

BACKGROUND OF PLANNED PARENTHOOD LAWSUIT A STATEMENT BY DAVID ALLEN, DATED JUNE 4, 2021

In 2010, I heard on the evening news that Planned Parenthood (PP) was building an abortion mega-clinic in my home city of Houston. In 1973, days after Roe v. Wade, PP had arranged an abortion for my high school sweetheart and I. Afterward, a nurse told her it was a boy.

I'd grown to understand and deeply regret that decision, and almost 20 years later, in August 1992, I finally begged God for forgiveness. He forgave me, and I became a born-again Christian and avid street evangelist. Soon after, I named my son Samuel.

In March 2010, two months before Houston's Mayor would cut the ribbon to open PP's mega-clinic, I entered the lobby of that construction site, and sounded a shofar trumpet.

The Harris County DA reacted harshly to this public affront to the Mayor's agenda, and with a team of four Prosecutors, trampled my constitutional rights during a two-day jury trial they requested. That story is free at HornOfSamuel.org

As I continued sounding the shofar and sidewalk counseling at the mega-clinic, I began filming and reporting to government law enforcement agencies, PP criminal activities being committed in broad daylight. I learned that PP had three main business operations:

1. Abortion
2. Child Sex Slavery
3. Baby Body Parts

During that period, the law enforcement agencies were not only ignoring, but actively hiding the crimes I was reporting. At the same time, the Mayor's Houston Police Department (HPD) was fellowshipping with PP's clinic escorts, while ignoring a Child Sex Slavery warehouse around the corner where I'd documented PP sending young girls - at 2305 Eleanor Tinsley Lane. Concurrently, HPD was wrongfully arresting me and confiscating my shofar as I evangelized on streets around the city.

I was also filming and calling out the Precinct One Constables that arrived at the mega-clinic each morning in official police vehicles to open the gates and man PP's front desk. Then, in 2011, two HPD Officers baked me for an hour in their squad car at PP, sending me to Memorial Hermann Hospital with severe heat stroke and permanent injury.

Efforts to address these matters with HPD were rebuffed. In 2013, Thomas More Law Center (TMLC) filed a First Amendment Complaint against the City and HPD, **ATTACHMENT (1)**. The City tried and failed to quash the Complaint. TMLC then deposed a hostile HPD Police Chief Charles McLelland and one of the two HPD officers that tortured me, Officer F. Gallegos. His partner, Officer Hugo Chavez is a bigger part of this story.

During those depositions, the Houston City Attorney showed the TMLC attorneys a YouTube video I'd posted, documenting Cardinal Daniel DiNardo covering up child abuse. Significantly more evidence of DiNardo's crimes have since come to light. TMLC is a Catholic organization and in hindsight, that action by the City Attorney apparently began the process of TMLC abandoning me.

In 2014, after the City had failed to quash the TMLC Complaint, and as I was publishing YouTube exposes and sounding the shofar to expose law enforcement agencies and officials, PP and a number of these agencies joined to silence me, including at minimum the FBI, Harris County DA, HPD and the Precinct One Constable.

I did not understand at the time, but their plan was set into motion in March 2014, when I was falsely arrested at PP. PP's Security Director, Ms. Larissa, came out with two off-duty Precinct One Constables that worked for her, and personally supervised the arrest. Video was taken and is available on The Memorials' web site below.

At that point, TMLC said they would hold off any further defense until this arrest was resolved. Then there was over a year of delays by the DA, denying me the right to a speedy trial as they prepared an exhaustive list witnesses and exhibits to prosecute me for their false charge of misdemeanor trespass. In fact, I'd walked into a driveway where I'd been allowed for 3 years after the torture incident. Officer Hugo Chavez oddly came over to the defense table prior to the trial and confirmed this fact to my attorneys.

In April 2015, a line of uniformed officers gathered in the Court hallway to testify against me. A Land Surveyor I'd hired to show I'd not trespassed, leaned over to me and whispered, "are all these police here just for you?" The details and names of the agencies and individuals involved are now fully documented. It was a rigged trial.

In his introductory remarks, the lead Prosecutor** stated he'd just voluntarily transferred from the FBI to become a Harris County Assistant DA, and repeatedly told the jury pool false statements to establish my guilt before the trial even started. The objections of my attorneys to this were overruled. The court transcripts document these and other details of the 'rigging'. As revealed by the Prosecutor's remarks, two HPD Officers (Ricky Trinh and Hugo Chavez) were prepared to commit perjury to deceive the jury.

** Per a 2012, Law and Order Magazine article, **ATTACHMENT (3)**, Ryan Volkmer was an FBI Project Director at a "joint law enforcement task force" in Houston. Around the country, such groups are headed by the FBI to protect and facilitate Child Sex Slavery. Per the DOJ, Houston is the hub of this evil and Volkmer's Houston "Task Force" orchestrated only occasional "staged" raids, always with full press coverage, making pompous joint statements about the need to raise awareness – but never making any real arrests or freeing any children. This is evident from public records and from the Harris County DA's negligible prosecutions of Child Sex Slavery.

The first witness, PP's Security Director, Ms. Larissa, quickly violated a Judge's directive, causing a mistrial. I was elated at first, but the tension was so great that the Judge recused himself and turned me over for further prosecution. My TMLC-affiliated

attorneys said they were worn out and that I had no choice but to accept a plea bargain that included probation.

That heartbreaking outcome, and the humiliation of the probation process, began a psychological decline that I believe was, and continued to be, orchestrated by government authorities. This led to my attempting suicide in October 2015, to protect my family and friends. The authorities were waiting, and a supposed "Intervention Officer" knew I was a veteran and persuaded me to bypass my employer's health insurance and check-in to the VA hospital (a special unit on the 6th floor called "The Eagles Nest") in the Houston Medical Center.

That began a 3-week period of intense psychological terror that included allowing a Houston City Attorney access to coerce me to sign papers without explaining them, and VA "doctors" having me sign papers disavowing my wife and family and giving the VA control of my life.

During that period I was demeaned and humiliated and kept in a state of extreme fear. One example was making me think I was about to be publicly raped by a crazed male 'patient' named Tony, as the entire group of "patients" and "staff" laughed together while playing loud music and having popcorn. A "nurse" wiggled my elbow and told me it would be best if I just relaxed. I then fainted and they used an office chair to wheel me to my room, which ended that episode. Similar episodes were frequent. About halfway through my stay, most of the "patients" suddenly donned street clothes. Laughing and congratulating each other on their acting skills, they signed out and departed through an exit door. Tony was the leader, no longer crazed, and everyone, including the "staff", now deferred to him as Anthony rather than Tony.

I was made to believe I would never be released. But suddenly I was well treated for several days, given anti-suicide counseling and released. Emaciated, hair and nails unkempt, and unable to even drive a car, my wife came to take me home.

I immediately took down all my YouTube videos and remained an emotional wreck until early 2020, too afraid to tell anyone what had happened. During that 4 ½ year period, I was also led to believe that I had offended the Holy Spirit by sounding the shofar in PP and usurping the voice of God. I firmly believed I was condemned and bound for hell at any moment.

Sometime later, probably 2016, I received a call from a woman with a deep voice who did not provide her name, stating she was from TMLC, and asking if I wished to release TMLC from their Defense Agreement. I was anxious to avoid further conflict and agreed. I learned much later that the TMLC Complaint was quashed in March 2016, in an appeal to the Fifth Circuit Court, **ATTACHMENT (2)**. That ruling is woven with false statements and makes no mention of TMLC or other representation on my behalf.

Several weeks after my release, I was able to resume my employment and worked until no longer emotionally able, retiring in 2018. During those 3 years, my co-workers and

boss knew I was just a shell and occasionally would laugh at me. I could no longer attend or conduct meetings. Why they kept me on the payroll remains a mystery. At home, I hid in a spare bedroom and cut off all outside contact. My family was essentially without a husband and father during that period.

