



McDonough v. Mata et al

2022 | Cited 0 times | S.D. Florida | March 31, 2022

UNITED STATES DISTRICT COURT FOR THE
SOUTHEASTERN DISTRICT OF FLORIDA

Miami Division Case Number: 19-21986- CIV- MUREN .O JAMES ERIC MCDONOUGH,
Plaintiff, VS.

J CARLOS GARCIA , GARLAND WRIGHT individually, and the CITY OF HOMESTEAD,
Defendants.

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'ORD/R GMENTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND

DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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. James McDonough sued two police officers and the City of Homestead alleging federal civil rights violations stemming from his disruptive attendance at City Hall

. on July 27 and August 24, 2016 and ' an arrest for cyber stalking on September 1, 2016. The Court grants summary judgment in favor of Defendants holding that the two law enforcement officers are

qualified immunity

. The Court also finds that Plaintiff fails to establish



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h Cot i r t f i f l d s s u m m a l . y j u d g m e n t i s l i a b i l i t y a s h e d i d n o t j u f l k r a d e p r i v a t i o n b f r i g h t s . F i n a l l y , t e ' d u e o t l t h e s t a t e l a w ' f a l s e a r r e s t è l q i n l s a s t h e p o l i c e h a d p r o b a b l e . c a t t s e t o a r r e s t P l a i n t i f f f o r d i s o r d e r l y c o n d u c t a n d c y b e r s t a l k i n g . T h e r e f o r e , s l l m m a r y j u d g m e n t i s . x g r a n t e d i n f a v o r o f D e f e n d a n t s a n d a g a i n s t P l a i n t i f f o n a l 1 c o u n t s .

Ii Factual Backeround Pl ai ht i f f James McDonougl k ' s a l l e g a t i o n s s t e m f ' r o m t h r e e s e p a r a t e e n c o u n t e r s w i t h t h e C i t y o f H o m e s t e a d ' s 1 a @ e n f o r c e m e n t o n J u l y . 27 , . A u g u s t 24 , a n d S e p t e m b e r 1 , 2016 . T h e f i r g t

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' 4 i n c i d e n t o c c u r r e d w h i l e P l a i n t i f f w a j s p e a k i l i g ç f o r e t h e C i t y C o u r f c i l o h J u l y 27 , 201 6 , W h e n

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k Plai nti ff personall y di reded a comment at Council l man Mal donado

, then Sergeant Garl and Wri ght , f e a r i n g f o r t h e s a f e t y o f t h e e l e c t e d o f f i c i a l s , i n t e l w e n e d a n d o r d e r e d P l a i n t i f f t o l e a v e t h e

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. meeti ng and Ci ty Hal l i n a c c o r d a n c e ' w i t h t h e C i t y ' s R u l e s o f D e c o r l z m . A f e w w e e k s l a t e r ,

é Pl ai n t i f f r e t u r n e d t o t h e i t y C o u n c i l m e e t i n g o n A u g u s t 24 , 2016 . B a s e d o n P l a i n t i f f s d i s n l p t i v e c c m d u c t a t t h e J u l y 27 m e e t i n g , t h e p o l i c e d e p a r t m e n t i s s u e d a t r e s p a s s w a r n i n g t o P l a i n t i f f p r e c l u d i n g ' h i m f r o m e n t r i n g t h e A u g u s t 24 C i t y C o u n c i l m e e t i n g . S e k g e a n t W r i g h t a d v i s e d P l a i n t i f f o f t h e t r e s p a s s w a r n i n g w h e n P l a i n t i f f e n t e r e d C i t y H a l l a n d t o l d h i m t h a t t o r e g a i n e n t r y t o t h e C i t y C o t m c i l m e e t i n g P l a i n t i f f r i e d e d i o p u t t h e r e q u e s t i n w r i t i n g . l F o l l o w i n g . p n e x c h a n g e w h e r e P l a i n t i f f g a v e S e t g e a n t W r i g h t h i s m i d d l e f i q g e r E m d t h r e s e n e d t o s u e , t h e p o l i c e a r r e s t e d P l a i n t i f f o n . A u g u s t 24 , 2016 f o r d i s o r d e r l y c o n d u c t . A f t è r b e i n g r e l e a s e d , P l a i n t i f f t h e n a d m i t t e d l y p o s t e d o n l i k ' e c o m m e n t s p e r s o n a l l y d i d i c t e d a t O f f c e r M o n a c o , w h e r e

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j he sai d he wbul d bl ast Of f i cer Monaco' s address. z Dei ect i ke Davi de Ma t a ar r es t ed Pl ai
nt l fffor

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. 3 Pl ai nt i f f asse rt s cl ai ms unde r 42 U. S. U. j 1983 f or cyber st al ki ng on Sept embe: 1 , 2016. vi
olations of his Fi rst and Fourt h Amendment rights and undér state 1 aw for fal se arrest.

A. Jul y 27, 2016 Inci dent The Ci t y Counci l al l ot s ' s peakers t hree mi nut es t o' s peak t o t he
Mâyor and t he Ci t y ' t i l l

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\$ j i any m>t t er of publ i c l nt er es t t o t he s peaker. The cont ent of t he s peaker s' t hr ee , 1 J .
Counci l abou

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l I mi nut es does not need t o r el at e t o any t opi c on t he Counci l ' s ni ght l y agenda. On Jul y 27,
2016, . i '

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j j y . . y ' . Pl ai nti ff approached the podi um and spoke of the accountabi li ty of the Hdf neitead Pol
i ce: ''

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j 1 D e pm- t ment , coniplai ned t hat Of f i cer Al e jandro Mur gui do fal s i f i ed a pol i ce r epor t concer ni ng an . ; i ndi vi dual hamed Rosemm' y Br ackel i ; s pokei p f avor of pol i ce wear i ng body cnmer as, s t at ed t he ' McDonopgh had an ext ensi ve pri of hi st or y of appearances at Ci t y Coqnci l meeti ngs. He t est i t ied t hat he fl r st

ke at a r peeti ng i n Januar y 20 15 a nd t hen he att ended more t han hal f pf t he meet i ngs f rom about 2015 t o 2017. spo Pl ai nt i ff De jo. Pt . l a t 30. He a dded t ha t o ut of 1 9 mee t i ngs , he a t t ended a ppr oxi r r i a t e l y 1 2 t o 1 6 dur i ng t hat t i me peri od. 1t i at 36. . 2 Of t icer Monaco was di smi ss ' ed fr om t hi s çase. ,

. 3 r i d Det ect i ke Mat a qual i t ted i mr huni t y on hi s mot i on t o ' di smi ss. The Cou grant e

Homestead Pol ice Depart ment had rampant nepoti sm, and complai ned t he Chi ef of Ppli ce fal si f i ed a dest nz ct ion 1 og and retali atedagai nst a ci ti zen for coiplai ni ng of hi s mi sùonduct i n of fce. Defendant , Garl and Wr i ght , was ser vi ng as Se rgeant at Ar ms of t he meet i ng. The sergeant at Arms is responsibl e fo' r t he enforcement of t he Rul es of Decorum at Ci ty Copnci l

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.. ' meet i ngs. z l At the ti me

, Pl ai nti f fhad spokep pn 12-16 prior occasi ons' aboutthese topi cs. Plai nti ff Depo. P\$. 1 at 36. The vi deo of t he Jul y 27 proceedi ng was conventional l y fi led. Jul y 27, 2016 Vi deo (D. E. 62, 94).

Af t çr speaki pg f or t wo and a hal fmi nut es, Pl ai nt i ff di r ect ed a comment t o Counci l man Mal dongdo stati ng; G s - f' he l ast poi nt I' d l i ke t o hi t off wi t h i s, M

.r. Maldonàdo, you l tnow 1' d appreci at e i f you got s omet hi pg t o say t o me, you say i t t ö my f ace. ' ' Per cei vi ng t hi s comment di r ect ed at Counci l man Mul donat l o t o be a t hr eat , Ser geant Wr i ght , who was aware of McDonoujh' s dozep pr i or vi si t s t o Ci t y Hal l , appr oached Pl ai ht i f f at t he podi um and or der ed hi m t o l eave.

At t hç t i me of t he i nc' i dent , Serge ' ant Wr i ght wa: an of f i cer f or 16 year s and had al so



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When Sergeant Wright approached Plaintiff at the podium Plaintiff had approximately twenty to thirty seconds left to address the City Council. Id. at 8-9. Sergeant Wright instructed the Plaintiff to leave the City Council Meeting, in order to put more distance between him and the elected officials who de-escalated a potentially violent situation. Sergeant Wright did not tell Plaintiff to stop speaking. Wright Affidavit at 8-9. Plaintiff testified that he had a final point to make and was stepping away from the podium when Sergeant Wright approached him. July 27, 2016 Video.

Plaintiff cannot identify what, if anything else, he had intended to say to the City Council.

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. Plaintiff; Depo. Pt. 1 at 86-87. The video shows Sergeant Wright approaching Plaintiff at the ' . . .

