

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

David Clary,)	
)	
Plaintiff,)	
)	
v.)	No. 1:14-cv-125
)	
City of Cape Girardeau, Missouri, and)	
)	
Matthew Peters,)	
)	
Defendants.)	

COMPLAINT

Introduction

1. In this civil rights action, pursuant to 42 U.S.C. § 1983, Plaintiff David Clary seeks judgment against Matthew Peters for First Amendment retaliation, judgment against the City of Cape Girardeau for failure to supervise and train Peters, a declaratory judgment that section 17-157 is facially unconstitutional and unconstitutional as applied, and an award of damages and reasonable attorneys' fees.

Jurisdiction and Venue

2. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983.
3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Cape Girardeau County, Missouri.
5. Venue is proper in the Southeastern Division pursuant to E.D. Mo. L.R. 2.07(A)(3).

Parties

6. Plaintiff, David Clary, is a resident of Missouri.

7. Defendant Matthew Peters is a police officer for the City of Cape Girardeau. He is sued in his individual capacity only.
8. Defendant City of Cape Girardeau is a municipal corporation duly organized under the laws of the State of Missouri.
9. Defendants acted under color of state law at all times relevant to this Complaint.

Facts

10. Plaintiff was driving in the City of Cape Girardeau on August 30, 2013.
11. Defendant Peters initiated a traffic stop.
12. Defendant Peters issued a citation to Plaintiff for making a prohibited turn.
13. Throughout the traffic stop, Defendant Peters demonstrated a hostile attitude toward Plaintiff by his tone, demeanor, and body language.
14. Defendant Peters explained the citation to Plaintiff and informed him that he would not have to appear in court if he pleaded guilty and paid a fine.
15. Plaintiff responded to Peters's explanation of the citation by stating, "I don't wanna plead guilty 'cause that's crap."
16. Plaintiff asked Defendant Peters if there was a sign prohibiting the turn, and Peters said that there was.
17. Plaintiff responded, "That's bullshit."
18. Defendant Peters then asked Plaintiff to sign the citation and informed him that his signature on the citation was not an admission of guilt.
19. Plaintiff signed the citation.
20. Plaintiff then said to Defendant Peters, "You're a freakin' dick."
21. Defendant Peters responded, "I'm sorry?"

22. Plaintiff replied, “You heard me. I said you’re a dick.”
23. Defendant Peters asked, “Why am I a dick?”
24. Plaintiff answered, “‘cause you’re a dick. You can tell by your freakin’ attitude you’re a dick.”
25. Defendant Peters then terminated the traffic stop, telling Plaintiff to drive safely, and Plaintiff was free to leave.
26. As Defendant Peters returned to his vehicle, Plaintiff said “go fuck yourself.”
27. Defendant Peters told Plaintiff to “have a good day.”
28. Plaintiff said, “Fuck off.”
29. Defendant Peters threatened Plaintiff by stating, “if I can hear you over fifty feet, I’m a take ya to jail for prohibited acts.”
30. Plaintiff said, “Do it,” and suggested that Defendant Peters “shut the fuck up.”
31. At no time could Plaintiff be heard at a distance of fifty feet.
32. Plaintiff’s expression described herein occurred on a public street.
33. Plaintiff at no time posed any threat to Defendant Peters.
34. Defendant Peters arrested Plaintiff for Prohibited Acts, City of Cape Girardeau Code of Ordinances § 17-157.
35. City of Cape Girardeau Code of Ordinances § 17-157(a)(9) prohibits:

Yelling, shouting, hooting, whistling or singing on any public street, particularly between the hours of 11:00 p.m. and 6:00 a.m., or at any time or place so as to annoy, disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
36. City of Cape Girardeau Code of Ordinances § 17-157(a) provides, in part, that:

Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way and

otherwise complying with this Code of Ordinances shall be exempt from the operation of this section.

37. After being arrested for his expressive conduct, Plaintiff was detained for approximately one hour before being released.
38. Defendant Peters arrested Plaintiff for no reason other than as retaliation for Plaintiff's expressive activity.
39. Defendant Peters lacked probable cause to believe that Plaintiff had committed any crime beyond that for which Peters had already issued a citation.
40. No reasonable officer would have believed that Defendant Peters had probable cause to arrest Plaintiff for Plaintiff's expressive activity.