In early 2020, as the Corona (Crown) Virus arrived, I began to awaken and realize that I had believed a lie – and that I’d always been a child of God and had been faithful in sounding the shofar in the PP mega-clinic. I was overjoyed to realize I wasn’t going to hell for eternity but rather to a loving Father in heaven.

At that time twin visions for ‘The Memorials’ and ‘Flying Cross Ranch’ began to occupy my mind, developing rapidly. Both were incorporated as 508 churches in July 2020, with missions so incredible that neither would be possible without God. Both are purposed to expand God’s kingdom and glorify only Him.

Both will lead millions to freedom from the prison of guilt and shame that resulted from the past 50 years of abortion deception and carnage by PP and their government cohorts. This includes most of the world - where America promoted the same agenda.

But instead of the punishment the world deserves, it seems God is about to lead such a countless number of grieving souls to Himself for forgiveness and freedom, that it will make the Exodus look like a walk in the park. Ironically, this is thanks to all who carried out the tragic abortion agenda – many of whom have accepted their forgiveness already and entered the kingdom as children of God. And more are coming every day.

In August 2020, monthly worship services began on the site of The Memorials – at the main gate of the PP mega-clinic “squatters” – see web site below. That same month we received a PP Eviction Decree from the Court of Heaven, out of the blue from a prayer intercessor group from Hempstead. After wrapping the Eviction Decree around a railroad spike, it was driven deep it into the ground at the main gate in December 2020.

That evidently upset PP as they filed a civil lawsuit against The Memorials and I on February 5, 2021, seeking temporary and permanent injunctions against our worship. That same day, a Judge denied their temporary injunction request. A page of PP’s lawsuit with a picture of the railroad spike being driven became the cover page for the next morning’s worship service song sheets.

These statements are true to the best of my knowledge and belief,

Original Signed
David Allen, Board Secretary

June 4, 2021
Date

The Memorials: TheMemorials.org
Flying Cross Ranch: FlyingCrossRanch.org

ATTACHMENT (1)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID ALLEN,

Plaintiff,

v.

COMPLAINT
[Civil Rights Action under 42
U.S.C. § 1983]

CITY OF HOUSTON; CHARLES MCCLELLAND,
Chief of Police, City of Houston; F.
GALLEGOS, Police Officer, City of Houston, J.
MONTELONGO, Police Officer, City of Houston,
A.H. CISNEROS, Police Officer, City of Houston,

Defendants.

COMPLAINT

Plaintiff David Allen (referred to as “Plaintiff”), by and through their undersigned counsel, bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 challenging Defendants’ acts, policies, practices, customs, and/or procedures that deprived Plaintiff of the right to engage in religious speech and expressive activities in the City of Houston, Texas during Plaintiff’s unlawful arrests on May 16, 2011, October 31, 2011, and January 14, 2012. Defendants’ policies, practices, customs, and/or

procedures will continue to deprive Plaintiff of his fundamental constitutional rights at future speaking events in the City of Houston (hereinafter “City” or “City of Houston”).

2. The City’s acts, policies, practices, customs, and/or procedures, and its failure to adequately train and supervise its police officers were each a moving force behind the constitutional violations in this case.

3. The City and its highest ranking officials, including the chief of police, Defendant Mc Clelland and police officers Defendant F. Gallegos, Defendant J. Montelongo, and A.H. Cisneros, in conjunction, agreement, and cooperation with police officers and officials, worked together, acted with reckless and callous indifference to Plaintiff’s constitutional rights, and in fact did jointly engage in conduct that deprived Plaintiff of his fundamental constitutional rights. Defendants’ actions were taken to silence, chill, and stop Plaintiff from engaging in constitutionally protected activities; and did so silence, chill, and stop Plaintiff.

4. Plaintiff seeks a declaration that Defendants violated his clearly established constitutional rights as set forth in this Complaint; a declaration that Defendants in their individual capacity acted with callous indifference for Plaintiff’s clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendants’ unconstitutional acts, policies, practices, customs, and/or procedures as set forth in this Complaint; and a judgment awarding nominal, compensatory, and punitive damages against Defendants for the harm caused to Plaintiff by the conduct of the Defendants which violated the fundamental rights of Plaintiff. Plaintiff also seeks an award of their reasonable costs of litigation, including attorneys’ fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

5. The action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

6. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court.

7. Venue is proper under 28 U.S.C. § 1391(b) because substantial parts of the events or omission giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

8. Plaintiff David Allen is a resident of Texas.

9. Plaintiff David Allen is a peaceful street preacher who spreads his message of God's love and Christianity through his religious speech and religious activities which including sounding the shofar.

10. The shofar is horn made out of ram's horn which makes a melodic and pleasing sound.

11. The shofar is mentioned throughout the Bible appearing in Joshua 6:20 and spreads God's messages such as jubilee, hope, and forgiveness.

12. Engaging in religious speech and activities in the City of Houston spreading Christianity and God's love is Plaintiff's religious exercise.

13. Sounding the shofar is Plaintiff's religious exercise. Plaintiff sounds the shofar to share God's messages of love and peace throughout the City of Houston

14. Plaintiff intends to speak, engage in religious activities, and sound his shofar again in the future in the City of Houston to inform the public about God's love.

DEFENDANTS

15. Defendant City is a municipal entity organized and existing under the laws of the State of Texas. It is a municipal corporation with the right to sue and be sued.

16. The City and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of the City, including the policies, practices, and procedures of its police department as set forth in this Complaint.

17. The City and its officials are also responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, policies, practices, procedures, and/or customs that deprived Plaintiff of his fundamental constitutional rights during the free speech event. These rules, regulations, policies, practices, procedures and/or customs were the moving force behind the actions that deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

18. At all relevant times, the City trained, supervised, and employed its police officers, including Defendants chief of police, Defendant McClelland and police officers Defendant F. Gallegos, Defendant J. Montelongo, and A.H. Cisneros

19. The acts, policies, practices, customs, and/or procedures of the City and its police department were the moving force behind the constitutional violations set forth in this Complaint. The deficient training and supervision of these officers, which was done with the deliberate indifference as to their known or obvious consequence, was also a moving force

behind the actions that deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

20. The City approved of and ratified the acts, policies, practices, customs, and/or procedures of its police department and its police officers, including Defendant police officers relating to silencing Plaintiff's speech and religious exercise on or about May 16, 2011, October 31, 2011, and January 14, 2012.

21. The City's actions relating to the free speech event deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

22. Defendant McClelland is the chief of police for the City Police Department. At all relevant times, he was an agent, servant, and/or employee of the City, acting under the color of state law and acting pursuant to the City's policies, practices, customs, and/or procedures.

23. As the chief of police, Defendant McClelland is responsible for the acts, policies, practices, customs, and/or procedures of the police department that deprived Plaintiff of his fundamental constitutional rights during the free speech event as set forth in this Complaint.

24. These rules, regulations, policies, practices, procedures, and/or customs were the moving force behind the actions that deprived Plaintiff of his fundamental constitutional rights. Defendant Clelland is sued individually and in his official capacity as chief of police for the City Police Department.

25. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros are police officers for the City Police Department. At all relevant times, Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros were agents, servants, and/or employees of the City, acting under color of state law.

26. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros deprived Plaintiff of his fundamental constitutional rights on or about May 16, 2011, October 31, 2011, and January 14, 2012. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros are sued individually and in their official capacities as police officers for the City Police Department.

STATEMENT OF FACTS

27. Plaintiff David Allen was arrested three times in the City of Houston for his constitutional, religious speech and expressive activity.

