

UNITED STATE DISTRICT COURT
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CLERK

BY [Signature]
DEPUTY CLERK

RALPH MOORE,
Plaintiff

v.

No. 2:19-CV-35

VICTOR BITCA, in his individual capacity,
FORMER CHIEF JENNIFER MORRISON, in her
individual capacity, and the TOWN
OF COLCHESTER,
Defendants

COMPLAINT

In this suit, Plaintiff Ralph Moore challenges the actions of a police officer who unlawfully expanded a traffic stop into a drug investigation without the requisite individualized reasonable suspicion to believe that he was engaged in any illegal activity. This officer discriminated against Mr. Moore on the basis of his race, and unlawfully ordered Mr. Moore to exit a motor vehicle. These actions thereby violating Mr. Moore's Fourth and Fourteenth Amendment right to be free from unreasonable search and seizure, his Fourteenth Amendment right to equal protection of the law, his Title VI right to be free from race-based discrimination, and his additional rights to be free from unreasonable search and seizure under Chapter I, Article 11 of the Vermont Constitution. In addition, Mr. Moore challenges the policies, practices and/or customs of the former Chief of Colchester Police Department and the Town of Colchester of unlawfully seizing and searching individuals in the absence of reasonable suspicion to believe they were engaged in illegal activity and unlawfully discriminating against individuals because of their race, as well as their failure to adequately train and/or supervise the defendant police officer, causing these violations of Mr. Moore's rights. These allegations may well be broadened once plaintiff conducts discovery on these issues.

Jurisdiction and Venue

1. The United States District Court possesses subject matter jurisdiction over this dispute because it arises under the Constitution and laws of the United States. 28 U.S.C. § 1331.
2. The United States District Court possesses diversity jurisdiction over this dispute because the plaintiff is a citizen of New York state and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.
3. Venue is proper within this judicial district because all Defendants are located in, and all events or omissions giving rise to Mr. Moore's claims occurred within, this district. 28 U.S.C. §1391 (b).

Parties

4. Plaintiff Ralph Moore is a resident of Brooklyn, Kings County, New York.
5. Mr. Moore identifies as African-American.
6. At all times relevant to this action, Defendant Victor Bitca was employed as a police officer by the Town of Colchester, Vermont and acting under color of state law.
7. Defendant Bitca was, and is, a "person" for purposes of 42 U.S.C. § 1983 and a proper plaintiff for a Chapter I, Article 11 action under the Vermont Constitution.
8. At all times relevant to this action, Defendant Chief Jennifer Morrison was the Chief of the Colchester Police Department, a law enforcement agency in Colchester, Vermont.
9. Defendant Morrison was the Chief of the Colchester Police Department from July 29, 2013 until August 16, 2018.
10. Defendant Morrison was, and is, a "person" for purposes of 42 U.S.C. § 1983.
11. Upon information and belief, the Colchester Police Department as a component of Defendant Town of Colchester is a recipient of federal financial assistance and therefore is legally prohibited from providing and conducting its programs and activities in a racially discriminatory manner.

12. At all times relevant to this action, Defendant Town of Colchester was a municipal corporation organized under the laws of the State of Vermont, and it owned, operated, managed, directed, and controlled the Colchester Police Department.
13. Defendant Town of Colchester was, and is, a “person” for purposes of 42 U.S.C. §1983.

