UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANDREW YOUNG,)
)
Plaintiff,)
vs.)
)
L. O. DAVIS, as Sheriff of St. Johns County, Florida; VIRGIL STUART, Chief of Police of St. Augustine, a Municipal corporation of St. Johns County, Florida; and JOSEPH A. SHELLEY, as Mayor of St. Augustine, Florida,)
)
Defendants.)

No. 64-133-Civ-J

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Plaintiff gave informal notice by telegram on May 29, and by mail late in the evening of May 29 (not received by the Defendants and their counsel until Monday, June 1) of their intention to apply to the undersigned Judge at 2:00 o'Clock P.M., Monday, June 1, 1964, for "temporary restraining order or temporary injunction".

The notice was short, but it was given as expeditiously as possible with respect to a time for presentation of the matter allotted to one of Plaintiff's counsel, Mr. Tobias Simon, in a telephone conversation with the undersigned Judge about 2:00 P.M., May 29. Immediately following that conversation, I advised Mr. Harris Dittmar, a member of the firm of Bedell, Bedell & Dittmar, the Defendants' leading counsel in this case, and counsel for the Defendants in related prior recent litigation before this Court, of the gist of the conversation with Mr. Simon and the fact that I had

given leave to Mr. Simon to give notice of a hearing at 2:00 P.M., on Monday, June 1.

This rather detailed description of the amount and type of notice is necessary because of my conclusion that the application should be treated as one for temporary injunction rather than one for temporary restraining order. A full hearing was had, commencing at the indicated hour, and continuing for two full court days thereafter, until 5:30 P.M., on Wednesday, June 3. Full opportunity was permitted both parties to present testimony and other evidence, and the case was fully argued by counsel for both parties at the conclusion of the evidence. All relevant evidence is therefore now submitted to the Court and no reason exists for not treating the application as one for temporary injunction rather than merely for a restraining order.

As required by Rule 52(a), F.R.Civ.P., in connection with the granting or refusing of an interlocutory injunction, the Court makes the following:

FINDINGS OF FACT

1. The Plaintiff, Andrew Young, is a member of the Negro race and brought this suit as a class action on his own behalf and on behalf of all other Negro persons in St. Augustine, Florida, who are similarly situated. The members of the class are so numerous as to make it impracticable to bring them all individually before the Court, but there are common questions of law and fact involved, and common grievances of all members of the class arising out

of common wrongs, and common relief is sought for the Plaintiff and for each member of the class. The Plaintiff fairly and adequately represents the interests of the class. I find that the suit is properly brought as a class action under Rule 23(a)(3), F.R.Civ.P.

2. The Defendants are L. O. Davis, as Sheriff of St. Johns County, Florida; Virgil Stuart, as Chief of Police of the City of St. Augustine, a municipal corporation of St. Johns County, Florida, and Joseph A. Shelley, as Mayor of the City of St. Augustine, a municipal corporation of St. Johns County, Florida. They are sued in their official capacities for official acts claimed to be violative of the rights of the Plaintiff and the class which he represents.

3. Jurisdiction of this Court is invoked pursuant to the First, Fourth, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States, and also under Title 28, U.S.C., Section 1343, and Title 42, U.S.C., Sections 1981-1985, inclusive. Primarily and essentially, the suit is one brought under authority of Title 28, U.S.C., Section 1343(3), and Title 42, U.S.C., Section 1983, for the protection by injunctive relief of the right of freedom of speech, the right of freedom of assembly, and the right to petition for a redress of grievances arising under Amendment I to the United States Constitution, and guaranteed against state action by the privileges or immunities clause, the due process of law clause and the equal protection of the laws clause of Amendment XIV to the United

States Constitution.

4. The Plaintiff and members of his class share a conviction that the usages, customs, practices, laws and ordinances of St. Augustine and St. Johns County, Florida, discriminate against them because of their race or color. Among the practices asserted to be discriminatory on the grounds of race are the following: exclusion from public employment, segregated schools and segregated teaching and administrative personnel of the schools, segregated public housing, systematic exclusion from Grand and Petit Juries in St. Johns County, and exclusion from most places of public accommodations, including restaurants, hotels, motels and theatres.

