Grant v. City of Philadelphia*, 2022 U.S. Dist. LEXIS 191774 (E.D. Penna. 10/22/2022), Plaintiff Michael Grant, also known as “Philly Jesus,” was detained by police on December 21, 2019 during the Christmas Village in Philadelphia’s Love Park. Grant brought a Fourth Amendment claim against the Philadelphia police officers as well as a claim of municipal liability against the Defendant City of Philadelphia.

FACTS OF THE CASE

On December 21, 2019, Plaintiff Grant appeared as "Philly Jesus" at Philadelphia's Love Park, which at the time was the location of the Christmas Village. Grant was at the Christmas Village "dressing up as his interpretation of Jesus and keeping the Christ in Christmas at Christmas Village like he did every year since 2014." He was there to "express his religious liberty, his freedom of speech, as an American citizen."

Grant positioned himself approximately ten (10) feet away from the LOVE sign, in the direction of City Hall, in the southeast quadrant of Love Park. He stood in the midst of a number of Christmas Village booths containing vendors. The Christmas Village was described as "very, very busy" with "a lot of people around," including families with children. Some of the vendors expressed concerns about Grant's behavior, some calling him a “troublemaker.” In addition, some tourists at the Christmas Village thought “there’s a crazy guy here.”

Grant acted alone, speaking to the crowd “with an elevated voice, but was not screaming or speaking loudly.” He held a “stick” at his feet with a “big” sign that stated: "If you die tonight, are you going to heaven or hell? Come up and ask me." In addition, Grant had a wood and straw “collection basket” with “a dollar folded on the crevice of the corner in case someone wanted to throw something in there.” Grant claimed he “wasn't out there for money,” but he kept the basket “there just in case someone wanted to make a donation to my mission.” According to Grant, people did typically “put money in the basket.” When the police officers arrived, Grant estimated there was fifty to seventy-five dollars in his basket.

Grant was approached by the two police officers on duty at the Christmas Village, Officer Sauris and Officer Moffitt. According to Grant, “Sauris' face scrunched up in disgust” upon reading his sign, asking Grant to leave Love Park. Grant further stated Officer Sauris did not specify why he needed to leave, but said "I'm just doing my job, you know." According to Grant, “Officer Sauris also said that he knew Grant and called him names, such as ‘con artist’.”

Grant refused to leave and continued talking to Officer Sauris for approximately five to seven minutes before Officer Moffitt arrived. After Grant continued to refuse to leave, the officers handcuffed Grant and allegedly "dragged him approximately thirty feet to the outside edge of Love Park.”

After confirming Grant had no warrants for his arrest, the police officers issued Grant a Citation Violation Notice (CVN) for "failure to disperse" and told him not to return to the spot where they had removed him from. Upon receipt of the citation, Grant crumpled the CVN in Officer Sauris' face and threw it in the trash. Grant then immediately returned to the spot within Love Park that the officers had removed him from.

#### FOURTH AMENDMENT VIOLATION?

In his complaint, Grant alleged his detention by the City of Philadelphia police officers had constituted a "custodial arrest without probable cause" in violation of his federal civil rights under the Fourth Amendment.

In response, the City argued Grant "was never subjected to a custodial arrest, only an investigative stop." Moreover, the City claimed the police officers had reasonable suspicion for an investigative stop. In the alternative, if this investigative stop constituted an arrest, the City maintained Officer Sauris and Officer Moffitt had probable cause to believe that Grant was violating Pennsylvania law and various city ordinances, including "disorderly conduct, noise violations, failure to disperse, solicitation within eight feet of a business, and obstruction of public sidewalks."

As described by the federal district court, the Fourth Amendment guarantees the right of individuals against "unreasonable searches and seizures" of their persons. While Grant may have experienced a temporary "seizure" of his person in this particular situation, the City maintained Grant was only "subjected to an investigative stop rather than a custodial arrest."

Within the context of the Fourth Amendment, the court noted a "seizure" would occur when "taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." Moreover, the court acknowledged "not all seizures are arrests." Instead, the court found "limited seizures may be considered investigative stops, which do not violate the Constitution even in the absence of probable cause, provided that the officers have reasonable suspicion":

An officer may, consistent with the Fourth Amendment conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot...

A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Viewing the undisputed facts in this particular case, the federal district court found Grant was not subjected to a custodial arrest. While Grant was "restricted in handcuffs for up to thirty minutes," the court noted Grant did "not contest that the officers were detaining him to confirm his identity and search for possible outstanding warrants, nor that he was released once the

investigation was complete.” Moreover, the court found Grant did not allege any “undue delay by the officers.”

Accordingly, in the opinion of the federal district court, it was “reasonable for the officers to verify that a person previously known to at least one officer, whom they believed to be violating the law at the time of seizure, did not have outstanding warrants.” In particular, the court found “[t]he officers' decision to restrict Grant's movements for the thirty minutes required to conduct that investigation was reasonably related in scope to the circumstances which justified the interference in the first place.”

