

21-8202
NO.

FILED

MAY 20 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE
UNITED STATES

ORIGINAL

ERIC WATKINS

Petitioner

V

OFFICER SHIELDS et al

Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Sunrise Florida 33351

Question Presented

- (1) Whether the City of Ft. Lauderdale Park Rule 4.5 prohibition of a clearly established First Amendment Right to play amplified music at a park is so grossly and flagrantly unconstitutional that the Respondent officers should have known it was unconstitutional?
- (2) Whether the City of Ft. Lauderdale Park Rule 4.5 is so grossly and flagrantly unconstitutional because it failed to regulate, by time, place and manner, the clearly established First Amendment Right to play amplified music at the park, as required by law, but instead prohibited the right, *supra*?
- (3) Whether Florida trespass law section 810.08, and not section 810.09, is applicable to the instant case where the City of Ft. Lauderdale's River Land park had a building on it with a roof over it together with a curtilage as required by section 810.08 and not section 810.09?

(4) Whether the Respondent Officers were entitled to qualified immunity where they lacked authority to issue trespass warnings and should have known they lacked that authority?

(5) Whether the defendants arrest for trespass after warning based on Plaintiff playing amplified music in the park and not for returning to the park nor refusing to leave is probable cause to arrest for trespass after warning?

List of Parties

A List of all parties to the proceedings in the Court whose Judgment is the Subject of this petition is as follows:

Timothy Shields	Respondent
Vincent Schrider	Respondent
Michael Carabeo	Respondent

Related Cases

Eric Watkins v Officer Shields, NO. 17-CV-60-009, U.S. District Court For the Southern District of Florida. Judgment entered January 29, 2020.

Eric Watkins v Officer Shield NO. 20-10791-AA U.S. Court of Appeals For the Eleventh Circuit. Judgment entered January 28, 2022.

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Petition For Writ of Certiorari

Petitioner Eric Watkins respectfully request
the issuance of a Writ of Certiorari to
Review the Judgment of the United States
Court of Appeals for the Eleventh Circuit.

Decision below

The decision of the United States Court
of Appeals for the Eleventh Circuit is non-
published at No. 20-10791.

Jurisdiction

The Eleventh Circuit entered Judgment on
January 28, 2022 see Appendix (F) on Ap-
ril 21, 2022 Justice Thomas granted Petitioner
30 day extension of time to file Petition
for Writ of Certiorari. see App. (G) This
Court's Jurisdiction is invoked under 28 U.S.C.
§ 1254.

Federal Rule involved

Qualified immunity generally protects government officials from individual liability for their on the job conduct unless they violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Piazz v Jefferson County*, 923 F.2d 947, 951 (11th Cir. 2019)

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

Fourth Amendment The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment no person shall be de-
prived of life, liberty, or property, without due pro-
cess of Law; nor shall private property be taken
for public use, without compensation.

Fourteenth Amendment no state shall 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.

Statement of the case

On March 14, 2013, Petitioner was, at approximately 8:30-8:45 am, in Riverland park's parking lot playing music from his car stereo system. A park Ranger approached and ordered Petitioner to turn off the music because the park rules prohibited the playing of amplified music. Petitioner Refused. The Ranger, radiated Law enforcement, and Officer Shields and Schirder of the Ft. Lauderdale police Department arrived. They ordered Petitioner to turn off his music, stating that amplified music was prohibited by park rules. Petitioner complied and shut off the music. Shields then attempted to engage Petitioner in a friendly conversation regarding his vintage Volkswagen, which Petitioner rejected. Shields became angry and disrespectful and degraded Petitioner. They ordered him to get into his car and leave the park and warn him that if he ever returned to the park, he would be arrested for trespass. Petitioner got into his car and left.

Doc 33 page 12-20

After leaving and remembering he had not obtained the case number for the trespass warning, Petitioner drove around the park and pulled up by Shields, who was parked outside the park. Petitioner asked him

For the case number for the trespass warning. Shields instructed Petitioner to get out of the Road and to pull into the park where they could talk. Petitioner did so, and both he and Shields exited their cars. Plaintiff again asked for the case number. Shields inquired why Petitioner needed the number. Petitioner responded that he intended to challenge the permanent trespass warning with Shields' supervisor. Shields became angry and told Plaintiff he was under arrest for trespass after warning. Schrider assisted in the arrest of Petitioner. See Doc. 33 par. 20-22.

In Petitioner's second Amended Complaint he claimed Shields and Schrider violated (1) his Fourth Amendment rights by arresting him without probable cause for trespass after warning (2) his due process right, under the Fifth and Fourteenth Amendments, to patronize the public park by trespass-warning him from ever returning to the park and (3) his First Amendment right to freedom of speech and expression at a public park by enforcing an unconstitutional prohibition on amplified music by ordering Petitioner to turn off his music and trespass-warning him from remaining and ever returning to the park. See Doc. 33 par. 7, 10-11.

