

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DEMETRIUS WILLIAMS,

And

JOHN K. PATTERSON,

Plaintiffs,

v.

ERIK H. MICHALSEN,

MICHAEL A. POWELL,

And

WAUKESHA COUNTY,

Defendants.

COMPLAINT

Civil Action No. 2:19-cv-00056

[Trial By Jury Demanded]

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiffs Demetrius Williams and John K. Patterson, by their attorneys, the law firm of Gingras, Cates & Wachs, LLP, by Attorneys Mark L. Thomsen and William F. Sulton, and as for their claims for relief against the above-named Defendants, allege and show the Court as follows:

INTRODUCTION

1. This action is brought to redress the racial profiling of Plaintiffs Demetrius Williams and John K. Patterson, both pastors, because they are African-Americans, in violation of 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the U.S. Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims under federal law in this complaint under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4).

3. Venue is proper before this Court under 28 U.S.C. § 1391(b)(2).

THE PARTIES

4. Plaintiff Demetrius Williams (“Williams”) is an African-American man and a pastor residing and domiciled in the City and County of Milwaukee, Wisconsin. Williams leads Community Baptist Church of Greater Milwaukee. He holds a doctorate in theology from Harvard Divinity School and has taught at Tulane University, Marquette University and the University of Wisconsin-Milwaukee.

5. Plaintiff John K. Patterson (“Patterson”) is an African-American man and a pastor residing and domiciled in the City and County of Milwaukee, Wisconsin. He leads Mt. Olive Baptist Church in Milwaukee. Patterson is a graduate of Cardinal Stritch University and has a master’s degree in religious studies from Trinity Evangelical Divinity University in Illinois.

6. Defendant Erik H. Michalsen (“Deputy Michalsen”) is a white man and sheriff’s deputy employed by Waukesha County, Wisconsin.

7. Defendant Michael A. Powell (“Deputy Powell”) is a white man and sheriff’s deputy employed by Waukesha County, Wisconsin. Deputy Powell is also Deputy Michalsen’s field training officer.

8. Defendant Waukesha County (“Waukesha County”) is a municipal entity in the State of Wisconsin. Acting through its Office of the Sheriff, Waukesha County is responsible for the training, supervision and discipline of sheriff’s deputies; adopting, implementing and enforcing policies and practices; and ensuring that the treatment of people complies with the United States Constitution and other federal, state and local laws. Waukesha County is liable for the harm alleged herein, and pursuant to Wis. Stat. § 895.46(1)(a), Waukesha County is required to pay or indemnify all judgments, including compensatory and punitive damages, attorney’s fees and costs that may be awarded against its officials, employees and agents.

FACTS

9. On May 1, 2018, Plaintiffs traveled to the Rock River in Jefferson County to fish. The fishing trip was successful and there were fish in the cooler for dinner later.

10. Plaintiffs were returning to Milwaukee, traveling eastbound on Interstate 94 through Waukesha County in a Chevy Silverado with a boat trailer.

11. A tire on the boat trailer became flat and Plaintiffs pulled over to the side of the road. Plaintiffs called an insurance company for roadside assistance and were told a tow truck would arrive within 30 to 40 minutes.

12. Shortly thereafter, Deputies Michalsen and Powell pulled up in a squad car, with its lights activated, behind Plaintiffs' disabled vehicle. Deputy Michalsen was a probationary deputy. Deputy Powell was Deputy Michalsen's field training officer.

13. Deputy Michalsen exited the squad car and approached Patterson (who was in the driver's seat).

14. Plaintiffs told Deputy Michalsen that they were pulled over because a tire was flat and that a tow truck would arrive soon.

15. Per Waukesha County policy number 6.10, deputies are required to stop for all disabled vehicles unless a courtesy tag has been affixed to the vehicle or exigent circumstances dictate otherwise.

16. Per Waukesha County policy number 6.10, a vehicle that is not a hazard and does not interfere with the flow of traffic, like Plaintiffs' vehicle, may remain on the side of road for 48 hours or more.

17. Nonetheless, and without legal justification, Deputy Michalsen treated the incident, not as a disabled vehicle, but as a stop per Waukesha County policy number 6.07. Deputy Powell, Deputy Michalsen's field training officer, deliberately failed to intervene.

18. Deputy Michalsen asked Plaintiffs whether they had any guns or drugs. Plaintiffs told Deputy Michalsen that they were pastors, had neither guns nor drugs, and were simply waiting for a tow truck that had been called.

19. Deputy Michalsen demanded Plaintiffs' driver's licenses. When Williams (who was sitting in the passenger seat) questioned why Deputy Michalsen needed that information, Deputy Michalsen walked around the vehicle and approached Williams. Deputy Michalsen again demanded Plaintiffs' driver's licenses. Plaintiffs complied.

20. After receiving Plaintiffs' driver's licenses, Deputy Michalsen ran warrant checks. The checks revealed that there were no warrants.

21. At the time Deputy Michalsen questioned Plaintiffs about guns and drugs, demanded their driver's licenses and ran warrant checks, Deputies Michalsen and Powell knew that Plaintiffs were legally pulled over to the side of road because of a flat tire and that the vehicle was not a hazard.

22. At the time Deputy Michalsen questioned Plaintiffs about guns and drugs, demanded their driver's licenses and ran warrant checks, Deputies Michalsen and Powell knew they lacked reasonable suspicion to stop Plaintiffs.