#### REASONABLE SUSPICION

Having found “the seizure was only an investigatory stop,” the federal district found the Fourth Amendment would only require Philadelphia to “show that the officers had reasonable suspicion that the suspect had violated the law.” The court defined “reasonable suspicion” within the context of a Fourth Amendment seizure as follows:

While reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. An officer must articulate more than an inchoate and unparticularized suspicion or 'hunch' of criminal activity.

In this particular instance, the court found: “The undisputed facts show that the officers had a reasonable suspicion that Grant had violated both the disorderly conduct and solicitation ordinances.”

#### PROBABLE CAUSE

Even if Grant's seizure constituted a custodial arrest, the federal district court found “the officers had probable cause to arrest Grant for disorderly conduct and violation of the city ordinance regarding solicitation.” As described by the court, probable cause for an arrest would exist under the following circumstances:

[W]hen there are facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.

Also, in determining whether probable cause to justify an arrest, the court would examine whether the particular facts establish the elements of the crime at issue. Accordingly, the court would initially determine whether the officers had probable cause to arrest Grant for violating the solicitation ordinance.

#### SOLICITATION VIOLATION

As cited by the court, Philadelphia City Ordinance Code § 10-611(4)(b) prohibited individuals to “solicit money for any purpose on the public sidewalk in any manner, within an eight-foot (8') radius of any building entrance, or within an eight-foot (8') radius of any vending cart.” In this particular instance, Grant did not dispute the fact that he “stationed himself within seven (7) to ten (10) feet of the nearest vendor.”

Because Grant admittedly “stood either within or just outside of the prohibited distance required by the statute,” the court found “a reasonable officer at that moment could conclude that he was within the prohibited distance from a vendor”:

Probable cause does not require the officers to use a tape measure. Plaintiff also concedes that he had a collection basket at his feet with a dollar in the corner and money inside. A reasonable officer could conclude from these facts that Plaintiff was impermissibly engaged in solicitation within eight feet of a vendor.

As a result, the federal district court held “the police had probable cause that Plaintiff was violating the City's solicitation ordinance.”

Grant had insisted he did not engage in solicitation because “his subjective intent was not monetary.” Grant, however, did concede he had a basket with a folded dollar inside if “someone wanted to put money inside.” Under such circumstances, the court found “a reasonable officer observing the basket at the scene could conclude that he was soliciting.”

In the alternative, Grant had argued the solicitation ordinance “only applies to sidewalks and does not apply to public parks.” The court, however, noted Grant’s conduct “took place on a paved right of way for exclusive pedestrian use within Love Park,” with the pavement extending “directly from the side of the road.” Accordingly, in the opinion of the federal district court: “A reasonable officer could conclude that the section of Love Park near the Love Sign is simply an extension of the sidewalks, as there is no clear demarcation between sidewalk and park.” Moreover, the court noted Grant had not cited any legal authority to “suggest that the ordinance defines ‘public sidewalk’ to exclude a walking space exclusively for pedestrian use within a public park”:

Indeed, there is no formal definition in the statute or binding legal authority determining the proper scope of the term “public sidewalk” in this ordinance. See § 10-611. Phila., PA., Code § 10-611. Whether or not the location where Plaintiff stood was legally a “public sidewalk” covered by the statute, it was objectively reasonable for the officers to conclude that it was.

As a result, the federal district court held “the officers had probable cause to believe that Plaintiff’s activity in this location violated the solicitation ordinance.”

## DISORDERLY CONDUCT

Under the circumstances of this case, the Philadelphia police officers had further claimed probable cause existed to arrest Grant under the following Pennsylvania's disorderly conduct statute, 18 P.C.S. § 5503(a):

[a] person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance, or alarm, or recklessly created a risk thereof, he: (1) Engages in fighting or threatening, or in violent or tumultuous behavior; (2) Makes unreasonable noise; (3) Uses obscene language, or makes an obscene gesture; or (4) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

As cited by the court, in pertinent part, the statute defined “public” as “affecting or likely to affect persons in a place to which the public or a substantial group has access,” including places of amusement and “any neighborhood, or any premises which are open to the public.” As characterized by the court, the disorderly conduct statute is “aimed at preventing public disturbance by focusing upon certain individual acts, which, if pursued with the intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof”:

The offense of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community. Rather, it is intended to preserve the public peace. The cardinal feature of disorderly conduct is public unruliness which can or does lead to tumult and disorder.

Viewing the following facts in the light most favorable to Grant, the federal district court concluded “a reasonable officer could nevertheless conclude from the totality of the circumstances that Grant's behavior constituted disorderly conduct”:

On December 21, 2019, four days before Christmas, Grant had positioned himself inside a very crowded Christmas Village, approximately ten (10) feet from the LOVE sign, in the southeast quadrant of Love Park, surrounded by Christmas Village vendor booths.

Grant concedes that some observers at the Christmas Village felt that he was acting “crazy,” and viewed his conduct as that of a “troublemaker” as he addressed a crowd including children, staff in hand, in an elevated voice, while soliciting funds through the use of a collection basket. When the Officers approached Grant, Grant refused to leave.

