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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

JOSE DECASTRO,
Plaintiff,

Jason Adam Jensen,
Intervenor Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
STATE OF NEVADA,
BRANDEN BOURQUE,
JASON TORREY,
C. DINGLE,
B. SORENSON,
JESSE SANDOVAL,
C. DOOLITTLE,
and DOES 1 to 50,
Defendants.

Case No. 2:23-cv-00580-APG-EJY

Honorable Judge Andrew Patrick Gordon
Presiding

**JURY TRIAL DEMANDED BY RIGHT AND
PRIVILEGE**

INTERVENOR COMPLAINT

I. INTRODUCTION

1. This is a §1983 wrongful arrest and excessive force lawsuit. On March 15, 2023, Defendant LVMPD Officer Branden Bourque (“Ofc. Bourque”) arrested Plaintiff Jose DeCastro (“DeCastro”) for allegedly “obstructing a lawful traffic stop when he refused to comply with Ofc. Bourque’s commands to move away from the detainee.” DeCastro asserts numerous causes of action under the theory that LVMPD Defendants wrongfully arrested him for discriminatory reasons and for exercising his First Amendment right to film. On June 1st, 2023, the Defendants, the State, filed a precarious “Motion to Dismiss” of the majority of DeCastro’s claims for “failure to state a claim upon which relief can be granted pursuant to FRCP 12(b)(6)”. Specifically, the Motion requests the Court dismiss DeCastro’s:

- Fourth Amendment and Nevada state law false arrest and false imprisonment claims (first and eighth causes of action).
- Fourteenth Amendment discrimination claim (second cause of action).
- First Amendment retaliatory arrest claim (third cause of action).
- Monell claim against LVMPD (fourth cause of action).
- 42 U.S.C. §1981 discrimination claim (fifth cause of action).
- State law invasion of privacy claim (ninth cause of action).
- State law negligence claim (tenth cause of action).

2. The only claims defendants are not contesting are DeCastro’s Fourth Amendment excessive force claim (first cause of action) and Nevada state law claims for assault and battery (sixth and seventh causes of action).

II. PARTIES

3. Intervenor Plaintiff, Jason Adam Jensen (“JENSEN”), is an adult over the age of eighteen, a driver and commercial purveyor of the United States Interstate System, is a transient member of society that lives in a motorhome to escape prejudice and discrimination.

(REST OF PARTIES TAKEN FROM AMENDED COMPLAINT VERBATIM)

4. Plaintiff Jose DeCastro (“DeCastro”) is an adult over the age of eighteen, a member of the press, and at all times relevant hereto, was and is a resident of the State of California.

5. Defendant Las Vegas Metropolitan Police Department (“LVMPD”) is a quasimunicipal entity and a political subdivision of the State of Nevada created and regulated by NRS Ch. 258 and at all times relevant hereto, employed all of the individually named Defendants.

6. Defendant State of Nevada (“Nevada”) is a government entity and at all time relevant hereto, operates, oversees, and manages Defendant LVMPD under the color of state law.

7. Defendant Branden Bourque (“Bourque”) is, and at all relevant times was, an officer with the LVMPD. In doing the things herein alleged, Bourque was acting under the color of state law and in the course and scope of his employment with Nevada. Bourque is sued in his individual capacity.

8. Defendant Jason Torrey (“Torrey”) is, and at all relevant times was, a supervisor with the LVMPD. In doing the things herein alleged, Torrey was acting under color of state law and in the course and scope of his employment with Nevada. Torrey is sued in his individual capacity, including in his capacity as a supervisor.

9. Defendant C. Dingle (“Dingle”) is, and at all relevant times was, an officer with the LVMPD. In doing the things herein alleged, Dingle was acting under the color of state law and in the course and scope of his employment with Nevada. Dingle is sued in his individual capacity. Plaintiff does not know the full true name of C. Dingle.

10. Defendant B. Sorenson (“Sorenson”) is, and at all relevant times was, an officer with the LVMPD. In doing the things herein alleged, Sorenson was acting under the color of state law and in the course and scope of his employment with Nevada. Sorenson is sued in his individual capacity. Plaintiff does not know the full true name of B. Sorenson.

