

**IN THE ____ DISTRICT COURT
TRAVIS COUNTY, TEXAS**

**BILLY L. SPEARS,
Plaintiff,**

v.

**TEXAS DEPARTMENT OF PUBLIC
SAFETY, STEVEN McCRAW, DAVID
BAKER, LUIS GONZALEZ,
RHONDA FLEMING, MICHAEL
BRADBERRY, LUIS SANCHEZ, K.B.
WILKIE, BRANDON NEGRI, JIMMY
JACKSON, and MARCUS STOKKE
Defendants**

NO. _____

ORIGINAL PETITION

NOW COMES Billy L. Spears, the Plaintiff herein, and alleges and states the following:

JURISDICTION AND VENUE

1. Venue and jurisdiction are properly found in this Court because Travis County was the site of many of the illegal acts described herein, and because several of the Defendants are residents of Travis County.

PARTIES

2. Plaintiff Billy L. Spears is a trooper with the Texas Highway Patrol, a division of the Texas Department of Public Safety (hereinafter "DPS"), and he is currently assigned to Camp County. He can be served with process via his attorney at the address below.

3. Defendant DPS can be served with process via the Attorney General of Texas at his office at 300 W. 15th Street, Austin, Texas 78701.

4. Defendant Steve McCraw is the director of DPS. He can be served with process

at his office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

5. Defendant David Baker is the deputy director of DPS. He can be served with process at his office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

6. Defendant Luis Gonzalez is the assistant director of DPS and the chief of the Texas Highway Patrol. He can be served with process at his office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

7. Defendant Rhonda Fleming is the inspector general of DPS. She can be served with process at her office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

8. Defendant Michael Bradberry is a major in the Texas Highway Patrol. He can be served with process at his office at 350 West IH-30, Garland, Texas 75043.

9. Defendant Luis Sanchez is a captain in the Office of Inspector General of DPS. He can be served with process at his office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

10. Defendant K.B. Wilkie is a captain in the Texas Highway Patrol. He can be served with process at his office at 5805 North Lamar Blvd., Austin, Texas 78752-4431.

11. Defendant Brandon Negri is a lieutenant in the Office of Inspector General of the Texas Department of Public Safety. He can be served with process at his office at 350 West IH-30, Garland, Texas 75043.

12. Defendant Jimmy Jackson is a lieutenant in the Texas Highway Patrol. He can be served with process at his address at 4700 TX-248 Spur, Tyler, Texas 75701.

13. Defendant Marcus Stokke is a sergeant with the Texas Alcoholic Beverage Commission. He can be served with process at his office at 2800 Gilmer Road, Suite 4, Longview, Texas 75604-1824.

FACTS

14. On May 10, 2014, Trooper Billy Spears and Trooper Manuel Ponce attended a concert at Lake Fork in plain clothes and while off duty. Both men attempted to carry alcoholic drinks from one area of the concert to another, but they were stopped by a security guard who told them that they could not carry the drinks beyond that point. While they were speaking with the security guard, Defendant Marcus Stokke approached the men and, in a threatening tone, told them that they could be arrested for a Class A misdemeanor if they crossed the line. The troopers said they were not aware that they were prohibited from carrying alcohol across the line, and Trooper Ponce asked if he could throw his drink in a nearby trash can. Trooper Spears remarked that Trooper Ponce had better throw the drink to the trash can so he would not step across the line. Sgt. Stokke demanded to know whether Trooper Spears was “getting smart” with him, and Trooper Spears replied that he was not. Sgt. Stokke then said he could arrest Trooper Spears for public intoxication, and Trooper Spears responded that he was not intoxicated, and that in order to arrest a person for public intoxication, that person had to be a danger to himself or others. When Sgt. Stokke disputed that and boasted that he was a sergeant over 24 counties, Trooper Spears explained that he, too, was a state law enforcement officer, and that he was personally familiar with the law (prior to that time, neither Trooper Spears nor Trooper Ponce mentioned the fact that they were law enforcement officers). This enraged Sgt. Stokke even further, and he detained Trooper Spears even though he had no reason to believe that Trooper Spears had violated any law. Sgt. Stokke summoned two game warden captains as well as other troopers and game wardens, and he gave conflicting explanations of his reason for detaining Trooper Spears, but none of those officers saw any evidence that Trooper Spears was intoxicated. Eventually, Trooper Spears was released.