In Petitioner's Amended Complaint he claimed that the officers did not have any authorization or authority to order petitioners to leave the park or to trespass warn them from ever returning to the park. See Doc 33 para. 7, 10, 23-24

Petitioner claimed to have a First Amendment constitutional right to play amplified music in a public park and that the park rules prohibited that right see Doc 33 para. 7, 11, 25

After discovery, the defendants, Shield and Schrider, filed a Joint motion for summary judgment. In it they claimed CJ Plaintiff failed to establish a claim for false arrest because Plaintiff did not have a right to play amplified music in the park pursuant to City of Ft. Lauderdale ordinance 16-71(a)-(c). That the officers had probable cause to arrest Petitioner for violating trespass laws because they initially heard Petitioner playing loud music after their arrival at the park, warned Plaintiff regarding the prohibitions and after Petitioner returned to the park the officers observed Petitioner playing loud music again in violation of park rules and city ordinance and in defiance of officer's orders. See Doc 62 pp 6-10

With respect to Refrains' First Amendment claim the defendant's argument that Refrains cannot demonstrate a constitutional violation as his conduct at the Nevada State did not constitute speech or expressive conduct warrants protection by the First Amendment. The defendant argues that he should be deemed to demonstrate that he is playing a symbolic message of the party was intended to deliver a message intended to be communicative or is expressive conduct. Refrains is related to matters of public concern or other concerns to the community and a subject of general interest and of public concern. Refrains is more disruptive to others and that every assuming argues that Plaintiff's playing of amplified music with symbolic side protected conduct can be reasonably restricted to time, place and manner. Plaintiff has not demonstrated that Rule 45 is unconstitutional. Dec 62 AP 12-13

The defendant went on to argue that they are entitled to qualified immunity because Shields and Shields were engaged in their official discretionary functions as police officers when they trespass against Plaintiff and that Plaintiff has failed to demonstrate that the officers violated any clearly established statutory

or constitutional law. That Petitioner also failed to establish that he had a constitutional right to remain on public property playing loud music. Doc 62 pp 13-16

In the Defendants statement of material facts they stated the following: That on March 14, 2013 the Riverland Park Ranger Radioed that a vehicle was playing loud music in the park. Upon arrival the officers observed Petitioner playing loud music from his vehicle. That this was prohibited by the park rules and regulations. The officers approached Petitioner and began warned him telling him that he was not authorized to be on the premises playing loud music, asked him to leave and warned him that if he remained on the premises playing loud music he would be arrested for trespassing. That Petitioner temporarily left the park but returned to the park playing loud music delaying the officers need to leave. That probable cause and reasonable probable cause existed to effectuate an arrest of Petitioner for the misdemeanor of trespassing. The misdemeanor was committed in the presence of the officers after warning by officer Shields. Petitioner was placed under arrest and taken to Jail. See Doc 61 para. 1-8

The officers went on to state that they were authorized to issue trespass warnings and misdemeanor arrest pursuant to City ordinance chapter 16, Ft. Lauderdale police department policy 501.2 and 501.4 and Florida Statute 901.15-901.17 and that the officers complied with the statutes, policies and ordinances. See Doc 61 para 10-11. The defendants also presented supporting Affidavits, interrogatories, park rules and regulations, city ordinances and Ft. Lauderdale police Department policies. Doc 59-1-59-7, 60-1-60-2

Subsequent to the defendants filing of their motion for summary judgment, Plaintiff filed a response denying and demonstrating the fallacy.

Plaintiff objected to the defendants numerous misrepresentation and omissions regarding all of the counts in plaintiff's complaint. See Doc 101 para 1 p 1-2 Plaintiff then argued that he did establish a claim of false arrest against Defendant Shields & Schriber. Petitioner demonstrated that pursuant to *Ward v Rock* against Plaintiff 49 U.S. 78 U.S. (1985) he had a first amendment right to play amplified music at a public park. That the park rule 4.5

prohibited that right, supra. That the defendants' trespass warning or letterhead for playing amplified music at the park was illegal because of Plaintiff's clearly established right to play amplified music at the park because such a right trumped any adverse state law, ordinance, or rule and regulation. Plaintiff claimed and demonstrated that the officers did not have legal authority to issue trespass warning at the park because the Ft. Lauderdale Police Department did not have a trespass affidavit or file giving them such authorization required by Florida trespass laws § 816.05 and § 816.06. Plaintiff demonstrated that city ordinance 16-12 a-c did not authorize the officers to order patrons to leave the park and trespass warn them from ever returning because of playing amplified music in the park in violation of park rules. That the ordinance did not make playing of amplified music at the park a conduct that amounts to trespassing nor did it vest the officers with authority to trespass warn for such conduct. Petitioner demonstrated that the park rules and resolutions 11.3, trespass, defined trespassing as a patron refusing to leave the park when ordered to do so. That it was undisputed that the defendant officers ordered Plaintiff to leave the park and trespass warn.

him from ever returning because of his
playing amplified in the park. See Doc 101
para 3-A-B pp 2-6

Plaintiff argued and demonstrated that
pursuant to David Shields v State of Flor-
ida no. 92-60849 25 L.T. no 922123 the
officers did not have probable cause to arrest
Plaintiff for trespass after warning because
their initial trespass warning did not
give petitioner a time to return. Doc 101
para CSp 6

Plaintiff argued and demonstrated that
Shields and Spingarn very own statements
in their affidavit and interrogatory responses
established that they did not have probable
cause to arrest Plaintiff for trespass after
warning because they claimed to have arrest-
ed Plaintiff for trespass after warning because
he was playing amplified music when he re-
turned to the park. That such an arrest is
as a matter of law invalid because Florida
trespass laws, the City ordinances and the
park rules and regulations do not author-
ize the defendant officers to arrest for
trespass after warning for any other conduct
than refusing to leave when ordered to do
so or being on the premises when not
allowed. See Doc 101 para 3(D) pp 7-9

