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Robert Ekas
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**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON**

Robert Ekas, in pro per,)
)
 Plaintiff,)
)
 vs.)
)
 Clackamas County Sheriff's)
 Office, Deputy Marcus Wold,)
 Deputy Steve Shelley, Sgt. John)
 Naccarato, and Does 1-10 to be)
 named in Discovery,)
)
 Defendants.)

CV '09 - 831 - - AC
Civil Case No: _____

(Jury trial requested)

Complaint

1. This is an action for declaratory judgment and money damages brought under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution against the Clackamas County Sheriff's Office (hereinafter "CCSO"). This action is also against Deputy Marcus Wold (hereinafter "Wold"), Deputy Steve Shelley (hereinafter

28049

“Shelley”), and Sergeant John Naccarato (hereinafter “Naccarato”), the officers who committed the acts complained of herein. Plaintiff alleges that the CCSO has a custom, pattern, practice, and/or policy of authorizing its deputies to conduct illegal traffic stops, to detain unlawfully, and/or issue false citations upon citizens based on their use of speech protected by the First Amendment. Pursuant to this custom, pattern, practice, policy, and/or the failure of the CCSO to appropriately train and/or discipline, Wold conducted an unlawful vehicle stop and detained Plaintiff without probable cause or reasonable suspicion, Wold issued a citation without appropriate legal foundation, which he later maliciously prosecuted, Shelley conducted an unlawful vehicle stop and detained Plaintiff without probable cause or reasonable suspicion, Naccarato harassed, threatened to unlawfully arrest, and detained Plaintiff without probable cause or reasonable suspicion, based solely on Plaintiff’s conduct of ‘flipping the bird’ to Wold and Shelley on two separate dates.

Jurisdiction

2. This Court has original jurisdiction over Plaintiff’s federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) and 42 U.S.C. § 1983. This Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

Parties

3. Plaintiff, Robert Ekas, is an adult residing within the district in Clackamas, Oregon.

4. Defendant, CCSO, is a municipal government entity organized under the laws of Oregon, with offices within the district in Oregon City, Oregon and Clackamas, Oregon. The CCSO has a legal responsibility to operate according to the laws of the United States and the State of Oregon, including, but not limited to, the United States Constitution.

5. Defendant Wold is a deputy sheriff employed by and acting under the authority of the CCSO. Plaintiff names Wold in his individual capacity.

6. Defendant Shelley is a deputy sheriff employed by and acting under the authority of the CCSO. Plaintiff names Shelley in his individual capacity.

7. Defendant Naccarato is a deputy sheriff and sergeant employed by and acting under the authority of the CCSO. Plaintiff names Naccarato in his individual capacity.

8. At all relevant times, the Defendants acted under color of state law. At all relevant times, Defendants acted within the scope of their employment by Defendant, the CCSO.

General Allegations

A. Allegations of Defendant Wold's Unlawful Vehicle Stop, Detention,

Citation, and Malicious Prosecution

9. On July 22, 2007, Plaintiff, while executing a right hand turn from OR-212 (westbound), onto the onramp for I-205 (northbound), gave Wold 'the finger' while Wold was in a marked patrol vehicle of the CCSO.

10. Wold, having observed Plaintiff's gesture, did initiate a pursuit of Plaintiff's vehicle making interception a mile away on 82nd Ave (northbound).

11. Plaintiff observed Wold approaching at a high rate of speed in his rear view mirror and Plaintiff did then open his sunroof and extend the middle finger of his right hand in the direction and clear view of Wold in defiance of his pursuit and interception.

12. After Plaintiff, with Wold directly behind him, crossed the intersection of 82nd Ave and Sunnyside Rd, Wold changed lanes and came up along the right side of Plaintiff's vehicle,

13. Wold was gesturing angrily but gave no command to Plaintiff to pull his vehicle over for a traffic stop.

14. Upon observing Wold's angry gesticulations, Plaintiff again gave him the finger.

15. Wold then assumed a position behind Plaintiff's vehicle at a distance of ten (10) feet or less and proceeded to follow at an unsafe distance.

