

NO.

IN THE SUPREME COURT OF THE UNITED
STATES

ERIC WATKINS
Petitioner

VS

OFFICER SHIELDS et al.
Respondents

On Petition For Writ of Certiorari to
the United States Court of Appeals
FOR the ELEVENTH CIRCUIT

Petitioner's APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10791
Non-Argument Calendar

D.C. Docket No. 0:17-cv-60009-DPG

ERIC WATKINS,

Plaintiff - Appellant,

versus

OFFICER SHIELDS,
Fort Lauderdale Police Department,
OFFICER SCHRIDER,
Fort Lauderdale Police Department,
RIVERLAND PARK, CARABEO,
950 SW 27th Avenue
Fort Lauderdale, FL 33312,

Defendants - Appellees,

RANGER TRILLO,

Defendant.

APPENDIX (A)

Appeal from the United States District Court
for the Southern District of Florida

(August 10, 2021)

Before ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Eric Watkins, proceeding *pro se*, appeals the district court's grant of summary judgment against him on his 42 U.S.C. § 1983 civil-rights action for violations of his rights under the First, Fourth, Fifth, and Fourteenth Amendments. After careful review, we vacate the grant of summary judgment on Watkins's Fourth Amendment claim, but we affirm the judgment in all other respects.

I.

We present the relevant facts in the light most favorable to Watkins.¹ On March 14, 2013, Watkins was parked in Riverland Park's parking lot, playing music from his car stereo system. A park ranger approached and asked him to turn off the music because of park rules against playing amplified sound. Watkins refused.

The ranger radioed law enforcement, and Officers Shields and Schrider of the Fort Lauderdale Police Department arrived. They ordered Watkins to turn the music

¹ At summary judgment, "[w]e view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-movant." *Alston v. Swarbrick*, 954 F.3d 1312, 1317 (11th Cir. 2020).

off, stating that amplified sound was prohibited by park rules. Watkins complied and shut off the music. Shields then ordered Watkins to get in his car and leave the park, warning him that if he ever returned to the park he would be arrested for trespass. Watkins got in his car and left.

After leaving, Watkins drove around the park and pulled up by Shields, who was parked outside the park. Watkins asked him for the case number for the trespass warning. Shields instructed Watkins to get out of the road and to pull into the park where they could talk. Watkins did so, and both he and Shields exited their cars. Watkins again asked for the case number and stated that he intended to challenge the permanent trespass warning with Shields's supervisor. Shields became angry and told Watkins he was under arrest for trespass after warning.² Schrider assisted in the arrest.

II.

In a second amended complaint, Watkins alleged, in relevant part, that Officers Shields and Schrider violated (1) his Fourth Amendment rights by arresting him without probable cause for trespass, (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 rights to freedom of

² Shields and Schrider dispute these events, contending that Watkins reentered the park on his own, loudly playing music from his car stereo. We must credit Watkins's version of events at summary judgment, however.

speech and expression at a public park by enforcing an unconstitutional prohibition on amplified sound. He also brought a similar First Amendment claim against Carabeo in his official capacity, purportedly as manager of Riverland Park.

After discovery, the defendants filed a joint motion for summary judgment. Shields and Schrider argued that they did not violate Watkins's constitutional rights and were entitled to qualified immunity. Carabeo asserted that he could not be held liable because he was not personally involved in or aware of the events at Riverland Park, he was not a Riverland Park manager, and he had no role in drafting or revising the City of Fort Lauderdale Parks Rules and Regulations ("Park Rules"). In a response, Watkins argued his claims and asserted that he intended Carabeo to be a placeholder for the City of Fort Lauderdale. The defendants filed a reply.

In a report and recommendation ("R&R"), a magistrate judge recommended that the district court grant the defendants' motion for summary judgment. The magistrate judge first concluded that any claim based on Watkins's First Amendment rights failed because the regulation at issue, Park Rule 4.5, was a reasonable and content-neutral time, place, and manner restriction.