23. Had Plaintiffs been white this would not have happened.

24. Susan Herro ("Herro") is a white woman. Prior to Plaintiffs' incident, Herro's vehicle was stranded off Interstate 94 and Highway 67 in Waukesha County. A Waukesha County sheriff deputy arrived. The deputy did not stop

Herro. The deputy did not inquire about whether Herro had a gun or drugs. The deputy did not ask for Herro's driver's license nor did he run a warrant check.

25. At the time of the events complained of herein, Plaintiffs had a clearly established constitutional right under the Fourth Amendment to be secure in their person against unreasonable seizures.

26. Any reasonable law enforcement officer knew or should have known of this clearly established right.

27. Instead of treating Plaintiffs as needing help per the disabled vehicle policy, Deputies Michalsen and Powell intentionally, knowingly and recklessly questioned Plaintiffs about guns and drugs, demanded their driver's licenses, and ran warrant checks without any reasonable suspicion of any criminal wrongdoing.

28. Deputies Michalsen and Powell did not at any time have reasonable suspicion or any other legally valid basis to believe that Plaintiffs had committed or were committing any violation of law.

29. Deputies Michalsen and Powell's actions were objectively unreasonable in light of the circumstances confronting him.

30. Deputies Michalsen and Powell's actions were undertaken intentionally, maliciously, willfully, wantonly and/or in reckless disregard of Plaintiffs' federally protected civil rights.

31. As a direct result of Deputies Michalsen and Powell's unlawful acts and omissions, Plaintiffs sustained damages, including, among others, emotional

pain, suffering, inconvenience, mental anguish, loss of enjoyment life, and other nonpecuniary losses.

32. The unlawful acts and omissions of Deputies Michalsen and Powell were the legal and proximate cause of Plaintiffs' damages.

33. At all times relevant to the claims in this complaint, Deputies Michalsen and Powell were acting under color law and within the scope of their employment as a law enforcement officers for Waukesha County.

**Violations of Fourteenth Amendment
Against Deputies Michalsen and Powell**

34. Plaintiffs incorporate here all other paragraphs alleged in this complaint.

35. Deputies Michalsen and Powell approached Plaintiffs' vehicle because it was disabled on the highway. Instead of treating the encounter as a disabled vehicle per policy, Deputies Michalsen and Powell treated the encounter as a traffic stop. They did this because of Plaintiffs' race.

36. At the time of the events complained of herein, Plaintiffs had the clearly established constitutional right to enjoy equal protection of the laws and to be free from Deputy Michalsen's discrimination based on race and condoned or ratified by Deputy Powell.

37. Plaintiffs also had the clearly established constitutional right to enjoy the equal protection of the laws and to be free from intentional discrimination in

the form of arbitrary and irrational treatment that differs from the treatment of similarly situated individuals.

38. Any reasonable law enforcement officer knew or should have known of these clearly established rights.

39. Plaintiffs' race was a motivating factor in Deputies Michalsen and Powell's decision to target Plaintiffs.

40. Deputies Michalsen and Powell's conduct was undertaken with the purpose of, and had the effect of, depriving Plaintiffs of the equal protection and benefits of the law and equal privileges and immunities under the law.

41. Deputies Michalsen and Powell treated Plaintiffs less favorably than their similarly situated non-African-American counterparts.

42. Deputies Michalsen and Powell's actions were objectively unreasonable in light of the facts and circumstances confronting them.

43. There was no rational basis for Deputies Michalsen and Powell's discriminatory actions, let alone a purpose narrowly tailored to serve a compelling governmental interest.

44. Deputies Michalsen and Powell intentionally, willfully, and wantonly targeted Plaintiffs because of their racial identity and they unlawfully treated them less favorably than individuals who were similarly situated in every material respect.

45. Deputies Michalsen and Powell's differential treatment was wholly arbitrary and irrational and unconstitutional.

46. As a result of Deputies Michalsen and Powell's unlawful conduct, Plaintiffs sustained damages, including, among others, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment life, and other nonpecuniary losses.

COUNT TWO
Violations of Fourth Amendment
Against Deputies Michalsen and Powell

47. Plaintiffs incorporate here all other paragraphs alleged in this complaint.

48. Deputies Michalsen and Powell unlawfully transformed a disabled vehicle encounter into a stop. Deputy Michalsen extended the stop of Plaintiffs by questioning Plaintiffs about guns and drugs, demanding their driver's licenses, performing warrant checks.

49. At the time of Deputies Michalsen and Powell's unlawful conduct, they knew they lacked reasonable suspicion treat the encounter as a stop, question Plaintiffs about guns and drugs, demand Plaintiffs' driver's licenses and run warrant checks.

50. As a result of Deputies Michalsen and Powell's unlawful conduct, Plaintiffs sustained damages, including, among others, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment life, and other nonpecuniary losses.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request judgment in their favor and against Defendants, jointly and severally, awarding Plaintiffs:

- A. Compensatory damages in an amount to be determined by a jury.
- B. Punitive damages in an amount to be determined by a jury.
- C. Reasonable costs and expenses, without limitation to attorneys and experts' fees under 42 U.S.C. §§ 1988(b) and (c).
- D. An order awarding such other and further relief as this Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury pursuant to Fed.R.Civ.P. 38(b) and the Seventh Amendment to the United States Constitution.

Dated at the law offices of GINGRAS CATES & WACHS LLP, in Waukesha,
Wisconsin, on this 9th day of January, 2019.

Respectfully Submitted,
GINGRAS CATES & WACHS LLP

/s/ Mark L. Thomsen
Mark L. Thomsen

/s/ William F. Sulton
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