

20 Feb 2009

re: U.S. v. Stanley ~

Observations on Discovery & Video:
-- Pre-Memorandum Points for R&D

Upon fast review of Discovery documents and the Griffith video received, the following brief observations are offered for the defense. Short of a line-item analysis of police statements and a full breakdown of the video, these points go to certain defining facts and legal themes they suggest.

There is value in outlining these ideas now for research, and preparing to argue them.

•• **NOTES ON DISCOVERY:**

There is much to impugn in the hyperbole and factual distortions of LEO statements, the meat of cross-examination if the case goes to trial. But details aside, certain broader issues bear upon grounds for pretrial dismissal, based on police actions. What's most defining is the reality gap between their tactical rationale and actual conduct:

LEO's emphasize the predicate drug "distribution" arrest (takedown) nearby minutes before, and then explain their tactical maneuver as securing a "perimeter" around other officers in performance of duties. This asserts a protective purpose in these actions, and implies mob aggression or threat – and in the view of a judge, this tends to justify any action necessary to restrain individuals or deter the crowd, in any officer's view.

First there is the clash of paradigms – Rainbows holding a 'Circle' around violent events - vs.- LEO's reacting to threat in being 'surrounded'. It is a core tradition and principle of the gatherings that the 'Circle' is a medium of peaceful discourse, and a means of bringing duress to rest and reason... the zone in its midst is the safest place in the world. If USFS LEO's were ignorant of this meaning or disinformed about it, their training for these events was deficient and flawed. If they were directed to disregard it, their superiors engaged them in negligence and conspiracy.

Moreover the 'drug' arrest of Fonty Fox & 'protest' arrest of Skye Riggs, and how they were conducted, are the pivotal precursors: Both were conspicuous violent takedowns in front of many witnesses... if in fact this was calculated to attract concerned observers, and then officers moved TO the crowd and initiated further police contacts – it cannot be called a defensive "perimeter".

It is then a deliberate game of provocation, intended to intimidate and inflict further random violence on any pretext, and thereby to escalate the incident. It can be shown that LEO's deviated from defensive procedures (per FSLE Handbook?), and did so systematically... this disproves any legitimate protective purpose in their actions, and indicates intent to violate civil rights.

•• **VIDEO ELEMENTS:**

The video clip is significant in this light – notably in the fact that the camera location was stationary throughout (until the final seconds), adjacent to gatherers who were NOT moving toward

the LEO's. Instead it shows LEO's coming into the frame, surging toward gatherers to points of personal contact on the trail. At no time was there notice in this vicinity that the trail was closed; it was openly passable moments before, then suddenly it was not. Officer Lampe was obstructing part of the trail when Roses tried to pass by – such that this normal movement was construed as a threat, but only because the LEO's got so close, and took advance positions to provoke bodily contact.

The sound track is also important, first as a true record of what anyone heard in that vicinity during those few minutes. As officers approached the trail, no general notice is audible that the trail was closed to walking traffic – so nobody HAD such notice of an enforceable prohibition. This sets up a solid "mens rea" defense, in Roses' move to simply walk on it with her dog, without knowledge of any official closure.

The track also records what observers actually said to LEO's. Their statements & reports suggest all sorts of threats & invective coming at them, but that is not what it reveals, i.e. – mostly loud appeals for calm, urging folks to "sit down", yells of "we love you", some demands for "justice" and "guns out of our church", a few chastising statements like "what you did was wrong" -- and after Roses was peppersprayed, one guy called Lampe a "bitch".


This was 'fair witness', and cannot be construed as "fighting words" – which is the legal test of threat or interference against police officers. Conversely, the law explicitly allows citizens to observe, criticize, berate, insult, and swear at police officers without crossing that line.

If even vile verbal abuse is lawful, how much or how loud people talk to officers should be a moot issue, and factually irrelevant to their pretexts & actions. This is a crucial question, because LEO's (and police nationwide) are trying to alter this threshold, attacking observers and using the 'interfering' charge to criminalize the acts of recording or criticizing cops.

It is thus a matter of core 'Civic Rights' of citizens to observe official actions in public, and say what they think. And certainly in this immediate situation at the Rainbow Gathering on July 3, they had no basis to infer threat from open public expression and petition against their actions. Reacting in this manner infringed on this protected speech under the First Amendment.

We have some research & case law on these issues, can provide cites for followup.

Respectfully scribed...


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