

Town Talk.

Forest Hill Man Gets Support from National Groups After Arrest for COVID Facebook Post

Melissa Gregory

November 28, 2022

A Forest Hill man has gotten support in his fight to sue the Rapides Parish Sheriff's Office and one of its investigators over a 2020 Facebook post that resulted in his arrest.

Waylon Allen Bailey's claims in a federal lawsuit he filed after his March 20, 2020, arrest on a felony terrorizing charge were dismissed July 20. U.S. District Judge David C. Joseph granted the defendant's motion for summary judgment and dismissed Bailey's claims with prejudice, meaning those claims couldn't be refiled with the court.

The Sheriff's Office and investigator Randell Iles asserted they were entitled to qualified immunity, a legal principle that protects government officials from liability as they perform their jobs. Bailey had claimed his arrest violated his rights to free speech and against unreasonable search and seizure. The Rapides Parish District Attorney's Office did not bring formal charges against Bailey, which ended the case.

In August, Bailey appealed Joseph's ruling to the U.S. Fifth Circuit Court of Appeals.

Three organizations – the ACLU of Louisiana, the Cato Institute and the Foundation for Individual Rights and Expression – on Nov. 14 filed an amicus, or friend of the court, brief on Bailey's behalf. In the brief, the three groups state that Joseph not only was wrong to grant the defendants qualified immunity, but he "revised an obsolete test that permits the government to jail speakers based on a remote possibility that the speech in question might lead to unlawful action."

Joseph had cited a precedent going back more than 100 years that states speech isn't protected when it presents a clear and present danger, like yelling fire in a crowded theater when there is no fire. He had noted that the beginning of the shutdown stemming from the pandemic, about a week before Bailey made his post, time of "great uncertainty, fear and in many cases, panic, in our community."

Joseph called Bailey's decision to make the post at that time "not only irresponsible, but it might very well have been criminal. "Indeed, the court finds it well within the realm of possibility that his Facebook post, if it had indeed gone 'viral,' was likely to have caused sustained fear, anxiety and perhaps injury and death among the people of central Louisiana."

Bailey's post read, "SHARE SHARE SHARE!!!! JUST IN: RAPIDES PARISH SHERIFFS OFFICE HAVE ISSUED THE ORDER, IF DEPUTIES COME INTO CONTACT WITH 'THE INFECTED' SHOOT ON SIGHT ... Lord have mercy on us all. #Covid9teen #weneedyoubradpitt"

In the amicus brief, the groups say the 100-year-old precedent has been superseded in the years since. Because of that, Bailey's post is protected speech, they wrote, and they compared it to a similar post about crashing a plane if infected people were on board that was made the same month by The Onion, an organization specializing in satire.

"At the time Iles viewed Bailey's post, there was plenty of context for the reasonable reader to consider," it reads. "Both the post itself and the comments left by others clearly indicated its humorous nature." A spokesman said the Rapides Parish Sheriff's would not comment because of the pending litigation.