5. The Plaintiff and other Negroes of and visiting St. Augustine, Florida, have sought by various means to publicize their position and to secure redress of their asserted grievances at the hands of public officials. They have made efforts to convince city officials to meet with Negro leaders and to form a bi-racial committee for the discussion and solution of grievances. These efforts have been notably and consistently unsuccessful.

6. Members of Plaintiff's class began, about a year ago, protests by various types of demonstration: by singing and marching, by dissemination of printed matter, by picketing, by sit-ins and by direct efforts to persuade owners of places of public accommodations to open their doors to persons of all races. These public demonstrations have continued sporadically to the present time.

7. Beginning Tuesday, May 26, 1964, the Plaintiff and the members of his class engaged in a series of nightly peaceful and orderly marches to and around the Plaza, the center of downtown St. Augustine. Such marches were held May 26, May 27 and May 28. One was attempted May 29 and was turned back by the Defendants before it reached the downtown section of the city. The turning back of this march is one of the crucial actions asserted in this suit as violative of the rights of the Plaintiff's class. Detailed findings with respect thereto are set forth in paragraph 14 hereof.

8. As far as the Negroes were concerned, these marches had a similar pattern each night. Meetings starting about 7:30 or 8:00 o'clock were held in various Negro churches. Singing of hymns and prayers were followed by exhortations by leaders, and detailed instructions with respect to keeping good order and preserving an attitude of non-violence. About 9:30 or 10:00 o'clock, in columns of twos, the Negroes then marched from the meeting place, using the sidewalks to the downtown section. They reached King Street, a main thoroughfare leading into the downtown by Cordoba Street, marched east on King Street to the waterfront, around the Plaza, a narrow two-block long public square on the sidewalks of King Street, Charlotte Street, Cathedral Street and St. George Street. This line of marching brought them back to King Street at the intersection of St. George Street and they marched thence back along King Street to Cordoba Street, and back into the Negro section on Cordoba Street. At the easterly end of the Plaza is a

structure known as the Old Slave Market. This is a covered pavilion, paved underfoot, with benches and tables, often used by the local populace and by tourists as a place of rest, recreation, and for the playing of checkers or dominoes. It is lighted by overhead lights, the switch thereto being in a place accessible to persons desiring to use the premises at night. The portion of the Plaza west of the Old Slave Market has some benches but consists in the main of shrubbery, grass patches and shade trees in the typical fashion of public parks. There is a public sidewalk completely around the Plaza, bordered by hedges within the westerly portion, by the Old Slave Market itself in the easterly part.

9. Tuesday, May 26, about 400 marchers left the First Baptist Church about 10:00 o'clock and marched downtown, arriving at the Old Slave Market about 10:30. It was unoccupied and prayers were said and several hymns sung at that point. The march returned to the First Baptist Church without incident. These proceedings were observed by the police establishment without interference or objection.

10. Wednesday, May 27, about 800 marchers left the St. Mary's Baptist Church on Washington Street, planning a similar demonstration, except that this was to be a "silent march" with singing, talking or clapping of hands not to take place. Near the intersection of King and Cordoba Streets, these marchers were met by a Police Lieutenant who told them that another group was meeting in the Slave Market and that he would not advise their going down. The Defend-

ants, Davis and Stuart, also came up and told the leaders of the march not to go down there, that there were not enough police to protect them. Reports were rife "that the town was full of Klan types, armed with sticks, metal rods, chains, knives, etc." Some of the older persons in the march and some small children left it at this point, but about 750 conducted an orderly, silent march around the Plaza. The lights were off in the Slave Market but it was occupied by a considerable number of white men and boys. Estimates of the number by witnesses varied from 25 or 30 to 100. Two or three State or local patrol cars were visible and some Police present. The Police who testified before me stated they saw no weapons. On the other hand, the Negro marchers who testified, as well as Dr. Harry Boyte, a white advisor with the Negro group, were positive that chains, rods, clubs and one or more "guns with barrels" were visible in the group. I accept the testimony of the marchers on this point, and reject that of the Police. The Police testimony is negative: they "saw no weapons". They were at a considerable distance, whereas the Negroes marched directly around the Slave Market. Further, it is convincing on this record that the Police (this term is used generically here and elsewhere in these Findings, and is intended to include local police, Sheriff's deputies and State Highway Patrolmen) made no effort at close inspection to determine whether the white persons were armed, and no attempt to learn their identity or the nature of their business in the Market. The youth of these whites is emphasized