The magistrate judge also rejected Watkins's other claims, stating that he knowingly returned to the park immediately after being trespass-warned. Regarding Watkins's claim that he was simply "following orders from Defendant Shields when he returned to the Park," the magistrate judge observed that Watkins "has been found

to have frequently brought frivolous and vexatious claims, often involving trespass, in this Court, and that he has been sanctioned for continuing to do so.” So according to the magistrate judge, “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.” Finally, the magistrate judge found that Shields and Schrider were entitled to qualified immunity.

The district court adopted the R&R over Watkins’s objections and granted the defendants’ motion for summary judgment. This appeal followed.

III.

We review the grant of summary judgment *de novo*, construing the evidence and drawing all reasonable inference in favor of the nonmoving party. *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013). We may not make credibility choices, and we therefore must credit the nonmoving party’s version of the facts even if we believe the evidence is “of doubtful veracity.” *Id.*

We construe *pro se* briefs liberally. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We may affirm the judgment on any ground supported by the record. *Big Top Koolers, Inc. v. Circus-Man Snacks, Inc.*, 528 F.3d 839, 844 (11th Cir. 2008).

IV.

We begin with the § 1983 claims against Officers Shields and Schrider, who raised the defense of qualified immunity. 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.” *Piazza v. Jefferson Cnty.*, 923 F.3d 947, 951 (11th Cir. 2019) (quotation marks omitted).

A.

Watkins first claims that Shields and Schrider violated his clearly established First Amendment right to play amplified sound in a public forum by enforcing Park Rule 4.5, which Watkins believes is unconstitutional.

According to Park Rule 4.5, “No person or group shall play or operate any sound amplification device including radios, television sets, turn tables, tape decks, public address systems, amplified musical instruments, portable generators, or any other loud noise generating device which disturbs other persons.” Park Rule 11.3 provides that any person who violates any of the rules “shall be ordered to leave all City of Fort Lauderdale parks . . . for a minimum 24-hour period, and if he fails to leave, he will be subject to arrest and prosecution for trespassing or prosecuted under other ordinances.”

Shields and Schrider are entitled to qualified immunity on this claim. Watkins’s conduct fell within Park Rule 4.5’s prohibition because he used a sound

amplification device—his car stereo system³—inside Riverland Park. Although Watkins argues that Park Rule 4.5 violates the First Amendment, “[p]olice are charged to enforce laws until and unless they are declared unconstitutional.” *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979). At the time of the incident giving rise to Watkins’s arrest, Park Rule 4.5, or something materially identical, “had not been declared unconstitutional, and therefore it could not have been apparent to [the officers] that [they were] violating [Watkins’s] constitutional rights” by ordering him to turn off his music and leave the park. *Cooper v. Dillon*, 403 F.3d 1208, 1220 (11th Cir. 2005).

Watkins relies on the Florida Supreme Court’s decision in *State v. Catalano*, 104 So. 3d 1069 (Fla. 2012), but in that case the amplified-sound regulation was held unconstitutional because it was content based, carving out more favorable rules for “motor vehicles used for business or political purposes.” *Id.* at 1078–79. The regulation was therefore subject to strict scrutiny. *Id.* In contrast, Park Rule 4.5 is a content-neutral sound ordinance directed at limiting sound emanating within and around parks, which is a substantial interest of the city. *See Ward v. Rock Against Racism*, 491 U.S. 781, 784, 803 (1989) (stating that content-neutral sound regulations are valid if they are narrowly tailored to serve a significant governmental

³ Despite Watkins’s assertions to the contrary, a car stereo system is plainly a “sound amplification device” within the meaning of Park Rule 4.5.

interest, such as “protecting its citizens from unwelcome noise,” and leave open alternative channels of communication). Watkins also cites to *Daley v. City of Sarasota*, 752 So. 2d 124 (Fla. Dist. Ct. App. 2000), but that case did not involve sound regulation in public parks. And even assuming Park Rule 4.5 might fail *Ward*’s test for constitutionality, despite its valid goals and content neutrality, it is not “so grossly and flagrantly unconstitutional” that the officers should have known it was unconstitutional. *DeFillippo*, 443 U.S. at 38.

Accordingly, Shields and Schrider are entitled to qualified immunity as to Watkins’s § 1983 First Amendment claims.

B.