' podium and pointing toward the door as he asked him to leave. As Plaintiff exited the chamber, he shouted to Sergeant Wright, & (I am going to sue the shit out of you dumb ass. ' ' July 27, 2016

J. Video (D. E. 94). Plaintiff testified that he walked into the lobby area and stated, ' ' Now we have Homestead junior officers again violating the First Amendment rights because they are fucking idiots and they don't know shit. Absolutely ridiculous. ' ' Id. Sergeant Wright asked him not to be disrespectful as Plaintiff then left City Hall.

B. The August 24, 2016 Trespass Warning and Arrest

5 Like the Rules of Decorum, the repealed decorum policy also allowed for Stagnant persons making impertinent or slanderous remarks, or who becomes boisterous while addressing the



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council, ' ' to be d d bar red f rom furt her audi ence bef ore. t he counci l . ' ' The re peal ed pol i cy, howqve r, empower ed onl y t he Mayor t o dqci de W . het hç t p bar t he ! i ndi vi dual . Pl ai nt i ff' s Compl ai nt at 13. The Rul es of Decorum i n ef fect at t hè t i me èf t he Jul y 27s 2016 meet i ng gave t he Mayor oï t hç Sergeant âi Anus t he di scret i on t o order an i ndi vi dual , who vi ol at ed t he Rul es of Decorum, t o l eave t he Ci t y Counci l cha/ber. ' '

Less t hqn one mont à l a t er, Pl ai nt i ff ajai n went t o t he Ci t y Counci l meet i ng on Augus t 24, ' a

(2016. l n response to t hqpl ai nti c s removal on Jul y 27, Capt ain Raymond Delohn,, a member of t he Ci t y' s pdl i ce command s t aff, i nqui r ed wi t h t he Mi ami - bade St at e Att or ney' s Of t ke regar di ng whet her t he pùl i cè depart ment coul d i s jue a t r espas s war ni ng t o an i ndi vi dual when

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' ' . t hat per son at t empt q t o r et ur n t o t he pr emi sçs af t er t he conduc ' t mer i t i r s g t he wnrni ng has al r eady

' Exh 5 . ci t y' s Ans wer s t o I nt er rogat of : Nos. 2. (D. E. 64- 6). bel ohn occur red. Def endant s . ,

. rel ayed Pl ai nt ifps di srt t pt i ve bçhavior at t he Ci ty Council meet i ng t o the St ate At lonzey' s Of t ke, who advisçd t hat poli ce coul d i ssue a t respass warning aft er the fact. The Stat e Att orney' s Offi ce . confi rmed that a basis exi st ed to i ssue a trespass warning to Pl ai nt iff, based on hi s acti ons duri ng t he Jul y 27, 2016' Ci t y Counci i Mee t i pg. I d. a t No. 14 & 15.

The ' r e was a meet i ng by Ci t y of f i ci al s and pol t ce t o di scus s i ss ui ng t he t r es pass war ni ng t o Pl ai nt i ff . The meet i ng i ncl uded t he Mayor , t he Ci t y Manajer, t he Chl ef of Pol i ce, Sergeant

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... j , : , . ? , . ; . . . , . . Wr i ght, and a ci t y at t or ney. 6 Wr i ght Depo. of Nov. 3, 2016 at 19- 24 (D. E. 56- 8) . At t he mee t i ng, t here waà agreepent t hat a trespass warni ng be isjued to Plai nti ff to precl ude hi s znt rance td t he Ci t y' Counci l mee i ng oh Augus t 24, 2016. ' Wr i git De po. of May 7, 2021 a t 29 (D. E. 56- 1 2). The l : - i)



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- k.1 e Ome nt ' i s a u t h o r i z e d t o i p s l b e t r e s p a s s w a r n i n g à t o i n d i v i k u a l s . R o l l e D e p o . o f M a r c h . ; ' p o l i c e d e p

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t 16, 2021 p , t 30; Defendant s' Exh. 6, j 2- 341, Ci t y Code of Or di nances (s t a t i n g t h a . t p o l i c e

' ' d d m a i n t a i n t h e p e a q e a n d à i g n i t y x o f t h e c i t y a n d o f f c e r s h a v è t h e a t t t h , o t i t y t o p r e s e r v e o r e r a n , t o m a k e a r r e s t s o f o f i k n d e r s a g a i n s t t h e o r d i n a n c è s a n d g t h e è i t y C o d e q ' ') . I D . E . 64- 7). ' T i h e p o l i c e d e p a r t m e z i t b a s e d t h e d e c i s i o n o n t h e P l a i n t i f f ' s b e h a v i o r a t t h e J u l y 27 , . 2016 m e e t i n g .

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- ' A s s o o n a s P l a i n t i d a p p r o a c h e d C i t y H a l l o n A u g u d t 24, h e b e g a n r e c o r d i n g o n h i s c e l l h o n e . P l a i n t i f f s D e p o . P t . 1 a t 152; A u g u s t 24, 2016 C e l . 1 # i z o n e V i d e o (D . E . 58) , W i e n p

6 The Mayor, Ci t y Manager , a n d t h e C h i e f o f P o l i c e h a v e n o t b e e n ' s u e d b y M c D o n o u g h , w h o c h o s e t o s u e t h e p o l i p e o f f i c e r s a n d t h e C i t y o f H o m : s t e a d .

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P l a i n t i f f e n t e r e d C i t y H a l l , h e w a s a p p r o a c h e d b y S e r g e a n t W r i g h t , w h o e s c o r t e d P l a i n t i f f o t i t o f t h e b u i l à i n g . p l a i n t i f f D e p o . # t . 1 a t 155: 2- 6; P l a i n t i f f s A u g p s t 24, 2016 C e l l P h o n e V i d e o .

O n c é o u t s i d e , S e r g e a n t W r i g h t a d v i s e d P l a i n t i f f t h a t , b q s e d o n h i s c o m m e n t s a n d a c t i o n s a t t h e l a s t m e e t i n g , h e h a d b e e n i s s u e d a t r e s p a s s w a r n i n g , p f e c l u d i n g h i s . e n t r y i n t o t h e C i t y C o u n c i l l p e e t i n g . H e t o l d P l a i n t i f f t o l e a v e t h e b u i l d i n g a n d C i t y H a l l p r e m i s e s . S e r g e a n t W r i g h t a d v i s e d p l a i n t i f f h e w o u l d n e e d t o p r e s e n t a l e t t e r t o r e q u e s t p e r m i s s i o n t o

. r e t v u . n t o c i t y H a l l . P l a i n t i f f a s k e d i f h e c o u l d g e t t h a t i n w r i l i n g a n d ' S e r g e a n t W z i g h t i n d i c a t e d t h e r e w o u l d b e a r e p o r t . A u g u s t 24, 2016 C e l l P h o n e V i d e o . P l a i n t i f f n e v e r w r o t e a l e t t e r , b u t r e t u r n e d t o a C i t y C o m m i t t e e m e e t i n g i n D é c e m b e r 2016 . P l a i n t i f f s D e p o . P t . 2 a t 241-242.

A f t e r b e i n g o r d e r e d t o l e a v e , P l a i n t i f f t o l d S e r g e a n t W r i g h t h e l o b k e d f o r w a r d t o s e e i n g h i m a t a d e p s i t i o n . H e b e g a n t o w a l k a w a y , g a v e S e r g e a n t W r i g h t t h e m i d d l e f i n g e r , a n d s a i d G o o d b y e , b y e - b y e . ' ' A t t h e t i m e , C o u n c i l m a n J o h n B u r g e s s w a s w a l k i n g i n t o C i t y



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e... Hall and two women Ferreira in City Hall. Plaintiff Depo. Pt. 2 at 211-712; Garcia Depo. at 18.

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bbing his genitalia. Plaintiff claims he was holding ' Sergeant Wright testified that Plaintiff was

. his commander At his left hip, bgt admits that they are asking could they have misperceived that

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, t) j bje,, gda t 214 was holding my phone at the lot grabbing my genitalia, I call see that that s p s s...Based on Plaintiff's conduct, Sergeant Wright ordered him to stop and put his hands behind his

n 1! ! r r. L x a ! a u . 1 a 7 vvr ! r. ' back and arrested relative to 10r C1 1SOrt 1 eY1 y C0n(mCt . Wngnt DeJjo. Of May 7, 2021 at 54. Sergeant Wright testified that the CGT party of Vs' behavior s' ' Were capse for the disorderly conduct arrest.

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ffed Plaintiff and placed him under arrest. Plaintiff Affidavit at I 6 l a t 55. Officer Monaco handcuffed 17.

7? k i n t o c g s t o d y a t a p p r o x i m a t e l y 5: 30 p m a n d r e l e a s e d o n b o n d o n A u g u s t 25 201 6 a t



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1 pm. Plaintiff was taken,

. Plaintiff Depo. Pt. 2 at 235. The details were dismissed. Plaintiff Depo, Pt. 2 at 271.

' Officer Monaco escorted Plaintiff to Sergeant Carlos Garcia.