in most of the Police testimony by their characterization as "teenagers", "young kids", etc. It is my finding that the group on Wednesday, as well as that on the following night, Thursday, May 28, was composed of armed toughs and hoodlums, predominantly youthful, but with a sprinkling of older leaders.

With the exception, near the completion of the circuit of the Plaza, of some exchanges of heckling and shouted curses or insults back and forth, the Wednesday night march returned to the Negro portion of the city without incident.

11. Thursday night, May 28, some 400 people met in the St. Paul's A.M.E. Church about 8:00 o'clock. As before, they left about 10:00 o'clock in a silent, orderly march by twos, headed toward the downtown section. The Slave Market was again dark but filled with white hoodlums. As about the middle of the Negro column was passing the open east end of the Slave Market, on the sidewalk on Charlotte Street, the lights from several television and still cameras flashed into the Slave Market. This flushed most of the occupants out of the Slave Market itself and into the westerly or open side of the Plaza. As the march proceeded around the Plaza several violent incidents occurred. At least one marcher, Clifford Eubanks, was struck on the head by a club in the hands of an unseen assailant from behind the hedge bordering the sidewalk. He was hospitalized, received several stitches in his scalp, and released. Several newsmen and cameramen were roughed up and their equipment

damaged or stolen.

Among the latter was the witness Harry Boyte, referred to above. It is convincing from his testimony that when his flashbulb went off he was charged and physically assailed by one of the uniformed officers with a police dog on a leash. According to Mr. Boyte, the officer exclaimed at the time: "There's that nigger lover." A witness, Deputy Sheriff W. E. Haynie, identified himself as the officer involved and testified that the collision between him and Mr. Boyte was accidental, that his dog jumped forward at the flash of Mr. Boyte's camera and that he and Mr. Boyte went down and tangled in the dog's leash. Haynie states that he disentangled himself from Boyte and resumed his patrol between the line of marching Negroes and the gathering of white hecklers without exchanging any words with Boyte, either in explanation or apology. Boyte also says that after he was assisted to his feet by another newsman he asked where his camera was and was told by another uniformed officer: "Let Khruschev buy you another one."

This conflict need not be resolved in connection with this hearing. I am of the view, nevertheless, that Boyte's account is essentially correct, mainly because of the inherent improbability of Mr. Haynie's testimony. He is a muscular 180 or 190 pound six-footer, and testified that he has about nine years' experience as a peace officer and several years' experience in the training and working of police dogs. It is doubtful that he would have his 50 or 60 pound dog held so insecurely as to permit the dog to

upset his balance at a time when he was patrolling the dog under tense conditions and expecting trouble. It is also at variance with my observation of human behavior that after an entirely accidental fall, entangled with Mr. Boyte and the dog's leash, he would depart the scene without at least some verbal exchange.

Other incidents of violence occurred after midnight Thursday night in the early morning hours of Friday, May 29. Although he and some of the other out-of-town visitors had rented a beach cottage some eight or nine miles south of St. Augustine, Mr. Boyte, after picking up his college freshman son at the bus station, decided they would spend the night at a drive-in motel, the Holiday Inn. It was about 2:00 A.M. when he entered the Holiday Inn driveway, after observing the lights of a car closely following his own. He parked his car in front of the room assigned to him and his son entered the room. At this point a shotgun blast shattered the rear window of Mr. Boyte's car and deposited a number of bird-shot inside the vehicle. He was in it at the time but was not injured. This blast appeared to come from the car observed earlier by Mr. Boyte. He made several reports of this incident to uniformed officers during the balance of the hours before daylight. About 7:00 A.M. Mr. Boyte went to the empty beach cottage to pick up his personal effects. He found that it had been hit by rifle and shotgun fire from three sides. He observed 21 bullet marks on the outside of the house and found furniture shattered and china broken inside the house. In response