16. Plaintiff changed lanes to avoid Wold and Wold, cutting off another driver, maintained his pursuit. When Plaintiff executed a lawful right hand turn onto Otty Rd (eastbound), Wold followed and activated his overhead lights initiating an unlawful vehicular stop.

17. Plaintiff promptly pulled off the road and exited the vehicle and stated to Wold, "Your traffic stop is illegal and you will answer for it. I have called 911 and your supervisor will be on scene shortly." Wold then placed his hand on his firearm, unsnapped the holster catch, and ordered the Plaintiff back into his vehicle.

18. The Plaintiff re-entered his vehicle and again called 911 to report the erratic and threatening behavior of Wold and to request that the supervisor be dispatched without delay.

19. Wold approached Plaintiff's vehicle and demanded license, registration, and proof of insurance. Plaintiff informed Wold that the 911 dispatcher has dispatched a supervisor to the scene who would be arriving shortly. It was Plaintiff's desire to avoid further confrontation and allow Wold's supervisor to reign him in.

20. Wold, visibly shaken with rage, shouted, "Give me your license, registration, and proof of insurance or I will take your ass to jail!" Plaintiff did pass to Wold the requested documents out of the sunroof of his vehicle.

21. After detaining Plaintiff for approximately 90 minutes Wold did issue two citations alleging violations of ORS 803.550 and 811.375

22. At no time during the events described was Plaintiff intoxicated, incapacitated, a threat to himself or others, or disorderly. Plaintiff did not commit any criminal or traffic offenses.

23. On September 26, 2007 Wold did prosecute Plaintiff in the Night Court of Clackamas County in front of presiding justice, Knauss, for the citations he issued on July 22, 2007, violations of ORS 811.375 and ORS 803.550.

24. Regarding the alleged violation of ORS 811.375, unlawful lane change, no such violation occurred. A witness to the events gave testimony that the violation never occurred.

25. Regarding the alleged violation of ORS 803.550, the illegal alteration or display of plates, Plaintiff did move that the citation be dismissed as a matter of law because Wold was barred from issuing aforementioned citation by ORS 803.550(2)(b) and ORS 803.550(2)(c).

26. After hearing testimony from Wold, the Plaintiff, and Plaintiff's witness, Justice Knauss did acquit Plaintiff of all charges.

27. As a direct and proximate result of Wold's actions, Plaintiff suffered the following injuries and damages:

- a. Violation of his rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from criminal prosecution or to be retaliated against in any way for engaging in constitutionally protected speech;
- b. Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from an unreasonable search and seizure of his person;
- c. Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from malicious prosecution;
- d. Loss of his physical liberty; and
- e. Physical pain and suffering, emotional trauma, humiliation, and distress.

B. Allegations of Defendant Shelley's Unlawful Vehicle Stop and Detention

28. On August 30, 2007, Plaintiff, traveling on SE 122nd Ave (northbound) did observe an oncoming vehicle traveling on 122nd Ave (southbound) marked as a patrol vehicle of the CCSO. Plaintiff did roll down the driver's side window and present the middle finger to the deputy operating the vehicle, who was later identified as Defendant Shelley.

29. As the Plaintiff passed Shelley he did observe in his rearview that Shelley did execute an immediate U-turn and initiate a pursuit of Plaintiff.

30. Plaintiff turned left onto SE Summer Pl (westbound) with Shelley immediately behind and following.

31. Shelley followed the Plaintiff for a few blocks and then activated his overhead lights and conducted an unlawful vehicle stop.

32. Plaintiff pulled over shortly after observing the flashing lights by turning right onto SE Springercrest Dr.

33. Shelley pulled alongside of Plaintiff's stopped vehicle and de-activated his overhead lights. Shelley asked Plaintiff if he was attempting to flag him down. The Plaintiff answered in the negative and informed Shelley that his vehicular stop was an unlawful violation of Plaintiff's civil rights.