Plaintiff demonstrated numerous service issues of material facts. That the music he was playing was not amplified. That he turned off his music after being ordered to do so by Shields. That the officers only trespassed petitioner long after he had turned off his music and because Plaintiff did not engage in a friendly conversation with Shields. That Plaintiff returned to the park after being instructed to do so by Shields. Upon returning to the park petitioner was not playing any music at all, and that the defendants only arrested Plaintiff for trespassing after petitioner requested the incident report number for the trespass and stated that he wanted it to challenge Shields trespass warning with his Supervisor. That Retention was put into the defendants and the defendants never asked petitioner to leave after they allowed him to return to the park. Plaintiff argued the defendants theory that if one is playing amplified music at the park they are in violation of trespass laws is inconsistent with Florida trespass laws, city ordinances and the park rules. see Doc 101 para (E) pp 9-11

Petitioner demonstrated a violation of clearly established First Amendment Right to play music and amplified music at the park.

Petitioner, demonstrated that pursuant to State of Florida v Richard T. Catalano no. 81-1166 at 13-14 and WAC v Rock against Revisors 491 U.S. 781 (U.S. 1989) Plaintiff had a clearly established First Amendment right to play music, including amplified music at a park. That the park Rules 4.5 prohibited patrons from play amplified music and any sound of music at the park. That the Defendants should have known of Plaintiff's clearly established right and known that they were violating that right when they ordered him to turn off his music and trespass warned him from ever returning to the park. Petitioner argued that playing music or amplified music in a park is speech, expressive conduct and activity and is symbolic expression to communicate a message of lyric, song or just music itself. See Dec 101 para 4 pp 11-13

Petitioner argued and demonstrated that based upon reasons he has already addressed in his Response to the defendants motion for summary judgment and because the law had put the defendants on clear notice - that a citizen had a First Amendment right to play music including amplified music at a park and that such right was only subjected to limitations on time, place and manner

The Defendant were not entitled to qualified immunity. That because Petitioner's right had been clearly established the defendant's ordering him to turn off his music, to leave the park and to never return on them subsequently arresting petitioner was all in violation and a violation of his constitutional rights.

Petitioner argued that because of his right to play music and amplified music in the park was clearly established the defendant could not enforce park rules against petitioner exercise of his constitutional rights because a clearly established constitutional right trumps any adverse rule, statute or ordinance. Petitioner then demonstrated that qualified or good faith immunity is defeated if an official knew or should have known that the action he took would violate the plaintiff's constitutional rights. Plaintiff demonstrated that the law reasons that an adverse policy to a clearly established constitutional right could not make reasonable a belief that was contrary to a decided body of case law. See Doc 101 para 5 pp 13-16

Plaintiff also filed a response to the defendant's statement of material facts where he raised the following disputes: According to Plaintiff he was not playing loud or amplified music but

had a First Amendment right to do so. That he was not rude nor threatening to the officers but that Shields was rude and threatening to petitioner. That though the officers did trespass plaintiff for playing music in the park the trespass for that reason only came about because petitioner did not engage in a friendly conversation with Shields and admonished Shields about his rude and disrespectful and threatening behavior. That defendants did not have any authority to trespass upon petitioner from the park nor to arrest him for trespass after warning for playing amplification music in the park because Florida trespass statute § 816.08, § 816.09, the city ordinance 16-71a-c did not give such authority or authorization. That plaintiff only returned to the park after given permission to do so by Shields and was only arrested for trespass after warning after he informed Shields that he intended to challenge his initial trespass warning with his supervisor. That none of the defendants ever ordered plaintiff to leave the park after they gave him permission to return to the park. That the probable cause affidavit did not establish probable cause because it was merely conclusory regarding the trespass warning that it did not indicate that plaintiff ever refused an order to leave the park or that he was ever a second order to leave after he was given permission to return. That the probable cause affidavit did

not indicate a time limit for Plaintiff's return to the park which invalidates the trespass warning and the arrest. That the park Rules 4.5 is not a scheduled misdemeanor or crime. That the park rules 11.3 defines trespass as refusing to leave when ordered to. That the defendant officers did not follow department policy, state statute nor city ordinances. That the defendants did not have any legal authority to order petitioners to leave the park or the trespass warn them from ever returning. On March 14, 2013 the park ranger never ordered Petitioner to leave the park. Petitioner immediately turned off his music when the defendant's ordered him to do so. That Shields tried to engage petitioner into a friendly conversation but when petitioner resisted it he became rude, disrespectful and threatening to petitioner. That only after Petitioner admonished Shields regarding such behavior is when Shields ordered him to leave the park and to never return or face arrest of playing amplified music in the park. That Petitioner immediately left the park but returned after getting permission from Shields. Once returned petitioner asked Shields for the incident report number for his trespass warning. That Shields inquired why petitioner needed the number then arrested Petitioner for trespass after warning after petitioner told him he intended to challenge his trespass.

