

NORTH CAROLINA

FILE NO(S): XX CR XXXXXXXX

GUILFORD COUNTY  
Greensboro Division

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

THE STATE OF NORTH CAROLINA )  
)  
)  
Vs. )  
)  
)  
XXXXXXXXXXXXXXXXXXXX, )  
Defendant. )

**MOTION TO DISMISS**

Pursuant to the First Amendment of the  
U.S. Constitution

Defendant, through undersigned counsel, respectfully moves the court pursuant to NCGS §§ 15A-954(a)(1), *et seq.*; the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the United States Constitution; Article I, § 14 of the NC Constitution; and any other applicable law, to dismiss the charge of Disorderly Conduct (NCGS § 14-288.4) against the Defendant in file number XXCRXXXX. The Defendant’s conduct is protected speech under established First Amendment jurisprudence and does not fall under any of the recognized exceptions to First Amendment protection. Therefore, because NCGS § 14-288.4, as applied to the defendant in this case, violates the First Amendment, the case must be dismissed.

For the purposes of this motion only, the Defendant stipulates to the facts in the charging documents, that during a confrontation with a Greensboro Police Department Officer, DEFENDANT uttered the phrases, “fuck the police” and “fuck you, I can say what the fuck I want.”

NCGS § 14-288.4(a)(2) defines disorderly conduct as, inter alia, “a public disturbance intentionally caused by any person who does one of the following: ... (2) makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace.” This statute, however, is unconstitutional as applied to the defendant’s conduct. Regardless of whether or not the Defendant made a wise or respectful choice by vocalizing his disdain for the institution of police, his conduct was the type of expression that is the most protected under the First Amendment: political expression. This is not to suggest that the entire statute is unconstitutional, but that the statute may not be constitutionally applied to the Defendant while protesting the police officers’ actions.

The phrase, “fuck the police,” uttered by the defendant, is often attributed to the titular song by the hip-hop group, N.W.A., about police brutality and racial profiling in America. The phrase’s inclusion in the charging documents, as well as his reference to his First Amendment rights, is further evidence that the Defendant was expressing political speech.

This case is analogous to the seminal United States Supreme Court case, *California v. Cohen*, 403 U.S. 15 (1971). In that case, the Court analyzed whether a person could be prosecuted under a California statute prohibiting disturbing the peace, where defendant wore a jacket with “Fuck the Draft” inscribed on the back. Ultimately the Court held that this language

was protected political expression and could not fall under the exceptions for obscenity or “fighting words.” *Cohen*, 403 U.S. at 19-21.

With respect to the “fighting words” exception, the Court noted that while it may be true that some citizens with violent proclivities may physically respond to such an offensive message, there was “no evidence that substantial numbers of citizens are standing ready to strike out physically at whoever may assault their sensibilities,” and that even though some people might, that fear was “an insufficient base upon which to erect, consistently with constitutional values, a governmental power to force persons who wish to ventilate their dissident views into avoiding particular forms of expression.” *Id.* at 23.

The Court’s reasoning went further, illuminating why the Constitution protects even offensive expressions such as those allegedly uttered by the Defendant:

*To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated.*

*Id.* at 24-25.

Following *Cohen*, the U.S. Supreme Court analyzed abusive speech directed at police officers and invalidated a city ordinance that made it a crime to "assault, strike, or in any manner oppose, molest, abuse or interrupt" police officers in the execution of their duty. *Houston v. Hill*, 482 U.S. 451 (1987). The Court held that the statute was constitutionally overbroad because, much like NCGS § 14-288.4, the ordinance did not prohibit only speech that fell under the “fighting words” exception. *Id.* at 462. Moreover, the Court noted that with respect to the “fighting words” doctrine, which requires language that is intended and plainly likely to invoke immediate violent retaliation, that police officers should be held to a higher standard of restraint from retaliation than the ordinary citizen. *Id.* at 471-72.

These principles, set forth in *Cohen* and *Houston* control here. The Defendant’s language, while offensive, is protected speech. Moreover, it does not fall under the “fighting words” exception, especially given that the listener was a police officer who is held to a higher standard of restraint. The case must be dismissed.

This the \_\_\_\_\_ day of April, 2013.

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A. Brennan Aberle  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I, A. Brennan Aberle, certify that on the date indicated herein, a copy of this motion was served on the office of the District Attorney for the 18<sup>th</sup> Judicial District by hand delivery to said office in the Guilford County Courthouse, Greensboro, NC on the date indicated below.

This the \_\_\_\_\_ day of April, 2013.

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A. Brennan Aberle  
Attorney for Defendant