Under such circumstances, the federal district court found “the Officers had probable cause to arrest Grant for disorderly conduct” as a matter of law because “no reasonable jury could find otherwise.”

## POLICE QUALIFIED IMMUNITY

In his lawsuit, Grant had claimed he was “entitled to damages” because “the police action was unduly forceful and amounted to an unlawful arrest.”

As cited by the federal district court, unless protected by “qualified immunity,” police officers are liable under federal civil rights law, Section 1983 (42 USC § 1983) for violating an individual’s constitutional rights. As described by the court: “Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” Further, in determining whether a police officer is entitled to qualified immunity, the federal court would conduct the following two-step inquiry:

(1) whether, taken in the light most favorable to the party asserting the injury, the facts alleged show the officer's conduct violated a constitutional right and (2) whether the right was clearly established, such that it would have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted.

According to the court, a “clearly established” right at the time of the alleged constitutional violation would have to be “sufficiently clear that a reasonable official would understand that what he is doing violated that right.”

In this case, Grant had alleged “bans on solicitation are unconstitutional as applied to religious groups.” The federal district court rejected this argument. According to the court, it was “unequivocal that the state is free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience.” With regard to religious groups, the court noted it would only be “unconstitutional to assess someone's religious practices in determining whether a party had a right to solicit.”

In this particular instance, the court found the police officers had appropriately exercised their discretion in removing Grant from the area where he was standing and giving him a citation. In the opinion of the court, these actions were warranted “to avoid any possible confrontations with the many individuals enjoying the Christmas Village.”

Further, the federal district court found the undisputed circumstantial evidence in this case indicated Grant was “soliciting donations during his presence at Love Park.” Moreover, given Grant’s “extensive experience with making similar appearances in prior years in Love Park and other locations” the court found Grant had “reason to know that soliciting within eight feet of a vendor was a violation of a City of Philadelphia ordinance.” Further, Grant had reason to know this violation “authorized the police to take action removing plaintiff, forcibly” because Grant “had refused to leave Love Park voluntarily to the perimeter where the police gave him a citation.”

In so doing, the court acknowledged: “Handcuffing an individual is not necessarily arresting someone and it is certainly not charging anyone with a crime.” In this particular instance, the federal district court determined the police had acted lawfully by handcuffing Grant.

Further, the court found the police had used “minimal force” to remove Grant after his refusal to leave, noting Grant’s “loss of liberty was minimal” and he had not been “charged with a crime.”

While acknowledging Grant’s “liberty was constrained for a period of time by the police,” the court determined this sole fact did not “entitle the plaintiff to damages, nor does it deprive the police of qualified immunity.” As a result, the federal district court held “the police officers were entitled to qualified immunity” and summary judgment should be granted in their favor.

## SECTION 1983 MUNICIPAL LIABILITY

In his lawsuit, Grant had also claimed the City of Philadelphia should be held liable for damages under Section 1983, a federal civil rights statute (42 U.S.C. § 1983). As described by the federal district court, under Section 1983, “the municipality can only be liable when the alleged constitutional transgression implements or executes a policy, regulation, or decision officially adopted by the governing body or informally adopted by custom.” Further, to establish municipal liability under Section 1983, the court noted a plaintiff like Grant would have to “show that they were deprived of rights, privileges, or immunities secured by the Constitution and laws, and that the deprivation of those rights was the result of an official government policy or custom.”

In this case, Grant contended the City of Philadelphia had indeed “developed a custom of its police and employees violating the rights of those expressing ideas or leafletting in public forum areas.” In particular, Grant alleged Philadelphia police officers would tell individuals engaged in such activities that “they could not do so or not to return to do so and/or they could not do so since soliciting was banned.” In addition, Grant claimed individuals who continued to engage in expressing ideas in public were threatened by police with arrest for disorderly conduct, failure to disperse, obstructing public passage or other crimes in which charges were later dismissed.

Grant had also alleged “the City has failed to provide adequate training, or otherwise update its training, on how police should respond to Constitutional violations or solicitations bans, despite having notice that its training was inadequate particularly as to the First Amendment.” In addition, Grant claimed the City had “no formalized tracking of complaints or violations, or data concerning alleged police interference with free speech or other activity protected under the First Amendment.”

In response, the City of Philadelphia argued Grant had “failed to prove that the City is the cause of any injury that he suffered.” The federal district court acknowledged that there can be no Section 1983 claim without an underlying constitutional violation.

It is well-settled that, if there is no violation in the first place, there can be no derivative municipal claim... If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point.

In this case, the federal district court held “Grant’s Section 1983 claim fails as a matter of law” because “no reasonable jury could conclude that Grant suffered a constitutional violation.”

## CONCLUSION

Having found no legal basis for Grant’s claims, the federal district court granted the motions for summary judgment in favor of the police officers and the City of Philadelphia, effectively dismissing Grant’s lawsuit without a trial.

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