First Arrest, May 16 2011

28. On May 16, 2011, Plaintiff was on the public sidewalk in front of the Planned Parenthood Clinic at 4600 Gulf Freeway in the City of Houston, Texas.

29. Plaintiff was praying and sounding the shofar on the public sidewalk.

30. Plaintiff stood on a storm drain in the public area outside of the far southern gate of the Planned Parenthood Clinic in the shade to avoid the hot sun and high temperature of the day.

31. Plaintiff was wearing a wool prayer shawl called a Tallit.

32. While standing on the sidewalk praying, two officers from the City's Police Department (Houston Police Department) approached Plaintiff.

33. Plaintiff explained that he did nothing wrong.

34. Officer F. Gallegos of the City's Police Department placed Plaintiff in handcuffs.

35. This arrest was performed without probable cause that Plaintiff committed a crime.

36. Once handcuffed, Plaintiff was placed in the back of a squad car.

37. The backseat area of the squad car was separated by plexiglass from the front seat area.

38. The air conditioning only was on in the front seat of the car.

39. The backseat of the squad car was separated from the air condition by plexiglass and parked under the hot sun.

40. Plaintiff, wearing his wool Tallit and unable to remove it due to being handcuffed, began having difficulty breathing.

41. Plaintiff became dehydrated.

42. Plaintiff asked the City's officers several times to help.

43. As it grew even hotter, Plaintiff became extremely nauseous and numb in his head and extremities.

44. Plaintiff's repeated pleas for help were meet with chiding.

45. After approximately 45-60 minutes of struggling to breath, Plaintiff feared he might die.

46. Officer Hugo Castro, who it is believed had been inside Planned Parenthood reviewing surveillance video, saw Plaintiff's condition and said "you'd better let him out of there" or words to that effect.

47. Plaintiff was removed from the back of the squad car.

48. Plaintiff, still handcuffed, slumped to his knees and propped his head against the back of the squad car.

49. Plaintiff requested water and an ambulance.

50. Officers did not provide water, but did call an ambulance.

51. Plaintiff was still in handcuffs as he waited for an ambulance to come.

52. Plaintiff then collapsed under the back of the squad car with his head on this ground.

53. Plaintiff asked for the car to be turned off as he was breathing in exhaust fumes and could not reposition himself due to being handcuffed.

54. Officers declined to turn off the squad car because “we have to keep the air conditioning running” or words to that effect.

55. Christine Melchor arrived with a camera.

56. Officers then removed Plaintiff from the handcuffs.

57. Officers then tried to stand Plaintiff up, but Plaintiff could not move and was close to passing out, numb in all extremities and extremely nauseous.

58. An ambulance arrived.

59. Paramedics placed Plaintiff on a gurney and transported Plaintiff to Memorial Hermann Hospital in Houston, Texas.

60. After two hours of Emergency Room care, Plaintiff was released.

61. Medical expenses for the ambulance and medical care in the emergency room totaled \$1,422.56.

62. Plaintiff paid for the \$1,422.56 out of pocket, without reimbursement or insurance.

63. Plaintiff never faced criminal charges from Plaintiff’s actions on May 16, 2011.

64. Plaintiff faced no criminal charges because he had committed no crime.

65. Plaintiff requested for mediation with Defendant Chief Charles McClelland of the City Police Department.

66. Neither the City nor its officers explained why Plaintiff was not simply released.

67. Plaintiff made numerous requests to obtain the security video of the arrest from Planned Parenthood and/or from the City. All of Plaintiff's requests were denied.

Second Arrest, October 31, 2011

68. On October 31, 2011 at Westheimer and Montrose Streets in Houston, Texas, Plaintiff joined with another street preacher. The two shared in the Gospel and Plaintiff sounded his shofar.

69. After sounding the shofar, a Houston Police Department squad car arrived on scene.

70. An officer exited the squad car and approached Plaintiff.

71. The officer told Plaintiff that he was doing nothing wrong.

72. As that officer began to leave, several other squad cars arrived.

73. Officer J. Montelongo immediately took a recording video camera from the other street preacher, forced him to the ground, and handcuffed him.

74. Plaintiff took out his iPhone to film what was occurring.

75. As Plaintiff took out his iPhone, officers grabbed the phone, forced Plaintiff to the ground, and handcuffed him.

76. Officers removed the Tallit from Plaintiff's shoulders.

77. Officers placed Plaintiff in the back of a squad car.

78. The confiscated video camera that was recording was left running and therefore continued to record audio while it sat on the back hood of the squad car.

79. Officers can be heard on the recording discussing how to justify the arrests.

80. Plaintiff, sitting in the rear of a squad car, became faint and an ambulance was called.

81. Plaintiff was allowed out of the squad car.

82. Officers removed Plaintiff's handcuffs for the paramedics to examine him.

83. Plaintiff was cited for City Code 28-33 and released.

84. City's Police Department confiscated Plaintiff's shofar.

85. Media outlet KHOU 11 reported a new story about the arrest.

86. The ZKHOU 11 reported suggested that Plaintiff file an Internal Affairs Investigation with City's Police Department.

87. Plaintiff indeed filed an Internal Affairs Investigation with City's Police Department. The results of the City's Internal Affairs Investigation "exonerated" the Officers' actions.

88. On the date of trial, the prosecutor dismissed the charges against Plaintiff for insufficient evidence.

89. Officers J. Montelongo silenced Plaintiff and stopped his religious expressive activity.

90. Plaintiff was wrongly held in custody for a few hours and his shofar was held for the afternoon.

91. Plaintiff incurred stress and expenses due to the false arrest.

Third Arrest, January 14, 2012

92. On January 14, 2012 at Milam and McKinney Streets in the City of Houston, Texas, Plaintiff was on the public sidewalk to share the Gospel and sound the shofar.

93. Plaintiff's intent was to reach the crowds of people who were at that location to see the Houston Marathon.

94. Plaintiff's ministry had been coordinated another street preacher as well as with the Central Intelligence Division of the City's Police Department.

95. Upon arriving at the location, two officers greeted Plaintiff and the other street preacher.

96. The officers saw the sign the street preacher held and also the shofar the Plaintiff carried.

97. The officers voiced no objections to the sign or the shofar.

98. Plaintiff shook hands with the officers as they left.

99. Shortly afterwards, a female officer approached the street preacher and asked him to stop using his sign.

100. Plaintiff began videotaping.

101. Defendant Sgt. A.H. Cisneros of the City Police Department arrived and arrested the street preacher.

102. Plaintiff followed Defendant Sgt. Cisneros and the street preacher with the video camera, stepping into the street which was completely closed off from traffic for the marathon.

103. The road was completely closed off with traffic cones and many spectators of the marathon were in the streets.

104. Defendant Sgt. Cisneros forced Plaintiff back onto the public sidewalk.

105. Defendant Sgt. Cisneros then suddenly took the video camera from Plaintiff's hands and arrested Plaintiff.

106. Defendant Sgt. Cisneros confiscated Plaintiff's camera and shofar.

107. Plaintiff was placed in the back of a squad car for 30 to 40 minutes.

108. Defendant Sgt. Cisneros then returned Plaintiff's property and released Plaintiff without citation.

109. When Plaintiff returned to document the squad car where Plaintiff was held, Defendant Sgt. Cisneros arrested Plaintiff a second time.

110. Defendant Sgt. Cisneros again confiscated Plaintiff's shofar.

111. Defendant Sgt. Cisneros handcuffed Plaintiff and placed him against a building where Plaintiff was ordered to stand for approximately 40 minutes.

112. As Plaintiff waited a female officers from the City's Police Department told Plaintiff that "if you were a true Christian, you would stay in your house and read your Bible" or words to that effect.

