

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

Jerry L. Jarman, Jr.,)	
)	
Plaintiff,)	
)	
v.)	No. 14-1071
)	
City of Grain Valley, Missouri, and)	JURY TRIAL DEMANDED
)	
John Doe,)	
)	
Defendants.)	

VERIFIED COMPLAINT

Introduction

1. In this civil rights action, pursuant to 42 U.S.C. § 1983, Plaintiff, Jerry L. Jarman, Jr., challenges his being pulled over, detained, cited, and prosecuted for having communicated to oncoming traffic that a speed trap was ahead by flashing his headlights.

2. Plaintiff asserts that there was neither reasonable suspicion nor probable cause to believe he had violated City of Grain Valley Code § 320.050 or any other ordinance or law and, therefore, his right to be free from unreasonable searches and seizures under the Fourth Amendment was violated.

3. Plaintiff also claims that he was pulled over, detained, cited, and prosecuted in retaliation for having engaged in expressive conduct protected by the First Amendment.

4. Finally, Plaintiff challenges the constitutionality of City of Grain Valley Code § 320.050, which criminalizes “post[ing] any sign or notice that any speed checks are being conducted.”

5. Plaintiff seeks damages, as well as declaratory and injunctive relief.

Jurisdiction and Venue

6. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983.

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Jackson County, Missouri.

9. Venue is proper in the Western Division pursuant to Local Rule 3.1(a)(1)(a).

Parties

10. Plaintiff, Jerry L. Jarman, Jr., is a resident of Kansas.

11. Defendant City of Grain Valley, Missouri, is a municipal corporation duly organized under the laws of the State of Missouri.

12. Defendant John Doe is a police sergeant for the City of Grain Valley, Missouri, whose name is not known to Plaintiff. On or about August 24, 2014, Doe pulled Plaintiff's vehicle over and issued Grain Valley Police Department Uniform Citation No. 131 758736 for allegedly "interfering with Radar by flashing headlights at oncoming motorists to warn them of officer conducting Radar" in alleged violation of Grain Valley City Code § 320.050. He is sued in his individual capacity only.

13. Defendants acted under color of state law at all times relevant to this Complaint.

Facts

14. Section 320.050 of the Grain Valley City Code provides that:

UNLAWFUL TO INTERFERE WITH RADAR, OTHER SPEED
CHECKING DEVICES

It shall be unlawful for any person to interfere in any manner with the
operation of radar or any other device or method used to check, test,

gauge or determine the speed of motor vehicles within the City limits or to post any sign or notice that any speed checks are being conducted.

15. On August 24, 2014, Plaintiff was driving in the City of Grain Valley at about 9:25 a.m.

16. Plaintiff observed a speed-trap.

17. Plaintiff flashed his headlights to communicate that oncoming traffic should proceed with caution.

18. The flashing of headlights is commonly understood as conveying the message to slow down and proceed with caution.

19. The Missouri Department of Revenue, which is responsible for the licensing of drivers within the State of Missouri, recommends drivers flash their headlights to warn other drivers that they should proceed with caution.

20. Doe saw Plaintiff flash his headlights and initiated a traffic stop.

21. Plaintiff was not free to leave the stop until after he was issued a citation.

22. Plaintiff was required to remain for approximately thirty minutes.

23. Doe issued Grain Valley Police Department Uniform Citation No. 131 758736 to Plaintiff for allegedly “interfering with Radar by flashing headlights at oncoming motorists to warn them of officer conducting Radar.”

24. Doe charged Plaintiff with violating Grain Valley City Code § 320.050.

25. Plaintiff did not violate Grain Valley City Code § 320.050 or any other law.

26. A reasonable officer would have known that Plaintiff had not violated Grain Valley City Code § 320.050 or any other law.

27. Doe did not have reasonable suspicion to believe that Plaintiff had violated Grain Valley City Code § 320.050 or any other law.

28. By issuing the citation, Doe initiated the prosecution of Plaintiff.
29. The citation notified Plaintiff that he must appear in court on October 6, 2014.
30. The reverse side of Missouri's Uniform Citation notifies those cited: "YOUR FAILURE TO APPEAR IN COURT AT THE TIME SPECIFIED ON THIS CITATION AS DIRECTED MAY RESULT IN THE SUSPENSION OF YOUR DRIVER'S LICENSE AND DRIVING PRIVILEGE AND MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST."
31. Prior to his scheduled court appearance, Plaintiff retained counsel.
32. On October 6, 2014, with the prosecutor citing *Elli v. City of Ellisville, Mo.*, No. 4:13CV711 HEA (E.D. Mo. 2014), the charge was dismissed, thereby terminating the prosecution of Plaintiff in Plaintiff's favor.
33. Defendants caused Plaintiff to be pulled over, detained, cited, and prosecuted without reasonable suspicion or probable cause to believe that he had committed any crime.
34. Defendants caused Plaintiff to be pulled over, detained, cited, and prosecuted in retaliation for Plaintiff's communication of the message that approaching drivers should proceed with caution.
35. As the direct and proximate result of the Defendants' actions and inactions, Plaintiff suffered the following injuries and damages:
- a) Unreasonable seizure of his person without a warrant, reasonable suspicion, or probable cause in violation of the Fourth Amendment;
 - b) Violation of his rights under the First Amendment to be free from detention, prosecution, or both for constitutionally protected acts of expression;

