

BIBLE BELIEVERS TARGET ARAB FESTIVAL

James C. Kozlowski, J.D., Ph.D.

© 2014 James C. Kozlowski

In the case of *Bible Believers v. Wayne County*, 2014 U.S. App. LEXIS 16533; 2014 FED App. 0208P (6th Cir. 8/27/2014), the United States Circuit Court of Appeals for the Sixth Circuit grappled “with claims of the right to disseminate ideas in public places” against claims of an effective power in government to keep the peace.” In this particular instance, a group of Christian evangelists were proselytizing at a city festival when an angry crowd of youths began hurling debris at them. Law enforcement officers told the group of evangelists to leave the festival or be cited for disorderly conduct.

See street preacher’s point of view YouTube video of incident at:

https://www.youtube.com/watch?v=HOL_ommK3qg

The federal district court rejected claims that governmental action under these particular circumstances violated the First Amendment right to freedom of speech, prompting an appeal to the federal circuit court described below.

FACTS OF THE CASE

The City of Dearborn in Wayne County, Michigan had hosted the Arab International Festival (“Festival”) every summer from 1995 until 2012. The three-day event was free and open to the public. The Festival welcomed roughly 250,000 attendees and featured carnival attractions, live entertainment, international food, and merchandise sales. Over the years, Christian evangelists had targeted the Festival, including the Bible Believers.

Bible Believers is an unincorporated association of Christian evangelists who desire “to share and express their Christian faith with others, including Muslims, through various activities, including street preaching and displaying signs, banners, and t-shirts with Christian messages and Scripture quotes.” For the Bible Believers, Dearborn was “an important place for their evangelical activities because of its large Islamic population.”

The 2012 Festival ran from June 15 through June 17 along several blocks in Dearborn. The Wayne County Sheriff’s Office (WCSO) was the Festival’s exclusive law enforcement agency. According to WCSO’s Operation Plan for the Festival, the overall mission was to provide “Wayne County citizens, festival patrons, organizers, and merchants with law enforcement presence and to ensure the safety of the public, and keep the peace in the event there is a disturbance.” The Plan further noted that “past festivals had attracted Christian evangelical groups, including “a radical group calling themselves The Bible Believers.” As characterized in the plan, “[t]hese groups will possibly show up at the festival trying to provoke our staff in a negative manner and attempt to capture the negativity on video camera.”

On June 15, 2012, the Bible Believers came to the Festival “bearing strongly worded t-shirts and banners,” including: “Jesus Is the Judge, Therefore, Repent, Be Converted That Your Sins May Be Blotted Out,” “Turn or Burn,” “Jesus Is the Way, the Truth and the Life. All Others Are Thieves and Robbers,” and “Islam Is A Religion of Blood and Murder.” One Bible Believer carried a severed pig’s head on a stick which purportedly “protected the Bible Believers by repelling observers who feared it.” After arriving the leader of the Bible Believers (Chavez) began preaching, castigating the crowd for “following a pedophile prophet.”

As the Bible Believers moved deeper into the Festival, the crowd—a good portion of which appeared to be minors—continued to gather and yell. Some people started throwing debris—including rocks, plastic bottles, garbage, and a milk crate—at the Bible Believers. Someone in the crowd also shoved one Bible Believer to the ground.

Some WCSO officers detained debris-throwers while other officers hovered at the edges of the crowd. Eventually, after about thirty-five minutes, the Bible Believers temporarily stopped preaching and stood as the crowd harangued them and hurled objects. Several officers, including some mounted units, attempted to quell the crowd.

After about five minutes of standing quietly, the Bible Believers began to move and preach again. As they did so, the cascade of objects intensified. WCSO officers then advised the Bible Believers that they should leave because their safety was in jeopardy and “not enough officers were available to control the crowd.” The Bible Believers, however, continued to preach, followed by what had swelled into a large crowd.

The officers then noted “Chavez was bleeding from where a piece of debris had cut his face.” The officers were concerned that “Chavez’s conduct was inciting the crowd” and advised Chavez that they would “escort the Bible Believers out of the Festival.” Chavez asked if the Bible Believers would be arrested if they refused. The officer replied: “Probably we will cite you” because “the Bible Believers were a danger to public safety.” In response, Chavez snapped: “I would assume a few hundred angry Muslim children throwing bottles would be more of a threat than a few guys with signs.”