FACTS

The Traffic Stop and its Expansion into a Drug Investigation

14. On March 07, 2016, Mr. Moore was sitting in a vehicle, a Chevrolet Cobalt, as a passenger in the Town of Colchester.
15. Defendant Bitca and Colchester Police Officer Wyskiel both arrived at the Dunkin’ Donuts on College Parkway in the Town of Colchester to investigate a trespass complaint reported by the business.
16. Officer Wyskiel went into the store. Defendant Bitca drove to the back-parking lot.
17. When Defendant Bitca pulled into the parking lot, the Cobalt that Mr. Moore was a passenger in pulled out of the parking lot.
18. Defendant Bitca believed that the Cobalt left the parking area quickly, so he followed the Cobalt. He observed that the driver failed to signal when exiting the parking lot and that the vehicle had a defective brake light.
19. Defendant Bitca stopped the vehicle, explained that he was investigating a trespass complaint, and asked for identification from the driver and from Mr. Moore.
20. Defendant Bitca knew, at the time he stopped the vehicle, that the description of the alleged trespasser was for a man in his 30s with long hair not identified as an African-American male, wearing a blue jacket and boots. Neither the driver, Ms. Nakita Brace, nor Mr. Moore fits the description of the trespasser.
21. Nakita Brace identifies as Caucasian.
22. Defendant Bitca performed a license record check on both identifications. Ms. Brace’s license was reported as suspended. Mr. Moore’s identification, under a different name, was verified.

23. Defendant Bitca returned the identifications and did not pursue the traffic infractions that had prompted him to stop the vehicle. Rather than pursuing his initial reason for the traffic stop of the vehicle and the temporary seizure of its two occupants, Defendant Bitca began to pursue a drug investigation without constitutionally sufficient suspicion.¹
24. While both occupants were seated in the Cobalt, Defendant Bitca asked the occupants of the vehicle how they knew the woman in the other car in the parking lot. A line of questioning that was not related to, or relevant in any manner toward, the purported justification for the motor vehicle stop.
25. Defendant Bitca commented that their presence at in the Dunkin' Donuts' parking lot seemed suspicious.
26. Defendant Bitca questioned whether they had anything illegal in the vehicle and he encouraged Mr. Moore, and Ms. Brace, to be "straight with him."
27. Defendant Bitca then asked the driver if he could search the car. The driver allegedly consented to Defendant Bitca's request.
28. Defendant Bitca did not review, nor did the driver sign, Colchester Police Department's Consent to Search card at this time.²
29. Defendant Bitca told Ms. Brace and Mr. Moore to stay in the vehicle while he waited for back-up.
30. Defendant Bitca did not inform Mr. Moore that he was free to leave the vehicle.
31. Mr. Moore was held in the vehicle for approximately twenty minutes while Defendant Bitca waited for back-up.
32. Mr. Moore was not free to leave the vehicle.

¹ 14-3-16 Cncm, Superior Court of Vermont, Chittenden, November 14, 2016. Judge Walpole found that the officer did not have reasonable suspicion to justify the extension of a traffic stop into a drug investigation and suppressed all evidence obtained by this tainted method.

² Upon information and belief, there is no video or audio recording of Ms. Brace's alleged consent to search her vehicle prior to the extended seizure of Ms. Brace and Mr. Moore as they waited for back-up to arrive. Defendant Bitca had Ms. Brace review and sign a consent to search card only after Mr. Moore was chased, apprehended and cuffed.

33. Defendant Bitca had no objective reasonable basis to believe that either the driver or Mr. Moore to be a danger to himself, or others, nor did Defendant Bitca see any potential weapon in plain view in the Cobalt.
34. When back-up arrived, Defendant Bitca ordered only Mr. Moore out of the vehicle.
35. Mr. Moore panicked and ran from Defendant Bitca.
36. Mr. Moore was chased and threatened with a Taser. Mr. Moore fell to the ground and was restrained, arrested, charged and held in Vermont Department of Corrections ("VDOC") custody for eight months pending dismissal of the Vermont charges more fully described below.

