

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT IN AND FOR DUVAL
COUNTY, FLORIDA.

CASE NO.: 16-2015-AP-000042-XXXX
DIVISION: CV-H
L.T. CASE NO.: 16-2014-MM-13332-AX
DIVISION: CC-C

MICHAEL ANTHONY HOFFMAN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

Filed ___ June, 2017

Andrew M. Bonderud, Esquire, attorney for Appellant
Sheila Ann Loizos, Esquire, attorney for Appellee

OPINION

THIS CAUSE came on for consideration pursuant to Appellant's Notice of Appeal, as filed with the Clerk on August 19, 2015, and this Court, having taken judicial notice of the court file in this Appeal and the underlying case (16-2014-MM-013332-AXXX-MA, Division CC-C) per **Section 90.202(6), Florida Evidence Code**, and having read Appellant's Initial Brief, as filed with the Clerk on January 11, 2016, and the Answer Brief of Appellee, as filed with the Clerk on March 7, 2016, and Appellant's Reply Brief, as filed with the Clerk on April 11, 2016, and having reviewed the Record on Appeal, as filed with the Clerk on September 11, 2015, and having watched the video evidence (Defendant's Exhibit A-1, as filed with the Clerk on October 24, 2014, and State's Exhibits 1-B, as filed with the Clerk on July 8, 2015 and State's Exhibits 1 and 2, as filed with the Clerk on December 15, 2015), and having read Appellant's Supplemental Brief, as filed with the Clerk on April 10, 2017, and being otherwise fully advised of the premises therein, makes the following findings of fact and conclusions of law:

1. The Appellant was arrested, charged with trespass, and ultimately convicted following a jury trial on July 8, 2015. After the Appellee rested its case, Appellant's

counsel moved for a judgment of acquittal and moved again after a close of all evidence. The trial judge denied both Motions and the Appellant was found guilty by a jury of his peers. The Trial Court then denied a Motion for New Trial that was entered on July 21, 2015 and the Appellant filed a timely Notice of Appeal on August 19, 2015. On appeal, the Appellant argues that the Trial Court erred by denying the Appellant's Verified Motion to Dismiss, that it erred by denying the Appellant's Motion for Judgment of Acquittal, and asks this Court to certify the questions presented to Florida's First District Court of Appeal if a reversal of Trial Court rulings is not granted.

2. Arrested on August 12, 2014, for allegedly violating **Section 810.09, Florida Statutes**, the Appellant asserts that there was no basis to arrest him for trespassing on public property. Furthermore, the Appellant asserts that law enforcement authorities could not issue a trespass warning to him for merely walking along the shoulder of a public street, regardless of the content of the signs he carried. Finally, he asserts that, as applied, the Jacksonville Aviation Authority's Protest and Picketing Regulation that resulted in a trespass warning violates Florida's public records laws. All matters on appeal are tied to a single issue. Ultimately, the legality of the Appellant's arrest, the denial of his Motion to Dismiss, the denial of his Motion for Judgment of Acquittal, and the denial of his Motion for New Trial center on whether the Appellant was engaged in protected speech such that the trespass statute is unconstitutional, as applied. With respect to the Motion to Dismiss, a de novo review is required. ***Bonge v. State*, 53 So3d 1231 (Fla. 1st DCA 2011)** and ***Bell v. State*, 835 So2d 392 (Fla. 2nd DCA 2003)**.
3. At the time he commenced his protest, he was on property owned and operated by Jacksonville Aviation Authority. At the time of his arrest, the Appellant was taken into custody on the side of the road at the main entrance to Jacksonville International Airport. It is not in dispute that pedestrians are permitted to walk along the shoulder of a public street if they exercise reasonable care for their own safety. ***Smith v. Johnson*, 187 So2d 655 (Fla. 2nd DCA 1966)**. However, the video evidence leading up to the events of the Appellant's arrest demonstrate something more. The audio portion of the video clearly reflects the Appellant's intent. Having been turned away from protesting at the airport terminal on a previous day, he

returned on the date at issue to conduct what he described as a “*constitutional audit*”. By words and behavior, it was his clear intent to provoke a confrontation with law enforcement officers for the primary purpose of testing the limits of his constitutional rights. The Appellant is free to challenge the constitutionality of a law through its violation. *White’s Place, Inc. v. Glover*, 222 F. 3rd 1327 (11th Cir. 2000). Evidence shows that he soon received the encounter he intended to provoke. At the time he was approached by law enforcement officers, he had been standing along the side of the road with signs in hand for an extended period of time. Although he walked to the location of his arrest, having parked his vehicle in a lot to avoid the possibility of it being towed as a consequence of his actions, he found his intended spot and held up his signs in anticipation of a desired encounter.

