

*Boyd v. City of Hermosa Beach*, Nos. 07-56572, 07-56681

APR 01 2009

WARDLAW, Circuit Judge, concurring in part and dissenting in part:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I am pleased to concur in the memorandum disposition, except as to Part II. I respectfully dissent from Part II because genuine issues of material fact remain as to whether the officers had probable cause to arrest Hon for a violation of California Penal Code section 148(a). It is undisputed that Hon heard the order to disperse, and lingered momentarily on the station premises to question the officer's order. However, Hon's questioning of the police officer is protected by the First Amendment. *See People v. Quiroga*, 20 Cal. Rptr. 2d 446, 448 (Ct. App. 1993) (citing *Houston v. Hill*, 482 U.S. 451, 461 (1987)). The California Courts of Appeal have also held that "it surely cannot be supposed that Penal Code section 148 criminalizes a person's failure to respond with alacrity to police orders." *Id.* I therefore would also affirm the district court's denial of summary judgment on this ground.