

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID J. ZIMBAUER,

Plaintiff,

v.

Case No: 3:23-cv-282

VILLAGE OF LAKE HALLIE AND
ANDREW STRASZKOWSKI,

Defendants.

COMPLAINT

Plaintiff David J. Zimbauer, by his attorneys, Strang Bradley, LLC, for his complaint against Defendants, states:

INTRODUCTION

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

2. On August 30, 2021, just before 1:00am, Defendant Straszowski initiated a traffic stop of a vehicle driven by a male, David Zimbauer, because the vehicle's registered owner, a woman, had a revoked license.

3. After realizing Zimbauer was not the registered owner of the vehicle, Straszowski unlawfully extended the traffic stop and illegally searched Zimbauer and the vehicle he was driving.

4. Plaintiff seeks actual or compensatory damages against the Defendants, and because Defendants 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

5. This lawsuit is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution.

6. This Court has jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and the state law indemnification claim pursuant to 28 U.S.C. § 1367.

7. Venue is proper under 28 U.S.C. § 1391(b)(2). Defendant Village of Lake Hallie is a political subdivision of the state of Wisconsin located within this judicial district. Additionally, the events giving rise to the claims asserted herein occurred within the judicial district.

PARTIES

8. Plaintiff David Zimbauer is a resident of the State of Wisconsin and the County of Jackson.

9. Defendant Village of Lake Hallie is a political subdivision of the state of Wisconsin and is or was the employer of the individual Defendant and is required to pay any tort judgment for damages for which its employees are liable for acts within the scope of their employment.

10. Defendant Andrew Straszkowski was at the time of this occurrence employed as a police officer in the Lake Hallie Police Department. Defendant Straszkowski engaged in the conduct complained of while he was on duty, acting under color of state law, ordinance, and/or regulation, and in the course and scope of his employment with the Village of Lake Hallie. He is sued in his individual capacity.

FACTS

11. On August 30, 2021, at around 12:45a.m., Zimbauer got into the driver's seat of a black SUV and drove out of a parking lot.

12. At that same time, Straszkowski was on patrol and in the same parking lot that Zimbauer drove out of.

13. Shortly after leaving, Straszkowski initiated a traffic stop of Zimbauer.

14. Unbeknownst to Zimbauer, Straszkowski had run the license plate of the black SUV while it was still in the parking lot and knew the registered owner was female and had a revoked license.

15. The video and audio of what happened next was captured on the camera attached to Straszkowski's squad car.

16. While walking up to the vehicle, Straszkowski used his flashlight to search the trunk and back seat of the SUV.

17. After informing the driver, David Zimbauer, and his passenger the reason he pulled them over, Straszkowski immediately said, "You're not the registered owner, are you?".

18. Straszkowski was aware Zimbauer was not the registered owner because his run of the vehicle indicated the owner was female.

19. At this point, Straszkowski should have said, “goodbye”, to Zimbauer and his passenger.

20. Instead, Straszkowski asked Zimbauer for his driver’s license and immediately followed that by asking the female passenger if she was the owner of the vehicle.

21. The passenger was not the registered owner of the vehicle.

22. Straszkowski continued to ask questions about where Zimbauer was coming from, what he purchased, and whether he bought drugs or paraphernalia at the store.

23. Zimbauer said he was not sure what that had to do with a traffic stop, to which Straszkowski said, “Okay. Well that’s not what I asked. I just asked if that’s what you did and you seem to be getting awfully nervous and stuff.”

24. The footage captured on Straszkowski’s squad camera shows Zimbauer was calm and respectful the entire time.

25. Straszkowski asked again if Zimbauer picked up a pipe, to which Zimbauer said “that’s irrelevant.”

26. Straszkowski told Zimbauer “I mean, it’s just a simple question, that’s all that I’m asking so.” Zimbauer then answered the question about purchasing paraphernalia by saying, “no.”