- c) Deprivation of his liberty for approximately thirty minutes; and
- d) Objectively reasonable chilling effect on future communication by flashing headlights for fear of detention, citation, prosecution, and punishment.

36. Absent declaratory and injunctive relief with respect to Grain Valley City Code § 320.050, Plaintiff reasonably fears that he will be harmed if he communicates by flashing his headlights and, as a result, has refrained from doing so and will refrain from doing so in the future.

COUNT I
42 U.S.C. §1983 – Fourth Amendment
Unlawful Seizure
Against Defendant John Doe

37. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

38. Doe violated Plaintiff's right under the Fourth Amendment to be free from unreasonable seizures when he conducted a traffic stop of Plaintiff without reasonable suspicion or probable cause to believe that Plaintiff had violated any law.

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff against Defendant Doe;
- B. Award Plaintiff compensatory damages against Defendant Doe for his violation of Plaintiff's constitutional rights under color of state law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT II
42 U.S.C. §1983 – First Amendment
First Amendment Retaliation
Against Defendant John Doe

39. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

40. Plaintiff's communication of a message by flashing his headlights is expressive activity protected by the First Amendment.

41. Plaintiff's communication did not violate any law.

42. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication, Defendant Doe would not have initiated a traffic stop of Plaintiff.

43. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication, Defendant Doe would not have detained Plaintiff while preparing a citation.

44. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication, Defendant Doe would not have issued Plaintiff a citation for allegedly violating § 320.050 of the City of Grain Valley Code of Ordinances.

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant Doe;
- B. Award Plaintiff compensatory damages against Defendant Doe for his violation of Plaintiff's constitutional rights under color of state law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT III
42 U.S.C. §1983 – First Amendment
Challenge to Section 320.050 and the Policy or Custom of
Stopping and Citing Individuals Who Communicate by Flashing Headlights
Against Defendant City of Grain Valley

45. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

46. Plaintiff challenges the constitutionality of the portion or application of § 320.050 that criminalizes communication that speed checks are being conducted as well as the policy or custom of stopping and citing individuals who communicate by flashing headlights.

47. The challenged portion or application of § 320.050 is a content-based or viewpoint-based restriction on speech, or both.

48. The challenged portion or application of § 320.050 is not narrowly tailored to achieve any compelling government interest.

49. The challenged portion or application of § 320.050 is unconstitutionally overbroad.

50. The challenged portion or application of § 320.050 fails to leave open ample alternatives for expression.

51. The challenged portion or application of § 320.050 is unconstitutionally vague.

52. The challenged policy or custom of stopping and citing individuals who communicate by flashing headlights is a content-based or viewpoint-based restriction on speech, or both.

53. The challenged policy or custom of stopping and citing individuals who communicate by flashing headlights is not narrowly tailored to achieve any compelling government interest.

54. The challenged policy or custom of stopping and citing individuals who communicate by flashing headlights is unconstitutionally overbroad.

55. The challenged policy or custom of stopping and citing individuals who communicate by flashing headlights fails to leave open ample alternatives for expression.

56. The challenged policy or custom of stopping and citing individuals who communicate by flashing headlights is unconstitutionally vague.

WHEREFORE, Plaintiffs prays this Court:

- A. Enter a declaration that § 320.050 of the Grain Valley City Code is unconstitutional;
- B. Enter an appropriate injunction to prevent the future deprivation of constitutional rights;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827
Grant R. Doty, #60788
Andrew McNulty, #67138
American Civil Liberties Union of
Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
Phone: 314-652-3114
Fax: 314-652-3112
trothert@aclu-mo.org
gdoty@aclu-mo.org
amcnulty@aclu-mo.org

Gillian R. Wilcox, #61278
American Civil Liberties Union of

Missouri Foundation
3601 Main Street
Kansas City, Missouri 64111
gwilcox@aclu-mo.org

ATTORNEYS FOR PLAINTIFF

Verification

I have the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ Jerry L. Jarman, Jr.