

**STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION**

GREGORY BOMBARD,
Plaintiff,

v.

JAY RIGGEN, Vermont State Police
Trooper, and STATE OF VERMONT
Defendants.

Washington Unit
Docket No.

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. This is a civil rights action pursuant to 42 U.S.C. § 1983, the Vermont Constitution, and Vermont common law seeking declaratory relief and monetary damages stemming from Defendant Vermont State Police Trooper Jay Riggen's unconstitutional and retaliatory seizures of Plaintiff Gregory Bombard on February 9, 2018 in St. Albans, Vermont.

2. Defendant Riggen first stopped Mr. Bombard's vehicle because he believed that Mr. Bombard "extended and displayed his left middle finger over his steering wheel," which Defendant Riggen "understood to be a negative gesture" directed at him.

3. In this jurisdiction it is clearly established law that it is unlawful for a police officer to stop a vehicle upon a perception that the motorist made an insulting gesture at the officer, whether purportedly to investigate crime or the well-being of the gesturer. See *Schwartz v. Insogna*, 704 F.3d 105, 110-11 (2d Cir. 2013) (holding that the "nearly universal recognition that" giving the middle finger is an insult renders unreasonable a

police officer's interpretation of the gesture "as a signal of distress," and "it is far more consistent with all citizens' protection against improper police apprehension to leave that highly unlikely signal without a response than to lend judicial approval to the stopping of every vehicle from which a passenger makes that gesture").

4. Mr. Bombard denied and denies making any such gesture or communication that caused Defendant Riggen to initially stop and detain him.

5. After the initial stop and detention concluded, and as Defendant Riggen entered his police cruiser, Mr. Bombard cursed from inside his vehicle.

6. As Mr. Bombard pulled his car into the road, he displayed his middle finger.

7. Defendant Riggen again stopped Mr. Bombard's vehicle, then ordered Mr. Bombard from his vehicle and arrested him.

8. During the arrest, Defendant Riggen told Mr. Bombard that Mr. Bombard's expressions of protest and displeasure with Defendant Riggen's actions were "disorderly conduct 101," and that his "behavior [was] ridiculous."

9. Defendant Riggen also seized Mr. Bombard's vehicle through the use of a tow service, allegedly because Defendant Riggen stopped Mr. Bombard in front of a "no parking" sign.

10. Mr. Bombard was jailed and held at the Vermont State Police's St. Albans barracks for over an hour and was subsequently released on a citation to appear in criminal court.

11. Nearly a year after the stop and arrest, the criminal case was dismissed.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this dispute by virtue of 4 V.S.A. § 31.

13. Venue is proper in this territorial unit of the Court under 4 V.S.A. § 37 and 12 V.S.A. § 402(a) because Defendant State of Vermont resides in Washington County.

PARTIES

14. At all times relevant to this action, Plaintiff Gregory Bombard was and is an individual residing in St. Albans, Vermont.

15. At all times relevant to this action, Defendant Riggen acted under color of law as a uniformed Vermont State Police trooper employed by the state of Vermont, and in the ordinary course and scope of his employment.

16. Defendant Riggen was and is a “person” for purposes of 42 U.S.C. § 1983.

17. For the purposes of the state law claims based on Defendant Riggen’s acts or omissions within the scope of his employment, the State of Vermont is a proper Defendant under 12 V.S.A. § 5602(a).

18. At all times relevant to this action, Defendant Riggen acted in bad faith, including but not limited to, showing personal ill will toward Mr. Bombard, causing Mr. Bombard to incur damages.

FACTS

A. The First Stop and Detention

19. On February 9, 2018, at approximately 12:15 pm, Mr. Bombard drove south on North Main Street in St. Albans, Vermont.

20. At the same time, Defendant Riggen drove his cruiser north on North Main Street in St. Albans, Vermont.

21. As their vehicles passed each other, Defendant Riggen believed Mr. Bombard to have moved his hand or fingers in some manner.

22. Defendant Riggen believed that Mr. Bombard displayed his “middle finger” toward Defendant Riggen.

23. Defendant Riggen recognized the alleged gesture as an insulting gesture.

24. Defendant Riggen turned his cruiser around and merged into traffic directly behind Mr. Bombard’s car.

25. Defendant Riggen’s dashboard camera and body-worn microphone captured the video and audio of the stop.

26. Once behind Mr. Bombard’s vehicle, Defendant Riggen followed Mr. Bombard through the intersection at North Main Street and Lower Newton Road.

