

# Bond Case Briefs

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## **IMMUNITY - MISSOURI**

### **Brandy v. City of St. Louis, Missouri**

**United States Court of Appeals, Eighth Circuit - July 28, 2023 - F.4th - 2023 WL 4835028**

After city police officer deployed pepper spray against protestor and others in a crowd, protestor sued defendants including officer, city, and police chief, alleging various claims under federal and Missouri law, including First Amendment retaliation.

Defendants moved for summary judgment based on immunity grounds. The United States District Court denied officer's summary judgment motion in part, finding that he was not entitled to summary judgment on First Amendment retaliation claim based on qualified immunity, or on state-law claims based on official immunity, and reserved ruling on city's summary judgment motion based on sovereign immunity. Defendants appealed.

The Court of Appeals held that:

- Protestor's right to exercise his First Amendment rights without facing retaliation from government officials was clearly established;
- The Court of Appeals lacked jurisdiction to disturb district court's conclusion that fact issue existed as to whether protestor's taunts of officer amounted to a true threat;
- The Court of Appeals lacked jurisdiction to resolve whether fact issue existed as to whether deployment of pepper spray was motivated by protected First Amendment activity;
- The Court of Appeals lacked jurisdiction to reverse determination that fact issue existed as to whether officer acted maliciously; and
- District court would be required on remand to reach the merits of city's sovereign immunity defense.

Given that city was entitled to a thorough determination of its claims of sovereign immunity, district court would be required to reach the merits of city's sovereign immunity defense against protestor's claims arising from city police officer's deployment of pepper spray against him, on remand from city's interlocutory appeal from district court's order denying summary judgment, where district court had failed to rule on city's summary judgment motion, but had instead reserved ruling until after the conclusion of trial.