27. The two continued their dialogue, with Zimbauer mentioning Straszkowski had pulled him over before. Straszkowski asked Zimbauer what happened on the previous traffic stop, and again, asked Zimbauer if he purchased a pipe at the store.

28. Zimbauer noted the lack of relevance his purchases had to the traffic stop, but Straszkowski insisted it was relevant because he found drugs the last time he pulled Zimbauer over.

29. The charges stemming from Straszkowski's previous traffic stop of Zimbauer were ultimately dismissed.

30. Straszkowski asked Zimbauer for proof of insurance, which Zimbauer could not produce.

31. Straszkowski told Zimbauer to stay in the vehicle.

32. While Straszkowski walked back to his squad car, he stalled briefly to search in the back seat and trunk with his flashlight.

33. While back in his squad car, Straszkowski called the store Zimbauer came from to see if the store clerk remembered what a person matching Zimbauer's description had purchased.

34. The store clerk confirmed that Zimbauer and his passenger did not purchase a pipe and they only sell pipes used for smoking tobacco.

35. Straszkowski continued to sit in his vehicle while he ran Zimbauer's information and looked up his criminal history.

36. Straszkowski did not write any citation for Zimbauer while he was in his squad car, including one for operating a vehicle without insurance, which is the only citation he had cause to issue.

37. Straszkowski exited his squad car and asked Zimbauer to step out of the vehicle.

38. Once outside the vehicle, Straszkowski had Zimbauer remove his hands from his pants pockets and then illegally patted Zimbauer down.

39. Straszkowski told Zimbauer he spoke with staff at the store and asked Zimbauer if he wanted to be honest about what he purchased. Zimbauer responded by saying, "It still is irrelevant to the traffic stop".

40. Straszkowski asked Zimbauer if he bought anything he wasn't supposed to, which Zimbauer told him he didn't.

41. Zimbauer told Straszkowski he wanted to talk to a lawyer because Straszkowski was going into questions outside the scope of a traffic stop related to registration of a non-licensed driver.

42. Straszkowski asked Zimbauer for his address and to identify the passenger with him.

43. Zimbauer told Straszkowski she could tell him her name, to which Straszkowski admitted she did not want to tell him her name, so he was asking Zimbauer.

44. Straszkowski continued to ask about the passenger's identity, noting Zimbauer's bond conditions of not being around certain people.

45. Zimbauer told Straszkowski he does not have a no contact condition with the passenger as part of his bond.

46. After Straszkowski told Zimbauer he was being uncooperative, Zimbauer requested to talk with the other officer on scene.

47. Zimbauer told Straszkowski, "our prior run-in you gave me every fine under the book that you could and they all got dropped", to which Straszkowski responded, "I'm sure there were probably a lot more I could've given you, man."

48. Straszkowski told Zimbauer to stay where he was and speak with the other officer, Corporal David Prokopinski, while he went into his squad and requested a K-9 from Eau Claire.

49. After Straszkowski was informed by dispatch that Eau Claire did not have a K-9 available, he sat in his squad for another five minutes, delaying the traffic stop even further.

50. Straszkowski exited his squad car, asked Zimbauer a few questions, and then informed him he'd be searching the vehicle and detaining Zimbauer.

51. Straszkowski did not have reasonable suspicion or probable cause to search the vehicle or to detain Zimbauer.

52. Straszkowski stopped the search momentarily to put Zimbauer and his passenger in handcuffs.

53. The remainder of Straszkowski's illegal search of the vehicle took 24 minutes.

54. Straszkowski found a clean, glass “bubbler style” pipe that he attributed to Zimbauer, and a straight, glass, smoking pipe with residue on it that he attributed to Zimbauer’s passenger.

55. Straszkowski informed Zimbauer and the passenger they would both be arrested for paraphernalia and bond violations.

56. The only citation that was issued against Zimbauer related to this incident was for operating a motor vehicle without insurance.

