

In the United States District Court
for the Western District of Texas
San Antonio Division

Martin Victor Hill,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 5:12-cv-0827
	§	
	§	
TDPS, <i>et. al.</i> ,	§	Jury
Defendants.	§	

Defendants’ Motion for Summary Judgment with Brief in Support

Defendants Kevin Marmor and Yolanda Aguinaga files this motion for summary judgment based upon their entitlement to qualified immunity, asking the Court to dismiss the Plaintiff’s complaint with prejudice.

Statement of the Case

Hill brings a civil rights action for damages arising under the United States Constitution via 42 U.S.C. § 1983, alleging illegal search and seizure, illegal demand to produce identification without reasonable suspicion or probable cause and retaliation for asserting his First Amendment right to free speech. [D.E. 12, paragraphs 34-42]. Hill’s state tort claims were previously dismissed [D.E. 25]. Hill’s claims are based upon his interaction with the Defendants on November 10, 2010, at a weigh station in Devine, Texas.

Statement of the Issue with Standard of Review

1. Are the Defendants entitled to summary judgment?

Standard of review:

The role of a court or judge in summary judgment proceedings is to make the "threshold inquiry of determining whether there is the need for a trial — whether, in other words, there are any

genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). If this inquiry reveals that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law," judgment should be entered in his favor. FED. R. CIV. P. 56(c).

Statement of Facts¹

Hill is a truck driver and holds a commercial driver's license (CDL) (Appx p. 1). On November 10, 2010, at approximately 7:15 p.m., Hill was off duty in the sleeper berth of the truck as his partner pulled into a weigh station in Devine, Texas located on Interstate 35 (Appx p. 1). The truck was allegedly overweight (Appx p. 1). Hill was awakened by his partner saying that the authorities needed to see his CDL (Appx p. 1).

Hill exited the truck and walked to the office of the weigh station (Appx p. 1). On the way to the office, Hill passed a trooper (later identified as Trooper Marmor) (Appx p. 1). Hill asked Trooper Marmor² why he had been awakened (Appx p. 1). He was told that "they like to know who we're dealing with." Hill and his partner waited at the office but no officer arrived. Hill returned to his truck (Appx p. 1).

While walking back to the truck, Aguinaga³ approached him and Hill told her that he had some questions (Appx p. 1). Hill asked her why she woke him up and made him leave his sleeper (Appx p. 1). Aguinaga replied that she had just asked his partner for his license (Appx p. 1). Hill told

¹This set of facts is derived entirely from an affidavit of Mr. Hill. They are not admissions by the Defendants and are used only for the purpose of summary judgment.

²Trooper Marmor is a trooper with the Texas Department of Public Safety [D.E. 9, page 2]. He is therefore a peace officer. TEX. CODE OF CRIM. PRO. ART. 2.12(4).

³Aguinaga is an employee of the Texas Department of Public Safety [D.E. 9 page 2].

her that other people do not have access to or possession of his license and that he keeps it in his pocket (Appx. pp. 1-2). Hill informed Aguinaga that he was off duty in the sleeper and that if wanting to see his license was a request or demand (Appx p. 2). Aguinaga replied that it was a request, to which Hill replied "I refuse your request." (Appx p. 2). Aguinaga replied "Okay, that's fine." (Appx p. 2). Hill returned to his truck (Appx p. 2).

After Hill had reached his truck, Trooper Marmor called after him, jumping up on the running board and putting his arms in the passenger window of the truck (the window was rolled down) (Appx p. 2). Hill told Trooper Marmor what Aguinaga had said and that he did not know who him (Appx p. 2). (Appx p. 2). Hill explained the situation about his license and Trooper Marmor told him that it was policy to identify everyone (Appx p. 2). Hill asked Trooper Marmor whether the query regarding his CDL was a request or demand, and Trooper Marmor told him that it was a demand (Appx p. 2). Hill handed Trooper Marmor his CDL (Appx. p. 2).

Brief in Support

The Defendants are entitled to qualified immunity.

Qualified immunity is an affirmative defense to all federal law claims. *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Under the doctrine of qualified immunity, government officials are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Id.* at 818. Qualified immunity is a threshold legal question to be decided by the court. *Mitchell v. Forsyth*, 472 U.S. 511, 527-529 (1985). The government official's liability turns on the "objective legal reasonableness" of the action assessed in light of the legal rules that were "clearly established" at the time it was taken. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

- 1. The Defendants did not violate Hill's Fourth Amendment right to be free from illegal search and seizure as it was constitutional for them to request Hill's identification and the request was not in retaliation for his assertion of his First Amendment right to free speech.**

The Texas Transportation Code section 521.021 states that “[a] person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver’s license issued under this chapter.” Furthermore, section 521.025 states that “[a] person required to hold a license under Section 521.021 shall: ... (2) display the license on the demand of a magistrate, court officer, or peace officer.” These sections of the Texas Transportation Code have never been declared unconstitutional. It was objectively reasonable for the Defendants to rely upon these laws when Aguinaga merely requested and Trooper Marmor later demanded Hill’s CDL and therefore they are entitled to qualified immunity from this claim.

Hill complains that the Defendants actions were only due to his assertion of his First Amendment right to complain about the officers actions. However, while “[t]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” *Enlow v. Tishomongo County*, 962 F.2d 501, 509 (5th Cir. 1992) (quoting *City of Houston v. Hill*, 482 U.S. 451, 462 (1987), “ that person does not taint a proper arrest by contemporaneously shouting ‘police officers are corrupt.’” *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008).

As it was legal under Texas law to demand Hill’s CDL, Hill cannot simply claim his Constitutional right to free speech was violated because he complained about having to comply with the law. If it were otherwise, any citizen would have a civil rights claim after every encounter with the police simply by saying “police officer are corrupt!” The Defendants’ actions in requesting Hill’s CDL despite his protests were objectively reasonable and therefore they are also entitled to qualified immunity from this claim.

Conclusion

Defendants Marmor and Aguinaga ask the Court to grant this motion for summary judgment, dismissing Plaintiff's complaint against them with prejudice.

Respectfully submitted,

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Notice of Electronic Filing

I, Seth Byron Dennis, Assistant General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing **Defendants' Motion for Summary Judgment with Brief in Support** in accordance with the Electronic Case Files System of the Western District of Texas, on this the 31st day of January, 2014.

/s/ Seth Byron Dennis
SETH BYRON DENNIS
Assistant Attorney General

Certificate of Service

I, Seth Byron Dennis, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendants' Motion for Summary Judgment with Brief in Support** has been served via e-mail to mhill.losangeles, clpc75@live.com and by placing same in the United States Mail on this the 31st day of January, 2014, to:

Martin Victory Hill

Appearing Pro Se

/s/ Seth Byron Dennis
SETH BYRON DENNIS
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