

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
APPELLATE DIVISION**

**WILLIAM G. BALL,
WILLIAM LEE HOLT,
JOSHUA PETTIGREW,
DOUGLAS C. PITTS,
FRANCIS N. PRIMAVERA**

Appellants,

**Appeal Case No.: CRC 08-00065 APANO
CRC 08-00066 APANO
CRC 08-00067 APANO
CRC 08-00068 APANO
CRC 08-00069 APANO**

v.

STATE OF FLORIDA,

Appellee.

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Opinion filed: 12/21/09

Appeal from the County Court
for Pinellas County
County Judge Henry J. Andringa

KrisAnne Hall, Esquire
Attorney for Appellant

Kimberly Proano, Esquire
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

THIS MATTER is before the Court on Appellants' consolidated appeals from their convictions for violation of St. Petersburg Ordinance 833G. Appellants violated the ordinance by carrying signs larger than the torso within the permitted area, an action expressly prohibited

by permit conditions. Appellants moved to dismiss the charges on the grounds that St. Petersburg Ordinance 833G is unconstitutionally vague and overbroad on its face and as applied, and denies First Amendment protections. Appellants were found guilty in a nonjury trial, and subsequently, the trial court denied the motions to dismiss. During oral argument, Appellants conceded that they do not actually contend that the ordinance is unconstitutional, but rather, their position is that the permit conditions imposed in this instance constituted an improper restraint on the exercise of First Amendment rights. After reviewing the record and briefs and hearing oral argument, this Court affirms the trial court's order denying the Motion to Dismiss and the guilty verdicts.

St. Petersburg Ordinance 833G, authorizes issuance of permits for events and the imposition of permit conditions. Pursuant to this ordinance, the city issued a permit for a gay pride event. Permit conditions prohibited (1) "Hand held signs on sticks, staves or other rigid objects and hand held banners on sticks, staves or other rigid objects ... within the entire Permitted Street Closure Area;" (2) "Hand held signs that extend beyond the torso (i.e. that part of the body which extends from the hips to the top of the shoulders) of the person carrying or displaying the sign and hand held banners that extend beyond the torso of the person carrying or displaying the banner ... within the Permitted Street Closure Area, except for the Applicant's Main Stage area." These conditions constitute the basis for the charges against the Appellants and the source of their complaints. These were the only restrictions on the display of signs for this event.

The limitations on signage were imposed because the year before during the same event signs that were inconsistent with these conditions provided weapons in the form of sticks and boards and also obstructed pedestrian traffic in the permitted street closure area. Thus, such

uncontrolled signage resulted in altercations and inconvenience to pedestrians in that area and the permit conditions were designed to make the situation better.

Appellants wanted to convey a religious message in opposition to homosexuality, especially with reference to excerpts from the Bible. The involved permit restrictions in no way impacted the distribution of that message. Except for the prohibition against sticks and the like and the requirement that hand held signs not be bigger than the torso, all forms of communication were available within the permitted street closure area. Citizens could display hand held signs up to the size of the torso, hold those signs above their heads, or presumably, push larger signs on carts in the permitted street closure area. They could pass out pamphlets, brochures, and religious materials of all sorts, including Bibles. They could have even stood on a soap box and preached in the permitted street closure area and could have used a bullhorn to verbally convey their message from the perimeter of that area. In fact, they could have arranged for an airplane to repeatedly fly over the area displaying excerpts from the Bible. Additionally, anyone could have displayed signs larger than the torso all along the perimeter of the street closure area. It is clear that the permit conditions imposed virtually no restraint on the content of anyone's message and the exercise of First Amendment rights.

The lack of any restraint on the exercise of expression should end this matter. But, assuming for sake of discussion that the permit restriction as to the size of the sign did constitute a prior restraint on the exercise of First Amendment rights as Appellants argues, it would meet controlling constitutional standards.

Expression is subject to reasonable time, place, or manner restrictions. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 292 (1984). The Supreme Court has often noted that "restrictions of this kind are valid provided that they are justified without reference to

the content of the regulated speech, that they are narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication of the information.” *Clark*, 468 U.S. at 292. Ample alternative channels for communication are left open when an ordinance does not attempt to ban any particular manner or type of expression at a given place and time. *Ward v. Rock Against Racism*, 491 U.S. 781, 802 (1989). This is especially true when expressive activity continues to be allowed and there is no effect on the quantity or content of the allowed expression. *Ward*, 491 U.S. 802. Without a doubt, the permit conditions in the instant case are consistent with these standards and were valid.

ACCORDINGLY, this court AFFIRMS the trial court’s order denying the Motion to Dismiss and the verdicts of guilty and remands these causes to the trial court for sentencing.

ORDERED at St. Petersburg, Florida this 17 day of Dec, 2009.

Original opinion entered by Circuit Judges David A. Demers, Joseph A. Bulone, and Chris Helinger.

Copies: Kimberly Proano, Esq.
KrisAnne Hall, Esq.