to a telephone call from Mr. Boyte, Sheriff's Deputies came shortly after eleven o'clock Friday morning and examined the damage. This occurred shortly after his report. It is at least interesting to note that a report of the incident had been received by the Defendant, Sheriff L. O. Davis, Jr., from a newspaper reporter about 9:00 A.M. Although he had several radio-equipped cars patrolling at the time, Sheriff Davis made no effort to investigate the incident until Mr. Boyte himself reported it.

12. As indicated above, near the end of paragraph 10, the Police testimony as to all nights involved emphasizes the youth of the white persons causing the trouble in and around the Plaza. Despite the serious nature of some of the occurrences, the defense testimony bears down heavily on the innocent nature of the white persons in and around the downtown section on the nights in question, and also bears down on the ability of the law enforcement agencies to keep the situation under control. There are some 27 active members of the Police Force, Mr. Davis has 7 or 8 full time deputies, 14 auxiliary deputies, and 150 or more "special deputies" on call. He was assisted during the week in question by 12 or 14 Florida Highway Patrolmen, each with his radio-equipped patrol car. Between the Sheriff's office and the St. Augustine Police Department, the local Police have available the use of 10 or 12 fully trained police dogs, which have been demonstrated to be peculiarly effective in the control of mobs. In fact, the conclusive nature and tendency of the Defendants' proof convincingly estab-

lishes that no "clear and present danger" existed in and around St. Augustine, Florida, at any of the times pertinent to these proceedings. Some disorder existed, considerable annoyance and inconvenience were caused by the Negroes' decision to conduct their marches in the evening hours. Nevertheless, no circumstances even slightly justifying prior restraint of orderly demonstrations were present in the conditions as they existed in St. Augustine on Friday, May 29, 1964, and the several days thereafter.

13. Late Thursday night, May 28, after the Negro demonstrators had returned to the St. Paul's A.M.E. Church, their leaders were called out by Sheriff Davis and Police Chief Stuart and were told that there would be no more night demonstrations. The Plaintiff, Andrew Young, quotes Mr. Stuart as saying: "We are declaring martial law. You had no permit for the earlier marches and no permits will be given for other marches." Young also says that when the subject of seeing Chief Stuart on Friday, May 29, for the purpose of securing a permit was brought up, Stuart told him that he would be unavailable either in the morning or afternoon of Friday. Davis and Stuart deny saying that martial law was declared, but in other respects their account of this incident is very nearly the same as that given by the Plaintiff Young.

14. Friday night, May 29, the Negro group met about 8:00 P.M. in the Trinity Methodist Church, another of the St. Augustine Negro churches. About 9:15 or 9:30, 200 to 300 marchers started downtown, proceeding as before

along Cordoba Street towards King. The marching group was met at a point midway in the Cordoba Street block nearest King Street by a massive array of Police. A number of patrol cars were in the street and on the sidewalk, and 25 or 30 armed officers, some with police dogs, were in front of the patrol cars. Chief Stuart acted as spokesman of the Police group and told the marchers they would have to go back, that they could not march downtown that evening or any evening in the future. The Negroes requested permission to hold prayers in the street. Leave was granted to do this, quiet prayers were said for ten or fifteen minutes, and the marching group returned to the Negro section of town.

15. This incident comprises the prior restraint against the exercise of the First Amendment rights guaranteed by the Fourteenth Amendment, which was the basis of complaint here at the time suit was filed. Additionally, at 5:00 P.M., on Monday, June 1, 1964, after this hearing had commenced at 2:00 P.M. that day, the City Commission of St. Augustine adopted two ordinances, No. 185-A and No. 186-A. The first of these imposes a restriction from 9:00 P.M. to 5:00 A.M. curfew on all persons under the age of 18. The second ordinance bars the parking of automobiles from 9:00 P.M. to 5:00 A.M. on 30 or 40 named streets of St. Augustine. These streets are those of the downtown section and those leading into it. Plaintiff's counsel indicated at the hearing that they would file an amendment to the Complaint asserting that these ordinances also are