27. Defendant Riggen then turned on his siren to commence a traffic stop.

28. Mr. Bombard pulled his vehicle to the side of the road immediately.

29. After both vehicles stopped, Defendant Riggen exited his vehicle and walked to Mr. Bombard’s driver-side window.

30. Defendant Riggen confronted Mr. Bombard in an angry manner.

31. Mr. Bombard expressed confusion.

32. Defendant Riggen continued to express anger towards Mr. Bombard.

33. Defendant Riggen then told Mr. Bombard that “it looked like you flipped me off when you were going by there.”

34. Mr. Bombard expressed confusion and denied making any gesture or communication.

35. Defendant Riggen continued to question Mr. Bombard and attempted to justify the stop.

36. Defendant Riggen conceded that it is possible he was mistaken about Mr. Bombard making any gesture.

37. After several minutes of detaining Mr. Bombard through repeated questions and justifications, Defendant Riggen told Mr. Bombard that, “Once I realized that you weren’t flipping me off, you’re free to go.”

38. Toward the end of the detention, Mr. Bombard told Defendant Riggen that he would file a complaint against him.

39. Mr. Bombard also questioned the legality of the vehicle stop and detention.

40. Defendant Riggen then abruptly ended the interaction and walked to his cruiser.

B. The Second Stop and Arrest

41. Mr. Bombard was upset to be stopped and questioned by a state police trooper without a valid purpose.

42. As Mr. Bombard pulled away, he cursed, saying something to the effect of “asshole” and “fuck you,” and showed his middle finger.

43. Defendant Riggen witnessed these expressions from his cruiser.

44. Defendant Riggen followed Mr. Bombard, and after Mr. Bombard signaled to turn onto Brainerd Street, Defendant Riggen subjected Mr. Bombard to a second stop.

45. As shown in the cruiser camera video, Defendant Riggen ordered Mr. Bombard to exit his car and informed Mr. Bombard that he was under arrest for disorderly conduct.

46. Mr. Bombard was again confused as to how his expressions could amount to a crime.

47. Defendant Riggen told Mr. Bombard that his “profane behavior in public” was disorderly conduct.

48. Defendant Riggen repeated that Mr. Bombard’s expressions were “profane behavior in public,” which constituted disorderly conduct.

49. Defendant Riggen told Mr. Bombard that “yelling ‘asshole’ in front of dozens of people is disorderly conduct 101.”

50. Mr. Bombard exited his vehicle and Defendant Riggen ordered Mr. Bombard to walk toward the police cruiser.

51. Mr. Bombard placed his hands on the cruiser, and Defendant Riggen patted him down and placed handcuffs on his wrists.

52. Mr. Bombard continued to question the legality of his arrest and how expressions of protest against a police action could constitute a crime.

53. Defendant Riggen repeated that using profanity in public constituted disorderly conduct.

54. Throughout the second stop which culminated in Mr. Bombard’s arrest, Defendant Riggen displayed anger towards Mr. Bombard as a result of Mr. Bombard’s alleged and actual expressions of free speech.

55. After Defendant Riggen further harangued Mr. Bombard for his alleged and actual expressions, he placed Mr. Bombard in the back of his police cruiser.

56. Mr. Bombard asked what would happen to his car.

57. Defendant Riggen noted the “no parking” street sign in front of Mr. Bombard’s car.

58. Defendant Riggen then told Mr. Bombard that his car would be towed because it was illegally parked.

59. Defendant Riggen denied Mr. Bombard's request to drive his car to the barracks.

60. Defendant Riggen acted unreasonably when he ordered Mr. Bombard's vehicle towed from a local residential street.

61. Defendant Riggen transported Mr. Bombard to the St. Albans barracks and jailed him.

62. Upon being jailed, Mr. Bombard continued to question the legality of his arrest.

63. Defendant Riggen told Mr. Bombard that he would be jailed until the Franklin County State's Attorney told the Vermont State Police how or whether he would be charged.

64. Mr. Bombard asked that the Franklin County State's Attorney be told that he intended to contact the American Civil Liberties Union about Defendant Riggen's actions against him.

65. Mr. Bombard was jailed and held for over an hour.

66. At the orders of Defendant Riggen, Mr. Bombard's car was towed.

67. Vermont State Police employees took Mr. Bombard's fingerprints and photograph.

68. Mr. Bombard was eventually released with a citation to appear in Franklin County District Court.

69. Later that afternoon, Defendant Riggen distributed information regarding Mr. Bombard's arrest for disorderly conduct, along with Mr. Bombard's mugshot, to a number of media outlets via an email to the "VSP media listserv."