15. Insofar as Sgt. Stokke committed a Class A misdemeanor by unlawfully detaining Trooper Spears, *see* Tex. Penal Code §39.03, Trooper Spears filed a complaint with TABC and reported the matter to the Texas Rangers as well as his superiors in DPS. Rather than investigate Sgt. Stokke, however, Trooper Spears's superiors at DPS filed a disciplinary complaint against Trooper Spears because he had the audacity to file a complaint against another law enforcement officer.

16. On May 28, 2014, Captain Luis Sanchez forwarded an email from Major Bradberry to Inspector General Fleming with the following comment:

Rhonda,

I reviewed and recommend a division referral. Basically, the way it began is because Trooper Spears filed a complaint with TABC internal affairs.

Thanks,

Louis Sanchez, Captain

In other words, Captain Sanchez admitted that Trooper Spears was being punished because he exercised his First Amendment rights by filing the complaint against Sgt. Stokke.

17. In separate interviews conducted by DPS investigators, meanwhile, Sgt. Stokke gave conflicting stories about why he detained Trooper Spears. In a June 9, 2014 memorandum, Trooper Spears's immediate supervisor, Sgt. Michael Sparks, explained that he interviewed various witnesses to the incident between Trooper Spears and Sgt. Stokke, including Sgt. Stokke himself, and that there were numerous inconsistencies in Sgt. Stokke's story. Sgt. Stokke's account also contradicted the statements given by the two game warden captains who were present. On some occasions Sgt. Stokke said he detained Trooper Spears because he thought he was intoxicated, but on other occasions he said he detained Trooper Spears for suspicion of impersonating a peace officer.

18. After completing his initial draft of the memorandum, Sgt. Sparks was directed by his superiors to find fault with Trooper Spears, so he wrote that “[i]t is also my opinion that Trooper Spears did not act in accordance to [sic] Policy. When confronted by law enforcement, whether they are right or wrong it is our duty to abide by their instructions given at that time.” Trooper Spears respectfully disagrees, as does the United States Supreme Court. No one in this country is obligated to comply with an unlawful arrest or detention. Even Sgt. Sparks's report acknowledges that it appears Sgt. Stokke got angry because Trooper Spears “called his bluff.” Sgt. Stokke thought he could impress a security guard by bullying a couple of civilians, and the stunt blew up in his face. Rather than admit his mistake, Sgt. Stokke doubled down on it and, in the process, he committed a crime.

19. Sgt. Sparks's investigation was only the first in a series of investigations conducted by DPS personnel. The records from those investigations repeatedly show contradictions in Sgt. Stokke's testimony, and those records further give probable cause to believe that Sgt. Stokke committed a crime, yet the DPS personnel consistently attacked Trooper Spears's credibility and sided with Sgt. Stokke. Defendants Jackson, Negri, Wilkie, Sanchez, Bradberry, Fleming, and Gonzalez all participated in a sham investigation / disciplinary process that was designed to punish Trooper Spears for filing a complaint against another cop.

20. Ultimately, Trooper Spears's superiors ordered him suspended without pay. Trooper Spears appealed that decision all the way to Defendant McCraw, the director of DPS. In a letter dated January 23, 2015, Defendant McCraw wrote as follows:

After reviewing the investigative file and carefully considering your points of contention, I have determined that allegation #1 should have been classified as “Not Sustained.” As a result of my decision, no disciplinary action will be taken against you. You will receive performance counseling from your chain of command.

It thus appeared that Defendant McCraw had exonerated Trooper Spears. As Trooper Spears

would soon learn, however, “performance counseling” is a DPS euphemism for a special sort of reprimand that cannot be appealed. On February 4, 2015, Defendant Jackson served Trooper Spears with a “Counseling Record,” and under the heading “DEFICIENCIES INDICATING NEED FOR COUNSELING” it stated as follows:

While attending an off-duty event at Lake Fork, Trooper Spears obtained an alcoholic beverage and attempted to take that beverages [sic] to another location. He was stopped by a security guard and told he could not leave with the alcoholic beverage. Rather than comply with the instructions, Trooper Spears engaged the security guard in conversation and questions. The interaction resulted in TABC agents and TWPD Game Wardens responding. During the incident, Trooper Spears identified himself as Trooper, but did not have any credentials with him. Trooper Spears' [sic] conduct was unprofessional [and] reflected poorly on the Department.

Beneath the heading “REASONS GIVEN BY EMPLOYEE FOR DEFICIENCIES,” Trooper Spears wrote: “I don't agree with this. My signature is affixed to comply with policy.”

Apparently, that statement further offended the DPS Defendants named in this lawsuit.