Judicial Proceedings

37. Mr. Moore was charged with possession of cocaine, possession of a firearm, providing false information to a police officer, and as a fugitive from justice for an outstanding warrant from New York
38. Mr. Moore entered pleas of not guilty to all charges.
39. Mr. Moore was held without bail on March 08, 2016 after his arraignment, and he spent the night at Chittenden Regional Correctional Facility in South Burlington, Vermont.
40. Mr. Moore's bail was set at \$100,000 which he was unable to post.
41. Mr. Moore was then transferred to Northwest State Corrections Facility in Swanton Vermont until his eventual release from VDOC custody.
42. Mr. Moore filed a motion to suppress all the evidence obtained as a result of his unlawful seizure -- the extended drug investigation without an independent basis of reasonable suspicion.
43. After reviewing both parties' motions and after a full evidentiary suppression hearing, Superior Court Judge Nancy Waples found that Officer Bitca unlawfully expanded the traffic stop into a drug investigation; an investigation that he did not have any independent reasonable and articulable suspicion to conduct.
44. In Judge Waples' Dismissal Order issued on November 14, 2016, she stated "the evidence is clearly the product of exploitation of the original illegality."

45. Based on these findings, Judge Waples granted Mr. Moore's Motion to Suppress and dismissed three of his four charges being dismissed for a lack of evidence with his only his fugitive from justice remaining.
46. Prior to his charges being dismissed, Mr. Moore had been held by VDOC for more than eight months.

Implicit Bias and Policing in Vermont

47. Implicit bias and over-policing of persons of color is well-documented throughout the United States and in the State of Vermont.
48. In an effort to confront biased policing, in 2014 the Vermont Legislature passed a statute requiring police departments throughout the state to collect race data during traffic stops.
49. Data collection from 2015-2017 showed, on the state level, that black drivers are four times more likely to be searched, subsequent to a stop, than white drivers.³
50. Colchester, Vermont, while not as grossly disproportionate as some cities and towns in Vermont, shared its data for the study and it revealed that the Colchester Police Department over-policed persons of color; particularly black and brown men, who were disproportionately stopped, searched and arrested while driving in Colchester.
51. The study posited that this result is due, in part, to racial stereotypes "informed by media portrayals of Blacks and Hispanics as disproportionately involved in drug trafficking" and that the over-searching of Blacks and Hispanics "may be due to officers having a lower threshold of evidence for Black and Hispanic drivers."
52. The *Driving while Black and Brown in Vermont* study did not find data that suggested that there was specific biased officer behavior; i.e., "a few bad apples" within law enforcement but rather the result of long-standing institutional and systemic race bias in Vermont policing.

³ Stephanie Seguinto & Nancy Brooks, DRIVING WHILE BLACK AND BROWN IN VERMONT (2017).

53. Rather, analysis of the data suggests that the “behavior is common to many officers, perhaps suggesting more persuasive cultural norms with agencies that contribute to the disparities.”

FIRST CAUSE OF ACTION

**VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS-
UNREASONABLE SEARCH AND SEIZURE**

Claim under 42 U.S.C. § 1983

Defendants Victor Bitca, Chief Jennifer Morrison, and the Town of Colchester

54. Paragraphs 1 through 53 above are incorporated as if restated here in their entirety.

55. The Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, prohibits unreasonable searches and seizures.

56. Defendant Bitca, acting under color of state law, violated Mr. Moore’s rights under the Fourth and Fourteenth Amendment to the U.S. Constitution by extending the seizure of his person to undertake a drug investigation, without the requisite reasonable suspicion to believe that he was engaged in illegal activity, and forced Mr. Moore out of the vehicle to conduct a search of his person without his consent and without reasonable suspicion to believe that a search of Mr. Moore would uncover evidence of illegal activity.

57. All in violation of *Rodriguez v. United States*, 575 U.S. ___, 135 S. Ct. 1609, 191 L.Ed.2d 492 (2015) decided a year prior to the plaintiff’s seizure and therefore was clearly established law.

58. The traffic stop and all of the activities legally necessary to effectuate the traffic stop had ended prior to Mr. Moore’s prolonged seizure and eventual arrest.