"prior restraint", and would formally ask for injunctive relief against their enforcement, as a violation of the same constitutionally guaranteed rights asserted to be violated by the Friday night orders of the Sheriff and the Chief of Police. The ordinances were introduced in evidence by the Defendants and I see no reason why they should not be considered with a view to determining whether relief should also be granted against them. Since they are mere municipal ordinances, not State statutes, a single judge is empowered to grant relief against them without asking for the formation of a three-judge statutory court under Title 28, U.S.C., Section 2281. The ordinances are clearly outside the scope of Title 28, U.S.C., Section 2283.

Since the conclusion of this hearing I have read in the daily press that the two ordinances have been repealed. This report was coupled with a statement by the Defendant Shelley, Mayor of St. Augustine, that they could be reenacted if needed.

Against the backdrop of circumstances existing at the time the ordinances were adopted, and especially in the light of their apparent subsequent repeal, when the Plaintiffs voluntarily undertook to cease nighttime demonstrations while this Court considers the application for temporary injunction, it is convincing that the ordinances were adopted as a part of and a bulwark to the attempted banning of night marches by the Sheriff and Chief of Police. They are as valid, but no more valid, than the Sheriff's and Police Chief's orders. They constitute additional

State action under color of law, and share whatever constitutional infirmities are inherent in the action of the Sheriff and Chief of Police. If the latter action is subject to injunction, the enforcement of the ordinances is equally so.

16. During the hearing of a separate matter, on Monday, June 8, 1964, in Open Court, the parties by their counsel stipulated that Ordinances 185-A and 186-A were repealed by the St. Augustine City Commission on Friday, June 5, 1964. Assurances of the good faith of city officials of the City of St. Augustine with respect to the repeal were given to the Court by counsel. Counsel state that the repeal was brought about so that persons, adult and juvenile, meeting at Negro churches would not run the risk of arrest while this case remains before the Court for consideration. The explanation is entirely acceptable, and I conclude that no purpose would be served by dealing further with the ordinances in these Findings and Conclusions or the accompanying Order. It would be an exercise in futility to consider further whether to enjoin enforcement of repealed ordinances, and further action of the City Commission may not be considered until it takes place.

CONCLUSIONS OF LAW

1. This Court has jurisdiction, under the Civil Rights Act, and the Constitution of the United States, of this action and of the parties hereto. Douglas v. City of Jeannette, 319 U.S. 157; Bell v. Hood, 327 U.S. 678; Haque

v. C.I.O., 307 U.S. 496; Bailey v. Patterson, 5 Cir., 1963, 323 F.2d 201; Aelony v. Pace, Harris v. Pace (Middle Dist. Ga. 3-judge court, November 1, 1963, 8 RRLR 1356); Denton v. City of Carrollton, Georgia, 5 Cir. 1956, 235 F.2d 481; City of Houston v. Dobbs Co., 5 Cir., 232 F.2d 425; Bush v. Orleans Parish School Board (3-judge court, E.D.La. 1961) 194 F.Supp. 182; Watson v. City of Memphis, 373 U.S. 526 (decided May 27, 1963). In Watson, Mr. Justice Goldberg points out that rights guaranteed by Amendment XIV are "present rights", "not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelming compelling reason, they are to be promptly fulfilled." (p. 533; emphasis as in original text.)

2. The fundamental rights involved here: of speech, of assembly and of petition are clearly such present rights. Prior restraint against their exercise casts a heavy burden upon the defendants to demonstrate "clear and present danger". This burden the Defendants failed to meet. To the contrary, the thrust of their proof is to the effect that the disturbances encountered were minor in nature, caused by a small number of youthful agitators or hecklers. True, they assert inconvenience to law enforcement officers in being required to patrol to preserve order, and the loss of sleep to do so. They told Plaintiff and his class that they could no longer protect them, but their proof in court was convincingly to the contrary. The heavy presumption against

the constitutionality of the type of prior restraint indulged in here is simply not met. Edwards v. So. Carolina, 372 U.S. 229; Bantam Books, Inc. v. Sullivan, 372 U.S. 58; Near v. Minnesota, 283 U.S. 697; Lowell v. Griffin, 303 U.S. 444; Niemotko v. Maryland, 340 U.S. 268; Congress of Racial Equality v. Douglas, 5 Cir., May 15, 1963, 318 F.2d 95.