. r ci a. Plaintiff Depo. Pt. 1 at 180. ,

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. By the time Plaintiff interacted with Sergeant Garcia, however, Plaintiff was handcuffed and

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' agrees he already knew he was under arrest. Plaintiff Depo. Pt. 1 at 179-182. Nevertheless,

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. Plaintiff testified that Sergeant Garcia

, advised Plaintiff that he was the arresting officer and Plaintiff was under arrest for trespass.
1d. Regarding the information from the other officers,

' * ser gqmt Garcia authored the August 24, 2016 arrest report, as he was the more junior officer on the scene. Plaintiff Depo. Pt. 1 at 177, 179, 180; Garcia Depo. . at 12, 15, 31. Sergeant Eric Rayez transported Plaintiff to the Holdestad Police Department. Id at 15. P .

Plaintiff, was released on bond the next day. Plaintiff Depo. Pt. 2 at 235.

C. The September 1, 2016 Arrest Affidavits days after the Plaintiff's arrest on August 24, 2016, Plaintiff admittedly posted .

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. , y . l t i p l e m e s a g e s r e g a r d i n g O f t q c e r J o h n M o n a c o o n a p o l i c e b l o g w e b s i t e . T h e n n m e o f t h e m u



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.h.i.k.'x.t...'t....web:ite is leofair rs.' coha

.plai nti yoe po. pt. é a t 2k4. fl a i n t i r p s p o s t s r e g a r d i n g o f u c e r M o u a c o i n c l u d e d t h e f è l l o w i n g s t a t e m e n t s :

j y k t j z e y s C h a l l e n g e f o r t h e c o w a r d . O f f i c e r . M o n a c o y o u s t a t e d i f t è c w a n t y o u t o w e a r a b o d y c a m y o u w i l l . A s 90% o f c i t i z e n s w a n t o f f i c e r s w e a r i n g b o d y c a m ; , I a m g i v i n g y o u a n o p p o r t u n i t y t o s h . o w y o u d o n ' t i e e v e r y t i m e y o u o p e n y o u g s i c ') m o u t h . I w i l l b u y y o u a c a m a n d p q y f o r ' t h e ' s t o r a g e , i f y o u w i l l a g r e e t o w e m ' i t . Y o u c a n b e t h e b e t a t e s t b r . # o u c a n c o n t a c t m e a t 571- 245- 5 . 410 o r ' ' p h d z b o s @ g m a i l . c o m . T h a t i s i f y o u a r e n o t t h e g i a n t t w a t w e a l t h i r l k o u a r e . C o m e o n e (s i c j s h o w y o u h a k e a n i n f i t e s t i m a l g s i c) s l i v e r o f . I . l n t e g r i t y . A m a n w h o i s n o t g o o d f o r l z i s w o r d , i s g o o d f o r n o t b i n g . S t e p u p t o t h e p l a t e , b i g b o y ' . C o w e r d o w n A n d r u n l i k e a s l i p t a i l E s i c) ; F e a r e e x p e c t i n g y o u t (? ' b e . A l j (? b e w a r n e d , I h a v e r e c o r d i n g d u v i c e s ' o n m e a t a l l i i n e s a n d a n y f u r t h e r r e t a l i a t i o n w i l l b e g d e a l t q W i t h s p i f t l y , g h a p h l y j , a n d l a w f u l l y . . .

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' Also, I will be blasting your address, lo thnks for provi ding t hat.

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' Pl ai n t i f f D e p o . P t . 2 a t 248, 250; D e f e n d a n t s ' E x h . 7 , O f f e n s e u h c i d e n t R e p o r t N o . 160830-0016, a t 3 (D . E . 64-8). A s a r e s u l t o f t h e s e . p o s t s , O f f i c e r M o n a c o b e c a m b c o n c e r n e d f o r h i s f a m i l y ' s ,

.' . s a f e t y a n d r e p o r t e a p l a i n t i f f ' p c o m m e n t s t o t h e c i t y s I n t e r n a l

, A f f a i r s D e p a r t m e n t . f # . ; M a t a j D e p o . a t 1 . D e t e c t i v e M a t a i n v e s t i j a t e d O f f i c e r M o n a c o ' s c o m p l a i n t s , w h i c h i n c l u d e d s u b p o e n a s t o t h e p o l i c e b l o g , l e o a f ? a i r s . c o m ,

.t o c o n f i r m P l a i n t i f f s a u t h

. o r s h i p , c o n t r o l l e d c a l l s w i t h P l a i n t i f f , q n d c o n s u l t a t i o n s w i t h . t h e M i n n ' i - D a d e S t a t e A t t o r n e y ' s O f f i c e . D e f e n d a n t s ' E x h . 7 a t 7 ; M a t a D e p o . a t 30 . D e t e c t i v e M a t a s p o k e t è M i a m i - D a d e A s s i s t a n t S t a t e A t t o r n e y H e d r i c k , w h o a d k i s e d h i m t h a t p r o b a b l e ' c a u s e e x i s t e d t o a r r e s t P l é i n t i f f . f t f ; M a t a ' D e p o . a t 34 . P l a i n t i f f w a s é r r e s t e d o n S e p t e m b e r 1 , 2016 f o r c y b e r s t a l k i n g a n d



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witness tampering. Defendant's Exh. 7 at 7-8. On September 2, 2016, Miami-Dade Criminal Court Judge Mindy Glazer determined that probable cause existed to arrest Plaintiff for cyberstalking. Plaintiff's bond hearing. Defendant's Exh. 9, Tr. of Sept. 2, 2016 bond hearing at 11 (D.E. 64r10). Plaintiff was released on bond, day later on September

2, 2016. Plaintiff Depo. Pt. 2 at 262-63. The State Attorney's Office did not testify at ges. Id at 271.

D. Cross-Motion for Summary Judgment

For summary judgment on the Plaintiff's Second Amended Complaint. Defendants move Plaintiff's undersigned as follows: (1) Count 1 is a 42 U.S.C. § 1983 claim against Sergeant Wright for violating Plaintiff's First Amendment rights on July 27, 2016; (2) Count 2 is a § 1983 claim

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*. ' against the City of Homestead under the Florida Constitution. Dep't of Soc. Servs., 436 U.S. 658 (1978) 8 for

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: / First Amendment rights on July 27, 2016; (3) Count 3 is a § 1983 claim violating the Plaintiff's against Sergeant Wright for violating the Plaintiff's First Amendment rights on August 24, 2016;

Monell provides the framework for municipal liability in § 1983 cases and states that municipal liability cannot solely be premised on the existence of an employer-employee relationship with a tortfeasor.

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(4) Count 4 is a state law false arrest claim against the City of Homestead for the disorderly.

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' . conduct arrest on August 24, 2016; Y) Count 5 is a § 1983 claim against Sergeant Wright for violating the Plaintiff's Fourth Amendment rights for false arrest on August 24, 2016; Y) Count

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' 6 is a § 1983 claim against Sergeant Garcia for violating the Plaintiff's Fourth Amendment rights . '

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. for false arrest on August 24, 2016; and (7) Count 7 is a state law false arrest claim against the City of Homestead for actions on September 1, 2016. The individual defendants, Sergeant

' t .

. Wright and Sergeant Garcia are moving for qualified immunity as to Counts 1, 3, 5, and 6. The City moves for summary judgment on the Monell claim, Count 2, stating that a final policymaker

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' did not issue the trespass decision. ' the City also

, argues the state law false arrest claims in Counts 4 and 7 are also foreclosed as the police had probable cause for the arrests. Plaintiff led

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: . a cross-motion for summary judgment as to all seven counts requesting the Court find Defendants liable as a matter of law.

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. (... II. . ' . 4 ; , ' .

Lezal St anda/d .

u . Fed. R. Ci v. P. 56 pr ovi des, G : sl z mmar y judgment i s a ppr opr i a ' t e where . t hef e ç i s no

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' ge nui ne i ss ue as t o any mat er i al fact ' ' and t he movi ng pa! - t y i s (ent i t l ed t o j ùdgment, as a. mat t er of 1 aw. ' ' ' See Al abama v. N Carol i na, 130 S: Ct . 2295, 2308 (2010) (quot i ng Fed; Rk Ci v. P. 56(a)). ' .

, j The existenée of some fact ual disputes between l i ti gants wi l l notn defeat an otherwise properly . . ' gr ound mot i on for s umma ry judgment ; G t t he requi r ement' i s t hat t here be' no genui ne i ss ue tf

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j ' : ' 1 , fadt . ' ' Ande rson ' v. Li bert y L obb y, I nc. , 477 U. S. 242, 24@ (1986) (emphâs i s adéed) . ' t . màt eri a

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1 ! . Mere S & met aphysi cal doubt as to the material facts' ' wil l. not suce. Mat sushi t a El ec. Indus. Co. ; ;

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-; ; ! , . ' , j 1 v. Zeni t h Radi o Col p. , 475 U. S. 574, 587 (1986).