59. The question as to whether the trespasser from the Dunkin’ Donuts complaint was in the car was answered the moment Defendant Bitca approached the Cobalt and viewed the passengers then having full knowledge that neither of

the vehicle's occupants in any way matched the description of the alleged trespasser provided by Dunkin' Donuts

60. Defendant Bitca's conduct violated Mr. Moore's clearly established right to be free from unreasonable searches and seizures.
61. Defendant Bitca acted with reckless indifference or callous disregard for Mr. Moore's right to be free from unreasonable searches and seizures, thus entitling Mr. Moore to punitive damages.
62. Based on information and belief, Defendant Morrison and the Town of Colchester knew that explicit and implicit bias was impacting its officers' decisions when interacting with persons of color.
63. Based on information and belief, Defendant Morrison and the Town of Colchester, as a matter of policy, practice and/or custom, and with deliberate indifference to the rights of citizens, failed to properly instruct, supervise, or train Defendant Bitca concerning the rights of citizens, thereby causing him to engage in the unlawful conduct described above.
64. Based on information and belief, Defendant Morrison and the Town of Colchester have, with deliberate indifference to the rights of citizens, sanctioned a *de facto* policy, practice and/or custom of using a lower standard of evidence for unlawfully seizing and searching individuals of color in the absence of reasonable suspicion to believe that they were engaged in illegal activity.
65. These violations are all redressable under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

VIOLATION OF THE FOURTEENTH AMENDMENT- EQUAL PROTECTION

Claim under 42 U.S.C. § 1983

Defendants Victor Bitca, Chief Morrison, and the Town of Colchester

66. Paragraphs 1 through 65 above are incorporated as if restated here in their entirety.
67. The Equal Protection Clause of the Fourteenth Amendment to the United States guarantees all persons equal protection of the laws.

68. As a person of color identifying as an African-American individual, Mr. Moore is a member of a protected class.
69. Defendant Bitca, acting under color of law, in performance of his official duties engaged in profiling of, and discrimination against, Mr. Moore based on his perceived race.
70. Defendant Bitca acted pretextually, with racial bias, and without reasonable suspicion of probable cause to seize, question and order Mr. Moore from the vehicle.
71. Defendant Bitca seized Mr. Moore incidental to a fully completed motor vehicle stop, extended his detention thereby expanding the seizure into a drug investigation. Further he ordered Mr. Moore from the vehicle because of his perceived race.
72. Defendant did not remove the driver of the vehicle, the person with possession and control of the car. The driver was female and identifies as Caucasian.
73. Defendant Bitca applied a facially neutral law in an intentional and unlawful manner in discriminating against Mr. Moore based on his race.
74. Defendant Bitca's conduct violated Mr. Moore's clearly established right to equal protection of the laws of the United States.
75. Defendant Bitca acted with reckless indifference or callous disregard for Mr. Moore's right to equal protection of the laws, thus entitling Mr. Moore to punitive damages.
76. Based on information and belief, in March of 2016, Defendant Morrison and the Town of Colchester knew that explicit, and implicit, bias was impacting its officers' decisions when interacting with persons of color in the community.
77. Based on information and belief, Defendant Morrison and the Town of Colchester were aware that officers had mishandled these decisions in the past as evidenced by road side collection data, and that mistakes of this nature would routinely cause the deprivation of citizens' constitutional rights to equal protection.

78. While the *Seguino and Brooks* study was not published until 2017, the Colchester Police department started collecting data as early as 2012 but certainly no later than September 1, 2014, the effective date of the race-based data collection mandate enacted by the Vermont Legislature.
79. Based on information and belief, Defendant Morrison and the Town of Colchester, as a matter of policy, practice and/or custom, and with deliberate indifference to the rights of citizens, failed to properly instruct, supervise, or train Defendant Bitca concerning the rights of citizens, thereby causing him to engage in the unlawful conduct described above.
80. Based on information and belief, Defendant Morrison and the Town of Colchester have, with deliberate indifference to the rights of citizens, sanctioned a *de facto* policy, practice and/or custom of unlawfully discriminating against individuals because of their race.
81. These violations are all redressable under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 Discrimination Based on Race *Defendant Town of Colchester*

82. Paragraphs 1 through 81 above are incorporated as if restated here in their entirety.
83. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations prohibit recipients of federal financial assistance from discriminating on the basis of, *inter alia*, race.
84. Based on Information and belief, the Town of Colchester is a recipient of federal financial assistance and is therefore subject to Title VI.
85. Defendant Bitca was an employee of the Town of Colchester, acting within his scope of his employment at all times relevant to this complaint.