WCSO officers then told Chavez: “You need to leave. If you don’t leave, we’re going to cite you for disorderly. You’re creating a disturbance. I mean, look at your people here. This is crazy!”

Officers then escorted the Bible Believers out. Overall, the Bible Believers preached at the Festival less than one hour. The WCSO’s Post-Operation Report indicated that officers arrested and cited several people for disorderly conduct and gave others verbal warnings. No Bible Believers were cited or arrested at the 2012 Festival itself.

PEACE KEEPER PLAN

Bible Believers alleged that Wayne County through the WCSO had “violated their First

NOVEMBER 2014 LAW REVIEW

Amendment right to freedom of speech by either suppressing their speech ab initio [i.e., from the beginning] or by permitting the hostile mob to effectuate a so-called ‘heckler’s veto’.”

As noted by the court, both parties agreed that Bible Believers had “engaged in protected speech” and “the Festival constituted a traditional public forum” in which free speech rights are exercised. That being said, Wayne County, however, maintained that the First Amendment did not empower the Bible Believers “to act as they pleased.” On the contrary, Wayne County claimed “the Bible Believers were not free to create a disturbance or cause a threat to public safety.”

Initially, under the circumstances of this case, the federal appeal court considered “whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” In other words, were the governmental restrictions of free speech rights content based or content neutral. If content neutral, that is the government regulates all messages alike without regard to content, then the government could impose “reasonable restrictions on the time, place, or manner of protected speech.” In so doing, however, such governmental restrictions would also have to be narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information.”

Applying these principles to the facts of the case, the federal appeals court held “WCSO’s Operations Plan was content neutral.”

The Plan merely stated that the WCSO would ensure safety and keep the peace. Although the Plan mentioned that Bible Believers might appear and attempt “to provoke our staff in a negative manner and attempt to capture the negativity on video camera,” it said nothing about regulating the content of their speech and nothing about imposing any prior restraints on Appellants. Instead, it merely flagged a potential source of conflict before emphasizing professionalism and the need for an even temperament.

The Plan did not require that the WCSO take any actions other than keep the peace. Accordingly, the Plan did not create any content-based restrictions on speech.

Having found the Plan was content neutral, the court determined “WCSO could impose reasonable time, place, and manner restrictions on protected speech that were narrowly tailored to serve a significant governmental interest and that provided alternative channels for communication of the information.”

HECKLER’S VETO

The federal appeals court then considered whether implementation of WCSO’s content neutral Plan nonetheless abridged freedom of speech for the Bible Believers based on the

NOVEMBER 2014 LAW REVIEW

First Amendment's ban on the "heckler's veto." As described by the court, "[t]he heckler's veto principle recognizes that listeners' reaction to speech is not a content-neutral basis for regulation."

[H]ostile public reaction does not cause the forfeiture of the constitutional protection afforded a speaker's message so long as the speaker does not go beyond mere persuasion and advocacy of ideas and attempts to incite to riot.

Accordingly, the question before the court was whether the hostile public reaction to the Bible Believers speech had effectively prompted WCSO's threat to cite the Bible Believer's for disorderly conduct if they did not leave the Festival. If so, the Bible Believers contended WCSO's actions effected an unconstitutional "heckler's veto" on their First Amendment free speech rights.

According to the federal appeals court, police "must take reasonable action to protect from violence persons exercising their constitutional rights." In so doing, the appeals court acknowledged that the government has a right to prevent a speaker from urging his opinion upon an audience with an intent to incite violence.

[T]he law does not expect or require officers to defend the right of a speaker to address a hostile audience, however large and intemperate, when to do so would unreasonably subject them to violent retaliation and physical injury. In such circumstances, they may discharge their duty of preserving the peace by intercepting his message or by removing the speaker for his own protection .

Accordingly, the court found "individual officers could prevent hostility... by removing the speaker if the officers' conduct was reasonable and undertaken in good faith. Moreover, the federal appeals court noted: "Courts should not 'second guess' police officers who are often required to assess a potentially dangerous situation and respond to it without studied reflection."