113. Plaintiff was transported to City Jail at 61 Resner St., Houston, Texas where Plaintiff spent the majority of the day in a jail cell. That evening, Plaintiff's wife came into the police station and posted bond.

114. Defendant Sgt. Cisneros charged Plaintiff with failure to obey a lawful order and possession of a "staff."

115. The "staff" was Plaintiff's shofar.

116. Before trial, the charges against Plaintiff were dismissed because Defendant Sgt. Cisneros failed to appear for court.

FIRST CLAIM FOR RELIEF

(Free Exercise of Religion—First Amendment)

117. Plaintiff hereby incorporates by reference all stated paragraphs.

118. By reason of the aforementioned acts, policies, practices, procedures, and/or customs created, adopted, and enforced under color of law, Defendants City, Chief McClelland,

F. Gallegos, J. Montelongo, and A.H. Cisneros deprived Plaintiff of his right to religious exercise in violation of the Free Exercise clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

119. Plaintiff's expressive religious activity as set forth in this Complaint is protected by both the Free Speech Clause and the Free Exercise Clause of the First Amendment.

120. Defendants target Plaintiff for selective and disfavored treatment because of Plaintiff's expressive religious activity in violation of the Free Exercise Clause of the First Amendment.

121. By targeting Plaintiff's religious speech activities for disfavored treatment because Plaintiff is Christian and blows his shofar to exercise his Christianity, Defendants' actions violated the Free Exercise Clause of the First Amendment.

122. Defendants' City Ordinance 28-33 disallowing possession of an object not constructed of wood, wood products or other cellulose material on city property targets persecution or oppression of Plaintiff's religion and Plaintiff's religious practices in violation of the Free Exercise Clause of the First Amendment.

123. Defendants' City Ordinance 28-33 disallowing possession of an object not constructed of wood, wood products or other cellulose material on city property is selectively enforced and targets the persecution or oppression of Plaintiff's religion and Plaintiff's religious practices in violation of the Free Exercise Clause of the First Amendment.

124. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of

their fundamental constitutional rights, entitling them to declaratory and injunctive relief and damages.

SECOND CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

125. Plaintiff hereby incorporates by reference all stated paragraphs.

126. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

127. At the time of his arrest on May 16, 2011, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

128. At the time of his arrest on October 31, 2011, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

129. At the time of his arrest on January 14, 2012, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a

person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

130. By arresting Plaintiff for engaging in his free speech activity on May 16, 2011, Defendants violated the First Amendment.

131. By preventing Plaintiff from engaging in his religious speech activity on May 16, 2011, Defendants violated the First Amendment.

132. By seizing Plaintiff's shofar on May 16, 2011 and maintain control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

133. By arresting Plaintiff for engaging in his free speech activity on October 31, 2011, Defendants violated the First Amendment.

134. By preventing Plaintiff from engaging in his religious speech activity on October 31, 2011, Defendants violated the First Amendment.

135. By seizing Plaintiff's shofar on October 31, 2011 and maintain control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

136. By arresting Plaintiff for engaging in his free speech activity on January 14, 2012, Defendants violated the First Amendment.

137. By preventing Plaintiff from engaging in his religious speech activity on January 14, 2012, Defendants violated the First Amendment.

138. By seizing Plaintiff's shofar on January 14, 2012 and maintaining control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

139. Defendants' City ordinance 28-33 forbidding objects not constructed of wood, wood products or other cellulose material on public property on its face and as applied against Plaintiff as set forth in this Complaint violated the First Amendment.

140. By favoring certain religious speech over Plaintiff's religious speech, Defendants' restriction on Plaintiff's speech was content and viewpoint based in violation of the First Amendment.

141. Defendants targeted Plaintiff's religious speech activities for disfavored treatment because Plaintiff is Christian and blows the shofar to practice his Christian beliefs, in violation of the First Amendment.

142. Defendants' Arrest Policy as set forth in this Complaint violates the First Amendment.

143. The enforcement of Defendants' Arrest Policy against Plaintiff on May 16, 2011 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

144. Defendants' Arrest Policy was the moving force behind the May 16, 2011 violation of Plaintiff's right to freedom of speech by the First Amendment.

145. The enforcement of Defendants' Arrest Policy against Plaintiff on October 31, 2011 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

146. Defendants' Arrest Policy was the moving force behind the October 31, 2011 violation of Plaintiff's right to freedom of speech by the First Amendment.

147. The enforcement of Defendants' Arrest Policy against Plaintiff on January 14, 2012 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

148. Defendants' Arrest Policy was the moving force behind the January 14, 2012 violation of Plaintiff's right to freedom of speech by the First Amendment.

149. Defendants' City Ordinance 28-33 prohibiting objects not constructed of wood, wood products or other cellulose material as set forth in this Complaint lacks objective standards or proper safeguards, is overbroad, and is selectively enforced, thereby operating to deprive Plaintiff of his right to freedom of speech or free exercise of religion protected by the First Amendment.

150. Defendants' policy, practice, custom, and/or procedure of selectively prohibiting the use of video camera violated the First Amendment's right to freedom of speech.

151. Defendants' policy, practice, custom, and/or procedure of selectively prohibiting the use, possession, or sounding of the shofar violated the First Amendment's right to freedom of speech.

152. The City's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of the Plaintiff's right to freedom of speech and religious exercise, and this failure to adequately train and supervise has had a chilling effect on Plaintiff's free speech and religious exercise rights in violation of the First Amendment.

153. The City's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of the Plaintiff's right to freedom of speech and religious exercise in violation of the First Amendment.

154. The City's acts, training, supervision, policies, practices, customs, and/or procedures were the moving force behind the violation of Plaintiff's right to freedom of speech and religious exercise and were viewpoint based in violation of the First Amendment.

155. Defendants will seek to enforce their Arrest Policy against Plaintiff in the future.

156. Defendants will seek to enforce their policy, practice, custom, and/or procedure of selectively prohibiting the use, possession, or sounding of the shofar against Plaintiff in the future.

157. Defendants will seek to enforce their policy, practice, custom, and/or procedure of selectively prohibiting the use of video camera against Plaintiff in the future.

158. Defendants will seek to enforce City Ordinance 28-33 prohibiting objects not constructed of wood, wood products or other cellulose material against Plaintiff in the future.

159. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and damages.

160. As a direct and proximate result of Defendants City and F. Gallegos violation of the First Amendment, Plaintiff suffered injuries requiring medical treatment costing Plaintiff \$1,422.56, and entitling Plaintiff to compensatory damages.

161. Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros acted with reckless or callous indifference to the federally protected rights of Plaintiff warranting punitive damages against these Defendants.

162. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff suffered irreparable harm, including the loss of his fundamental constitutional rights,

entitling him to declaratory and injunctive relief. Additionally, Plaintiff is entitled to nominal damages for the past loss of his constitutional rights.

THIRD CLAIM FOR RELIEF

(Unlawful Search and Seizure—Fourth Amendment)

163. Plaintiff hereby incorporates by reference all stated paragraphs.

164. By reason of aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros have deprived Plaintiff of his right to be free from unreasonable searches and seizures protected by the Fourth Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

165. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure on May 16, 2011 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

166. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure on October 31, 2011 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

167. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure, and confining Plaintiff in jail on January 14, 2012 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

168. The enforcement of Defendants' Arrest Policy against Plaintiff violated Plaintiff's rights protected by the Fourth Amendment.

169. Defendants' Arrest Policy was the moving force behind the violations of Plaintiff's rights protected by the Fourth Amendment.

170. As a direct and proximate result of Defendants' violations of the Fourth Amendment, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, and he suffered both physical and emotional harm, entitling him to declaratory and injunctive relief and damages.

171. Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros acted with reckless or callous indifference to the federally protected rights of Plaintiff warranting punitive damages against these Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court:

A) To declare that Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) To declare that Defendants' acts, training, supervision, policies, customs, and/or procedures violate Plaintiff's fundamental constitutional rights to freedom of speech, freedom from unreasonable search and seizure, and free exercise of religion as set forth in this Complaint;

C) To declare that Defendants' practice allowing its agents, servants, and/or employees to end constitutionally protected speech and religious exercise and to execute unlawful search and seizure is unconstitutional as set forth in this Complaint;

D) To temporarily and permanently enjoin Defendants' practice of allowing its agents, servants, and/or employees to end constitutionally protected speech and religious exercise and to execute unlawful search and seizure as set forth in this Complaint;

E) To award Plaintiff compensatory damages plus interest as set forth in this Complaint;

F) To award Plaintiff nominal damages against Defendants for all 42 U.S.C. § 1983 claims as set forth in this Complaint;

G) To award Plaintiff punitive damages against Defendants sued in their individual capacity for all 42 U.S.C. § 1983 claims for the Defendants' callous indifference for the Plaintiff's constitutional rights as set forth in this Complaint;

H) To award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

I) To grant such other relief as this court should find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Dated: May 15, 2013

Respectfully submitted,

s/ Jerad Najvar
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**pro hac vice pending*

ATTACHMENT (2)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-20264

United States Court of Appeals
Fifth Circuit

FILED

March 9, 2016

Lyle W. Cayce
Clerk

DAVID ALLEN,

Plaintiff - Appellee

v.

A. H. CISNEROS; J. MONTELONGO,

Defendants - Appellants

Appeal from the United States District Court
for the Southern District of Texas

Before KING, JOLLY, and PRADO, Circuit Judges.

PER CURIAM:

Plaintiff–Appellee David Allen participated in several demonstrations throughout the City of Houston that led to his detention and arrest by police officers, including Defendants–Appellants Aaron Cisneros and Juan Montelongo. Allen brought claims under 42 U.S.C. § 1983 against Sergeant Cisneros and Officer Montelongo, among others, alleging that the officers violated his constitutional rights. The district court denied the officers’ motion for summary judgment on qualified immunity grounds, and the officers appealed. Because we hold that the officers are entitled to qualified immunity, we REVERSE the district court’s order denying summary judgment.

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I. FACTUAL AND PROCEDURAL BACKGROUND

Since at least 2010, Plaintiff–Appellee David Allen has regularly engaged in street preaching throughout Houston, Texas, sounding a shofar as part of his preaching.¹ After Allen’s activities led to his detention and arrest by police officers on multiple occasions, he filed a complaint in the United States District Court for the Southern District of Texas, alleging numerous violations of his constitutional rights arising out of several encounters with police officers. Two encounters are at issue in this appeal: Allen’s encounter with Officer Montelongo on October 31, 2011, and his encounter with Sergeant Cisneros on January 14, 2012.

A. Incident Involving Officer Montelongo

On October 31, 2011, Allen was street preaching at a bus stop in Houston with David Stokes—another street preacher—and two other individuals. Officer Montelongo arrived on the scene in response to a disturbance call. He possessed a template that measured whether signs and objects used by demonstrators complied with Houston Ordinance § 28-33,² which describes the

¹ A shofar is a trumpet-like instrument made from a ram’s horn. Shofars are commonly used in Judaism to mark the holidays of Rosh Hashanah and Yom Kippur. Joseph Berger, *In Brooklyn, Horn Lessons by a Rabbi Ring Out*, N.Y. Times, Sept. 29, 2011, at A24. Sergeant Cisneros and Officer Montelongo did not know of the shofar’s religious significance, and the parties do not dispute on appeal that Defendants are entitled to qualified immunity for the seizure of Allen’s shofar.

² The ordinance provides that:

(a) No person shall carry or possess while participating in any demonstration, rally, picket line or public assembly, any stick, board, pole, stave, rod, plank, pipe, stud, cane, staff, slat, or similar object unless that object conforms to the following specifications:

- (1) All objects which are generally rectangular in shape shall not exceed one-fourth inch in thickness and two inches in width.
- (2) All objects which are not generally rectangular in shape shall not exceed three-quarters inch in their thickest dimension.
- (3) All objects must be constructed of wood, wood products, or other cellulose materials.

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items that may be carried at a demonstration. He measured the signs and informed Stokes that the signs did not comply with the ordinance. Officer Montelongo also informed Allen that he could not have his shofar, which measured approximately thirty-seven inches long and six inches in width, and which Allen possessed throughout the entire incident. As Officer Montelongo and Stokes argued about whether the signs complied with the ordinance, Officer Montelongo's supervising officer arrived. While the officers discussed the situation, Stokes approached the officers, and the supervising officer detained Stokes. According to Officer Montelongo, Allen entered into the oncoming street traffic while Stokes was being detained. Officer Montelongo pulled Allen back onto the sidewalk, but Allen resisted and fell, leading to Officer Montelongo and another officer handcuffing Allen for the officers' and Allen's safety. According to Allen, however, he never entered or tried to enter the street; instead, the officers detained and handcuffed Allen as he attempted to use his cell phone to videotape Stokes' treatment by the officers. The parties agree that Allen was placed in the back of a police car after being handcuffed. Officer Montelongo ultimately issued citations to Stokes and Allen for violating the city ordinance, and confiscated the signs and Allen's shofar.³

B. Incident Involving Sergeant Cisneros

On January 14, 2012, Allen and Stokes protested in downtown Houston on the route of the Houston Marathon. Allen had his shofar and Stokes had several signs displaying controversial messages. A race official approached, stood in front of one of the signs, and exchanged words with Stokes. A police officer spoke with Stokes, and subsequently called for assistance because of

Houston, Tex., Code of Ordinances ch. 28, art. 1, § 33.

³ The citation was later dismissed because it had been incorrectly completed.

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“two extremely uncooperative males” that were causing a disruption along the race route.

Upon arriving at the scene, Sergeant Cisneros spoke with the other officer and the race official about the disruption. Sergeant Cisneros approached Stokes and Allen and directed them to move back from the edge of the race route, but Stokes verbally refused to move. Sergeant Cisneros told Stokes “[c]ome on with me” and escorted Stokes towards Sergeant Cisneros’ police car, which was parked on a street blocked off for the race. As Sergeant Cisneros detained Stokes, Allen videotaped the encounter, following Sergeant Cisneros and “com[ing] up behind him.” Sergeant Cisneros turned and told Allen, “I’m going to tell you. I do not want you near my police car. I’m going to order you to go away. If you do not go away, I’m going to put you in jail for interfering with a police investigation.” Allen began walking backwards while continuing to videotape. Sergeant Cisneros then told Allen that “[i]f we are going to play the step-by-step game, I’m going to put you in the backseat of the car also.” Allen verbally protested, claiming that he was on a public sidewalk and asking what he was doing wrong. Sergeant Cisneros confiscated the video camera from Allen, frisked him, and placed him in the backseat of the patrol car with Stokes.