11. Defendant Jesse Sandoval (“Sandoval”) is, and at all relevant times was, an officer with the LVMPD. In doing the things herein alleged, Sandoval was acting under the color of state law and in the course and scope of his employment with Nevada. Sandoval is sued in his individual capacity.

12. Defendant C. Doolittle (“Doolittle”) is, and at all relevant times was, an officer with the LVMPD. In doing the things herein alleged, Doolittle was acting under the color of state law and in the course and scope of his employment with Nevada. Doolittle is sued in his individual capacity. Plaintiff does not know the full true name of C. Doolittle.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1-50, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names and capacities if and when the same are ascertained. Plaintiff is informed and believes, and thereon alleges, that said Defendants, and each of them, are responsible in some manner for Plaintiff’s damages as herein alleged. Each reference in this complaint to “defendant”, “defendants”, “Defendants”, or a specifically named defendant also refers to all “Doe” defendants.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 as a Federal Question.

15. This Court is the proper venue pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the claims occurred in the County of Clark in Nevada which is in the U.S. District of Nevada

IV. FACTUAL ALLEGATIONS

16. On March 15, 2023, at approximately 4:30 p.m., Ofc. Bourque was conducting a traffic stop of a silver Hyundai Elantra. ECF No. 13 at ¶20. **At no time, and not on the record, is Ofc. Bourque's declaration or evidence of the subject of that stop being afforded any Miranda Warnings.** DeCastro allegedly approached the traffic stop and began **recording** and **talking** to the "traffic detainee". ECF No. 13 at ¶21. At the time DeCastro approached the traffic stop, Ofc. Bourque was sitting in his LVMPD vehicle. ECF No. 13 at ¶20.

17. Upon noticing DeCastro interacting with the subject of the traffic stop, Ofc. Bourque exited his police vehicle, got DeCastro's attention, and told him to back up. ECF No. 13 at ¶22. DeCastro moved five feet. ECF No. 13 at ¶22. Ofc. Bourque again told DeCastro to back up from the traffic stop, at which time DeCastro began asserting his rights to record the interaction. ECF No. 13 at ¶23. Ofc. Bourque warned DeCastro he would detain DeCastro for obstructing if he did not move further away from the detainee. ECF No. 13 at ¶23. DeCastro insisted he had no obligation to back up because of his status as a member of the press and his right to record police interactions. ECF No. 13 at ¶¶ 23-24. When DeCastro ignored Ofc. Bourque's commands to move back ten feet, Ofc. Bourque told DeCastro he was being detained. ECF No. 13 at ¶24. Ofc. Bourque told the traffic detainee she was free to go. ECF No. 13 at ¶25.

18. When Ofc. Bourque attempted to detain DeCastro, DeCastro refused to comply. ECF No. 13 at ¶¶ 25-26. DeCastro asked for a supervisor and walked to Ofc. Bourque's LVMPD vehicle, at which time Ofc. Bourque informed DeCastro he was being arrested for obstruction. ECF No. 13 at ¶¶ 26. DeCastro made Ofc. Bourque aware of a prior shoulder injury, and Ofc. Bourque placed DeCastro in two pairs of handcuffs to adhere to his medical needs. ECF No. 13 at ¶¶ 27.

19. DeCastro alleges one of the Defendant officers repeatedly squeezed Plaintiff's elbow, placing pressure on DeCastro's ulnar nerve and causing DeCastro severe pain. ECF No. 13 at ¶¶ 29-32. DeCastro then threatened to sue the officers at the scene. ECF No. 13 at ¶¶ 33. DeCastro further alleges he was

patted down several times, and during the final patdown, an officer struck DeCastro in the groin with a closed fist. ECF No. 13 at ¶ 38.

20. Eventually, Defendant Erland Jason Torrey (“Sgt. Torrey”) arrived at the scene. ECF No. 13 at ¶ 35. Sgt. Torrey authorized the officers’ behavior as being within LVMPD policy, and said DeCastro should be arrested. As noted in Ofc. Bourque’s report and affirmed by Sgt. Torrey, the reasons why DeCastro was arrested was for engaging with a detained driver, refusing to give an officer reasonable space to work, and refusing to obey lawful commands after being advised he was being detained. ECF No. 13 at ¶¶ 44. Ofc. Bourque’s report further stated DeCastro had admitted to getting in trouble numerous times in the past for the same reasons, and his habitual behavior of obstructing police officers and claiming it was justified because of his right to film the police would continue in the area if he was not cited. ECF No. 13 at ¶¶ 45.