Watkins next asserts that Shield and Schrider violated his Fourth Amendment rights when they arrested him for trespass based on conduct authorized by Shields. Relatedly, he claims that these officers lacked the authority to issue a trespass warning in the first place.⁴

⁴ Watkins’s argument on this point is primarily statutory, but he also asserts in passing that the “[t]respass warning was invalid from the beginning because it was indefinite and hence illegally violated Plaintiffs due process right to patron the park.” We conclude that this passing reference, without any supporting legal authority or arguments, is not sufficient to raise a due process argument on appeal. See *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (“We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.”).

“[I]t is well established that [a] warrantless arrest without probable cause violates the Fourth Amendment and forms a basis for a section 1983 claim.” *Carter v. Butts Cnty.*, 821 F.3d 1310, 1319 (11th Cir. 2016) (quotation marks omitted). But where probable cause supports an arrest, it bars a § 1983 unlawful-arrest claim. *Id.* “Probable cause to arrest exists if the facts and circumstances within the officer’s knowledge, of which he has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” *Id.* (internal quotation marks omitted). We evaluate probable-cause determinations objectively—that is, without regard to the officer’s subjective intentions—and under the totality of the circumstances. *See id.*

Watkins was arrested under a Fort Lauderdale ordinance prohibiting “trespass . . . on public property.” Fort Lauderdale Code of Ordinances § 16-71(b)(7). “Trespass” includes “[e]ntering upon or refusing to leave any public property in violation” of lawfully enacted and promulgated regulations “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.” *Id.* § 16-71(c)(2). In addition, Florida state law 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 the property “[a]s to which notice against entering or remaining is given . . . by actual communication to the offender.” Fla. Stat. § 810.09(1)(a).

The record shows that a park ranger told Watkins that he was violating park rules by playing music inside Riverland Park through a sound-amplification device—his car stereo system. When Watkins refused to turn off the music, thereby continuing to violate park rules, the ranger notified police. Despite Watkins’s views to the contrary, his conduct plainly violated Park Rule 4.5, so the park rules required that he be “ordered to leave . . . for a minimum 24-hour period,” even if he was not actively violating park rules at the time he was ordered to leave. *See* Park Rule 11.3. The officers did just that, informing him that he was violating park rules and ordering him to leave the park.

We are not persuaded that the officers lacked the authority to issue a trespass warning for violating park rules or—more pertinent for purposes of qualified immunity—that the officers should have known they lacked that authority. Watkins asserts that the officers were required to have written authorization from Riverland Park to issue trespass warnings, claiming that this requirement derives from §§ 810.08 and 810.09. He is incorrect.

Section 810.08 governs trespass of a “structure or conveyance,” while § 810.09 governs most other trespasses. Section 810.09 applies here because no structure or conveyance was involved. And in contrast to offenses under § 810.08,

§ 810.09 includes no requirement that the alleged trespasser “defied an order to leave communicated by the owner or authorized person.” *R.C.W. v. Florida*, 507 So. 2d 700, 702 (Fla. Dist. Ct. App. 1987). The statute requires merely that “notice against entering or remaining is given . . . by actual communication to the offender,” which is what Shields and Schrider provided. Fla. Stat. § 810.09(1)(a)(1). So at the very least, the relevant law was not so clearly established that the officers should have known that they lacked the authority to issue a trespass warning.

Turning to Watkins’s arrest, the district court found that the officers had probable cause to arrest for trespass because, considering his prior litigation history, Watkins reentered the park “knowingly and at his own peril” immediately after being trespass-warned by the officers. But that finding effectively served as an impermissible credibility determination because it contradicted Watkins’s version of the facts. *See Feliciano*, 707 F.3d at 1252.

Under Watkins’s version of the facts, his reentry to the park was not unauthorized. *See Daniel v. Morris*, 181 So. 3d 1195, 1199 (Fla. Dist. Ct. App. 2015) (“Trespass to real property is the unauthorized entry onto another’s real property.”); *Coddington v. Staab*, 716 So. 2d 850, 851 (Fla. Dist. Ct. App. 1998) (“Trespass to real property has been defined as an unauthorized entry onto another’s property.”). Rather, according to Watkins, he reentered the park at the direction and

with the permission of Shields, under whose authority he had just been ordered to leave.