After checking Stokes’ and Allen’s identification, Sergeant Cisneros released both men, returning their personal belongings. Allen began walking towards Sergeant Cisneros’ patrol car with the video camera. Sergeant Cisneros contends that he warned Allen to stay out of the street, although Allen disputes that such a warning occurred. After Allen entered the street, Sergeant Cisneros arrested him. Sergeant Cisneros issued Allen a citation for failure to obey a lawful order of a police officer directing traffic and for violating

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Houston Ordinance § 28-33 by possessing a staff while participating in a demonstration.⁴

C. Procedural History

On May 15, 2013, Allen filed his complaint seeking relief under 42 U.S.C. § 1983. Allen alleged that Defendants seized him in retaliation for his exercise of his freedom of speech, in violation of the First Amendment, and that the seizures were without probable cause or other lawful authority, in violation of the Fourth Amendment.⁵ Defendants moved for summary judgment, asserting that they were entitled to qualified immunity. The magistrate judge issued a memorandum and recommendation, advising that the district judge deny summary judgment on qualified immunity grounds as to the seizures of Allen by both Defendants.⁶ As to the incident involving Officer Montelongo, the magistrate judge found that there was a genuine factual dispute of whether Allen had entered the street when he was detained by Officer Montelongo. Similarly, the magistrate judge found that there was a genuine factual dispute of whether Allen complied with Sergeant Cisneros' orders and whether Allen remained bound by Sergeant Cisneros' prior orders. Both Defendants filed objections, but the district court adopted the magistrate judge's memorandum and recommendation in its entirety. Defendants timely appealed the denial of their summary judgment motion based on qualified immunity.

⁴ The charges were later dismissed after Sergeant Cisneros missed Allen's court date.

⁵ Allen also brought claims against the chief of the Houston Police Department, Charles McClelland, and the City of Houston, but the district court ultimately dismissed those claims.

⁶ The magistrate judge also advised that the district court grant summary judgment on qualified immunity grounds as to the seizure of Allen's shofar by both officers, and the district court dismissed those claims relating to the seizures of the shofar.

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II. STANDARD OF REVIEW

An order denying summary judgment on qualified immunity “is a collateral order subject to immediate appeal.” *Brauner v. Coody*, 793 F.3d 493, 497 (5th Cir. 2015). However, “[t]his court has jurisdiction over such an order only ‘to the extent that the district court’s order turns on an issue of law.’” *Gibson v. Kilpatrick*, 773 F.3d 661, 666 (5th Cir. 2014) (quoting *Kovacik v. Villarreal*, 628 F.3d 209, 211 (5th Cir. 2010)). Accordingly, we lack jurisdiction to review the *genuineness* of a fact issue but have jurisdiction insofar as the interlocutory appeal “challenges the *materiality* of [the] factual issues.” *Bazan ex rel. Bazan v. Hidalgo Cty.*, 246 F.3d 481, 490 (5th Cir. 2001). We review *de novo* the district court’s conclusions regarding the materiality of the facts, *Gibson*, 773 F.3d at 666, “consider[ing] only whether the district court erred in assessing the legal significance of the conduct that the district court deemed sufficiently supported for purposes of summary judgment,” *Kinney v. Weaver*, 367 F.3d 337, 348 (5th Cir. 2004) (en banc). “Where factual disputes exist in an interlocutory appeal asserting qualified immunity, we accept the plaintiffs’ version of the facts as true.” *Id.*

III. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY

“The doctrine of qualified immunity shields officials from civil liability so long as their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). “Put simply, qualified immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). A plaintiff can overcome a qualified immunity defense by showing “(1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2080 (2011)

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(quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Allen contends that Officer Montelongo and Sergeant Cisneros unlawfully seized him in retaliation for exercising his freedom of speech, in violation of the First and Fourth Amendments. However, because the genuine disputes identified by the district court are not material and Allen has failed to show that either officer violated his constitutional rights, Defendants are entitled to qualified immunity.

“[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). However, a retaliation claim is only applicable “when nonretaliatory grounds are in fact insufficient to provoke the adverse consequences.” *Id.* As a result, even where a citizen believes that he has been subject to a retaliatory detention or arrest, if there was reasonable suspicion or probable cause for an officer to seize the citizen, “the objectives of law enforcement take primacy over the citizen’s right to avoid retaliation.” *Keenan v. Tejeda*, 290 F.3d 252, 261–62 (5th Cir. 2002); *see also Mullenix*, 136 S. Ct. at 308 (“A clearly established right is one that is ‘sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’” (quoting *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012))).

Under the Fourth Amendment, “[p]olice officers may briefly detain individuals on the street, even though there is no probable cause to arrest them, if they have a reasonable suspicion that criminal activity is afoot.” *United States v. Michelletti*, 13 F.3d 838, 840 (5th Cir. 1994). Reasonable suspicion exists if there are “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [a detention].” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). However, determining reasonableness is an objective inquiry where “[w]e ask whether ‘the circumstances, viewed objectively, justify [the challenged] action.’” *Ashcroft*,

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131 S. Ct. at 2080 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)). Accordingly, “[t]he Fourth Amendment requires only some minimum level of objective justification for the officers’ actions—but more than a hunch—measured in light of the totality of the circumstances,” *Michelletti*, 13 F.3d at 840, considering the facts available to the officer at the time of the detention, *Davila v. United States*, 713 F.3d 248, 258 (5th Cir. 2013).

A. Officer Montelongo

First, the district court erred in finding that Officer Montelongo was not entitled to qualified immunity because the genuine factual dispute identified by the court—whether Allen had entered the roadway—is not material to the determination of qualified immunity. Here, Allen’s possession of his shofar independently provided reasonable suspicion for his detention. The city ordinance specifically prohibited “carry[ing] or possess[ing] while participating in any demonstration” objects that “exceed three-quarters inch in their thickest dimension.” Houston, Tex., Code of Ordinances ch. 28, art. 1, § 33. The shofar, which was approximately six inches in width, clearly violated the ordinance. Moreover, Allen refused to relinquish the shofar to Officer Montelongo and continued to possess it until he was detained. Based on the totality of the circumstances, these facts provide a “minimum level of objective justification” for the detention of Allen by Officer Montelongo. *Michelletti*, 13 F.3d at 840. Officer Montelongo therefore did not violate Allen’s Fourth Amendment rights when he lawfully detained Allen for carrying or possessing the shofar in violation of the city ordinance. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (“If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”). Furthermore, Officer Montelongo did not violate Allen’s First Amendment rights because Allen’s possession of the shofar provided a legal, non-retaliatory ground for Allen’s

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detention. *Keenan*, 290 F.3d at 261–62. Thus, the genuine factual dispute regarding whether Allen entered the roadway was not material to determining whether Allen’s constitutional rights were violated. *See Gibson*, 773 F.3d at 666. The district court therefore erred in holding that Officer Montelongo is not entitled to qualified immunity.

B. Sergeant Cisneros

Second, the district court also erred in denying qualified immunity to Sergeant Cisneros. Neither of the remaining factual disputes identified by the district court—whether Allen complied with Sergeant Cisneros’ orders and whether Allen remained bound by Sergeant Cisneros’ prior orders—is material for determining whether Sergeant Cisneros is entitled to qualified immunity for his detention and subsequent arrest of Allen.

Sergeant Cisneros had a lawful reason for detaining Allen independent of any potential failure to comply by Allen. During an investigation, police officers may “take such steps as [a]re reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.” *United States v. Campbell*, 178 F.3d 345, 348–49 (5th Cir. 1999) (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). We only consider, on a case-by-case basis, “whether the police were unreasonable in failing to use less intrusive procedures to conduct their investigation safely.” *Id.* at 349 (quoting *United States v. Sanders*, 994 F.2d 200, 206–07 (5th Cir. 1993)). Here, while Sergeant Cisneros was in the process of detaining Stokes, Allen followed and “came up behind” Sergeant Cisneros, prompting Cisneros to order Allen to back away. Based on those undisputed facts, we cannot say that Sergeant Cisneros’ detention of Allen was an unreasonable procedure for protecting the officer’s safety and maintaining the status quo during the detention of Stokes. Thus,

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whether Allen complied with Sergeant Cisneros' order is immaterial because Sergeant Cisneros had an independent basis for lawfully detaining Allen.⁷

Sergeant Cisneros also had a lawful reason for arresting Allen unrelated to the genuine factual disputes. “[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *see also Cole v. Carson*, 802 F.3d 752, 764 (5th Cir. 2015) (noting that in order to make out a Fourth Amendment claim for warrantless arrests, the Supreme Court has made clear that “the [officers] must not be aware of facts constituting probable cause to arrest or detain the person for *any* crime.”). Allen possessed and carried his shofar while demonstrating with Stokes, a demonstration that ultimately led to Sergeant Cisneros' involvement. And as previously discussed, the undisputed evidence shows that the shofar violated the Houston ordinance. *See Atwater*, 532 U.S. at 354 (“If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”). Sergeant Cisneros therefore had probable cause to arrest Allen unrelated to the genuine factual disputes identified by the district court.⁸ Those factual disputes are therefore not material, and Sergeant Cisneros is entitled to qualified immunity.