Warming with Shields's supervisor. See Doc 102 pp 1-10
para 3-11, 16-39

Peltiner supported his Response to Defendants' motion for summary judgment and his Response to Defendants' statement of facts with his Sworn Declaration Doc 103 pp 3-10 Exhibit (1); Exhibit (2) State of Florida v Catalano; Exhibit (3) 810.08, 810.09 pp 16-20; Exhibit (4) David Shields v State of Florida pp 21

The Defendants filed a Reply to Plaintiffs response to Defendants' motion for summary judgment arguing that Plaintiffs reliance upon Ward v Rock Against Racism 491 U.S. 781, 109 S.Ct. 2746 (1989) is misplaced and meritorious. That State v Catalano 104 So.3d 1069 (Fla. 2012) is distinguishable. That Plaintiffs argument that there was no trespass without on file authorizing the officer to trespass was on is misplaced. That Plaintiffs response, have not shown that Qualified immunity is not appropriate. See Doc 106 pp 1-3

Peltiner filed a Sur-Reply arguing that his reliance on Ward v Rock Against Racism was on point and meritorious because it was based on the principles of the case that a

park patron has a first Amendment Right to play music and amplified music at a public park and that that right could only be restricted to time place and manner. That the park Rule 4.5 prohibited the right to play amplified music. Petitioner argued that the defendant's concede that a patron's violation of the park's Rule 4.5 is not violation of city ordinance Sec. 16-17 A-C trespass law because the Ordinance did not criminalize noncompliance of park rules as a violation of its trespass law but it did criminalize refusing to leave when ordered to do so. That Rule 4.5 swept too broadly and inhibited plaintiff's clearly established rights. Plaintiff argued that this argument that the officers did not have a trespass affidavit on file swing their authorization to issue trespass warnings at the park is not misplaced. Petitioner argued that Police 501.1 did not authorize arrest for trespass but Police 501.4 did not authorize officers to issue trespass warning but it did authorize them to arrest for trespass violation. That Chapter 16 did not authorize officers to issue trespass warnings for violating Rule 4.5 but it did give law enforcement authority to arrest for violation of trespass laws. That Florida Statute 905.15 did not authorize officers to issue trespass warning to leave property for violation of park Rule 4.5. That Florida Statutes

§ 810.08 (1)(3) and § 810.09 (1)(3) required
Law enforcement to issue a trespass warning
from public property. Doc 108 para 1-3 pp 1-5

The magistrate Judge filed a report
and recommendation recommending that
the defendant's motion for summary judgment
be granted for the following reasons:
That the Park's sound amplification regula-
tion is valid because it was content neutral
aimed at the noise level of certain devices
rather than any expressive content emanating
from them. That the regulation does not seek
to stop non-amplified expressions but continued
to permit expressive activity in the park and
has no effect on the quality or content of
that expression because regulating the extent
of amplification. Accordingly, on its face the
regulation appears to be a valid time place
and manner restriction. Accordingly, Plaintiff's
claim of a first amendment violation fails.
Doc 116 pp 4-5 The magistrate went on to
reason that pursuant to ordinances § 16-72 (1)(1)-
16-71 (1)(2) the arresting officers had legal authority
in the park and as the Park's regulation of
amplified music was constitutionally valid
it was not improper for the officers to en-
force that regulation against Retterer after
he was warned about the regulation. The
magistrate also found that the defendant's

Failure to give Petitioner a time to return to the park did not invalidate the trespass warning. Because any reasonable reading of the warning would have put Plaintiff on notice that he was not allowed to immediately return and Plaintiff did so knowingly & here Plaintiff's argument fails. The Magistrate went on to argue that if Plaintiff returned to the park under any circumstances immediately after he was given a trespass warning, he did so knowingly and at his own peril. Because he had been deemed a vexatious litigant and sanctioned for it. Dec 116 pp 5-7. The Magistrate then found that even if the defendants were mistaken about the extent of their authority or the constitutionality of the regulations, they are still entitled to qualified immunity of their actions because based on the constitutionality of the regulation and the defendants' action he was unable to demonstrate that those actions violated a clearly established constitutional right. Dec 116 pp 7-9.

Petitioner filed objections of the magistrate's report and recommendations arguing the following: Plaintiff objected to many parts of the magistrate's background and facts he claimed Petitioner agreed to. Dec 119 para 1-5. Plaintiff objected to the magistrate's analysis of

petitioner's facts, courts and construction of petitioner's paper parts underlying his claims. Petitioner argued, that he had a clearly established first amendment right to play amplified music in the park and the park rules prohibited that right. That the defendants violated that right, ~~supra~~, when they ordered him to turn off his music and trespass warned him from ever returning to the park. That the defendants had no legal statutory right to trespass upon petitioner from the park and that their trespass warning had be invalidated because they did not give petitioner a time to return to the park. That the defendants had no legal ground to trespass warn petitioner from the park because petitioner complied with their order to turn off his music. That the defendants had no probable cause to arrest petitioner for trespass after warning because petitioner did not disobey any orders to leave the park and never turned on his music after turning it off. (Doc 119 para 6-10 pp 3-4) Plaintiff objected to the magistrate claim that speakers in general are by nature sound amplification devices that would fall under the park's regulation. Doc 119 para 11 p 5 Plaintiff objected to the magistrate claim that the park rule 4.5 appeared to be a valid time, place and manner restriction. Plaintiff argued that the rule prohibits the right, ~~supra~~, and did not leave open any ample

alternative Channels For communication of the information / playing of amplified music at a time, place and manner as redressed by WARE V Rock Against Racism Doc 119 para 12 pp 6-7 Plaintiff objected to the magistrate's claim that he admitted to violating park rules. Doc 119 para 13 pp 7-8 Petitioner objected to the magistrate finding that the defendants had legal authority to order petitioner to leave the park and to trespass warning him from ever returning for playing amplified music at the park. Plaintiff asserted that ordinance 16-72 O.C. did not give the officers such legal authority, supra. Doc 119 para 14 pp 9-11 Petitioner objected to the magistrate's constraining of his claim regarding the officers not giving petitioner a time to return to the park and objects to the magistrate finding. Petitioner argued that pursuant to David Shields v State of Florida the officers did not have probable cause to arrest him for trespass after warning because they did not give petitioner a time to return to the park. Doc 119 para 15 p 11 Petitioner objected to the magistrate's failure to consider his argument that the defendants response to petitioner's interrogatories and their affidavits demonstrated that they did not have probable cause to arrest Plaintiff for trespass after warning because they claimed to arrested petitioner for trespass after warning because he was allegedly playing amplified music in the