To the extent Watkins was simply following Shields's directions and not violating any other park rule, as Watkins claims he was, no reasonable officer in these circumstances could have believed that Watkins was trespassing. *See* Fla. Stat. § 810.09 (stating that a trespasser must have entered or remained "without being authorized, licensed, or invited"); *Pearson v. Ford Motor Co.*, 694 So. 2d 61, 69 (Fla. Dist. Ct. App. 1997) ("Consent is an absolute defense to an action for trespass."). Under Watkins's version of events—which we must credit, notwithstanding his history of bringing "frivolous and vexatious claims," as the magistrate judge observed—his reentry to the park was authorized.

Accordingly, we conclude that Shields and Schrider are not entitled to qualified immunity on this claim.

V.

Finally, Watkins asserts that his § 1983 claim against Carabeo in his official capacity was, in actuality, a claim against the municipality of Fort Lauderdale.⁵

⁵ We note that Watkins attempted to amend his complaint to add additional defendants, including the City of Fort Lauderdale and various City officials. But that motion was denied for reasons of futility and undue delay, and even liberally construing Watkins's briefing, we cannot discern any challenge to the reasons for that denial. So we must conclude that he has abandoned that issue. *See Sapuppo*, 739 F.3d at 680 (issues not raised on appeal are abandoned).

“When suing local officials in their official capacities under § 1983, the plaintiff has the burden to show that a deprivation of constitutional rights occurred as a result of an official government policy or custom.” *Cooper*, 403 F.3d at 1221. However, “[o]nly those officials who have final policymaking authority may render the municipality liable under § 1983.” *Id.* (quotation marks omitted).

Here, there is no evidence that Carabeo had any policymaking authority with respect to the Park Rules or that he had any personal involvement in the events at Riverland Park. In a declaration, Carabeo provided un rebutted testimony that he was not at Riverland Park on the day in question, that he has never been a Riverland Park ranger, and that he did not participate in the creation, drafting, or revision of the Park Rules. Accordingly, Carabeo is neither personally liable nor an official with final policymaking authority who “may render the municipality liable under § 1983.” *Id.* We therefore affirm the district court’s grant of summary judgment against Watkins on his § 1983 claim against Carabeo.

VI.

In conclusion, we vacate the grant of summary judgment on Watkins’s Fourth Amendment claim, and we remand for further proceedings consistent with this opinion. We affirm the district court’s judgment in all other respects.⁶

⁶ Watkins contends that the magistrate judge erred in granting the defendants’ motion for an extension of time to file their motion for summary judgment. But Watkins did not timely request district-court review of the magistrate judge’s decision, so he has waived appellate review

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

of that order. *See Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1365 (11th Cir. 2007) (“[W]here a party fails to timely challenge a magistrate’s nondispositive order before the district court, the party waive[s] his right to appeal those orders in this Court.”); Fed. R. Civ. P. 72(a).

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-cv-60009-GAYLES/HUNT

ERIC WATKINS,

Plaintiff,

v.

OFFICER SHIELDS, et al.,

Defendants.

ORDER AFFIRMING AND ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court on Magistrate Judge Patrick M. Hunt's Report and Recommendation (the "Report"). [ECF No. 116]. On January 3, 2017, Plaintiff filed a *pro se* action pursuant to 42 U.S.C. § 1983, alleging that he was denied his constitutional rights. [ECF No. 1]. The action was referred to Magistrate Judge Hunt, pursuant to 28 U.S.C. § 636, for a ruling on all pretrial, non-dispositive matters, and for a report and recommendation on any dispositive matters. [ECF No. 6]. On April 1, 2019, Defendants filed a Motion for Summary Judgment (the "Motion"). [ECF No. 62]. On December 11, 2019, Judge Hunt filed a Report and Recommendation, recommending that the Court grant the Motion. [ECF No. 116]. Plaintiff timely filed Objections to the Motion. [ECF No. 119].

