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# Noise ordinance is unconstitutionally void for vagueness

## FACTS:

Two owners and two employees of the Tip Top Deluxe Bar and Grill were criminally charged with violating § 9.63(3) of the Grand Rapids Noise Ordinance on several nights in 2012 and 2013. The section provides as follows:

(3) No person shall use any premises or suffer any premises under his or her care or control to be used which shall destroy the peace and tranquility of the surrounding neighborhood.

The arresting officers testified that they understood a violation of § 9.63(3) occurred if noise could be heard from the street regardless of the actual decibel level if the noise “destroyed the peace and tranquility of the surrounding neighborhood.” The Noise Ordinance also contained a separate section, § 9.63(11), that prohibited measurable maximum sound levels. The officers, however, did not record the decibel level of the noise on the nights in question and the defendants were not charged with violating that section.

The defendants argued that § 9.63(3) was unconstitutionally vague since it did not provide adequate notice of what conduct was prohibited and allowed police officers broad latitude in enforcing the section based on their subjective determination that the peace and tranquility of a neighborhood had been destroyed.

## QUESTION:

Is the ordinance void for vagueness under the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

**ANSWER ACCORDING TO THE DISTRICT COURT:** YES. Although the district court determined that there was a question of fact for the jury regarding whether the bar’s music on the nights in question had actually destroyed the peace and tranquility of the surrounding neighborhood, it also concluded that the ordinance was unconstitutionally vague because reasonable minds could differ regarding what destroys the peace and tranquility of a neighborhood and there was no objective way for police to make that determination.

**ANSWER ACCORDING TO THE CIRCUIT COURT:** NO. The court reversed the district court finding that § 9.63(3) was not unconstitutionally vague, reasoning that the section when read in conjunction with other provisions and specifically § 9.63(11), the section that provided notice of maximum sound levels during the day and night, provided notice to residents of maximum sound levels and how those levels would be measured.

**ANSWER ACCORDING TO THE MICHIGAN COURT OF APPEALS:** YES. The Court of Appeals reversed the ruling of the circuit court, finding that § 9.63(3) was unconstitutionally void for vagueness. Noting that there are three ways in which a statute may be found to be unconstitutionally vague: (1) failure to provide fair notice of what conduct is prohibited, (2) encouragement of arbitrary and discriminatory enforcement, or (3) being overbroad and impinging on First Amendment freedoms, the court found the section to be void for vagueness under the standards set forth in (1) and (2). The court reasoned that the section provided no explicit standards for determining what *destroys* the peace and tranquility of a neighborhood and that, as a consequence, law enforcement officers and finders of fact (juries) are vested with “virtually complete discretion” in determining whether a violation has occurred. The court distinguished this case from challenges to disturbing the peace statutes on the basis that the ordinance at issue does not proscribe conduct that *disturbs* or *disrupts* the peace but rather that which *destroys* the peace on the basis that a reasonable person is sufficiently aware of what disturbs the peace but would not be sufficiently aware of what totally destroys the peace.

*People v Gasper*, Nos. 324150, 324152 and 328165, March 8, 2016.

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