The basi c i ssue befor e t he cöul ' t on a mot i on for summar y judgment i s t i whet her t he evi dence present s a s uff i ci ent di s agreçment t o r equi r e s ubmi s si on t o a jury or whe t her i t i s so



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'one- pi ded t hat one part y mus t pr evai l as a mat t e r of l aw.' ' Ander son, 477 U. S. at 251 (1986).
The

movi ng party has the burden of showing the . ab

.sence of a genui ne issue as to any material xfact , apd i n deci ding whether the movant has met this
bt l rden the court must vi ew the movant' s

'. ' ' ' evi dence ahd a1 l factual i nferences ari si ng from it i h the l ighj most favorable t o t he
nonmovi ng act y. Al l ev v. vyson Foods , I nc. , 12i F. 3d 642, 646 (11 t h ci r . 1997) . ' - I f reas onabl e
mi nds coul d p di ffer oh t he i nferences arisi ng frôm t mdisputed fact s, t hen a court shotl l d deny
sl l mmary

' j udgment . ' ' Mi randa v. B t # B Cash Grocer y St or e, Inc. , 975 J ? . 2d 1518, 1534 (11t h Ci r. 1992).

111. Leeal AnAl vsi s, . ' Res ol ut i on of t he cros s- mot i ons for s l l mmar y judgment requi r es t
he Court t o exami ne t he dbct r i ne of qual i f i ed i mpuni t y and muni ci pal l i abi l i t y t mdyr
Mgnel l v. D@ ' f o fsoc. Senw, 436 U. S. 658 (1978). ' I n t hi s case, t he pati es agr ee t hât ' ser jeant s
Wr i ght ahd Gar ci a wer e act i ng wi t hi n t hel r di scr et i onar y a ut hor i t y and t he Court wi l l
need onl y deûi de whet her t he of t kers r

' vi ol at ed cl earl y es t abl i s hed l âw. To r es ol ve Pl ai nt i f f s cl ai msagai ns t t he Ci t y of
Homes t ead, t he cour t wi l l exsmi ne whet hçr t he pi ai nt i f rcan es t abl i s h a cl ai m f br muni ci
pal l i abi l i t y b . ased on

' 1 d a t 692- 93 Yndi ng t ha t j 1 98 3 C ç cg z mo t be e as i l y rea d t c ? t he de c i s i o n o f a f i n a l
pol i c y ma ke r . i mpos e l i abi l i t y vi car i ous l y on gover z z i ng bodi es sol el y oz i t he basi ! of
t he exi st ence of an empl oyet - empl oyee r el p li ons hi p wi t h a t ort feasor. ').

A. Qual sedlmmuni t y

f i f r om l i abi l i t y under 4 1 2 .

U. S. C. j 1983, unl ess Qual i f i ed i mmuni t y pr öt edt s s t at e of cer s t hey viol ate a stat utol y or
coqst i tut i onal ri ght t hat ' was clearl y establ i s ' hed at the t i me t he al l eg:d vi ol at i on t ook pf



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ace. Gilmore v. Hodges, 8 F. 3d 264, 272 (11th Cir. 2013). (The purpose of Equalized immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, protecting from suit all but the plainly incompetent or those who violate federal law.) Id. (quoting *Fee v.*

Ferraro, 28

. 417. 301 188, 1187 (11th Cir. 2001) (9.

To establish a qualified immunity defense, Congress the public official must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Connors v. Ineson*, 311 F. 3d 1340, 1346 (11th Cir. 2002) (quoting *Lee*, 184 F. 3d at

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' 1194). G. To act within the scope of discretionary authority means that the act is necessary (1)

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- ' 1190 (11th Cir. 2002) and *Williamson v. Foughnan*, 261 F. 3d 1178,

t.) - i.e., duties and (2.) within the scope of (his jurisdiction!)

; undertaken pursuant to the performance of the officer's duties.

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y'

jj' JJ1 authority. *Collins v. Dickinson*, 471 F. 3d 1306, 1307 n. 1 (11th Cir. 2007) (quoting *Fenz v.*...

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l t o r i c : t h e o f f i c i a l h a s d o n e s o , t h e b l z r d e n s h i f t ! t o t h e p l a i n t i f f t o s a t i s f y t h e c l l
o w i n g t w o - p r b n g e d i n q u i r y : (1) w h e t h e r t h e f a c t s t h a t a p l a i n t i f f h > s s h o w h m a k e o u t a v i
o l a t i o n o f a

...: 232 (2009)). The Supreme Court clarified in *Păcarson* that courts may exercise their solid

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11 citations of the case at hand. Pearson, 555 U. S. at 236.

...oihtingtoamateriallysimilardecisionoftheSupremeCourt,ofEvent'hCircuitCourtsofAppeal,orofthesupremecourtsofthestateinwhichthecasearose;(2)byestablishingthatçabroad,clearlyestablishedprinciplesshouldcontrolthenovelfactsofthecase;or(3)byconvincing(thecould't)thatthecaseisoneofthoserareones:thatfitswiththeexceptionconductedwhichsoobviouslyviolateshighconstitutionalprincipleawisunnecessary'''

• • •

' The pl ai nt i f f mu j t r e l y o n d e c i s i o n a l l a w t o m e e t e i t h e r o f t h e f i r s t t w o ù r i t e r i a. P o w e l l
, 25 F. 4t h a t 920 (c i t i n g V i n y a r d , 311 . F. 3d a t 1351) (n o t i n g t h a t i n t h e f i r s t m e t h o d w e ç s l
o o k a t ' p r e c e d e n t l h a t ' i s t i e d t o i h e f a c t s ' ' w h i l e i n t h e s e c o n d m e t h o d w e l o o k f o r G % b r



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oad statement s of principle in case law (that) are not tied to particularized facts') (emphasis omitted). The Eleventh Circuit added that under the second and third criteria a court should look for (1) obvious clarity of the principle or provision so clear that, even without specific guidance from a decision involving

materially similar facts, the unlawfulness of the officer's conduct is apparent. 1d. (citing

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vinyard, 311 P.3d at 135-51) (wondering that - - broad statement of principle in case law... can clearly establish a principle in the future to different sets of detailed facts' and that the

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It would be of the pertinent federal statute or federal constitutional provision in some cases will be

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8jj. ... (specifically though to establish clearly the law applicable to particular conduct and circumstances'). In all three methods, the 'G' salient question is whether the state of the law at the time of the

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Incident gave (the officer's fair warning) that his conduct was unlawful. 1d. (quoting Perez v. Susztynski, 809 F.3d 1213, 1222 (11th Cir. 2016)) (additional citations omitted).

Count 1 and J.

J. 1983 amendments for Amendment not at issue against I.T.J. right a. July 27, 2016 Incident

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. With has moved for qualified immunity to shield him from liability for his sergeant's reactions on July 27, 2016 when he ordered Plaintiff to leave the City Council meeting approximately two and a half minutes into his three-minute speech. Plaintiff's burden is to show that Sergeant Wright's actions violated clearly established law.

Generally, city council meetings are "public fora" meaning that a city cannot "R... 1 * ' h ' ' ' ' ' . ' l K . ' * ' ' ' ' z . ' <

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. place limits on public . commentary. *Rowe v. City of Coconino*, 358 F.3d 800, 802 (11th Cir. P

< ' 2004). *Ws. a 1*

. limited public forum, a city council meeting is not open for endless public

; . commentary speech' b

. But instead it simply allows a limited platform to discuss the topic at hand. ' ' Id at 807. In this case, the City Resolution allowing for public commentary allowed speakers to sign in to the meeting ahead of time, and to speak to the council on any matter pertinent to city business or up to three minutes. ' the city, s. Rules or oecorum set forth

. has structure to 1,000 members of the community and to move meetings along efficiently.

Content-neutral time, place, and manner restrictions, such as those in place by the City of

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. Homestead, are permissible if they are narrowly drawn to achieve a significant government interest and if they allow communication through other channels. *Jones v. Heyman*, 888 F.2d 1328, 1331-32 (11th Cir. 1989) It - the Supreme Court has recognized the significance of the government's interest in conducting



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.ng or der ly, eff i ci ent meet i ngs of publ i c bodi esk ' ' I d. (ci t i ng Ci t y . .

' ' of Madi son, Joi nt Sch. Di st . v. Wi sconsi n Enl pl 6 yment hel at i ons Comm 3,

.429 U. S. 167, 176 n. 8 .

. ' 1 . ' . ' ,

' (1976\$. Thç ques t i on i n t hi s case i s whet her Sergeant Wri ght ' s deci si on t o order Pl ai nt i f f t b

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. z ' l eave was a cont ent - neut r al t i me, jl aèe, and manwer res t r i ct l on nat vowl y t ai l or ed t o achi evè t hat i nterest.

