

IN THE COUNTY COURT, POLK COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

DANIEL F. BISHOP,

Defendant.

CASE NO. MM03-000930-LD
MM03-001052-LD
MM03-007001-XX

MOTION TO DISMISS (MDIS)

Defendant, through counsel and pursuant to Fla. R. Crim. P. 3.190(b), moves this Honorable Court to dismiss the charges and/or informations in the above causes.

As grounds for this motion, Defendant states the following:

1. Defendant is charged in MM03-000930-LD by Notice to Appear with Trespass after warning.
2. Defendant is charged in MM03-001052-LD by information with Trespass other than structure or conveyance.
3. Defendant is charged in MM03-007001-XX by information with Trespass other than structure or conveyance.
4. There are no facts material to such charges that are in dispute in these causes.
5. The undisputed, material facts in these causes do not constitute a prima facie showing of guilt of Trespass in any of the three cases.
6. The First and Fourteenth Amendments to the United States Constitution and Article I, section 4 of the Florida Constitution recognize the fundamental right of every person to freedom of speech and expression, and prohibit any law abridging that right.

[E 3]

MATERIAL FACTS:

MM03-000930-LD:

On June 27, 2003, at approximately 4:13pm, Officer Donald Bell, a member of the Lakeland Police Department saw Defendant standing on the median at the intersection of N. Lake Parker Ave. and E. Memorial Blvd. Officer Bell then made contact with the Defendant. Officer Bell learned that Defendant had been give a Trespass warning for this exact location. Officer Bell also states in his report "affiant also advise the defendant on several occasions not to stand/trespass on the median strip." Officer Bell arrested Defendant for Trespass after warning.

MM03-001052-LD:

On July 22, 2003 at approximately 5:17pm, Officer M. Townsend, a member of the Lakeland Police Department saw Defendant standing on DOT property at 999 N. Lake Parker Avenue. Officer Townsend made contact with the Defendant. Officer Townsend learned that Defendant had been given Trespass warnings for this location. Officer Townsend arrested defendant for trespass after warning.

MM03-007001-XX:

On August 3, 2003, Officer Dallas, a member of the Lakeland Police Department saw Defendant standing at 999 N. Lake Parker Avenue. Officer Dallas made contact with the Defendant. Officer Dallas arrested defendant for trespass after warning. Officer Dallas had previously given Defendant a Trespass warning for this exact location.

Officer Did this - to several men.

Daniel F. Bishop
MM03-000930-LD
MM03-001052-LD
MM03-007001-XX
Motion to Dismiss

2

*Case Law -
The holding*

[E4]

*Officer Dallas has
a "pattern of behaviour"
or a "history" of
violating this law of
panhandling. (M)*

BUT courts said this practice was illegal:

STATEMENT OF LAW

Public streets have traditionally been available for public expression protections:

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

Hague v. Committee for Indust. Org., 307 U.S. 495, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423(1939).

In Ledford v. State, 652 So.2d 1254 (Fla. 2nd DCA 1995), the court examined a St. Petersburg municipal ordinance which made it unlawful "for any person to beg for money in the City while about or upon any public way, and it shall be unlawful for any persons to be in or upon any public way in the City for the purpose of begging money for themselves or any other person." Since the ordinance prohibited begging on the "public ways", the court found the regulation to be subject to strict constitutional scrutiny, and stated the standard for such strict scrutiny. "Such regulations shall survive only if: (1) they are narrowly drawn to achieve a compelling governmental interest; (2) the regulations are reasonable; and (3) the viewpoint is neutral." Ledford, 652 So.2d at 1256. Applying that standard, the court found the St. Petersburg ordinance unconstitutional. The court recognized that protecting citizens from annoyance is not a compelling governmental reason to restrict free speech in a traditionally open forum.

The Ledford court further found that the ordinance was over broad, since it did not distinguish between "aggressive" and "passive" begging. The significance of this

[E5]

differentiation is made clear in a number of other cases discussed in the court's opinion. In CCB v. State, 458 So.2d 47 (Fla. 1st DCA 1984), the First District Court determined that a Jacksonville ordinance prohibiting all forms of begging in the streets or public places was overbroad and unconstitutional because it abridged First Amendment rights in a manner more intrusive than necessary. As that court stated, "[p]rotecting citizens from mere annoyance is not a sufficient compelling reason to absolutely deprive one of a [F]irst [A]mendment right. CCB, 458 So.2d at 50. . Also see Watchtower Bible and Tract Society of New York, Inc., et al. v. Village of Stratton, et al., No. 00-1737 (U.S. decided June 17, 2002). The Ledford court noted that similar regulations that have been upheld have been narrowly tailored to be no more restrictive than necessary to further legitimate governmental interest. For instance, ordinances in Washington and Texas were upheld because they had the aim of preventing passersby from being coerced, threatened or intimidated by aggressive begging. See Roulette v. City of Seattle, 850 F.Supp. 1442 (W.D. Wash. 1992); Johnson v. City of Dallas, 860 F.Supp. 344 (N.D. Tex. 1994).