COUNT I

*42 U.S.C. § 1983 - First Amendment
First Amendment Retaliation
Against Defendant Peters*

41. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
42. Plaintiff's speech was noncommercial and conducted on a public right-of-way.
43. Plaintiff's speech is protected by the First Amendment.
44. Plaintiff's speech did not violate any law.
45. But for Defendant Peters's retaliatory animus regarding Plaintiff's speech, Defendant Peters would not have arrested Plaintiff.
46. But for Defendant Peters's retaliatory animus regarding Plaintiff's speech, Defendant Peters would not have issued Plaintiff a citation for allegedly violating § 17-157 of the City of Cape Girardeau Code of Ordinances.

WHEREFORE, Plaintiff prays this Court:

A. Enter judgment in favor of Plaintiff and against Defendant Peters;

- B. Award Plaintiff compensatory damages against Defendant Peters for his violation of Plaintiff's constitutional rights under color of law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

COUNT II
42 U.S.C. § 1983
Failure to Supervise and Train
Against Defendant City of Cape Girardeau

- 47. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
- 48. Prior to August 30, 2013, the City of Cape Girardeau developed and maintained policies, customs, and practices exhibiting deliberate indifference to the constitutional rights of persons in Cape Girardeau, which caused the violation of Plaintiff's rights.
- 49. At all relevant times, the City of Cape Girardeau was aware that Defendant Peters was inadequately trained regarding the First Amendment, yet the City of Cape Girardeau maintained a policy or custom of failing to provide Peters training on the First Amendment or adequate supervision.
- 50. It was the policy, custom, or both of the City of Cape Girardeau to inadequately supervise and train its police officers, including Defendant Peters, thereby failing to prevent the constitutional violations against Plaintiff.
- 51. Defendant City's policies, customs, and practices demonstrate a deliberate indifference to the constitutional rights of persons within the City of Cape Girardeau and caused the violation of Plaintiff's rights alleged herein.

52. Plaintiff sustained damages as a result of Defendant City's policies, customs, and practices.

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant City;
- B. Issue an injunction requiring Defendant City to develop and implement adequate training programs for its police officers about rights under the First and Fourteenth Amendments;
- C. Award Plaintiff compensatory damages against Defendant City for its violation of Plaintiff's constitutional rights under color of state law;
- D. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- E. Allow such other and further relief as the Court deems just and proper.

COUNT III

*42 U.S.C. § 1983 - First Amendment
Challenge to Section 17-157
Against Defendant City of Cape Girardeau*

53. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
54. Section 17-157 is not narrowly tailored to achieve any significant government interest.
55. Section 17-157 fails to leave open ample alternatives for Plaintiff's expression.
56. Section 17-157 is unconstitutionally overbroad.
57. Section 17-157 was the cause of Defendant Peters's decision to arrest Plaintiff.

WHEREFORE, Plaintiff prays this Court:

- A. Enter a declaration that § 17-157 of the City of Cape Girardeau Code of Ordinances is unconstitutional on its face;

- B. Award Plaintiff compensatory damages;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

COUNT IV
42 U.S.C. § 1983 - First Amendment
Unconstitutional Application of Section 17-157
Against Defendant Peters

- 58. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
- 59. Plaintiff's arrest was based on an overbroad application of Section 17-157.
- 60. The application of Section 17-157 to Plaintiff's conduct was not narrowly tailored to achieve any significant government interest.
- 61. The application of Section 17-157 to Plaintiff's conduct did not leave open ample alternatives for Plaintiff's expression.

WHEREFORE, Plaintiff prays this Court:

- A. Enter a declaration that the application of § 17-157 of the City of Cape Girardeau Code of Ordinances to Plaintiff's conduct was unconstitutional;
- B. Award Plaintiff compensatory damages against Defendant Peters for his violation of Plaintiff's constitutional rights under color of law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

COUNT V

*42 U.S.C. § 1983 - Fourteenth Amendment
Section 17-157 is Void for Vagueness
Against Defendant City of Cape Girardeau*

62. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
63. The prohibitions of § 17-157(9) are vague and not clearly defined.
64. Section 17-157(9) offers no clear and measurable standard by which Plaintiff and others can act lawfully.
65. Section 17-157(9) does not provide explicit standards for application by law enforcement officers.
66. Section 17-157(9) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, and authorizes or encourages arbitrary and discriminatory enforcement, or both.

WHEREFORE, Plaintiff prays this Court:

- A. Enter a declaration that § 17-157 of the City of Cape Girardeau Code of Ordinances is unconstitutional on its face;
- B. Award compensatory damages;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert

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