

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THOMAS THACKER, and
BRETT GASPER,

Plaintiffs,

v.

CIVIL ACTION NO. _____
Judge _____

H.E. HILL, JR., in his Individual and Official Capacity
as Superintendent of the West Virginia State Police,
R.W. BOLYARD, J.A. SIMONS, J.D. COOPER
C.F. TRADER, M.B. CUNNINGHAM,
DENVER ROZIER, J.D. BURGE, C.R. SMITH, in their individual and
official capacities as law enforcement officers in the
state of West Virginia,
and JOHN M. CUTRIGHT, in his Individual
and Official Capacity as Sheriff of Barbour County,

Defendants.

COMPLAINT

For their claims for relief, plaintiffs aver as follows.

INTRODUCTION

1. This is a claim under 42 U.S.C. § 1983 seeking damages, injunctive relief fees and costs against the individual defendants and injunctive relief, fees and costs against defendants A. G. Hill, Jr., in his official capacity, based upon the defendants' unconstitutional searches of plaintiffs' persons and possessions. Defendants established a roadblock near a festival held by the West Virginia chapter of the National Organization for the Reform of Marijuana Laws (hereinafter "NORML") and did so without

evidence of probable cause, with the intent to search for drugs, and with the intent to discriminate against NORML and its members.

JURISDICTION

2. This Court has jurisdiction in this case pursuant to 28 U.S.C. §§ 1331 and 1343.

PARTIES

3. Plaintiff Thomas Thacker is a citizen and resident of Virginia.
4. Plaintiff Brett Gasper is a citizen and resident of West Virginia.
5. Defendant H.E. Hill, Jr., is a citizen and resident of West Virginia and is the Superintendent of the West Virginia State Police and as such he is responsible for its policies and the conduct of its officers. Defendant Hill is sued in his individual and official capacities.

6. Defendants R.W. Bolyard, J.A. Simons, C.F. Trader, M.B. Cunningham, Denver Rozier, J.D. Cooper, J.D. Burge, and C.R. Smith are citizens and residents of West Virginia and at all times relevant to this complaint were employed as law enforcement officers in the State of West Virginia; they are sued in their individual and official capacities.

7. Defendant John Cutright is the Sheriff of Barbour County and as such is responsible for, among other things, law enforcement within said county; he is sued in his individual and official capacity.

FACTS

8. On July 28, 2001, NORML held a "Freedom Festival" in Barbour and Randolph Counties, West Virginia, that featured live entertainment and efforts to promote NORML's ideological and political agendas.

9. Prior to that date, NORML had promoted the event throughout West Virginia.

10. On that date, the defendants, acting under the auspices of the West Virginia State Police and the Barbour County Sheriff's Department, set up a checkpoint, in Upshur County, near the festival such that vehicles could not get to the festival without going through the checkpoint.

11. Defendants set up the checkpoint in an effort to interdict illegal drugs, to harass and intimidate members of NORML and other Festival attendees, and to disrupt the lawful associational, ideological, and political activities of NORML.

12. Defendants had no individualized suspicion of wrongdoing or criminal activity that would justify establishing the checkpoint when and where they did.

13. Defendants had with them dogs who have been specially trained to detect drugs, and defendants used the dogs to search, intimidate, and harass persons detained at the checkpoint.

14. Plaintiffs attended the Freedom Festival.

15. Defendants detained and seized plaintiffs at the checkpoint and without individualized suspicion that any of them had engaged or were engaged in any criminal activity.

16. Defendants used dogs to check and/or search the persons and property of the plaintiffs without their lawful consent and without legal justification.

17. Defendants unlawfully made statements to plaintiff Thacker that indicated that he might be subject to arrest for disturbing the peace because of his assertion of his civil rights.

18. Defendants administered the checkpoint in ways that discriminated against the plaintiffs and other persons attending the Freedom Festival.

CLAIMS FOR RELIEF

19. By establishing the checkpoint to interdict illegal drugs and without individualized suspicion of criminal activity, defendants violated the plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution, under 42 U.S.C. § 1983, and under Article III, §§ 6 and 10 of the West Virginia Constitution.

20. By establishing the checkpoint to harass and intimidate members and/or supporters of NORML and other festival attendees, defendants violated plaintiffs' rights protected by the First and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. § 1983, and by Article III, §§ 1, 3, 7, 10, 11, 16, and 17 of the West Virginia Constitution.

21. By establishing the checkpoint to disrupt the lawful associational, ideological, and political activities of NORML, defendants violated the rights of plaintiffs guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. § 1983, and by Article III, §§ 1, 3, 7, 10, 11, 16, and 17 of the West Virginia Constitution.

22. By using dogs to search the persons and property of the plaintiffs without their lawful consent and without lawful justification, defendants violated plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution, under 42 U.S.C. § 1983, and under Article III, §§ 6 and 10 of the West Virginia Constitution.

23. By administering the checkpoint in a manner that singled out and discriminated against NORML members, supporters and other festival attendees, defendants violated the rights of plaintiffs guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. § 1983, and by Article III, §§ 1, 3, 7, 10, 11, 16, and 17 of the West Virginia Constitution.

24. Upon information and belief, these constitutional deprivations were a direct and proximate result of a policy, custom and/or practice of the West Virginia State Police and/or the Barbour County Sheriff's Department. At all times relevant to this complaint defendant Hill acted as the final policy maker for matters of law enforcement for the state of West Virginia and defendant Cutright acted as the final policy maker for matters of law enforcement for Barbour County.

25. Said policy, custom and/or practice demonstrates deliberate indifference to the constitutional rights of the plaintiffs.

26. The conduct of the defendants was willful, wanton and/or undertaken in direct disregard for the rights and sensibilities of the plaintiffs entitling them to punitive damages in an amount to be determined by the jury and to reasonable attorney fees and costs.

27. The plaintiffs have a right to be free from unreasonable searches and seizures and a right to free association. The denial of these rights constitutes per se irreparable harm.

28. The plaintiffs have suffered and will continue to suffer irreparable harm due to the defendants' policy of subjecting the plaintiffs and NORML members to unconstitutional, selective and discriminatory searches and seizures.

PRAYER FOR RELIEF

Wherefore, plaintiffs request the following relief:

1. An award of damages to compensate the plaintiffs for being unlawfully detained, searched, and discriminated against and for the embarrassment, humiliation, and emotional distress that they suffered because of the defendants' unlawful conduct;

2. An award of damages to the plaintiffs for defendants' interference with their associational rights and their enjoyment of the Freedom Festival;
3. An award of punitive damages for the defendants' knowing, willful, and malicious violations of plaintiffs' clearly established constitutional and civil rights;
4. An injunction forbidding the defendants from establishing checkpoints to interdict drugs or to otherwise detect evidence of ordinary criminal wrongdoing;
5. An Order awarding the plaintiffs their reasonable attorneys' fees and costs expended in the prosecuting of this civil action;
6. All other relief to which the Court shall deem the plaintiffs are entitled.

PLAINTIFFS,
BY COUNSEL.

ALLAN N. KARLIN
WV BAR # 1953
ALLAN N. KARLIN & ASSOCIATES
174 CHANCERY ROW
MORGANTOWN, WV 26505
(304) 296-8266

Jason Huber
WV BAR # 7175
FORMAN & CRANE, L.C.
P.O. BOX 2148
CHARLESTON, WV 25328
304-346-6300
Counsel for Plaintiffs

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