

## Singer off hook for using obscenity

By Gabrielle Crist Rocky Mountain News November 6, 2003

A 20-year old singer won't be prosecuted for saying "f--- the pigs" at a band performance last summer because police didn't keep a record of anyone who was offended.

Daniel Lewis was an occasional singer for the band Dysarranged, one of several groups that performed at the grand opening in June of the Skate Park and Metzler Ranch in north Castle Rock.

Performers had been warned not to use obscenities, but when Lewis took the stage, he dedicated a song to the Castle Rock police, then said, "I hate you all. F--- the pigs," according to police reports.

Police turned off the power, escorted Lewis and several other band members offstage and arrested Lewis, a Castle Rock resident, charging him with disturbing the peace.

The town's statute prohibits maliciously or willfully disturbing the peace by "loud or unusual noises, or by tumultuous or offensive language, threatening, traducing, quarreling, challenging to fight or fighting within the town."

Lewis' attorney, Daniel Recht, argued that Lewis' language was protected by the First Amendment and asked the judge to dismiss the case.

"The state has the power to protect its citizenry from actual harm and thus has the power to outlaw one yelling 'Fire!' in a crowded theater. However, yelling 'F---!' in a crowded theater does not create a clear and present danger to anyone and thus cannot be outlawed. Although they are both four letter words that start with F, the distinction is constitutionally significant," Recht wrote in his motion.

The judge denied Recht's request and the case was headed for trial when prosecutors dismissed the case. Prosecutors could not be reached for comment, but assistant town manager and town spokesman Fritz Sprague said the case was dropped for lack of evidence.

The witnesses who provided statements to police did not say they were offended by Lewis' language, which is required to prove that Lewis disturbed the peace, Sprague said.

Castle Rock Police Chief Tony Lane said police talked to witnesses who were offended but didn't get their contact information before they left the event.

Lane said he was disappointed because Lewis acted inappropriately and should have been held accountable.

"It should have never happened," Lane said. "I'm all for freedom of speech - don't get me wrong - but there is a time and a place."

Recht, who works cooperatively with the American Civil Liberties Union, acknowledged that Lewis' actions were not wise.

"I think what he did was crass and sort of an inarticulate criticism of Castle Rock law enforcement," Recht said. But that expression is protected, he said, and Lewis' victory in the case is an important one.

"It's a good thing we prevailed," Recht said.

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