21. Less than two months after signing the “Counseling Record,” Trooper Spears worked an approved off-duty job as backstage security at the SXSW concert in Austin. While Trooper Spears was working backstage, an assistant to Calvin Broadus, a.k.a. “Snoop Dogg,” asked if he could take a photograph of Snoop Dogg standing next to Trooper Spears. Trooper Spears agreed, and the Doggfather's assistant later posted the photograph to Instagram with the caption “Me n my deputy dogg.”

22. On March 24, 2015, Trooper Spears was informed by Sgt. Sparks that Defendant Jackson would be driving from Tyler to Gilmer to serve him with a copy of another “Counseling Record.” Defendant Jackson drove 80 miles round trip to serve Trooper Spears at 9:24 p.m. in the evening. Sgt. Sparks also told Trooper Spears that DPS supervisors were now requiring the presence of two superior officers for any incident involving Trooper Spears. Trooper Spears is not aware of any other trooper who has been singled out for such unusual treatment.

23. Shortly before Trooper Spears was served with the “Counseling Record,” Sgt. Sparks said he was looking at Trooper Spears from behind to see if he had a target on his back. According to Sgt. Sparks, the disciplinary action was initiated by Defendant Baker after Trooper Spears's photograph was detected during routine scanning of social media.

24. Under the title “DEFICIENCIES INDICATING NEED FOR COUNSELING,” the “Counseling Record” alleged as follows:

While working a secondary employment job, Trooper Spears took a photo with a public figure who has a well-known criminal background including numerous drug charges. The public figure posted the photo on social media and it reflects poorly on the Agency.

Once again, Trooper Spears's superiors could not identify any policy, rule, order, or law that he violated, so they just fabricated something.

25. On April 1, 2015, the undersigned sent a letter to Defendant McCraw asking him to remove the “Counseling Record” forms from Trooper Spears's file and put a stop to the retaliation against Trooper Spears. The undersigned posted that letter on his blog, LawFlog.com, and the *Dallas Morning News* blogged about the incident later that day. The story quickly spread nationally and internationally and was published as far away as India, Africa, and Australia. Despite the nearly universal consensus that DPS's senior commanders were making fools of themselves and embarrassing the entire state, Defendant McCraw refused to reign in the misconduct within his agency.

26. In a press release dated April 3, 2013, DPS officials suggested that the “Counseling Record” was not really discipline. That press release was duplicitous and disingenuous. DPS policy requires troopers to disclose all disciplinary incidents to their local district attorneys, and that policy further states that “counseling” is among the disciplinary incidents that must be disclosed to prosecutors. Moreover, “counseling” incidents can be

grounds for adverse employment actions against a trooper, yet DPS personnel are not allowed to appeal “counseling” incidents. Not surprisingly, “counseling” has become a preferred method of retaliation and selective enforcement. DPS superiors need not prove that any policy, rule, order, or law was violated, yet they can still punish a politically-disfavored trooper such as Trooper Spears without fear that the trooper will appeal.

CLAIMS

42 U.S.C. § 1983

27. All prior paragraphs are incorporated herein by reference.

28. Trooper Spears brings claims for damages and injunctive relief against Defendants Jackson, Negri, Wilkie, Sanchez, Bradberry, Fleming, Gonzalez, Baker, and McCraw under 42 U.S.C. §1983 because they retaliated against him for exercising his right to petition for redress of grievances as guaranteed by the First Amendment to the U.S. Constitution.

29. Trooper Spears brings claims for damages and injunctive relief against Defendants Jackson, Negri, Wilkie, Sanchez, Bradberry, Fleming, Gonzalez, Baker, and McCraw under 42 U.S.C. §1983 because they denied him the equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

30. Trooper Spears brings claims for damages and injunctive relief against Defendants Jackson, Negri, Wilkie, Sanchez, Bradberry, Fleming, Gonzalez, Baker, and McCraw under 42 U.S.C. §1983 because they denied him due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

31. Trooper Spears brings claims for damages against Defendant Stokke under 42 U.S.C. §1983 for violating his right to be free from unreasonable seizure as guaranteed by the Fourth Amendment to the U.S. Constitution.

Texas Whistleblower Act

32. All prior paragraphs are incorporated herein by reference.

33. Trooper Spears brings claims for damages and injunctive relief against Defendants Jackson, Negri, Wilkie, Sanchez, Bradberry, Fleming, Gonzalez, Baker, and McCraw and State of Texas under the Texas Whistleblower Act, Section 554.001 et seq. of the Texas Government Code.

JURY DEMAND

34. The Plaintiff demands a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against the Defendants, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

/s/ Ty Clevenger

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