IV. CONCLUSION

For the foregoing reasons, we REVERSE the district court's order denying summary judgment on Allen's § 1983 claims and REMAND for entry

⁷ Allen also possessed his shofar during this incident involving Sergeant Cisneros, similar to the incident involving Officer Montelongo.

⁸ Moreover, because Sergeant Cisneros had non-retaliatory grounds for his detention and subsequent arrest of Allen, he did not violate Allen's First Amendment rights. *See Hartman*, 547 U.S. at 256.

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of judgment in favor of Officer Montelongo and Sergeant Cisneros. Allen shall bear the costs of this appeal.

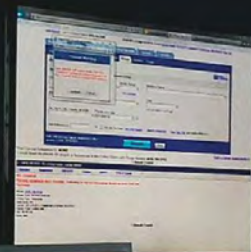
ATTACHMENT (3)

SUMMARY

When a Houston jury deliberated the fate of a father accused of killing his young son, video evidence created using specialized 3D software helped make their decision. The video was made using cell phone records and the 3D visualization software, GeoTime. The software allows law enforcement to quickly make sense of a lot of data and produce videos of suspect movements over time.

MORE INFORMATION

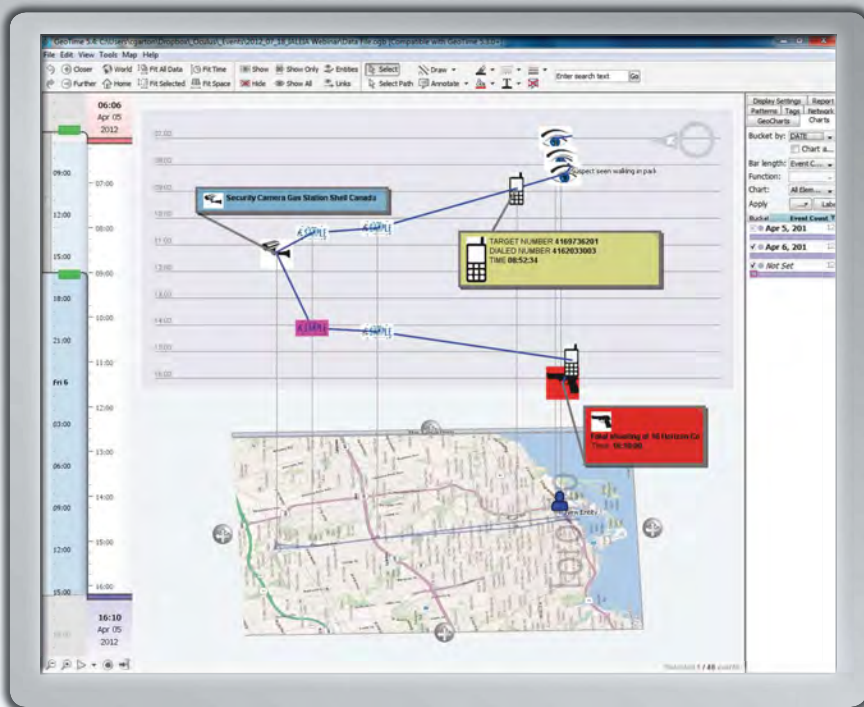
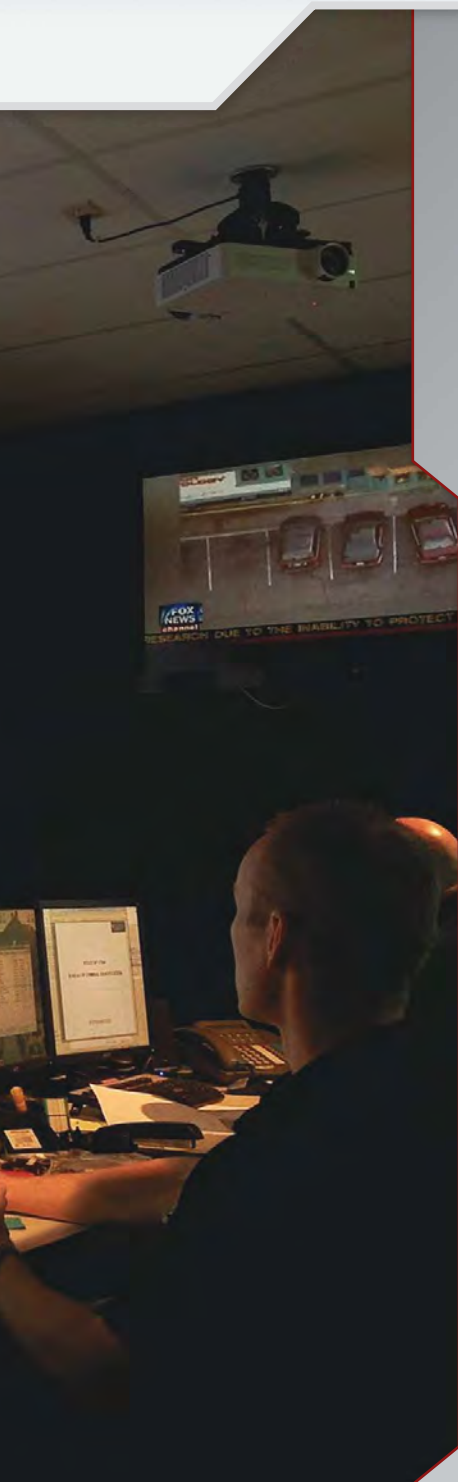
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GEO TIME VISUALIZATION SOFTWARE

Jurors see evidence clearly with 3D visualization software.