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review, if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint*

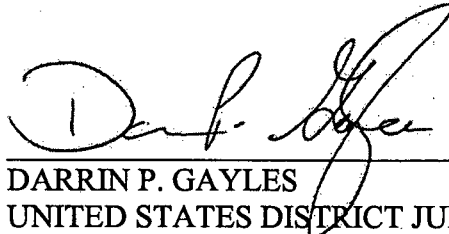
APPENDIX (D)

Underwriters, L.L.C., 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); accord *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

Having conducted a *de novo* review of the record and being otherwise fully advised, the Court agrees with Judge Hunt's well-reasoned analysis and conclusion that the Motion should be granted. Accordingly, after careful consideration, it is **ORDERED AND ADJUDGED** as follows:

- (1) Judge Hunt's Report [ECF No. 116] is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference;
- (2) Defendants' Motion for Summary Judgment is **GRANTED**;
- (3) All pending motions are **DENIED as moot**; and
- (4) This case is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of January, 2020.


DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 17-60009-CIV-GAYLES/HUNT

ERIC WATKINS,

Plaintiff,

v.

OFFICER SHIELDS, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before this Court on Defendants' Motion for Summary Judgment. ECF No. 62. This case was referred to the undersigned for a report and recommendation. See 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. Having carefully reviewed the motion, Plaintiff's response, Defendants' reply, the entire case file, and applicable law, and being otherwise fully advised in the premises, the undersigned hereby RECOMMENDS that Defendants' Motion be GRANTED.

I. Background

The basic facts, as agreed to by the parties, are as follows. On March 14, 2013, Defendants Shields and Schrider, of the Fort Lauderdale Police Department, responded to a call from a Riverland Park Ranger regarding a car playing loud music in the Park. Plaintiff, who acknowledges that he was playing music, states that the music could not be heard more than 25 feet away. ECF No. 102 at 1, ¶ 3. Plaintiff also acknowledges that he ignored a warning by a park ranger regarding the rules prohibiting playing music in the Park. ECF No. 102 at 7, ¶ 22. The Park regulates sound amplification that

APPENDIX (E)

disturbs Park guests. Although the Parties dispute the circumstances, all agree that Plaintiff was given a trespass warning by the officers due to his music and told he could be arrested for trespassing in the future. Plaintiff left the Park, returned, and was arrested for trespass, though the circumstances under which this arrest took place are disputed. Defendants contend that Plaintiff returned to the location of his own accord, while Plaintiff states that he did so only at the direction of Defendant Shields. ECF No. 102 at 9-10.

II. Summary Judgment Standard

Pursuant to Rule 56, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

III. Analysis

In his second amended complaint, ECF No. 33, Plaintiff alleges multiple counts against Defendants. Plaintiff first alleges Defendants Shields and Schrider violated Plaintiff’s Fourth, First, and Fourteenth Amendment rights by unlawfully arresting Plaintiff and by preventing Plaintiff from exercising his right to free expression and to patronize the Park. In his second count, Plaintiff alleges Defendant Carabeo, and thereby Riverland Park, violated Plaintiff’s First Amendment rights by enforcing Park rules prohibiting amplified music.¹ Plaintiff’s third count alleges Defendants Shields

¹ Defendant Michael Carabeo asserts that he had no interaction with Plaintiff or any of his fellow defendants on March 14, 2013, that he did not participate in drafting the rules Plaintiff was alleged to have violated, and that he did not participate in the application or enforcement of the rules against Plaintiff on March 14, 2013. ECF No. 61 ¶¶ 13-15. Plaintiff does not dispute the above but argues that Carabeo is a manager sued in his official capacity, and is therefore a stand-in for the municipality for which he works.

and Schrider violated Plaintiff's Fourth, Fifth, and Fourteenth Amendment rights when they gave Plaintiff a trespass warning preventing Plaintiff from remaining in or returning to the Park without a valid legal reason, and that they arrested Plaintiff without probable cause. There is also a fourth count, directed toward a dismissed Defendant, that Plaintiff claims is also a charge against the Park that the regulations violate Plaintiff's First Amendment rights.

Plaintiff's claims all involve two major points. The first is that the Park regulation under which he was trespassed is an unconstitutional attempt at curbing Plaintiff's First Amendment rights. Anything that flows from the enforcement of that regulation is an unlawful encroachment on Plaintiff's rights, he argues. The second major point is that, even if the regulation is lawful, the circumstances under which the regulation was enforced violated Plaintiff's constitutional rights. The undersigned will address each of these points in turn.