V. LEGAL DISCUSSION

21. “[T]he [traffic] stop and inquiry must be `reasonably related in scope to the justification for their initiation.’ Ibid. (quoting *Terry v. Ohio*, supra, at 29.)” *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)

22. “Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. **But the detainee is not obliged to respond.**” *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (emphasis added)

23. “And, unless the detainee’s answers provide the officer with probable cause to arrest him, he must then be released.” *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984)

24. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant

to such stops are not "in custody" for the purposes of Miranda. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)

25. It is settled that the safeguards prescribed by Miranda become applicable as soon as a suspect's freedom of action is curtailed to a "degree associated with formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam). If a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he will be entitled to the full panoply of protections prescribed by Miranda. See *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam). *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)

26. "Nor do other aspects of the interaction of Williams and respondent support the contention that respondent was exposed to "custodial interrogation" at the scene of the stop." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)

27. "It was the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted" *Berkemer v. McCarty*, 468 U.S. 420, 442 n.35 (1984)

28. "Moreover, the typical traffic stop is conducted in public, and the atmosphere surrounding it is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda and subsequent cases in which Miranda has been applied." *Berkemer v. McCarty*, 468 U.S. 420, 421 (1984)

29. "However, if a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he is entitled to the full panoply of protections prescribed by Miranda." *Berkemer v. McCarty*, 468 U.S. 420, 421 (1984)

30. To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset

these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree. Passersby, on foot or in other cars, witness the interaction of officer and motorist. This exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse. Berkemer v. McCarty, 468 U.S. 420, 438 (1984) (emphasis added)

31. However, Mr. Decastro's behavior, conversing with, and of being nearby and recording the interactions this is the exact kind of negating force Berkemer held "most importantly" negated the Miranda requirements of a Traffic Stop Detainee.

32. If, the Policy of LVMPD has a policy of creating a "buffer" or crime scene, and monopolizing the attention and ability for a traffic detainee, and charging anyone close enough to hear the conversations and provide the counterbalance to the State's interrogation, then the Driver is entitled to Miranda Warnings.

33. All defendants have been made aware of these "clearly established" rights since Berkemer in 1984, some 39 years.

34. In arguendo, officer safety, creating a crime scene around a traffic stop does not protect the officers. Any person seeking to harm the police need only drive around looking for a Traffic Stop, and then pull up and engage the officer in surprise.

VI. CLAIMS

FIRST CAUSE OF ACTION

42 U.S. Code § 1985 – Miranda, First Amendment, Fifth Amendment

(Against Bourque, Torrey, Dingle, Sorenson, Sandoval, Doolittle, and Does 1 – 25)

35. JENSEN reincorporates paragraphs 1,2, 16-34.

36. Defendants Bourque, Torrey, Dingle, Sorenson, Sandoval, Doolittle, and, perhaps, Does, did, by making the presence, video recording, and conversing with the detainee, part of the Traffic Stop, conspire to not only deprive the rights of the Traffic Detainee, but accomplished that deprivation, by depriving the rights of the passerby, in this case Decastro.

VII. PRAYER

For all the aforementioned allegations of fact, legal argument, and claims above, JENSEN prays for the following relief:

- a. That defendants, and all those similarly situation, be enjoined by Injunctive Relief from converting a traffic stop into an “investigative detention”, by strict monopolization of the traffic stop area, in violation of Miranda, Berkemer, and the Fifth Amendment to the United States Constitution.
- b. That Intervenor Plaintiff be provided by relief of Declaratory Judgment, that the monopolizing force of a Traffic Detainee, such as restricting video recording, passer by from eliciting suggestions to the detainee, and making the public stand back beyond the ability to hear what the officer is doing, is a violation of Miranda, Berkemer, and the Fifth Amendment.

DATED: June 11th, 2023

Respectfully Submitted,

//s/JasonAJensen

Jason Adam Jensen