Park when he returned and not because he returned.
Doc 119 para 16 p 12-13 Petitioner objected to
the magistrate finding that discredited Petitioner's
claim that he returned to the park after he
got permission to do so from defendant Shieffs.
Doc 119 para 17 p 13-15 Petitioner objected
to the magistrate finding that the defend-
ants were entitled to qualified immunity on
the ground that they were not entitled to
qualified immunity because the ordinance
that governed their action were not ambi-
guous and Petitioner's rights were clearly est-
ablished. Hence the defendants were put
on notice and reasonably should have known
that their actions were violative plaintiff's
constitutional rights. Doc 119 para 18 pp 15-17
plaintiff objected to the Magistrate's failure
to consider his numerous material disputed
facts. Doc 119 para 21 p 18

On January 29, 2020 the district court
entered an order affirming and adopting the
magistrate's report and recommendations.
Doc 120 pp 1-2

On appeal Petitioner amongst other things
argued that the park rules and regulation 4.5
prohibited his clearly established first amendment
right to play amplified music at the park be-
cause it prohibited the right and did not regulate

it to time, place and manner, as required by Ward v Rock Against Racism 491 U.S. 289 (U.S. 1989), to allow Plaintiff to play amplified music or any sound or music at the park at a specified time, place, and manner. That the defendants violated Petitioner's clearly established right to play amplified music at the park when they ordered him to turn off his music and trespass warned him from remaining or ever returning to the park. See case no. 20-10791 Appellant opening brief page 10A-C, 12 pp 14, 17-19

On appeal Petitioner argued that the defendant officers did not have legal authority pursuant to city ordinance section 16-71A-C to issue orders to leave the park and to issue trespass warnings for violation of park rules that prohibit playing of amplified music because the ordinance did not make playing amplified music a violation of its trespass laws - only being on park property in violation of regulations regarding when patrons are allowed to enter the park and refusing to leave the park when ordered to do so is the conduct that the ordinance criminalizes. Petitioner argued that in order for the defendants to have had authority to issue trespass warnings beyond those proscribed in ordinance 16-71A-C, the Ft. Lauderdale police department had to have written authorization to do so from

Park officials pursuant to Fla Stat. § 810.08 or § 810.09 (1) (a) (3). The park Ranger had the order ordered Petitioner to leave and asked the officer to enforce that order. That the park Ranger did not order Petitioner to leave, nor asked the officers to do such. and, Ft. Lauderdale P.D. did not have such authorization or files. Petitioner argued that even the park rules defined trespass only as one refusing to leave when ordered to do so. IC at para 14 pp 19-22, 24

Petitioner argued that the defendants were not entitled to qualified immunity, as the magistrate had claimed, because the park's regulations and ordinance section 16-71 (C) (2) were unambiguous with their proscriptions only giving authority to trespass warn and arrest for trespass after warning if persons enter upon or refuse to leave in violation of regulations pertaining to the time a person enters the property, that the defendants all interpreted that the park's rule 4.5 prohibited the playing of amplified music without regulating the right to time, place or manner. That the defendants were also put on clear notice that Petitioner had a clearly established first Amendment right to play amplified music in the parks. Plaintiff argued that qualified immunity and good faith immunity is defeated if an official knew or reasonably should

have known that their actions of making Plaintiff shut off his music, trespass warning him and arresting him for violation of trespass warning would violate Petitioner's first, fourth and fourteenth Amendment Rights. See at para 18-19 pp 27-28

III Appell Petitioner argued that the sworn statements made by the defendants regarding the reason they trespassed warned and arrested Petitioner for demonstrates that the officers lacked probable cause to arrest Petitioner for trespass after warning because playing amplified music at the park does not violate City ordinance or Florida trespass laws neither did it violate the park trespass rule. See at para 16 pp 23-25

Plaintiff argued that he did not return to the park in violation of trespass warning that Shields had given him permission to return to the park to ask him for the trespass warning incident report number. See at para 17 pp 25-26

Petitioner also argued that the officers did not have probable cause to arrest him for trespass after warning even if he had returned to the park after trespass warning because the officers did not give him a time

to return to the park but trespass warned him indefinitely. That such a permanent trespass was pivotal as a matter of law. Id at para 15 pp 18-19

In the defendants' response brief the defendants argued that (1) the district court did not error in adopting the magistrates report and recommendation and granting summary judgment because the parks rule regulation did not violate Petitioner's 1st Amendment rights, (2) Petitioner failed to demonstrate that he was falsely arrested for trespass and (3) that all defendants were entitled to qualified immunity. Defendants response brief pp. 12-19

In Petitioner's reply brief Petitioner argued and demonstrated the following: That throughout the defendants statement of the case the defendants made numerous inaccuracies and misrepresentations regarding the facts of the case. -

