

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

PHARON J. VOEGELI,

Plaintiff,

Case No. 3:20-cv-00845

v.

CITY OF JANESVILLE, COUNTY OF ROCK,
VINCENT LEMERY, SHAWN WELTE,
KEVIN SKATRUD, JAYSEN CLEASBY,
ERIN WILSON, DANIEL BANKS,
CHRISTOPHER SIMON, AND JAMES SCHULER,

Defendants.

COMPLAINT

Plaintiff Pharon J. Voegeli by his attorneys, Strang Bradley, LLC, for his complaint against Defendants, state as follows:

Introduction

1. This is a lawsuit brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Pharon Voegeli's constitutional right to be free from unreasonable search and seizure in violation of the Fourth Amendment of the United States Constitution.

2. On 17 March 2019, Janesville Police Department Officers Vincent Lemery and Shawn Welte and Rock County Sheriff's Department correctional officers Kevin Skatrud, Jaysen Cleasby, Erin Wilson, Daniel Banks, Christopher Simon, and James Schuler forcibly restrained Voegeli, tasered him, and ordered a phlebotomist to draw Voegeli's blood against his will and without a warrant.

3. Plaintiff seeks actual or compensatory damages against Defendants, and because they acted recklessly and/or with callous indifference to the federally protected rights of Plaintiff, punitive damages, plus the costs of this action, attorneys' fees, and such other and further relief that the Court deems just and equitable.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and § 1343(a)(3) (42 U.S.C. §1983 jurisdiction).

5. Venue is proper under 28 U.S.C. § 1391(b)(2). A substantial part of the events or omissions giving rise to the claims asserted herein occurred within this judicial district.

Parties

6. Plaintiff Pharon J. Voegeli is an adult who resides in Oregon, Wisconsin.

7. Defendant City of Janesville is a Wisconsin municipal corporation and is and/or was the employer of Defendants Officer Lemery and Welte and is required to pay any tort judgment for damages for which its employees are liable for acts within the scope of their employment pursuant to WIS. STAT. § 895.46.

8. Defendant County of Rock is political subdivision of Wisconsin and is and/or was the employer of Defendants Skatrud, Cleasby, Wilson, Banks, Simon, and Schuler and is required to pay any tort judgment for damages for which its employees are liable for acts within the scope of their employment pursuant to WIS. STAT. § 895.46.

9. Defendants Lemery and Welte were, at the time of this occurrence, employed as police officers in the City of Janesville Police Department. At all times relevant to this action, Defendants Lemery and Welte engaged in the conduct

complained of while they were on duty and in the course and scope of their employment with the City of Janesville and were acting under color of state law, ordinance, and/or regulation. These Defendants are sued in their individual capacity.

10. Defendants Skatrud, Cleasby, Wilson, Banks, Simon, and Schuler were, at the time of this occurrence, employed as correctional officers in the Rock County Sheriff's Department. At all times relevant to this action, Defendants Skatrud, Cleasby, Wilson, Banks, Arneson, Simon, and Schuler engaged in the conduct complained of while they were on duty and in the course and scope of their employment with Rock County and were acting under color of state law, ordinance, and/or regulation. These Defendants are sued in their individual capacity.

Facts

11. On 17 March 2019, Janesville Police Department officers Lemery and Welte arrested Voegeli.

12. Lemery had pulled Voegeli over at 12:32 am, an interaction that ultimately lead to Voegeli's arrest.

13. Defendants Lemery and Welte transported Voegeli to the Rock County Jail in Janesville, WI.

14. Defendants Skatrud, Cleasby, Wilson, Banks, Arneson, Simon and Schuler were on duty, working for the Rock County Sheriff's Department at the Rock County Jail.

15. Defendant Lemery, with Defendant Welte standing next to him, read Voegeli a Wisconsin Implied Consent Form and asked Voegeli whether he would consent to a blood draw.

16. Voegeli initially responded, "sure, why not."

17. Lemery replied, "Okay, alright. Cool."

18. Voegeli immediately changed his mind and told Lemery, "You're going to take it anyway. No!"

19. Lemery then attempted to coerce Voegeli into consenting by misstating the law: "Too bad, you said 'yes.' Doesn't matter."

20. Defendant Skatrud briefly attempted to intervene, interjecting "Said 'yes' to what? He's saying 'no' now?"

21. Lemery, not persuaded, replied, "He's saying 'no' now but he said yes, so."

22. To which Skatrud again tried to intervene, by saying "It does not matter. We're not going to hold him down if he says 'no.'"