I n Jones v. He yman, t he Mayor expel l ed t he pl ai nt i f f f r om t hJ meet i ng and t h: i lsue was whet her the Mayor' s acti or f s st emmed from di sapproval of the plai nti fp: message or froni t he pl ai nti ff' s ' di àwpt iye conduct and fail ure to adhere to the agenda it em t mder discussi on. The '

pl ai nt i f f i n- t hat cas e s t a t ed' t o t he mayor C t g i j f you can' t s t ay ger man: i n yot l r mi nd, t hat ' s your pr obl em, not mi ne. ' ' I d at 1329. When t he pl ai nt i f f was war ned t ha t f urt her out bt z rs t s woul d

' h t es ponded t ô t he mayor : \$ I don' i t ht nk you ar e bi g enough. ' ' Id Tie mayor , r es ul t i n r emoval , e

, j, t es t i ied t hat t he pl ai nt i f f' s t t di j r upt i ve be ha vi or woul d ' worsen i f i gnocr ed, t hat g pl ai nt i f t l ' ' pr ès ent ed a poj si bl e t hreat of vi ol e nce t o t he commi s si on, ahd t hat (pl ai nt i f f j quest i oned t he

' t hoti t / t o pr es i de oker t he meet i ng. ' ' Id a t 1332. ' The El event h Ci r cui t f ound t hqt t he ma yor s au pl ai nt i f f f ai l ed t o es t abl i s h t hat t he expul si on was cont ent - based, rat her t han f iom' t he need t o

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'cont i nue t he order l y progress i on of an al ready l epgt hy commi ss i on meet i ng. Id.

.. I '

...'. *. ' Li ke i n Jones, t ùz. meet i ng' s ser geant - at - Mms, wr i ght , cl ai ms he was cha rged t mder t he Ci t yr s Rul es of Decorùm wi t h mai nt ai ni ng an order l y meet i ng. l n keepi ng wi t h t hai dut y, Sergeant Wri ght , l i ke t he màyor i n Jones, per cei ved Pl ai ni i ff ' s cor hment s di r ect ed t o Cot mcil man Maldonado to be

. a t hreat. Plai nti ff st ated that i f Council man Maldonado had somethi ng t o say to l d say i t to hi s face. ' ' Li ke i n Jones, t here i j a si gnifi cant government interest i n preservi ng the Orderl y admi nistrati on Of a governmept meet ing. St l rel y, Sergeant Wri

, ght, l i ke t he mayor i n Jnnes, was concenl ed the t l disrupti ye behavior woul d worsen i f i gnored. ' ' #. Gi ven t hat the Plai nti ff spoke for al most the ent ired y of his al lotted ti me and had spoken on pri or occasi ons on t l t e same t opi cs, t hér e i s not hi ng i l l t hi s r ecur d t o s uppor t a concl us i on j ha t t he dezision to ask hi p to l eave w:s baged on t he cont ent of his speech and not whàt he said to t he Coufl ci l ma n, whi ch coul d l eaè t o a gr ea t er di s rupi i on of t he méet i ng.

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...

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. The next i ss ue i s whet hei t v èxpul s i on f rom t he meet i nû was nar r owl y t ai l or ed' t o achi eve t he i nt zr es t i n an or der l y Yeet i ng. ç s g - f l he r equi r yment of nai r ow t :i l ori ng i s s at i sf i ed 1 so l ong as \$he . . . regulatibn promotes a stt bstanti al government i nterest .t hat would be achieved less ef f èt i vel y absent t he r egul at i on. ' ' ' ld at 1334 (quôt i ng Ward v. Rock agai nst Raci sm, 491 U. S.

.. è 78 1, 7997800 (1989)). . ' I ' he El èvent h Ci mui t i n Jones found t hat i t ' was not i t s r ol e t o' second- gues t hè mayor s deci si on, but r at he i whet her i t was pl aus i bl e t àat t he pl ai nt i ff i n Jones woul d have del ayed t he meet i ng o! t ct mt i nt l ed t o wander f r oz r j t hu s ubject i n ques t i on. S Thi s i s a j udgment cal l t hat a presi di ng of f i cer and par l i ament az i afl mus t make wi t hout. t he benef i t of



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er r onepus j udgment cal l on . t he part of a pres i di ng of f i cer does hot automatical l v ci ve rise to li abil i ' t v for a consti tuti onal to1 4. ' ' Id at 1334.

l n t hi s case, t he Pl ai nt i ff admi tt ed t hat he uhder s t ood why Ser jeant Wr i ght pe rcei ved l l i s

.. j ... speech to be a threat. Unquesti onabl y, the statement personal l y di rected at Counci l man Maldonado was disrupti ve. Pl ai nti ff had al ready ' al most compl etéd l l i s al l ot ted ti me and spokçn ' ' about al 1 the matt ers he Fi shed to raise. Indeed, he stated t hat he was on hi s ç E last poi nt. ' ' The vi deo shows t hat Plai nti ff was pul li ng away fmm the podi um as Sergeant Wri ght approached hi m. Sergeant Wright asked Pl ainti ff to leav

.r but did not order him t o stop speaking. The vi deo evi dence s hows t hat Pl ai nt i ff cont i nued t o s peak as he exi ted t he chamber and as he wal ked out si de. Fi nal l y, t he r ecor d s hows t ha t Pl ai nt i ff had di scussed t hes e mat t ers . on ot her occasi ons, havi hg part i ci pat èè i n 1 2 t o . 16 pr i or Ci t y Copnci l mert i pgs. Pl ai nt i ff. al so part i ci pat ed i n lei sure refl ection. An

meet i ngs aft er t he Jl z l y 27, 2016 i nci èent. Pl ai nt i ff De po. Pt . 1 at 36, , 38; Jone s, 888 F. 2d at 1334 (s t at i ng t hat t her ç mus t be al t er hat i ve' chnnel s of commt mi cat i on t o' avoi d a Fi r st Amendment vi ol at i on).

.

' The cout t f i nds ĩ hat ber geafl t Wr i ght di d not vi dl at e cl rar l y és t abl i shed 1 aw when orderi ng Pl ainti ff to l èave t he Jul y 27, 2016 meeti ng. Li ke t he El event h Circui t i n Jones, t hç Cot t rt cannot second- guess hi s decisi on to mai nt ai n an orderl y meeti ng it z vi ew of a st atement ' . t hat even Pl ai nti ff admi ts could. be percei ved as a t ht eat and i s, at t he vel ' y l east, disrupti ve. The

' - t é or der t t j l eave was near t he t ai l - eùd of Pl ai nt i ff s al l ot t el t i r i l e and' di d not pr ecl ude Pl ai nt i ff âom J)

..

.j j ., ., .

., j r j ., - conti nuing to Cpeal c as he exi ted t hç chamber. Notabl y; a plai nti ff' s prot ected speech i s onl y 21 .), .

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(j!)!! ffect ed G d i f t he def endant' g al l egedl y r et à l i at ory conduct woul d l t kel f det er a per son of i i ' édvers el y a

ordinary firmness from the exercise of First Amendment rights.' *Bennett v. Hendrix*, 423 F.3d 1111.

e. 1 247, 1254 (11th Cir. 2005). This is an objective analysis, which allows for a 'weeding out'

function when the injuries complained of are trivial or amount to no more than a . de zrl f
nfvl z k z inconvenienc ' e in the exercise of First Amendment rights

' 16 L at 1253. Not only was Plaintiff's

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... 's speech object i vel y not advers el y af f ect ed, i ndeed he spoke as V exi t ed t he chamber , but al s o any

! ! ! ! !

') al leged Fi rst' Amendment viol ati on, is . de mi ni mus as Plai nti ff st ated he was on l lis tl ast point ' '

... ' and car mot recal l wha t el s e he Fant ed t o di scuss. Accor di ngl y, t he Cot l i t f i nds t hat Pl ai nt i f f has f i l ed t o meet hi s bmden t o s hoW jer geant Wr i ght vi ol qt ed cl ear l y est abl i s hed l a w on Jul y 27, a 2016 and he is enti tl ed to quali fi ed i mmuni ty for Col mt 1.

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' motion for summary judgment on Count 1.

The Court denies the Plaintiff's

Plaintiff cites to two cases to state that the clearly established law precluded Sergeant Wright from ordering him to leave. These cases posit that the incident in this case and therefore, applicable in a qualified immunity analysis. Watkins v. Cent. Broward Reg'l Park, 799 F. App'x 659 (11th Cir. 2020), Uni ted States v. Baier, No. 4

: 21- mj- 09- MAJ, 2021 WE 3 1831 1.. 4. \$ (... (R. D. Fla. Jan. 25, 2021) .

b. a z l z l g n x f J 4 2016 Incident Count 3 against Sergeant Wright is based on the trespass warning issued to Plaintiff on August 24, 2016, when he sought to enter the City Council meeting only 3 and a half weeks after

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' his outburst of July 27, 2016. Sergeant Wright moves for qualified immunity on this claim arguing that ' he did not violate clearly established law and that he relied on the advice of the ' Miami - Dade State Attorney's Office in enforcing a trespass warning as to the Plaintiff.

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'

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' ' Having previously found that the City Council meeting is a limited public forum with a

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' . significant interest in conducting orderly and efficient meetings, the Court must examine whether

...

' the trespass warning is a content-neutral time, place and manner restriction narrowly tailored to



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1 p .