In CORE v. Douglas, the Fifth Circuit struck down an injunction against CORE prohibiting activities allegedly engaged in for the purpose of "fomenting violence or provoking breaches of the peace". The injunction was held violative of First and Fourteenth Amendment rights. The essence of the holding, by Chief Judge Tuttle for the Court is as quoted below:

> "[8] The posture of this case in particular is even more favorable to the defendants than was the Edwards case to the defendants therein, in that an injunction is involved here which prohibits the exercise of constitutionally guaranteed rights. It is a prior restraint. As the Court said in Kunz v. New York, 340 U.S. 290, 295, 71 S.Ct. 312, 315, 95 L.Ed. 280, 'We are here concerned with suppression - not punishment,' and so are we here in this case. Although the protection against previous restraints on the liberties guaranteed by the First Amendment is not unlimited, it takes on an even more guarded protection than punishment after the exercise thereof. See Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357; Kunz v. New York, supra; Hague v. C.I.O., 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1433; Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213. We find that the injunction below is an unconstitutional abridgement of the First Amendment rights, as protected by the Fourteenth Amendment, as a prior restraint on the freedom of speech.
>
> "[9] There was no 'clear and present danger' in the case at bar as there was in Feiner v. New York, supra. The testimony of both the Chief of Police and one of his officers was that at all times they had the crowd under control. The discontent and unrest of the local populace resulting

from the unpopularity of racial integration or the offensiveness to them of Negroes organized in a movement to test out the segregation in the bus terminal, are no grounds to prohibit what otherwise would be a constitutionally guaranteed right and freedom, especially in the manner in which the defendants conducted themselves. 'A State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions.' Cantwell v. Connecticut, 310 U.S. 296, 308, 60 S.Ct. 900, 905."

See further Terminello v. Chicago, 337 U.S. 1, 4:

"Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettled effects as it presses for acceptance of an idea."

See further the language of Mr. Justice Goldberg in Watson v. City of Memphis, supra:

"The compelling answer to this contention is that constitutional rights may not be denied simply because of hostility to their exercise."

3. Exposition of reasons and citation of authorities might be much extended. Each case examined leads to several others, which in turn suggest earlier cases that should be cited, probably quoted. I find that I have reached nearly the end of what I consider necessary to say to make clear the reasons compelling my ruling without mentioning an earlier case from the 8th Circuit, indistinguishable on the facts from the instant case, except as involving Jehovah's Witnesses rather than Negroes; Sellers v. Johnson, 163 F.2d 877.

But this was an emergency application, and its urgency may not be disregarded, certainly not to allow me to write an extended treatise. Preparation of these findings and conclusions was deferred all day Monday, June 8, to permit hearing of another emergency injunction application in connection with St. Augustine racial strife and unrest. There may be others.

At all events, perhaps enough has been written to indicate the clear legal and constitutional basis for my conclusion that the orders promulgated to Plaintiff and his class by the Defendants Stuart and Davis, Thursday, May 28, 1964, and Friday, May 29, 1964, were unlawful prior restraint of the exercise by Plaintiff and the class he represents of fundamental rights of freedom of speech, freedom of assembly and of petition for redress of grievances, guaranteed by Amendment I and protected against infringement by State action by Amendment XIV to the Constitution of the United States. The equity power of this Court has been properly invoked under existing statutes, viz, Title 28, U.S.C., Section 1343, and Title 42, U.S.C., Sections 1981-85. The Plaintiff and his class are entitled to temporary relief by injunction.

4. Preliminary injunction will issue. It is issued after full hearing and requirements as to bond should be nominal.

Bryan Simpson

CHIEF JUDGE, MIDDLE DISTRICT OF FLORIDA

Jacksonville, Florida
June 9, 1964.
Copies mailed to counsel of record.