- Petitioner's reply brief para. 17 pp 1-8 - Plaintiff also argued and demonstrated numerous inaccuracies, misinterpretations and omissions in the defendants statement of the facts critical to Petitioner's case. - Petitioner's Reply brief para 18-27 pp 8-10 - Petitioner again demonstrated that the parks Rule 4.5 violated his clearly established constitutional rights. - Id at para (C) p 11 -

Plaintiff demonstrated that the defendants did
falsely arrest him on multiple illegal grounds. Id.
at para (D), pp 11-15. Petitioner argued and
demonstrated that neither defendants were ent-
itled to Qualified immunity. Id. at para (E) pp
15-17

TO THE ELEVENTH CIRCUIT For reasons they
violated the district court's granting of Summary
Judgment on Plaintiff's fourth Amendment
Claim but Affirmed on all others. On Petiti-
oner's first Amendment claim the appellate court
found that the defendants were entitled to Que-
ried immunity because Petitioner's conduct fell
within the Block Rule 4.5 prohibition. Police are
charged to enforce laws until and unless they are
declared unconstitutional. The rule was not de-
clared unconstitutional at the time of the incident.
The Rule supra, was consistent with the pro-
scription of Ward V. Rock Against Racism,
491 U.S. 781, 784, 803 (1989) being a content
neutral sound difference directed at limiting
sound emanating within and around parks,
which is a substantial interest of the city, but
even if the Rule supra, failed Ward's test for
constitutionality, despite its valid goals and con-
tent neutrality, it is not "so grossly and flag-
rantly unconstitutional" because it could not have
been apparent to the officers that they were
violating petitioner's constitutional rights by

ordering him to turn off his music and leave the park. See Appellate Court decision pp 6-8 Appendix (A)

The appellate court found that the officers were entitled to qualified immunity as Petitioner's claims that they lacked authority to order him to leave the park and to issue him a trespass warning for violating the park rule 4.5 that prohibited playing amplified music at the park. The court reasoned that the relevant laws were not clearly established that the officers should have known that they lacked the authority to issue a trespass warning. To support the court found that Petitioner was arrested under Ft. Lauderdale ordinance prohibiting trespass on public property ordinance § 16-71(6)(7), and § 16-71(5)(2) which states in relevant part:

"Trespass includes entering upon or refusing to leave any public property in violation of lawfully enacted and promulgated regulation, where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, his agent or a police officer § 16-71(6)(2) Id at p 9 Appendix (A)

The court went on to state Florida trespass law section 810.05(1)(a) that it "criminalizes

trespass on property other than a structure or conveyance - such as a public park - where a person, without being authorized, licensed, or invited, willfully enters upon or remains on property as to which notice against entering or remaining is given - by actual communication to the offender. 32 at pp 9-10 Appendix (B)

The court continued that the park ranger order petitioner to turn off his music because it violated park rules. Petitioner refused and the ranger called the police and park rules 11a3 required that a person be ordered to leave for a minimum of 24 hours for violating park rule 4.5. That the officers informed petitioner of the violation of park rules and ordered him to leave. That plaintiff is incorrect when he claims that the 810.02 required the officers to have a written authorization from the Reverend park to issue trespass warrants. 32 at p 10 Appendix (B)

The court continued to reason that Fla. Stat. 810.09 applies to the park because no structure or conveyance was involved which 810.02 would have covered. That only Section 810.08 required the alleged trespasser to defy an order to leave communicated by the owner or authorized person. That section 810.08 only requires notice against entering or remaining is given - by actual communication to the offender, which is

What Shields and Schirer provided, Pl. Stk. 5
§10.09(1)(5)(1). Id at 10-11 Appendix (A)

Subsequently, Petitioner filed a petition
for hearing or rehearing en banc in which
he argued and demonstrated the following:

That the appellate court's decision regard-
ing the park Rule 4.5 conflicts and departs
from the Supreme Court holding in City of Reno-
ton v Playtime Theatres, Inc. 475 U.S. 411, 47,
106 S.Ct. 925, 928, 89 L.Ed.2d 1186 (1986), which was
adopted by the Court, that "statutes which pro-
scribe the time, place and manner in which
first amendment rights may be exercised in
respect of the message being conveyed
are deemed to be content neutral statutes,
which are analyzed under a lower standard
of scrutiny." (Petitioner's Petition for rehearing
en Banc para 2) That Ward v Rock Against
Racism 491 U.S. 781 (U.S. 1989) clearly establi-
shed a first amendment right to play amplified
music at a park only to be restricted to time,
place and manner. (Id at para 3, p 2) Petitioner
then demonstrated that the park Rule 4.5
clearly prohibited the playing of amplified
music at the park without regulating it to
time, place or manner. (Id at para C-1) Peti-
tioner argued that the Supreme Court in Ward,
supra, did not prohibit the playing of amplified
music in that park but regulated it to time

place and manner allowing the Band to still play amplified music. Id at para (E) p 3-4
Petitioner argued and demonstrated that because the Right was clearly established and the rule prohibited it without regulation to time place and manner the defendants were put on clear notice that the rule violated the Right and if they enforced it they would also be violating Plaintiff's Right as well. That pursuant to Wilson v Layre 526 U.S. 603, 615 (1999) and Harper v Kemp 677 F. Supp. 1213 (M.D. GA 1988) Refuse or (play) to act is unreasonable where policy is contrary to a decided body of case law. (Id at para (F) pp 4-5.)