. ; serve i hat si gni f i cant goyernment al i nt er es t. The pol i ce de pm ment i ss ued, and Ser geant Wr i ght enf or ceL, a t res pass war ni ng pr ecl t z di ng Pl ai nt i f f f r om ent er i ng t he meet i ng because of Pl ai nt i f fs

recept disrupti ve behavior as he left t he Ci t y Counci l meeti ng. There i s no record evi dence t hat

. l this decision was consent-basqd. I ndeed, t he record shows t he Plai nti ff had part ici pated and

' l i di s put ed r ecor d evi dence s hows t ha t s poken on t he same t opi cs on 12-16 pr i or occasi ons. e un . ' ' -- '

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' .

' ' pl ai nti s di d not l eave the chamber qui euy, as requi red by the Rul es oç oecorum. Indeed, the

t '\$ t I am goi pg t o sue t he shi t put Pl ai nt f f agr eed at hi s deposi t i on t hat he sài d t o Set geant Wr i ght: . of yōu, you dumb ass. ' ' I - l e adpi t q t hat peopl e i

.n the chàmbèr coul d hear hi m. Plai nti ff Depo. Pt. . 1 at 92. The vi deo of t his i ncident shows the Pl ai nt iff sai d this as he was exi ti ng the chqmbèr. Vi deo of Jùl y 27, 2016 (D. E. 94) . Pl ai nt i ff' s comment èan be eas i ly hear d on t he vi deo t aken i ns i de ' t he Ci t y Counci l chamber . Pl ai nt i f f al so sai d out l oud t hat G ç g wl el l , now we have Homestead pol ice officers agai n vi olat ing the Fi rst Amendi l wnt because they are f ' ucl dng idi ots, and dol t' t khow shi t. ' ' Pl ainti ff Depo. Pt. 1 at 94.

Given thi à unrul y and di ' srupt i ve behavi oi on Jul y 27, t he Mayor, C

. i ty Manager, Pol ice ' chi ef - Rol l z, ser gema t wr i ght and ot ùers mei t o kl scuss appopr i at e meas utes. undi sput edl y, t hè

l i ce depar i mh ent has t he àùt hor i t y t o i ss ue a t res pass war ni ng i n ' t hi s cont ek t t o prevent po di sordef ' l y conduct at à, government meet i ng - a deci si on t hat i s consi lt ent wi t h t he Rul es ot Decorum. ' The record supports t he concl usi un t hat t he trespass warning was based on Pl ai nti ff s

' i dence t o s pggest i t ' i ly beh . avi or weeks ear l i er at t he J ul y 27 Veet r f g and t her e i s no recor d e v : j ul l r u



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4 'wàs a' cöntent-based decisi oh. 1 ! j

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Havi ng f ouhd t he deci s ion t o be cont ent - heut fal , t he coul ' t mus t exnmi ne i f t he t res pàss

; K''' u j . t war hi ng was nat r oFl y- t ai l ored . (Tj he r equi remçnt of nar row t ai l or i ng i s j at
i sf i ed so long as t e'

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... regulation provisions a substantial government interest that would be achieved less effectively

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''..'''' Jonès 888 #. 24 at 1334 (quot i ng kard v. Rock agai nst Raci sm, 491 U.!. absent t he r egul at i on. , 78 1, 799- 800 (1989)). To t ha t end, t he t r es pass wmmi ng l ss ued t c j Pl ai nj i f f, who wee ' ks bef or e

disrupted a Ci W Cot mci l meet i hg wi th ct l rsi ng and threats of li t igati on, promotes t he substantial

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. ' kover nment i nt er est of mai nt ai ni ng ' . an or der l y meet i ng. Se rgeal i t Wr i git al s o pr ovi ded t he

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i ' h Pl ai nt i ff cou ' l d azamet er s t mder whi ch Pl ai ni i ff cou d gai n r eadmi s si on. Thi s i s not a cas e w er e P .

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' J ' ' i i t f ac t ' ser geant wr i ght t ol d Pl ai nt i ff he s i ppl y needed pot reques s r eadmi ssi on t o t he mee nj. T 1 ,

c t ' i ' h l 8 l be a pol i ce r epot ' t . Xt t hpugh Pl ai ni i t f di d not t o put t he reques t i n m- i t i ng an t a t t e re wOu compl y wi t h t he or der , by s ubpi t t i ng a wr i éen reques t for r eadmi ssi on, he was nevert hel ess abl e to remrn to t he Ci ty Counci l meet i ng i n December 2016. Serge:ét Wright di d not viol ate cl earl y establi shed 1aw wheù he enforced t he trèspass warni ng,and provi ded procedures for the Pl ai hti ff to ret urn to Ci ty Hal l.

The El event h Ci rcui t éase 1 aw is al so clear t hat al t hough a ci ty hall is a government bui l di ng, t he publ i c does not have a cons t i t ut i onal r i ght t o vi si t Ci t y ' l - l al l ' f ç t mder a1 1 qir cum s t mwes and àt a1 1 t i mes. ' ' Cat ron v. Ci t y o fst . Pet ersburg, 658 F. 3d 1260, 1267 n. 5 (1 1t h ci r. 2011); Bl oedurv' v. ' Grz / bc, 631 y' . jd i21à, léjù (11 t h di r. 2011) (û (I t i s by now cl ear t hat t he Fi r s t Amendme nt doçs not gua pnt ee acces s t o propert y j us t becaus e i t i s owned by t l i e

, , . t j a ci r 2020) (ç t pol i ce oft en ask governmçl t t .); Peer y v. Ci t y o fMi ami , 977 F. 3d 1061, 1071 (1 t .

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' i ndi vi duals to temporari l y l eave publ i c spaces, and doi ng :o' does not create a cunst i tut i onal

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' ' l t he de ti s i on t b pr ecl ude Pl ai nt i f f f rom ' ent er i ng a Ci t y Counci l meet i ng ' ' E depr i



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vat i ôn . . Cel - t ai h y, : . . .

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; I ' j d è s not vi olat e clearl y establ ished l aw, where the Eleventh Ci rcuit l f l as i l : weekg aft er his out butst o

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, , . . authori zed local governments to l i mi t access as l ong as a trespass warni ng provi des i, procedure ç t f or t he r eci pi ent of a t t es pas s war ni ng ' t o chél l enge t he War l l i ng. ' ' Cat ron, 658 F. 3d a t 1267. :

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'''j!'.
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l I Eveh i f the trespass wérni ng was not natrowl y tai lored? Poul aki s v. Rggebs, 341 F. App' x ! ' !

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'jjk...'..

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l j'!... (: 4 r 523 , 533 (1 t h Ci r. 2009) st at es t hat an of f i cer may r easona bl y rel y on a; pm- ar r es t cons ul t at i on and advi çe of a di s t r i ct att or ne y. ' ' I n' poul al ds, t he El eveht h Ci rcui t f ound an èf f i cer had qt l al i f i ed

i mmuni ty when he rel ied on t he adkice of the as ' sistant state att orney to det enni ne whet her pr obabl e caus e support ed an arr es i. ç ' As a pr act i cal mai t er , i t i s al t oget her cons i s t ent wi t h t he total i t y of t he ci rcl l mstances anal ysi s to consi der pre-arrest cpnsul tat i on and advice of a di strict at t or nry as bei ng one ci rcumst al t ce con ' t r i but i ng S o t he obj ect i ve r easönabl eness of an Qf f i cer' s conduct. ' ' The record here is undi sputed t hat t he pol ice depart ment, throphg Delohn, sought l egal advi ce from t he' State At lorney's Offi ce t o determi ne if t he pol ice depart ment coul d i ssue a trespass warni ng to Pl>i nti ff based on his conduct at t he Jul y 27j 2016 meeti ng. The Stat e At s onwy' s Of f i ce confr med t hat t her e was probabl e càuke t o i ssue t he order. Delohn des cr i bed

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? f i t he ' Pl ai nt i f fs behavi or àt t he cùunci l meet l ng; s peci f kal l y, hi s use t o t he St at e At t onwy s O ce of foul l anguage and hi s t hr eat t o sue Ser geant Wri èht . The St at e At t ômey' s Of f i ce t ol d Delohn

. ' t hat t he Ci t y of Homes t ekd pol i ce coul d i ss ue t he t r espas s war ni ng t o Pl ai nt i f f bas ed on hi s disnz pti ve behavi or. Delohn Dspo. at 12. The opi niqn of t he State Att orney' s Office should be

i i ng ' t he ques t l or i of qual i f i ed i mmpni t y. The recor d s hows t he cons i demd i r i t he mi x of exam n advi ce wàs bas ed oj l a f ai r des ct i pt i pn of Pl ai nt i f f' s conduçs and was t hç ki nd t hat an ob ject i vel y

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' reasonableq offcer could consi det rel iabl e.

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. Bas ed on t he t ot al i t y öf t he ci r cums t ancesy ' t he cour i gr ant s sergeqnt wr i ght qual i ied i lmuhi t y. Hi s enf or cemènt of t he pol i ce depa tt ment ' s t res jass warni ng di d not vi ol qt e cl zarl y èstàbli shed l aw. The t respass warni pg was nafrowl y tai lored to serve a àigni ficant governmental if l t erest i n fost eri ng an orderl y meeti ng and i t set fort h t he parameters under which Pl aint i ff coul d

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y . . . regai n admi s si on t o t he ci t y èounci l meet i ng. The cou, . t al so f i nds t ha t t he pol i ce depart ment s i g

i j i l ce fwm t he jt at e At t ol - pçy' s öf f i cq i s' an i mpoMant fact or , whi ch t i ps t he ' ! r el i ance on l egal adv

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. è . scal e i n favor of fndi ng Ser geant Wf i ght i s el t f i t l ed t o ql l al i f i ed i mmuni t y.