34. Shelley then re-activated his emergency lights and placed his patrol vehicle into reverse and backed into a position directly behind the Plaintiff's stopped vehicle, affecting a second unlawful traffic stop.

35. As this was the third unlawful traffic stop and civil rights violation from employees of the Defendant, CCSO, the Plaintiff did call 911 and request the intervention of a supervisor or the State Police.

36. Shelley did receive Plaintiff's license, registration, and proof of insurance upon request, which, after a good deal of time had elapsed, Shelley passed Plaintiff's documents to Defendant Naccarato.

37. Shelley had no further contact with the Plaintiff and no citation was issued nor did Shelley communicate any probable cause for his re-activation of emergency lights and subsequent detention of the Plaintiff.

38. At no time during the events described above was Plaintiff intoxicated, incapacitated, a threat to himself or others, or disorderly. Plaintiff did not commit any criminal or vehicular offenses.

39. As a direct and proximate result of Shelley's actions, Plaintiff suffered the following injuries and damages:

- a. Violation of his rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from criminal prosecution or to be retaliated against in any way for engaging in constitutionally protected speech;
- b. Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from an unreasonable search and seizure of his person;
- c. Loss of his physical liberty; and
- d. Physical pain and suffering, emotional trauma, humiliation, and distress.

C. Allegations of Defendant Naccarato's Unlawful Detention

40. A few minutes after Naccarato had arrived on scene he did approach Plaintiff's vehicle with Plaintiff's license, registration, and proof of insurance in his possession. Naccarato then asked the Plaintiff, "What's the problem here?"

41. Plaintiff responded with a brief synopsis of the events listed in Part B (Allegations involving Shelley) of this complaint.

42. Naccarato then asked the Plaintiff, "Why do you hate Sheriffs?"

43. Plaintiff replied that the only topic available for discussion was Defendant Shelley's unlawful stop and the forthcoming departmental complaint.

44. Plaintiff did then make a demand to Naccarato for the immediate return of the documents surrendered to Defendant Shelley (Plaintiff's license, registration, and proof of insurance), or that he be cited for an offense.

45. Naccarato became hostile and returned to the Plaintiff his vehicular registration and proof of insurance and instructed Plaintiff to file his complaint at the North Clackamas Station.

46. Plaintiff again demanded that the remaining document in Naccarato's possession, Plaintiff's driver's license, be returned forthwith or that the Plaintiff be cited for an offense.

47. Naccarato responded with, "How about I arrest you and take you to jail for abuse of the 911 system?" To which Plaintiff responded, "Do what you have to do, but do it or release me."

48. Naccarato then questioned Plaintiff about the window tinting on Plaintiff's vehicle and Plaintiff responded that the tinting was in compliance with state law as certified by the installer.

49. Plaintiff offered to produce the Certificate of Compliance that would put to rest any question about the legality of the window tint.

50. Naccarato refused to inspect the Certificate and instead stated, "If you're in compliance then you won't mind if I take some measurements, will you?"

51. Plaintiff responded, "Do whatever you have to but you'll do it without consent."

52. Naccarato told Plaintiff, "OK, so when you leave here I'll just pull you over again and cite you for illegal window tinting. What do you think of that?"

53. Plaintiff told Naccarato, "Look, do whatever it is you're going to do but do it or release me. Is that clear?"

54. Naccarato, in the presence of Plaintiff's twelve year old son threw Plaintiff's license into the car and said, "Grow up and teach your kid some respect!" Naccarato then walked away from Plaintiff's vehicle.

55. At no time during the events described above was Plaintiff intoxicated, incapacitated, a threat to himself or others, or disorderly. Plaintiff did not commit any criminal or vehicular offenses.