► By Karen McDonough

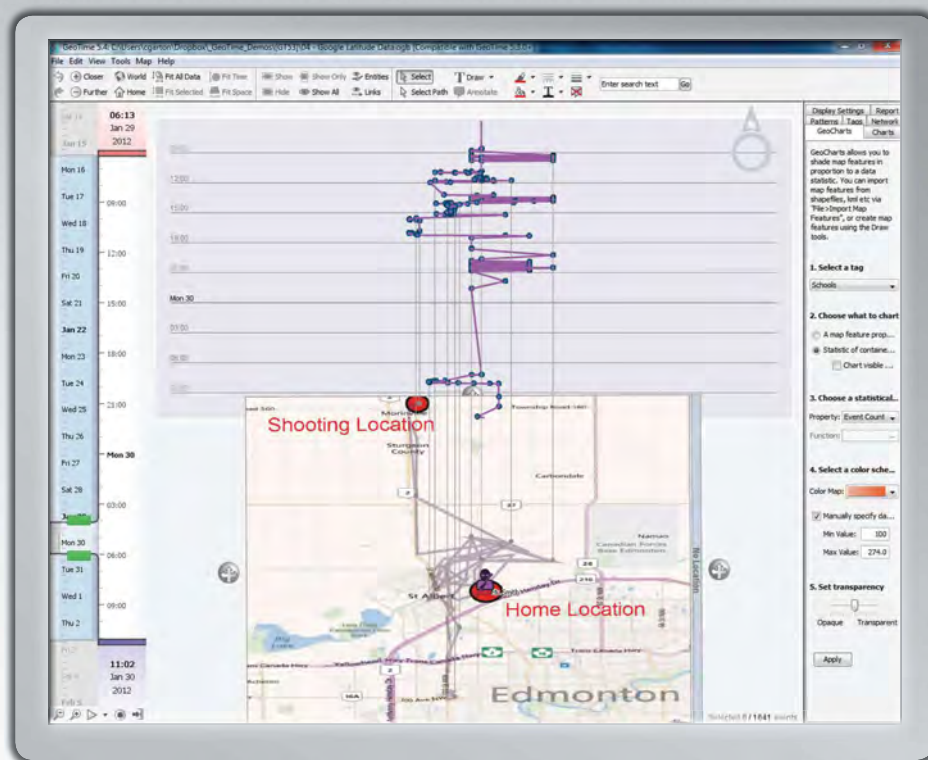


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hen a Houston jury deliberated the fate of a father accused of killing his young son, video evidence created using specialized 3D software helped make their decision. The video evidence was shown during the October 2011 trial of Roderick Fountain and later for jurors, who requested seeing it again during deliberations. Within hours, they convicted Fountain of life in prison for murdering his 3-year-old son, Kendrick Jackson. The boy's body has never been found.

The video was made using Fountain's cell phone records and the three-dimensional (3D) visualization software, GeoTime, from Oculus Info Inc. The software allows law enforcement to quickly make sense of a lot of data and produce videos of suspect movements over time. Prosecutors asked crime analysts to create a presentation-quality movie they could play at the trial, showing a 36-hour snapshot of the defendant's actions, said Ryan Volkmer, project director at a joint law enforcement taskforce center in Houston.

Using the GeoTime video editing tools, Volkmer put together an easy-to-follow, 17-minute video. He uploaded the original screenshots, including photos of the cell towers and pictures of the people Fountain spoke with. By inserting text boxes with the timeline of events, the jury could clearly see how the prosecution laid out its case. During Volkmer's testimony at the trial, he explained how he created the montage using the evidence.



"What was telling during deliberations," Volkmer said, "was the judge asked me to cue the video because a couple of jurors requested to thumb through it themselves. When the data [is put into the 3D software] and fits with the prosecution's case and doesn't fit with the defendant's alibi, it's a powerful weapon in the conviction process."

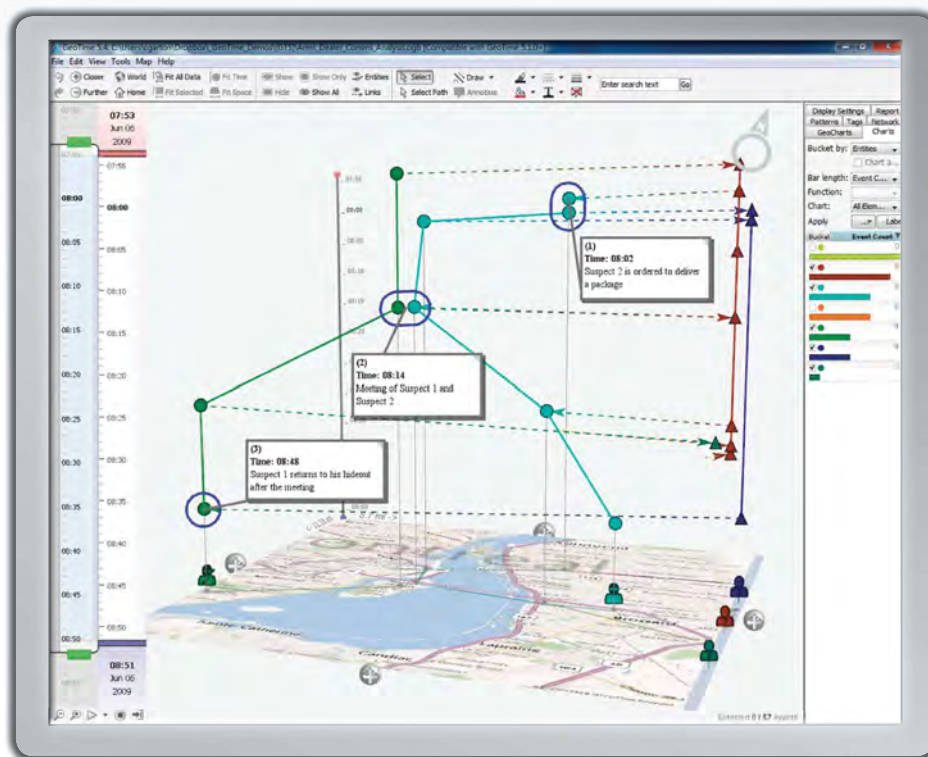
From Disappearance to Homicide

The case began April 7, 2006 when the boy was reported missing. Police said Fountain, 37, was a parolee with a violent criminal past. The evening of the crime, Kendrick had been staying with Fountain in his Houston apartment when he told police the boy walked out the front door without his knowing. Despite a massive search led by the FBI, the boy wasn't found. Fountain, acting "too calm" according to police, was the initial suspect. He told investigators he was home before and after the reported disappearance.

But Fountain's cell phone records obtained by police showed an entirely different story. After the disappearance, Fountain was on the phone with several different women as he drove east from Houston on Interstate 10 into Louisiana—a stretch of road that becomes surrounded by a body of swampy water—toward his former residence in New Orleans. Then he turned around and returned to Texas.

Investigators theorized he fatally beat his son over not being potty trained at the time, then disposed of the body in the bayou. But lacking additional evidence, the case stalled for a few years. The FBI, which handles missing child cases, handed it back to Houston Police as a homicide investigation. Fountain returned to prison, convicted of being a felon in possession of a firearm, after authorities found a shotgun inside his home.

No new leads in the case surfaced until August 2011, when a jailhouse informant came forward, saying Fountain admitted killing his son and dumping the body. This new



evidence, which supported the prosecution's case, was key to enabling authorities to bring the case to trial. This time, Houston Police turned to the 3D visualization software in use at the joint law enforcement taskforce center to analyze the original cell phone data.

In 2006, investigators and crime analysts had the laborious task of mapping the data—from calls and texts from several different phones. From each cell tower site, they plotted the latitude and longitude, then took a screenshot of each location using PowerPoint. Back then, it took two days to map 200 cell sites showing the defendant's travel patterns, which shot a hole in history to police. By contrast, today that same data uploaded into GeoTime can produce the same map within minutes, not days.

Many Uses

Along with analyzing cell phone records, GeoTime allows investigators to upload GPS tracking information to show a suspect's travel pattern, which helps establish a timeline for crime solving. The 3D visualization software also helps law enforcement better use limited resources by spotting crime trends. Using it with crime data stored in CAD, police can see patterns in crime trends and hot spots, giving a better understanding of where crime is occurring.

It can help law enforcement determine where best to allocate resources. Crime analysts can input arrest warrant information and geographical crime data to produce a map showing the address of wanted people, compared with the high crime areas. This allows an agency to see where to focus enforcement efforts.

Police can also handle calls for service with faster response times, which increases command and control and situational awareness, and can move an agency from the standard, reactive model of policing to proactive policing by showing where to attack problems.

"It's a very intuitive system," Volkmer said. "You don't have to spend a lot of time formatting data like with other programs." The software works with Excel spreadsheets and CSV files, as well as connecting directly with ESRI's ArcGIS, software and other

technology already in place at most law enforcement communication centers.

Karen McDonough is the former Public Information Officer for the Oceanside, Calif. Police Department. She may be reached at

karenwriter@yahoo.com. Photos courtesy of GeoTime.

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