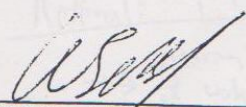
In the instant case, there is no allegation that defendant was "begging," rather the allegation is that he was standing on the median. There is no justifiable reason why Defendant was given a warning not to be there, nor is there a justifiable reason to arrest Defendant for merely standing in a place he has a Constitutional right to be. For the sake of argument, even if Defendant were "begging," according to the Ledford decision, he would be allowed to do so on the "public way."

Daniel F. Bishop
MM03-000930-LD
MM03-001052-LD
MM03-007001-XX
Motion to Dismiss

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order dismissing the charges and/or information in the above causes.

Respectfully submitted this 10th day of September, 2003

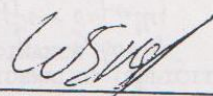
JAMES MARION MOORMAN
Public Defender


William E. McManus, Jr.
FLORIDA BAR #0544310
Assistant Public Defender

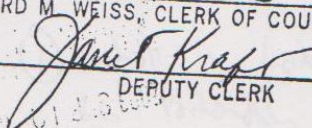
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Trenton Cleland, Assistant State Attorney at the State Attorney's Office mailbox, Polk County Courthouse, Bartow, Florida, this 10th day of September, 2003.

JAMES MARION MOORMAN
Public Defender


William E. McManus, Jr.
FLORIDA BAR #0544310
Assistant Public Defender

STATE OF FLORIDA, COUNTY OF POLK
CERTIFIED TO BE A TRUE COPY OF ORIGINAL.
THIS 9-25-03
RICHARD M. WEISS, CLERK OF COURTS

BY 
DEPUTY CLERK

Daniel F. Bishop
MM03-000930-LD
MM03-001052-LD
MM03-007001-XX
Motion to Dismiss

5

[E7]

Note: Even after repeated warning here on 09-25-2003 (above), the Lakeland Police Department continued its illegal pattern of harassment against this gentleman (see below: Booking Date of 06-28-2004) -and probably many others. --Gordon Wayne Watts

Inmate Information

Page 1 of 1

**Polk County Sheriff's Office
Inmate Information**

(Harold Muddman)
Rick Russo
802 - Judge Spade
540

This data is for informational purposes only and should not be relied upon for any type of legal action.

Inmate Name: BISHOP, DANIEL Release Date: 08/09/2004
 Booking Number: 2004-014858 Booking Date: 06/28/2004
 Race: W Sex: M DOB: 03/31/1947 Height: 600 Weight: 150

ZZ Will any violation of law or constitution (especially) be proscribed?

Location: TRANSFERRED TO BOOKING
 Arresting Agency: LAKELAND POLICE DEPT.
 Hold: N Hold for:
 Disposition of Hold:

Referral: FDLF

Charge Number: 1
 Statute: 810.09(2B) TRESPASSING-FAIL TO LEAVE PROPERTY UPON ORDER BY OWNER
 Charge on arrest docket: TRESPASS AFTER WARNING
 Bond Type: Bond Number:
 Purge Number: Purge/Bond Amount: 0.00
 Surety: 0.00 Cash: 0.00 Bond Exp.:
 How Released: NOLLE PROSSE
 Upgrade/Reduction:

→ wearing hat because I just got off work - was cold overnight
 Allegory for no appointments (got mail?)
 Just got off work - Must sleep soon - phone tag
 Must get up when awake

Charge Number: 2
 Statute: 337.406 NONMOVING TRAFFIC VIOL-VIOL USE OF STATE RIGHT OF WAY
 Charge on arrest docket: UNLAWFUL USE STATE RIGHT OF WAY
 Bond Type: Bond Number:
 Purge Number: Purge/Bond Amount: 0.00
 Surety: 0.00 Cash: 0.00 Bond Exp.:
 How Released: NOLLE PROSSE
 Upgrade/Reduction:

CAN NOT TRESPASS ON PUBLIC PROPERTY

→ Trumped up charge; Not solution
 When looking for spelling of your name - saw opposite to abortion article 50 times
 Police trying to entrap me for harassment
 phone calls
 regular call: Update let read!!
 Block 911? Real illegal: How to find out

Charge Number: 3
 Statute: ORDINANCE COUNTY OR MUNICIPAL ORDINANCE
 Charge on arrest docket: USE OF STREETS/SIDEWALKS (SOLICITATION)
 Bond Type: Bond Number:
 Purge Number: Purge/Bond Amount: 0.00
 Surety: 0.00 Cash: 0.00 Bond Exp.:
 How Released: NOLLE PROSSE
 Upgrade/Reduction:

Solicitation - Retriev FIRST AMENDMENT RIGHT
 Jail Photo RE: Pattern of Behavior
 Injury

3A Police Blocking #
 retaliation of reporting to Internal Affairs

Leadford's State
 652 S. 2nd 1243, Fb 2nd DCA, 1115
 Return to the On-line Inquiries page.

[2A] 2nd Holding no excuse for prior violations
 under old Lakeland holding - no need to wait

1) What is Lakeland holding re Bonding Statute both found unconstitutional?
 2) (BUT HIT AND Ledford ... not either or - find police violating LAW) 2/1/06