In this particular instance, the Bible Believers had argued "they did not incite the crowd at the 2012 Festival to violence." As a result, the Bible Believers claimed WCSO had "effectuated an impermissible heckler's veto when they threatened to cite the Bible Believers if they did not leave." The district court had rejected this argument.

In the opinion of the federal district court, "the actual demonstration of violence here provided the requisite justification" for WCSO's intervention, "even if the officials acted as they did because of the effect the speech had on the crowd." Further, the federal district court found WCSO was "not powerless to prevent a breach of the peace in light of the imminence of greater disorder" engendered by the Bible Believers speech. The federal appeals court agreed. According to the appeals court, freedom of speech principles do not sanction "incitement to riot."

NOVEMBER 2014 LAW REVIEW

When clear and present danger of riot, disorder . . . or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious... [A] speaker can incite to violence even if no such eventuality be intended by making statements "likely to provoke violence and disturbance of good order."

Applying these principles to the facts of the case, the federal appeals court determined a video of the 2012 Festival had demonstrated that the speech and conduct of the Bible Believers was "intended to incite the crowd to turn violent."

Within minutes after their arrival, Appellants began espousing extremely aggressive and offensive messages—*e.g.*, that the bystanders would "burn in hell" or "in a lake of fire" because they were "wicked, filthy, and sick"—and accused the crowd of fixating on "murder, violence, and hate" because that was all they had "in their hearts."

These words induced a violent reaction in short order; the crowd soon began to throw bottles, garbage, and eventually rocks and chunks of concrete. Moreover, members of the crowd can be heard to shout "get them" and "beat the s*** out of them"; one Bible Believer was pushed to the ground. Chavez's face was cut open and bleeding from where he had been struck by debris. And the crowd itself continued to swell and swarm, undeterred by the WCSO's attempts to contain it.

Under these circumstances, the federal appeals court found "the situation at the 2012 Festival went far beyond a crowd that was merely unhappy and boisterous." On the contrary, the court accepted WCSO's explanation provided to the Bible Believers at the time that "the threat of violence had grown too great to permit them to continue proselytizing."

In so doing, the federal appeals court acknowledged "a state must not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." However, in this particular instance, the court found WCSO had "a reasonable good faith belief that the threat of violence was too high because the Bible Believers had already been subjected to actual violence."

[H]ad the WCSO wanted merely to preserve desirable conditions, they could have intercepted the Bible Believers shortly after their arrival at the 2012 Festival. Instead, they allowed the Bible Believers to proceed until the threat of "violent retaliation and physical injury" became too great, at which point they discharged their duty of preserving the peace . . . by removing the speakers for their own protection.

CONCLUSION

Accordingly, the three judge panel of the federal appeals court, with one judge dissenting,

NOVEMBER 2014 LAW REVIEW

concluded WCSO's threats to cite the Bible Believers "for disorderly conduct if they refused to leave do not amount to effectuating a heckler's veto." On the contrary, the court found WCSO's conduct was "objectively necessary under the circumstances" and did not violate the free-speech rights of the Bible Believers. As a result, the federal appeals court affirmed the judgment of the federal district court in favor of defendants WCSO and Wayne County.

(Note: This three judge panel decision is not necessarily final. On September 8, 2014, a petition was filed for a "rehearing en banc" (i.e., by all of the judges) on the Sixth Circuit Court of Appeals. If reconsidered by the entire Sixth Circuit, the three judge panel decision described herein could be modified or reversed. Moreover, while unlikely, there is slight possibility that the U.S. Supreme Court could eventually accept this case for review to clarify and/or redefine the general constitutional principles governing the "heckler's veto.")

Links to additional YouTube videos of 2012 Arab Festival incident:

<https://www.youtube.com/watch?v=B4Ws1YWuzyQ>

https://www.youtube.com/watch?v=HOL_ommK3qg

<https://www.youtube.com/watch?v=FLKarYXjG4c>

<https://www.youtube.com/watch?v=kkfVAeG3rn4>

James C. Kozlowski, J.D., Ph.D. is an attorney and associate professor in the School of Recreation, Health, and Tourism at George Mason University in Manassas, Virginia. E Mail: jkozlows@gmu.edu Webpage with link to law review articles archive (1982 to present): <http://mason.gmu.edu/~jkozlows>