As to his First Amendment claims, Plaintiff cites to *State v. Catalano* for the notion that "the right to play music, including amplified music, in public fora is protected under the First Amendment." 104 So. 3d 1069, 1078 (Fla. 2012). It is true that First Amendment rights are at their zenith in public fora, and that "[t]he Supreme Court and the Eleventh Circuit have consistently held that parks are public forums." *Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1522 (11th Cir. 1992) (citations omitted). However, the inquiry does not end there.

Plaintiff notes the *Catalano* court bases its conclusion, in part, on the seminal United States Supreme Court case, *Ward v. Rock Against Racism*, 491 U.S. 781, 791

Plaintiff alleges that, as such, Carabeo can be sued for the allegedly unconstitutional Park rule. ECF No. 102.

(1989). While it is true that the First Amendment does cover amplified music in public fora, which the Park clearly is, both the *Catalano* Court and the *Ward* Court recognized that the right to play amplified music was not unlimited. See *Catalano*, 104 So. 3d at 1078.

As the *Ward* court recognized,

even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Ward, 491 U.S. at 791 (internal quotation omitted).

City of Fort Lauderdale Parks Rules and Regulations 4.5 provides as follows:

Loud Noise. No person or group shall play or operate any sound amplification device including radios, television sets, turn tables, tape decks, public address systems, amplified musical instruments, portable generators, or any other loud noise generating device which disturbs other persons.

As Plaintiff makes clear, much of his case hinges on whether he was wrongfully punished for playing his music in the Park. Plaintiff admits that he was playing music through his car stereo speakers. Although Plaintiff disputes that his music was “amplified,”² speakers, by their nature, are a “sound amplification device” that would fall under the regulation. The question, then, is whether the Park’s sound amplification regulation is valid.

² Plaintiff contends that “the music [he] was playing in [his] car was not amplified because the ster[e]o system in [his] car was not amplified. It was only a CD Player and the two 4-inch speakers in [his] car.” ECF No. 102 at 7, ¶ 21.

The undersigned finds that it is. The *Ward* court found that a “city's desire to control noise levels at bandshell events, in order to retain the character of the [park area] and its more sedate activities, and to avoid undue intrusion into residential areas and other areas of the park,” was a valid, content-neutral justification for amplification restrictions. *Ward*, 491 U.S. at 792. Here, the regulation is clearly aimed at the noise level of certain devices, rather than any expressive content emanating from them. Indeed, it is hard to imagine what kind of “content” other than noise would emanate from a portable generator. Further, the regulation does not seek to stop non-amplified expression, “continues to permit expressive activity in the [park], and has no effect on the quantity or content of that expression beyond regulating the extent of amplification.” *Id.* at 802. Accordingly, on its face, the regulation appears to be a valid time, place and manner restriction.

As such, Plaintiff admits he was in violation of a valid Park regulation, as he was playing amplified music in the Park via his car stereo. Plaintiff does not appear to argue that he was given a trespass warning due to the content of his music, but merely because it was playing through his car stereo speakers. Accordingly, any claim based on Defendants' alleged violation of Plaintiff's First Amendment rights must fail.

Plaintiff also claims that Defendants Shields and Schrider did not have the legal authority to give him a trespass warning in the Park due to the lack of a trespass affidavit from Riverland Park. Plaintiff claims that the City of Fort Lauderdale Police Department must have written authority from the Park to validly serve as law enforcement on Park grounds.

Fort Lauderdale's Code of Ordinances § 16-71(b)(7) makes it unlawful when an individual "[c]ommits a trespass on private property or on *public* property." (emphasis added). Section 16-71(c)(2) defines trespass as

Entering upon or refusing to leave any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning the property where such regulations have been conspicuously posted or 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.*

(emphasis added).

As these Ordinances make clear, Plaintiff is incorrect that the arresting officers had no legal authority in the Park. As the Park's regulation of amplified music was constitutionally valid, *supra*, it was not improper for Defendants Shields and Schrider to enforce that regulation against Plaintiff after he was warned about the regulation.