Petitioner went on to pose numerous questions of exceptional importance. They are as follows:

Does rule 4.5 proscribe a time, place or manner in which Petitioner could play amplified music and if not is such a rule content neutral? Is the defendant entitled to qualified immunity in spite of Rule 4.5 prohibiting the playing of amplified music, an established Right. Whether Rule 4.5 is overly and flagrantly unconstitutional because of its prohibition of a clearly established right. And whether the defendant is entitled to qualified immunity on Petitioner's first amendment claim in light of the circumstances. Id at para A-D pp 5-6

Petitioner ~~asserted~~ argued and demonstrated that Fla. Stat. § 810.08 and not § 810.09 governed and was applicable to the park because the park had a permanent building with a roof over it together with its curtilage thereof. (Id. at para E p 7). Petitioner ~~also~~ demonstrated that § 810.09 did not authorize the officers to enter, people's home property, they were invited on to at (F) p 7). Petitioner demonstrated that section 810.09 clearly established that the officers should have known that they lacked the authority to issue trespass warnings at the park for violation of the park's prohibition of playing amplified music. Id. at para (F) p 8 whether rule 810.09 authorized the officers to issue trespass warnings for playing amplified music at the park. Plaintiff demonstrated no. (Id. at para (G) p 8). Lastly, Petitioner demonstrated that the Appellate Court erred when claiming that Petitioner's claim, that the officers trespass warning was invalid from the beginning because it was indefinite, was raised in passing. The record showed that petitioner did raise the claim as an issue under issue two of his opening brief and supported the issue under argument two. Id. at para 3 pp 8-9

Petitioner also subsequently filed a

Petition For Panel rehearing. In it Petitioner agreed and demonstrated the following: That the officers should have known they were violating Petitioner's right when they ordered him to turn off his music and to leave the park because Petitioner's right was clearly established and the rule unambiguously prohibited the right. (See Petition for panel rehearing para 01 pp 1-2) That the panel grossly erred in finding Rule 4.5 to be content neutral within the meaning of Ward supra. Id at para 2 p 2) That Rule 4.5 was grossly and flagrant-ly unconstitutional in that it totally prohibited the right. (Id at para 3 p 3) That Fla. Stat. §10.09 was not applicable to the park because it had a building on it consistent with Fla. Stat. §10.08. (Id at para 4 p 3) That section §10.09 did not authorize the officers to issue trespass warnings for playing music in the park. That it only gave the officer authority for persons who enter the park without authorization and who refuse to leave. (Id at para 5 pp 3-4) That §10.09 clear reading put officers on notice that they lacked authority to issue trespass warnings at the park for playing music. Id at para 6 pp 4

Reasons For Granting The Writ

① This court should grant review of questions one and two for the following reasons:

The Eleventh Circuit Court of Appeals decision on the constitutionality of the City of Ft. Lauderdale parks rule and regulation 4.5 that prohibits the playing of amplified music at its parks has so far deviated from this Court's *Ward v Rock Against Racism* 491 U.S. 781, 788-90 (1989) test for constitutionality that it seems for this Court to exercise its supervisory power.

According to the Supreme Court in *Ward v Rock Against Racism*, *supra*, the right to play music, including amplified music, in a public forum is protected under the First Amendment but subject to regulation to reasonable limitations on time, place and manner under the First Amendment, 491 U.S. 781, 788-90, *supra*.

The City's parks rule 4.5 did not regulate the playing of amplified music to reasonable limitations on time place and manner, instead it flat out prohibited the playing of amplified music at any time, place and in any manner. The rule states "no person or group shall play or operate any sound amplification device including

radios, television sets, turntables, tape decks, public address systems, amplified musical instruments, portable generators, or any other loud noise generating which disturbs other persons." see *Eleventh Circuit per curiam* at p 6

On March 14, 2013 the defendant officers enforced this park rule, *supra*, by ordering petitioner to shut off his music. Petitioner was playing in the park from his car radio and cited him to leave the park. Trespass warning him from re-entering because of his playing of amplified music in the park. The defendants informed plaintiff that the park rules prohibited the playing of amplified music in the park. According to the defendants they subsequently arrested petitioner for trespass after warning because petitioner was playing amplified music when he re-entered to the park. See pages 145, 23-26 of this petition.

In the Appellate Court *per curiam* it found the Park Rule 4.5 Constitutional on its claim that the rule was a "content neutral sound ordinance directed at limiting sound emanating within and around parks, which is a substantial interest of the city. That even if Park Rule 4.5 might fail Ward's test for constitutionality, despite

its goals and content neutrality it is, not so grossly and flagrantely unconstitutional that the officers should have known it was unconstitutional. See appellate courts per curiam pp 7-8 Appendix (A)

According to Ward's test, for constitutionality the right to play and be in the park is protected by the First Amendment subject to reasonable limitations on time, place and manner of the protected speech. That limitations are reasonable if they are without reference to the content of the regulat- ed speech - narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communi- cation of the information. Ward, 491 U.S. at 791.

~~If~~ a statute does not reasonably restrict a First Amendment right to time place and manner and it prohibits it such a statute or rule cannot be content neutral even if it does not discriminate and it grossly and flagrantely violates clearly established constitutional rights and Law Enforcement's enforcement of such a rule or statute disqualifies them from the privilege of qualified immunity because they should have known such enforcement, supra, would violate clearly established constitutional rights. Clearly, even if Rule 4.5 was

Content neutral and serving a significant government purpose such does not end words test for constitutionality. The appellate court must then determine if the restriction was narrowly tailored and left open ample alternative channels of communication for the particular speech to be expressed.