**COUNT 1:
42 U.S.C. § 1983 Claim for Unlawful Seizures**

57. Plaintiff realleges the above paragraphs.

58. Defendant Straszkowski seized Plaintiff by stopping his vehicle and not letting him leave.

59. Defendant Straszkowski unlawfully extended this seizure by not going back to his squad car after first speaking with Zimbauer and writing a citation for operating a vehicle without insurance.

60. Defendant Straszkowski unlawfully extended this seizure by calling the store and inquiring about what Zimbauer and his passenger purchased.

61. Defendant Straszkowski unlawfully extended this seizure by contacting dispatch and requesting a K-9 from Eau Claire.

62. Defendant Straszkowski’s extended seizure was unlawful because it was done without probable cause that Plaintiff had committed, was committing, or was going to commit anything more than operating a vehicle without insurance.

63. Defendant Straszkowski thus violated Plaintiff's Fourth Amendment rights to be free from unreasonable seizure.

64. The aforementioned actions of Defendant Straszkowski were the direct and proximate cause of the constitutional violations set forth above and of Plaintiff's injuries and set forth above.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 & 1988, Plaintiff demands actual or compensatory damages against Defendant Straszkowski and because he acted maliciously, wantonly, or oppressively, punitive damages, the costs of this actions, attorneys' fees, and such other further relief that the Court deems just and equitable. Additionally, Plaintiff asks this Court to find the Village of Lake Hallie is liable to defend this action against Defendant Straszkowski, and to satisfy any judgment entered against him, by virtue of WIS. STAT. § 895.46.

COUNT 2:
42 U.S.C. § 1983 Claim for Unlawful Search of Person

65. Plaintiff realleges the above paragraphs.

66. Defendant Straszkowski unlawfully searched Plaintiff's person when he patted him down. The search was unlawful because it stemmed from an unlawfully extended seizure, and because there was no reason to suspect Plaintiff was armed or dangerous.

67. Defendant Straszkowski thus violated Plaintiff's Fourth Amendment rights to be free from unreasonable search.

68. The aforementioned actions of Defendant Straszkowski were the direct and proximate cause of the constitutional violations set forth above and of Plaintiff's injuries and set forth above.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 & 1988, Plaintiff demands actual or compensatory damages against Defendant Straszkowski and because he acted maliciously, wantonly, or oppressively, punitive damages, the costs of this actions, attorneys' fees, and such other further relief that the Court deems just and equitable. Additionally, Plaintiff asks this Court to find the Village of Lake Hallie is liable to defend this action against Defendant Straszkowski, and to satisfy any judgment entered against him, by virtue of WIS. STAT. § 895.46.

COUNT 3:
42 U.S.C. § 1983 Claim for Unlawful Search of Vehicle

69. Plaintiff realleges the above paragraphs.

70. Defendant Straszkowski unlawfully searched Plaintiff's vehicle. The search was unlawful because it stemmed from an unlawfully extended seizure, and there was no reasonable suspicion or probable cause that anything was in the car.

71. Defendant Straszkowski thus violated Plaintiff's Fourth Amendment rights to be free from unreasonable search.

72. The aforementioned actions of Defendant Straszkowski were the direct and proximate cause of the constitutional violations set forth above and of Plaintiff's injuries and set forth above.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 & 1988, Plaintiff demands actual or compensatory damages against Defendant Straszkowski and because he acted

maliciously, wantonly, or oppressively, punitive damages, the costs of this actions, attorneys' fees, and such other further relief that the Court deems just and equitable. Additionally, Plaintiff asks this Court to find the Village of Lake Hallie is liable to defend this action against Defendant Straszkowski, and to satisfy any judgment entered against him, by virtue of WIS. STAT. § 895.46.

JURY DEMAND

Plaintiff hereby demands a trial by jury, pursuant to FED. R. CIV. PRO. 38(b), on all issues so triable.

Respectfully submitted,

Dated: 3 May 2023,

/s/ James Odell
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