70. In the days after February 9, 2018, Mr. Bombard saw articles describing his arrest in two local newspapers, based on the Defendant Riggen's email to the "VSP media listserv."

71. Mr. Bombard also saw his mugshot and Defendant Riggen's description of the arrest on the Vermont State Police's press release webpage.

72. Since Defendant Riggen's actions against Mr. Bombard for his alleged and actual use of curse words and an insulting gesture to protest Defendant Riggen's actions, Mr. Bombard's ability to speak-out similarly has been and continues to be chilled.

73. As a result of Defendant Riggen's actions, Mr. Bombard was caused to incur the cost of retrieving his vehicle from impoundment.

C. The Prosecution of Mr. Bombard for Disorderly Conduct

74. Defendant Riggen submitted an affidavit of probable cause, describing his version of the events of February 9, 2018, to the Franklin County State's Attorney.

75. The Franklin County State's Attorney charged Mr. Bombard with disorderly conduct under 13 V.S.A. § 1026(a)(1) based upon, *inter alia*, what was contained in the affidavit.

76. On August 31, 2018, the Court denied Mr. Bombard's V.R.Cr.P. 12(d) motion to dismiss the charge for lack of prima facie case, based on an assertion in Defendant Riggen's affidavit that Mr. Bombard allegedly needed to "stop short" when he reentered the roadway after the initial traffic stop.

77. On November 21, 2018, the Franklin County State's Attorney filed a second charge of Disorderly Conduct against Mr. Bombard based upon the same event, for "recklessly create[ing] a risk of public annoyance by obstructing vehicular traffic, in violation of 13 V.S.A. § 1026(a)(5)."

78. On December 17, 2018, the Court granted Mr. Bombard's V.R.Cr.P. 12(d) motion to dismiss the § 1026(a)(5) charge for lack of a prima facie case because "[o]ne cannot be convicted of obstructing traffic by simply conveying offensive messages or ideas" and "the DVD video of the incident does not show any time when the Defendant or his vehicle physically obstructed traffic"

79. Mr. Bombard did not cause any passing vehicles to deviate from their course upon re-entering the road after the initial stop.

80. On January 18, 2019, nearly a year after the stop, the Franklin County State's Attorney dismissed count one and no judgment was entered.

81. Mr. Bombard was caused to incur attorney's fees and expenses as a result of defending against the charges discussed above.

CLAIMS FOR RELIEF

COUNT I – Defendant Riggen's Initial Stop Violated Mr. Bombard's Rights to Be Free from Unreasonable Seizure and False Arrest

(Pursuant to 42 U.S.C. § 1983, Article 11 of the Vermont Constitution, Tort of False Arrest)

Defendant Riggen, Defendant State of Vermont (State claims only)

82. Paragraphs 1 through 81 are incorporated by reference as if set forth at length here.

83. Mr. Bombard has a constitutionally protected liberty interest in being free from unreasonable seizures under the Fourth Amendment to the U.S. Constitution and Article 11 of the Vermont Constitution.

84. Defendant Riggen subjected Mr. Bombard to the initial vehicle stop because he believed Mr. Bombard gave him the "middle finger."

85. Defendant Riggen did not believe that Mr. Bombard had committed a motor vehicle violation, traffic infraction, or any other crime.

86. The vehicle stop on the belief that Mr. Bombard gave Defendant Riggen the middle finger was a violation of Mr. Bombard's right to be free from unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution and Article Eleven of the Vermont Constitution.

87. The stop and unlawful detention of Mr. Bombard constituted a false arrest by Defendant Riggen of Mr. Bombard.

88. As a result of Defendant Riggen's violation of his rights, Mr. Bombard suffered damages.

COUNT II – Defendant Riggen Initially Stopped Mr. Bombard in Retaliation for Mr. Bombard's Perceived Expression of Constitutionally Protected Speech

(Pursuant to 42 U.S.C. § 1983, Article 13 of the Vermont Constitution)

Defendant Riggen, Defendant State of Vermont (State claim only)

89. Paragraphs 1 through 88 are incorporated by reference as if set forth at length here.

90. Mr. Bombard has constitutionally protected liberty interests in the exercise of his rights to free expression, to petition his government, and to protest his government under the First Amendment to the U.S. Constitution and Article Thirteen of the Vermont Constitution.

91. Giving the “middle finger” to protest a police officer’s actions constitutes expression that is protected by the First Amendment of the U.S. Constitution and Article Thirteen of the Vermont Constitution.

92. In direct response to perceiving Mr. Bombard to have exercised his constitutional rights protected by the First Amendment to the U.S. Constitution and Article Thirteen of the Vermont Constitution, Officer Riggen conducted the retaliatory vehicle stop and detention.