For the reasons stated above if this court denies review or consideration of my petition for writ of Certiorari on the questions presented one and two the City's grossly flagrant unconstitutional Park Rule 4.5 - would not only continue to deny Ft. Lauderdale's U.S. Citizens clearly established constitutional right to play amplified music at its city parks but it would become a permanent bedrock precedent against the established constitutional right to play amplified music at its city parks. Additionally and equally important is the actual way the appellate court deviated from Ward's test for constitutionality would also become a bedrock precedent in their moving forward on determining the constitutionality of other statutes that prohibits or seek to regulate constitutional right.

② This court should grant review of Question presented three for the following reasons:

The Eleventh Circuit's finding that the

Riverland Park is not a Structure within the meaning of Fla. Stat. § 810.08 is a terrible precedent that would cause arrest for trespassing under Fla. Stat. § 810.09 which is a different trespass Law from § 810.08. With different conduct and prescriptions. Hence people would be arrested and convicted under the wrong statute as petitioners.

§ 810.08 trespass in a structure or conveyance should have been the Law applied to the Riverland Park in the instant case because the Riverland park has a Building with a roof at the head of the park on the park and the park is its curtilage. It is not just empty land.

Section 810.08 governs trespass in a structure or conveyance and section 810.09 governs trespass in property other than a structure or conveyance. See Eleventh Cir. per Curiam p10. The appellate Court held that section 810.08 does not apply to the park because no structure was involved. Id at p10

Fla. Stat. 810.11 defines what is a structure under section 810.08. That it is a building of any kind, either temporary or permanent, which has no roof over it, together with the curtilage thereof.

In Petitioner's Petition for *en banc* hearing, he claimed that the Riverland park did have a building on it with a park and the park is its Carlsbad. Petitioner's Petition for *en Banc* para. (E) p 7

If the Supreme Court does not review this question Florida law enforcement will continue to violate its citizens Fourth Amendment rights not to be falsely arrested. To arrest someone on the wing statute is a false arrest and this is continuously going on in Florida when it comes to parks as happened to me.

(3) The Court should grant review of Questions presented four for the following reasons:

The Appellate Courts finding that the defendants were entitled to qualified immunity on petitioner's First Amendment claims and on his claim that the defendants did not have the authority to issue trespass warning at the park for violation of park rule that prohibited playing of amplified music is a bad precedent and a flagrant deviation from the principles of qualified immunity set by this U.S. Supreme Court. As such the Court's intervention is warranted because without review of this issue this flagrant deviation, *supra*

would be common precedent in the appellate courts future analysis and decisions on other state law, ordinances and rules which would be a threat to numerous constitutional rights as in the instant case. Additionally the lower courts and law enforcement would now act consistent with the appellate courts erroneous finding regarding the trespass statutes, ordinance and park rules violating the U.S. Constitution.

Pursuant to the Supreme Court's holding in *Saich v Katz*, 533 U.S. 194 (2001) to grant the application of qualified immunity, the plaintiff must satisfy a two prong test showing (1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the violation. Id at 201

As Petitioner demonstrated under reason one of this petition and through out this petition he had a first amendment right to play amplified music in the park and that right was clearly established, and the city park rule 4.5 clearly violated that right because it prohibited the right without leaving open any alternative communication of that right. Petitioner also demonstrated that the Rule supra, was blatantly and flagrantly unconstitutional because it totally prohibited the clearly established right. Hence the officer's

Should have known it was unconstitutional and to enforce it would violate petitioners constitutional.

Petitioner met the two prong test of Saucier, supra, yet the ~~appellate~~ court disregarded such.

Petitioner also demonstrated that Florida Statutes 810.08 and 810.09 did not give the defendants any legal authority to issue trespass warrants at the park for playing amplified music at the park in violation of park rules unless written authority from the parks official was given to the Ft. Lauderdale police department to issue such warrants. That the statutes only authorized law enforcement to arrest for trespassing. Petitioner also demonstrated that because the reading of the statutes did not give the officers authorization to issue trespass warrants, supra, the officers should have known that they had no authority to issue trespass warrants for playing amplified music at the park. See

(4) This court should grant review of questions presented here for the following reasons:

The Eleventh circuit court of appeals did

not address petitioner's argument that the defendants lacked probable cause to arrest petitioner for trespassing because he was allegedly playing amplified music upon his return to the park.

Without this court's intervention Ft. Lauderdale Police officers would continue to arrest patrons of the park for trespassing if they are found to be playing amplified music at the park. Such a precedent is a violation of Florida trespass statutes and the City's trespass ordinance.

Florida trespass laws §10.09 and the City Ordinance 16-71 A-G does not proscrib[e] the playing of amplified music in its parks as conduct that violates its trespass laws. These laws only proscrib[e] the conduct of entering property without authorization ~~or~~ refusing to leave when ordered to do so.

In sworn affidavits both officers claimed that they arrested petitioner for trespass after hearing because petitioner was playing amplified music at the park upon his return to the park.

Clearly the defendants arrested petitioner for violating trespass law based on conduct

not proscribed as violative of trespass laws.

For the reasons stated above this Court's review is warranted.

Conclusion

Mr. Watkins respectfully requests that this Court is a writ of certiorari.

Respectfully filed on this 19 day of May 2022.