4. For purposes of free speech analysis, not all government property is a public forum for purposes of First Amendment protection (*Daniel v. City of Tampa*, 843 F. Supp. 1445 (M.D. Fla. 1993)) and the mere ownership of the property by the government does not automatically create a public forum. *United States v. Kokinda*, 497 US 720 (1990). As for airport property, it is a non-public forum that allows reasonable restrictions on speech activity. *ISKCON Miami, Inc. v. Metropolitan Dade County*, 147 F. 3rd 1282 (11th Cir. 1998). As such, the State may impose reasonable time, manner, and place restrictions with respect to speech. *Smith v. City of Cumming*, 212 F. 3rd 1332 (11th Cir. 2000). As long as there is a valid time, place, and manner restraint, rules and regulations are consistent with First Amendment rights when content neutral and leave other opportunities for communication. *Board of Airport Comm’Rs v. Jews for Jesus*, 482 US 569 (1987). A content neutral regulation is constitutional if it is “*reasonable in light of the purpose which the forum at issue serves*”. *Bloedorn v. Grube*, 631 F. 3rd 1218 (2011). It is not an unreasonable constitutional restriction to require a permit process to allow monitoring of those who uses airports, given security concerns. *Stanton v. Fort Wayne-Allen County*, 834 F. Supp. 2nd 865 (2011).
5. Jacksonville Aviation Authority Rules and Regulations prohibit demonstrating with signs without prior permission from the Authority, per **Sections 3-7**. There is a process delineated by the Authority’s Rules and Regulations for obtaining the required permit and being allowed to conduct protests in areas reviewed by the

Authority. This process applies to all applicants and is a content neutral regulation. Accepting the Appellant's assertion that the entrance to Jacksonville International Airport constitutes a public forum, the Regulations would be subject to an intermediate level of scrutiny, per Ward v. Rock Against Racism, 491 US 781 (1989). Under the foregoing standard, a regulation may not restrict substantially more speech than necessary to further a legitimate government interest. While all who wish to protest on Jacksonville Aviation Authority property are subject to the Regulation, the process to obtain authority is clearly stated in the Appendix to the Regulation, an application process the Appellant was aware of and refused to comply with. The Jacksonville Aviation Authority has a legitimate government interest in regulating the main access point to Jacksonville International Airport, such that it does not distract drivers and impede the flow of traffic, thereby causing a potential traffic hazard and delay. The Jacksonville Aviation Authority also has a legitimate interest in determining the number of protestors, the time of day, the size of the signs, and any other factors that may impact the security and safety of the airport. This Court finds that the Regulation at issue does not restrict substantially more speech than necessary to further these legitimate government interests.

6. Citing Burk v. Augusta-Richmond City, 365 F. 3rd 1247 (11th Cir. 2004), the Appellant argues that JAA's reservation of a right to disapprove an application for protest if the applying entity does not "*demonstrate adequate financial capacity or responsibility to undertake the proposed use*" or if the entity "*cannot obtain a bond or insurance in a type and amount required by the Authority for the proposed use*" violates the First Amendment because it gives unlimited discretion to disallow protest requests. However, this Court finds that the Appellant has no standing to challenge the applicability of the foregoing regulation because, after being given multiple opportunities to apply for a permit, he refused to comply with the process. His "*as applied*" challenge to the permitting requirement must fail because he was not harmed by its application to him. Allen v. Wright, 468 US 737 (1984).
7. The Appellant also asserts that the picketing regulation violates Florida's public records laws because he contends that he was en route to Jacksonville Aviation Authority's administrative building to make a public records request when he was arrested. The foregoing assertion is clearly rebutted by his language and behaviors

as captured on the video. His stated intent was to conduct a “*constitutional audit*” of his perceived constitutional rights and he took up a position at the Jacksonville International Airport entrance, holding the signs he brought, for the purpose of doing so. He was not going anywhere at the time law enforcement officers arrived at his location. The trespass warning was issued only after he became stationary for the purpose of initiating his protest. As he stood holding his signs, a passing motorist honked in apparent agreement with their message. The Appellant’s conduct was consistent with his stated purpose, which had nothing to do with inspecting and copying public records. This Court concludes that there was no violation of **Section 119.01, Florida Statutes**.

8. In evaluating the denial of the Judgment of Acquittal, this Court also applies a de novo standard of review. ***McCray v. State, 171 So3d 831 (Fla. 1st DCA 2015)***. Appellant’s counsel made a Motion for Judgment of Acquittal at the close of the Appellee’s case and again at the close of the evidence. The basis was that the arresting officer had no “*lawful authority to trespass Mr. Hoffman from the scene*”. Contrary to the assertion of Appellant’s counsel that “*...Hoffman was issued a trespass warning because he happened to be carrying signs with speech on them*”, the video provides strong evidence to the contrary. After being provided with the procedures for making application to protest and told where and how to initiate the process, the Appellant simply refused to leave the scene. That the Appellant was carrying signs was consistent with his intent to stage a protest and thereby precipitate a confrontation resulting in a “*constitutional audit*”. He was issued a trespass warning, according to the evidence, because he had not yet applied for or received a permit to protest but yet was doing so at the main entrance of the airport and refused to leave the scene. The issues raised in the Motion for Judgment of Acquittal were essentially those raised in the Motion to Dismiss. The Jacksonville Aviation Authority has the authority to regulate the property they are responsible to manage and the Appellant, having failed to comply with their regulations, was properly given a trespass warning and refused to take heed. His failure to apply for a permit deprives him of standing to challenge the content of the regulations. The law is well settled on all issues raised and This Court does not find that the issues raised are matters of great public importance. It is, therefore,

ORDERED AND ADJUDGED:

1. The Trial Court is hereby **AFFIRMED** as to its denial of the Motion to Dismiss, Motion for Judgment of Acquittal, and Motion for new Trial.
2. This case is remanded to the lower court for further proceedings.

DONE AND ORDERED in chambers at Jacksonville, Duval County, Florida this 19th day of June, 2017.



HONORABLE KEVIN A. BLAZS
CIRCUIT COURT JUDGE

Copies to:
Honorable Brent Shore
Andrew Bonderud, Esquire
Sheila Ann Loizos, Esquire
Meredith Charbula, Esquire