J. Count s J and 6: f 1983 Cl ai msfor Fourt h Amendment Vi ol at i ènagai nst Wri ght and

Garci a cot mts 5 and 6 stem f ' ro ' m . pl ai nti ff's azrest on August 24, 2016. Pl éi ùt iff clai ms Sergeant Wright ar î d Sergeant Garci a vi olated cl eatl y ejt abli shed Fpurt h Am endment 1aw whdn they ar r es t ed hi m f or di s order l y . conduct on Augusf 24, 2016. Yhè undi s put ed fact s show. Pl ai nt i f f t hreat ened to sue Sergeant Wright, and stuck up his mi ddl e finger t o t he ofl icers aft er recei ving t he trespass wnrni ng as he wal ked away. Plai nti ff admi ts that as hè was hol



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ding his video camera, t he pf scer j al s o coul d have per cei ved hi i n t o be grabbi ng hi s gent t al i a. At t he t i mb qf thi s August 24, 20 16 i nci dent, t here were t wo women i n the parl ci ng lot and one col mci l member wal ki ng i nto the bui ldi ng. Of course, this conduct was on t he heels of hij out burst a few weeks earli er at She Ci t y Cot mci l meeti ng where he cursed ar l d t hreat ened to sue Sergeant Wright.

A wArrantl ess arrest wi thout probabl e cause vi ol àtes t he Consti tution and forms the basi s öf a j 1983 cl ai m. Conker sel y, , i f àl l ar res t i s sppport ed by pr oba bl e cquse, t he arr es t ee i s absol ut el y bar r ed f rom purs ui ng a j 1983 f al se ar res t cl ai ms. Probabl e càuse exi pt j ç 6 i f G at t he

... ? % . ' moment t he al wst was made, C t he f ac t s and ci r cumst ances wi t hi n E t he of f i cer s') l c nowl edge and

f f i ci ent t o war rant a prudent man of whi ch t hey had r eas onabl y t r ust wor t hy i r l f or mat i on wer e s u .

', i t l bel ievi ng' that the kuspett had commi tt ed or was commi tt i ng an offense. ' ' Hol mes v. Kucynda, 321 F. 3d 1069, 1079 t1 ' lt k ci r. 2003) (di s t i ngùi s hed on ot her gr ounds by' i nl l i ams v, Agui rre, 965 F. 3d 1 t47 (11t h Ct r . 2020)).

To recei ve qual if ied immuni t y protecti on, an officer ç ' need pot have act ual probabl e cause

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. ; i T \$ tguabl e yrt / l / t z l l l c cause. n ' ' ' ' I d. (quot i ng Mont out e ' v' . CJr#, 114 F. 3d 181, 184 (1 t h i ' j l but only a !

' l j .

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g ç ç f f i cer r eafonabl y coul d have bel i eved t hat / 1 1 ' C i r . 1997)) . Arguabl e pr obabl e caus e exi st s when an (j i j probabl e. cause exi st ed, i n li ght of t he i nformati on . t he officer possessed. ' ' Durrut hy v. Pastor, '

t . . ' j51 F. 3d 1080, 1089 (11t h Ci r. 2003) (quot i ng Mont out e, 114 F. 3d a t 184). Ar guabl e pr oba bl :

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cause does not require an arresting officer to prove every element of: crime or to obtain a confession. before making an arrest, which would negate the concept of probable cause: and transform arresting officers into prosecut prs. ' ' Id at 1089 (quoting Lees 284 F. 3d at 1195)

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.(additional omissions or omitted).

The Court finds that Sergeant Wright and Sergeant Garcia had arguable probable cause to make the arrest. Although Plaintiff argues that the law is clear vests liability shed that Rivington the

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' ' fi to an officer is insufficient to support a disorderly conduct charge

, Sergeant Wright admittedly had witnessed Plaintiff's behavior on July 27, 2016. With that knowledge, a reasonably prudent officer would believe that Plaintiff would further escalate the situation. In *Gould v. City of Miami*, 121 F. 3d 1442 (11th Cir. 1997), the Eleventh Circuit found officers had arguable probable cause



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ffdf àùt y l oudl y t wi ce i n t he t o ar r èà t a pl ai nt i f f f or di s or derl y conduct when t h8 pl ai nt i ub; pr o c ' wh t cong t i t u ' ' t ès i egal l y pmc cri bed ' di s or detl y con' duct i s s ubject t o great pres ence öf ot hers. a j ubj ect i ve' i nt epr et a t i on of' speci éc fact s - f or exame pl e, t he wor ds us td, t he t one used, t he

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' deci bel s used, and t he r e ' act i on ' of onl ookers -g t he court i s q conà r ai ned t o concl ude t ha t a

d ' in the s ' ame knowl edge as the' officers reasonable off icer i n the snme ci rcumst ances an possess g '

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pj a ut i u sr (j ' , . i n t hi s ca s e c oul d ha ve r e a s ona bl y be l i e ved t ha t pr obabl e c a us e e xi s t e d t o ar r est E .

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; i s or derl y conduct . ' ' fJ. Her e, Sdrgeant Wr i gl i t had wi t nessed Pl ai nt i f fd bel l i ge rent behavi or f d t ' i t hand weeks earl ier'

. fl ai nt i f t t mdi j put edl y us ed prof ahi t y and t hreat ened t o ejcal at e \$ he F S i nteraction wi th Sergeant Wri ght and t he pol ice ön August * 24, 2022. 11 4 thi s context, t he Court

. i l l not sa y t hat ser geaut wz i gl a t and. ser geant èar ci a. vi öl al ed cl ear l y. es t abl i s hed l aw when ' W ar res i i ng Pl ai ht i f f f or di s or der f y conduct . g

9 Pl ai nt i f f ar gues t hat Gol d acmâl l y put of f i cçr s on not i ce t hat t her e W as no ac mal pr obabl e cause t o ar r est i n a case of pr of ani t y. The s t andar d f or kual i /ed i mmuni t y, however , i s ar guabl e

b b1 e ca ' use

, whi ch when qppli ed i n thi s éase enti t les the officers t ö quali fed i mmuni ty. pro a



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In addition, the Court finds that Sergeant Garcia is entitled to qualified immunity as he was not the officer who instigated the arrest. The record evidence shows that Sergeant Wright

... instructed Plaintiff to stop and put his hands behind his back, Officer Monaco handcuffed

J... Plaintiff, and Sergeant Garcia authored the arrest report. Sergeant Garcia was at City Hall at the time of the incident but was not at the scene of the disorderly conduct. He relied on the

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... information from the other officers, to write the arrest report. Plaintiff admits that by the time he interacted with Sergeant Garcia, he already knew he was under arrest; Sergeant Garcia escorted

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the Plaintiff to a police vehicle for his transport.

It is the Court's finding that an officer who does not participate in the actual arrest or who was not in the chain of command supervising the arresting officer cannot be liable for false arrest under 42 U.S.C. § 1983. *Di az v. Miami - Dade Cnty.*, 424 F. Supp. 3d 1345, 1357 (S.D. Fla. 2019),

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Yes, as cited in *Di az v. Miami - Dade Cnty.*, 849 F. App'x 787 (11th Cir. 2021). Here, the record is

clear that Plaintiff is not entitled to the actual arrest. The actual arrest was testified to by Sergeant Wright and Officer Monaco. Sergeant Garcia was also not a



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upyr vi si ng off i cei '

'... i n' t he chai n of command. Rat her '

, Sérgeaht Garci a obtai ned the i nformation from t he armsti ng offi cefà to wri te the arress rèport. Accördi ngl y, the Coul ' t grants Sergeant Garcia' s r hoti t m for ' 1

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q . Z '

. k j j ual i f i ed i mmt mi t y on t hese addi t i ùàl gr ounds; Havi ng found Sergeant Wri ght anc t Gar ci a are ? C 1

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. ' ent i t l ed' t o qual i f i ed i mmuni t y, t hé Cpul ' t deni es t he Pl ai pt i f f s mot i on for s ummary judgment.

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. B. ' Count 2. ' 42 LI, S I C. f 1983 Monel l c/ t z j z ? iagai nst t he Ci t yfor vi ol at i ng t he Pl ai nt t' s

Fi rstAmendpent Ri ght s Cf mnt 2 of the ' compl aint al l eges a vi olat ion of the Plai nti ff' s Fi rst Amen' dment ri ghts by

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' t he Ci t y of Homes t ead puys umg t o Monel l . The Supréme Cpul ' t ha! i mpoked st r i . ct l i mi t at i ons on - . .