Plaintiff also argues that, even if the officers had authority, it was improper that he was not given a specific time period during which he was banned from returning. However, Plaintiff does not dispute that he immediately returned to the Park after his warning, and that it was clear to him that returning to the Park was not allowed. Any reasonable reading of the warning would put Plaintiff on notice that he was not allowed to immediately return, and Plaintiff did so knowingly. Accordingly, Plaintiff's argument fails on this point.

The undersigned also notes that Plaintiff appears to contend that he did not come back to the Park of his own accord, but was instead following orders from Defendant Shields when he returned to the Park. The undersigned observes that Plaintiff has been found to have frequently brought frivolous and vexatious claims, often

involving trespass, in this Court, and that he has been sanctioned for continuing to do so. See *Watkins v. Dubreuil, et al.*, No. 19-62260-CIV-DIMITROULEAS, ECF Nos. 5, 12. (noting Plaintiff's history of vexatious, duplicative and harassing lawsuits and enjoining Plaintiff "from filing any further (new) lawsuit in this district without prior approval of this court"). 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.

In the interest of thoroughness, assuming *arguendo* that any of the Defendants were mistaken about the extent of their authority or the constitutionality of the regulations, they are nonetheless entitled to qualified immunity for their actions.

"Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action." *Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016) (citing *City & Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1775 (2015)). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). To be eligible for qualified immunity, a government official must first establish that he was acting within the scope of his discretionary authority when the alleged wrongful act occurred. *Bailey*, 843 F.3d at 480 (citing *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002)). If the government official meets this burden, the burden then shifts to the opposing party to show that qualified immunity is not appropriate. *Lee*, 284 F.3d at 1194.

Here, as demonstrated above, all Defendants were charged with the regulation and law enforcement of public spaces such as the Park. Accordingly, Plaintiff must show that qualified immunity is inappropriate here. To show that qualified immunity is inappropriate, the party opposing qualified immunity must satisfy a two-part test. First, the party must establish a violation of a constitutional right. *Pearson*, 555 U.S. at 232. Second, the party must establish that "the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Id.* This Court may determine whether the prongs are satisfied in any order, and if either prong is not satisfied, qualified immunity is appropriate. See *id.* at 236.

Given the undersigned's findings as to the constitutionality of the regulation and Defendants' actions, Plaintiff cannot demonstrate that those actions violated a clearly established constitutional right. Any violation would at worst be a close, questionable call. Accordingly, even were Defendants' actions in error, they would be entitled to qualified immunity for that error, and Plaintiff's claims would fail.

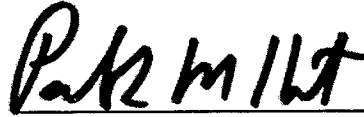
IV. Recommendation

Based upon the foregoing, the undersigned RECOMMENDS granting Defendants' Motion for Summary Judgment. ECF No. 62.

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(b). The parties are hereby notified that a failure to timely object waives the right to challenge on appeal the district court's order based

on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2016); see *Thomas v. Arn*, 474 U.S. 140 (1985).

DONE AND SUBMITTED at Fort Lauderdale, Florida this 11th day of December 2019.

A handwritten signature in black ink, appearing to read "Patrick M. Hunt", written over a horizontal line.

PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Darrin P. Gayles

Eric Watkins, PRO SE
10814 NW 40th Street
Sunrise, FL 33351

All Counsel of Record

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 20, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10791-AA

Case Style: Eric Watkins v. Shields, et al

District Court Docket No: 0:17-cv-60009-DPG

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/lt

Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

APPENDIX (B)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10791-AA

ERIC WATKINS,

Plaintiff - Appellant,

versus

OFFICER SHIELDS,
Fort Lauderdale Police Department,
OFFICER SCHRIDER,
Fort Lauderdale Police Department,
RIVERLAND PARK, CARABEO,
950 SW 27th Avenue
Fort Lauderdale, FL 33312,

Defendants - Appellees,

RANGER TRILLO,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Appellant's motion for waiver *construed* as motion to suspend the rules regarding the filing of paper copies of the petition for rehearing is DENIED AS MOOT.

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

APPENDIX (B)

**Additional material
from this filing is
available in the
Clerk's Office.**