23. Skatrud told Lemery and Welte to write a warrant.

24. Lemery told Skatrud that there were now exigent circumstances for a warrantless blood draw because of how much time had elapsed since Voegeli was pulled over. Skatrud would later memorialize this conversation in a report.

25. Lemery then told Voegeli to answer "yes" or "no."

26. Voegeli replied, "If I say no you're going to take it and if I say yes you're going to take it."

27. Lemery responded, again trying to coerce Voegeli by misstating Fourth Amendment law, "That's right."

28. Voegeli briefly conceded, "Say yes, might look better in court."

29. To which Lemery responded "Kay" and checked "yes" on the form at 1:25 am, 53 minutes after he had pulled Voegeli over.

30. Defendants Lemery, Welte, Skatrud, Schuler, Cleasby, Banks, Wilson and Simon then escorted Voegeli to the jail's Medical Office for a blood draw.

31. In the office, Voegeli was initially passive.

32. But if there was any doubt as to Voegeli's consent for a blood draw, it immediately vanished when Voegeli yelled "No, I won't! I can't!"

33. Voegeli's conduct then matched his words, as he began to pull away and resist his blood being drawn.

34. Defendants Cleasby and Banks then held Voegeli's arms at his side.

35. Defendant Wilson brought in a chair with straps.

36. Defendants Schuler, Cleasby, and Banks forced Voegeli into the chair.

37. Defendant Skatrud then tasered Voegeli.

38. Defendants Skatrud, Schuler, Cleasby, Banks, and Wilson held Voegeli down, restrained, in the chair while Defendant Lemery ordered the phlebotomist to draw Voegeli's blood without a warrant and while Defendant Welte stood by.

39. Voegeli's blood was drawn at 2:08 am, 96 minutes after he was pulled over.

40. Defendant Lemery later claimed, in a police report, that there were exigent circumstances requiring a blood draw because Voegeli initially consented to a blood draw and was briefly cooperative in the Medical Office.

41. Defendants had the opportunity, duty and ability to intervene on behalf of Plaintiff during their violation of Plaintiff's constitutional rights in one or more of the ways described above, but failed to do so.

COUNT I

**42 U.S.C. § 1983 Claim for Unlawful Search and Seizure / Failure to Intervene
(All Individually-Named Defendants)**

42. Plaintiff realleges and incorporates by reference all of the allegations in all of the preceding paragraphs.

43. The actions of Defendants Skatrud, Schuler, Cleasby, Banks, and Wilson in forcibly restraining and holding Voegeli down while Defendants Lemery and Welte ordered a phlebotomist to draw his blood against his will without a warrant, and without any other permissible lawful reason to do so, and/or intentionally failing to prevent said abuse, despite having the opportunity and duty to do so, violated Plaintiff's Fourth Amendment right to be free from unreasonable search and seizure, and thus violated 42. U.S.C. § 1983.

44. Rock County Defendants Skatrud, Schuler, Cleasby, Banks, and Wilson knew there were not exigent circumstances, such as a medical emergency or a pressing need to timely preserve evidence, and still assisted in the unlawful blood draw and didn't intervene to stop it.

45. Alternatively, Rock County Defendants Skatrud, Schuler, Cleasby, Banks, and Wilson believed there were exigent circumstances, namely the need to timely preserve evidence, because Janesville Defendants Lemery and Welte made deliberate lies

and misrepresentations to the Rock County Defendants regarding the amount of time between Voegeli's arrest and his blood draw.

46. Defendants acted recklessly and/or with callous indifference to the federally protected rights of Plaintiff.

47. As a direct and proximate result of these Defendants' unlawful action, Plaintiff has suffered, and will continue to suffer damages.

WHEREFORE, pursuant to 42 U.S.C. § 1983, Plaintiff demands actual or compensatory damages against Defendants Lemery, Welte, Skatrud, Schuler, Cleasby, Banks, and Wilson and because they acted maliciously, wantonly, or oppressively, punitive damages, plus the costs of this action, attorneys' fees, and such other and further relief that the Court deems just and equitable. Additionally, Plaintiff asks this Court to find that the City of Janesville and Rock County are liable to defend this action against Defendants Lemery and Welte (Janesville) and Defendants Skatrud, Schuler, Cleasby, Banks, and Wilson (Rock County), and to satisfy any judgment entered against their employee(s), by virtue of WIS. STAT. § 895.46.

Jury Demand

Plaintiff hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38(b), on all issues so triable.

Respectfully submitted,

Dated: September 14, 2020

/s/ John H. Bradley
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