56. As a direct and proximate result of Naccarato's actions, Plaintiff suffered the following injuries and damages:

- a. Violation of his rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from criminal prosecution or to be retaliated against in any way for engaging in constitutionally protected speech;
- b. Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from an unreasonable search and seizure of his person;
- c. Loss of his physical liberty; and
- d. Physical pain and suffering, emotional trauma, humiliation, and distress.

D. Allegations regarding Defendant CCSO

57. On, or about, July 23, 2007 Plaintiff did file a formal complaint, by hand delivery to the CCSO office at the North Clackamas Station, regarding Defendant Wold's unlawful stop.

58. On, or about, August 27, 2007 the CCSO responded to Plaintiff's complaint about Wold and deemed it unfounded.

59. On September 26, 2007, while under oath, Wold did admit to observing Plaintiff's gesture and the subsequent events that followed.

60. Therefore, upon information and belief, the CCSO, by virtue of custom, pattern, practice, policy, and/or failure to appropriately train and/or discipline, authorizes its Deputy Sheriffs to act in an unconstitutional fashion by allowing and/or ignoring the civil rights violations of personnel acting under the authority of the CCSO.

61. Upon information and belief, Defendant the CCSO policymakers and officials are deliberately indifferent, fail to appropriately train, and/or discipline its deputies regarding unlawful traffic stops and/or detentions as a punitive response to protected speech.

COUNT I

62. Defendant Wold's vehicle stop and subsequent detention, in retaliation against the Plaintiff for engaging in constitutionally protected speech, violated the First and Fourth Amendments to the United States Constitution, as they are applied to the states through the Fourteenth Amendment to the United States Constitution.

COUNT II

63. Defendant Shelley's vehicle stop and subsequent detention, in retaliation against the Plaintiff for engaging in constitutionally protected speech, violated the First and Fourth Amendments to the United States Constitution, as they are applied to the states through the Fourteenth Amendment to the United States Constitution.

COUNT III

64. Defendant Naccarato's detention, in retaliation against the Plaintiff for engaging in constitutionally protected speech, violated the First and Fourth Amendments to the United States Constitution, as they are applied to the states through the Fourteenth Amendment to the United States Constitution.

COUNT IV

65. Defendant Wold's prosecution of Plaintiff without appropriate legal foundation violated his Fourth Amendment right to be free from malicious prosecution, as that right is applied to the states by the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Robert Ekas, requests that this Honorable Court grant the following relief:

- a. Enter a declaratory judgment that the Defendants Wold and Shelley violated the First Amendment rights of the Plaintiff, as applied to the states by the Fourteenth Amendment to the United States Constitution,

when they, in retaliation to Plaintiff's protected speech, conducted their traffic stops;

- b. Enter a declaratory judgment that the Defendants Wold, Shelley, and Naccarato violated the First and Fourth Amendment rights of the Plaintiff, as applied to the states by the Fourteenth Amendment to the United States Constitution, when they, in retaliation to Plaintiff's protected speech, unlawfully detained Plaintiff without reasonable suspicion or probable cause.
- c. Enter a declaratory judgment that the Defendant Wold violated the Fourth Amendment rights of the Plaintiff, as applied to the states by the Fourteenth Amendment to the United States Constitution, when he maliciously prosecuted the Plaintiff on citations he authored that lacked the appropriate legal foundation.
- d. Enter a declaratory judgment that the Defendant CCSO, a municipality, has a custom, pattern, practice, and/or policy of promoting, ignoring, and/or failing to discipline personnel acting under its authority who retaliate against, and chill, citizens' First Amendment free speech rights;
- e. Enter an award for compensatory damages against all Defendants, jointly and severally, and enter an award for punitive damages against Defendants Wold, Shelley, and Naccarato in amounts to be determined at trial;
- f. Enter an award for costs, expenses, and counsel fees pursuant to 42 U.S.C. § 1988; and

- g. Enter such other relief, as this Honorable Court may deem just and deserving.

Dated: July 20, 2009

A handwritten signature in black ink, appearing to be 'R. Ekas', written over a horizontal line.

Robert Ekas, in pro per