. è ' mt mi ci pal l i abi l i t y under j 1983. . ùrech v. Cl ayt on C@. , 735 F. 3d 1326, 1329 (11 t h Ci r. 2003);

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Ci t y, Pl ai nt i f f mus t demons t r at e: (1) t hat hi s cons t i t ut i onal r i gh t s were vi ol at ed, (2) t hat t he Ci t y had a cust om or pol i cy t hat const i t ut ed èel i ber at è i ndi f f er ence t o t hose cons t i t ut i onal r i gh t s, and

Under a final policy maker's authority, financial liability may be imposed for a single decision by municipal policy maker's under appropriate circumstances. "Pembaur v. City of Cincinnati, 47\$ U. S. 469

., 480 (1986). To establish compatibility under the final policymaker theory, the challenged action must have been taken pursuant to a policy adopted of municipal liability, thereby of the official or officials responsible under state law for making policy in that area of the city's business. *l' Gomez v. Metro Dade C@.*, 801 F.. Supp. 674, 677 (S. D. Fla. 1992) (quoting *City of*, ...

. st . Loui s v. pr aprot ni k 485 u. s. 112, 123 (1988:.. A muni ci pal i i y can be hel d l i abl e oht he - bafi
s of rati fcat ion when a subordi nat e pgbli c offkial makes an t mconsti t uti önal déci si on and when

' t h a t d e c i s i o n i s t h e n a d o p t e d b y s o t n e o n e w f l o d d e s l k a v e f i n a l p o l i c y m a l c i n g a u t h o r i t y . ' ' H o e f i n g v . C i t y . o f M i a m i , 811 F. 3d 1271, 1279 (11 t h C i i . 2016) (q u o t i n g M a t t h e w s v . C g l u m b i a C @ . , 294



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' F. 3d 1294, 1297 (11th Cir. 2002)).

' Alai nt i f f i l f n u s t i d e n t i ' f y t u o s e o t f i c i a l s w h o s p e a k w i t h f i n a l p o l i c y m a k i n g a u t h o r i t y f o r p t h a t l o c a l g b v e r n m e n t a l e n t i t y c o n c e r n i n g t h e a 8 t a l t e g e d t o h a v e c a u s e d t h e p a r t i c u l a r

i t u t i o n a l v i o l a t i o n i 2 i s s u e. ' ' G r e c h , 3 1 5 F . 3 d a t 1 3 3 0 : (1 1 t h C i r . 2 1 0 3) (c i t i n g J e t t v . D a l l a s c o n l t I n d e p . S c h : D i s t , 4 9 1 U . S . 7 0 1 , 7 3 7 (1 9 8 9 : . D e t e r m i n i n g w h e t h e r t h e e m p l o y e e h a s f i n a l o l i c y m a k i n g a u t h o r i t y

. i s a d e c i s i o n f o r t h e j u d g e . h t t , 4 9 1 U . S . a t 7 3 7 . P

i g . . ' l '

j T h e t h r e s h o l d i / u e i s w h e t h e r P o l i c e C h i e f R p l l e i s t h e f i n a l p o l i c y m a k e r a n d i s I 6 v q s t e d j ' ' w i t h f i n a l i t y o f a u t h o r i t y i n h i s d e c i s i o n s . ' ' V i l l a h u e v a v . C i t y o f F o r t P i e r c e , . 2 4 F . S u p p . 2 d

t 199à). The El event h C i r c u ' i t h a s s t a t e d t h a t a m u n i c i p a l o f f i c i a l i s n o t a 1364 , 1369 (S . D . F a .

f i n a l p o l i c y m a k e r i f t h o s e d e c i s i o n s a r e s u b j e c t t o m e a n i n g f u l r e v i e w . I d T h e ' c i t y M a n a g e r

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' . G e o r g e G r e j s a s t e s t i f i e d t h a t t h e C i t y l e f t t h e d e c i s i o n a s t o i s s u e s s u c h a s t h i s t r e s p a s s w a m i n g ,

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. u p t o t h e p o l i c e d e p e n d e n t . G r e t s a s D e p o . a t 5

. 5 . (ç s g - l - l h é s e d e c i s i o i l s a r e w i t h i n t h e d i s t r i b u t i o n o f . . , '



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' . t he pol i ce de part ment g . l ' ' l ; Rol l e Depo. at 30. The Ci t y' s ordi nance gave s i mi l ar aut hor
i t y t o t he

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'Wright's decision was subject to review.



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Having found the Police Chief or his delegate, Sergeant Wright, had final policymaking

therefore, in authority, the Court must next decide if the decision caused a deprivation of rights. The Court

finds the trespass order did not cause a violation of Plaintiff's First Amendment rights. Therefore, the City did not violate Plaintiff's First Amendment rights where the trespass was

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was narrowly tailored to serve the significant governmental interest of conducting orderly

city council has authorized local government to limit access to government meetings. The Eminent Domain as long as a trespass warning provides a procedure for the recipient of a trespass warning to challenge the warning. Catron, 658 F.3d at 1267. Moreover, it is not the role of

this Court to second-guess the police department's decision to issue a trespass warning to Plaintiff, but rather this Court's inquiry is whether it is plausible that the plaintiff would have delayed the

meeting or disrupted the meeting absent the trespass warning. This is a judgment call that a presiding officer and parliamentarian must make. . . An erroneous judgment call on the part of a

presiding officer does not automatically give rise to liability for a constitutional tort. Jones, 888 P

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. F. 2d at 1334. Certainly, it is feasible that Plaintiff would have again disrupted the meeting absent the trespass order. Accordingly, the Court finds no deprivation of First Amendment rights and grants the City's motion for summary judgment.

C Count 4 (17. 'State of Florida v. Attest Claims against the County of Homestead The state law false arrest claim turns on the existence of probable cause. The probable cause is an affirmative defense to a false arrest claim.' 'Mallory v. Jenne, 867 So. 2d 1250, 1251 (Fla. 4th DCA 2004). Probable cause exists when the facts and circumstances that would lead a reasonable

person to believe that the person accused is guilty of the offense charged. Ito (tuot ing cau Fla. Game of Fishwater Fishing Club? v. Docker, 676 So. 2d 1471, 1474 (Fla. 1st DCA 1996)).

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. I See probable cause must be judged by the facts that existed at the time of the arrest, not evidence;

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y's subsequent learning (k provided to the prosecution. Miami, 669-70 (Fla. 3d DCA 2012).', 2

August 24, 2016 Arrest for Disorderly Conduct This Court has already

. determined that the officers had probable cause to arrest

that Plaintiff for disorderly conduct. Florida Statute 877.03 provides that (which however commits

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such acts... to constitute a breach of peace or disorderly conduct, shall be guilty of a

level of a disorderly conduct law largely depends on the second degree. On the facts and circumstances of each case, noting that it is the degree of loudness, and the

... 'circumstances (Elder) which the speech is justified, that justifies it out of the



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constitutorially protected area. ' ' ' Gold, 121 F.3d at 14k6 (quoting Morris v. State, 335 So. 2

d 1, 2 (Fla. 1976)). In the fact-intensive nature of the constitutional inquiry accorded to the varying views in the

J., ' Florida appellate court's of what constitutes illegal 'y proscribed

disorderly conduct. ' ' Id Given the prior interaction between Sergeant Wright and Plaintiff, Plaintiff's cursing, Plaintiff's multiple threats to sue Sergeant Wright, and Plaintiff's demeanor, which showed a desire to escalate the, altercation, the Court finds Sergeant Wright had probable cause to arrest Plaintiff for disorderly conduct on August 24, 2016. The Court grants the City's motion for summary judgment on the state law false arrest claim in Count 4 and denies the Plaintiff's motion for summary judgment.

J 2016 Akrest 6 Cyberstalking B. September 1, ' The Court has also determined that Detective Mata had probable cause to arrest Plaintiff for cyberstalking. He relied on the opinion of the State Attorney's office prior to the arrest after completing his investigation. Plaintiff admitted to writing multiple posts directed at Officer Monaco. He accused Officer Monaco of being a coward and liar and states, he will blqst Officer . . .

' . . Monaco's home address. Officer Monaco was concerned for his family's safety.

Florida's cyberstalking statute, section 784.04, Fla. Stat., defines cyberstalking as engaging in a course of conduct ' to communicate

, or to cause to be communicated, words, 1) the use of electronic mail or ' electronic communication, images, or language by or through directed at a specific person causing substantial emotional distress to that person and giving no legitimate purpose. ' ' Under this definition, the Court agrees the officer had probable cause to

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.(arrest the Plaintiff for cyberstalking.

. Accordingly, the Court grants the City's summary judgment on Count . .



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' 7 i l l f a v o r o f t h e U i t y a n d d e n i e s t h e P l a i n t i f f ' s m o t i o n f o r w m m ' a r y j u d g m e n t .

DONE AND ORDERED i n C h a m b e y s a t M i > i n i , F l o r i d a , t h i j 1 1 & o f M a r c h 2 0 2 2 .

.. #. * .

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VEDERI OREN UNITED-STATES DISTRICT JUDGE Copies fur ni shed to: Counsel of Record , ' q '