93. Defendant Riggen’s vehicle stop and detention of Mr. Bombard in retaliation for a perceived insulting gesture violated Mr. Bombard’s right to be free from retaliatory police action under the First Amendment to the U.S. Constitution and Article Thirteen of the Vermont Constitution.

94. As a result of the retaliatory stop, Mr. Bombard suffered damages.

COUNT III—Defendant Riggen Arrested Mr. Bombard in Retaliation for Constitutionally Protected Speech

(Pursuant to Article 13 of the Vermont Constitution)

All Defendants

95. Paragraphs 1 through 94 are incorporated by reference as if set forth at length here.

96. Mr. Bombard has constitutionally protected liberty interests in the exercise of his rights to free expression, to petition his government, and to protest his government under Article Thirteen of the Vermont Constitution.

97. Protesting the actions of a police officer by expressing displeasure and frustration through words and gestures constitutes speech that is protected by Article Thirteen of the Vermont Constitution.

98. In direct response to observing Mr. Bombard exercise his constitutional rights protected by Article Thirteen of the Vermont Constitution, Defendant Riggen arrested Mr. Bombard.

99. Defendant Riggen repeatedly told Mr. Bombard that the reasons for Mr. Bombard's arrest were his use of curse words and the middle finger gesture in public.

100. Defendant Riggen arrested Mr. Bombard in retaliation for his expressions.

101. Defendant Riggen's arrest of Mr. Bombard, among other actions, in retaliation for his constitutionally protected speech violated Mr. Bombard's right to be free from retaliatory arrests under Article Thirteen of the Vermont Constitution.

102. As a result of Defendant Riggen's violation of his rights, Mr. Bombard has suffered and continues to suffer damages.

COUNT IV – Defendant Riggen Seized Mr. Bombard's Vehicle in Retaliation for Mr. Bombard's Constitutionally Protected Speech

(Pursuant to Article 13 of the Vermont Constitution)

All Defendants

103. Paragraphs 1 through 102 are incorporated by reference as if set forth at length here.

104. Mr. Bombard has constitutionally protected liberty interests in the exercise of his rights to free expression, to petition his government, and to protest his government under Article Thirteen of the Vermont Constitution.

105. Protesting the actions of a police officer by expressing displeasure and frustration through curse words and insulting gestures constitutes speech that is protected by Article Thirteen of the Vermont Constitution.

106. In direct response to observing Mr. Bombard exercise his constitutional rights protected by Article Thirteen of the Vermont Constitution, Defendant Riggen sought to further retaliate against Mr. Bombard by seizing Mr. Bombard's car.

107. Defendant Riggen's seizure of Mr. Bombard's car in retaliation for his constitutionally protected speech violated Mr. Bombard's right to be free from retaliatory seizures under Article Thirteen of the Vermont Constitution.

108. As a result of Defendant Riggen's violation of his rights Mr. Bombard has suffered and continues to suffer damages.

COUNT V – Defendant Riggen's Actions Have Chilled Mr. Bombard's Speech in Violation of Constitutional Protections

(Pursuant to 42 U.S.C. § 1983, Article 13 of the Vermont Constitution)

Defendant Riggen, Defendant State of Vermont (State claim only)

109. Paragraphs 1 through 108 are incorporated by reference as if set forth at length here.

110. Mr. Bombard has constitutionally protected liberty interests in the exercise of his rights to free expression, to petition his government, and to protest his government under the First Amendment to the U.S. Constitution and Article Thirteen of the Vermont Constitution.

111. Giving the “middle finger” and using curse words to protest a police officer’s actions constitute expression that is protected by the First Amendment to the U.S. Constitution and Article Thirteen of the Vermont Constitution.

112. Defendant Riggen’s initial stop, second stop, and subsequent arrest of Mr. Bombard, and his seizure of Mr. Bombard’s vehicle, among other actions, have chilled and continue to chill Mr. Bombard’s exercise of his rights to protest the actions of police and express his complaints to similar government officials.

113. The resulting and ongoing chill of Mr. Bombard’s speech has caused and continues to cause him to suffer damages.

REQUEST FOR RELIEF

Mr. Bombard requests that this Court issue the following relief:

1. A declaration that Defendant Riggen’s actions were illegal;
2. Compensatory damages;
3. The costs and expenses of this action, including reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988(b); and
4. Any further relief that the Court determines to be just and equitable.

JURY DEMAND

Plaintiff Gregory Bombard demands a jury trial on all counts so triable.

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Dated: February 3, 2021

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