86. Mr. Moore identifies as, and is perceived as, an African-American, and as such he is a person within the zone of interests sought to be protected by Title VI.
87. Defendant Bitca unlawfully expanded his initial traffic stop into a drug-related search and removed Mr. Moore from the vehicle because of Mr. Moore's perceived race, thereby discriminating against Mr. Moore on the basis of race in violation of Title VI and its implementing regulations.
88. The Colchester Police Department's stop data from 2015-2017 shows a measurable disparity in its rates of seizing and searching black verses white drivers.
89. Though passenger data is not available, a reasonable inference can be made that black passengers in motor vehicles are treated with a similar disparity as black drivers.
90. These disparities demonstrate a *de facto* policy, practice and/or custom of unlawfully discriminating against individuals because of their race.
91. The Town of Colchester is liable for Defendant Bitca's unlawful discrimination because it was the result of the Town's policy, practice, and/or custom of unlawfully discriminating against individuals in the basis of race.
92. The Town of Colchester, in 2016, had actual notice that its employees within the Colchester Police Department unlawfully discriminated against citizens in its community, knew that its officers would continue to confront similar situations and that these confrontations would potentially lead to the constitutional violations of its citizens, and the Town was deliberately indifferent to this knowledge and allowed the policy, practice and/or custom to unlawfully discriminate against individuals on the basis of race to continue unabated.
93. The Town of Colchester is liable for Defendant Bitca's unlawful discrimination directly and/or under the doctrine of *respondeat superior*.

FOURTH CAUSE OF ACTION

**VIOLATION OF THE VERMONT CONSTITUTION, Chap. I, ARTICLE 11
UNLAWFUL SEARCH AND SEIZURE**

Defendants Victor Bitca, Defendant Chief Morrison, and the Town of Colchester

94. Paragraphs 1 through 93 above are incorporated as if restated here in their entirety.

95. Article 11 of Vermont's Constitution prohibits unreasonable searches and seizures. It provides additional protections, than does its Federal counterpart, to Vermont's citizens and to motorists traveling through the State of Vermont.

96. In Vermont, under Article 11, it is unlawful to require a driver or passenger to exit a vehicle during a traffic stop without reasonable suspicion of danger or the commission of a crime. *State v. Sprague*, 2003 VT 20, 824 A.2d 539 (2003).

97. Defendant Bitca, acting under the color of state law, violated Mr. Moore's rights under Article 11 of the Vermont Constitution by unlawfully extending the seizure of his person when, without reasonable suspicion, Defendant Bitca impermissibly transformed and extended a traffic stop into a drug-related search and seizure when Defendant Bitca unlawfully ordered Mr. Moore from the vehicle without the prerequisite reasonable suspicion that there was a danger to his or other's safety or that plaintiff had committed a crime.

98. Defendant Bitca violated Mr. Moore's clearly established right to be free from unreasonable searches and seizures.

99. Defendant Bitca acted with reckless indifference or callous disregard for Mr. Moore's right to be free from unreasonable searches and seizures, thus entitling Mr. Moore to punitive damages.

100. Based on information and belief, Defendant Morrison and the Town of Colchester has, as a matter of policy, practice and/or custom, and with

deliberate indifference to the rights of citizens, failed to properly instruct, supervise, or train Defendant Bitca concerning the rights of citizens in Vermont, thereby causing him to engage in the unlawful conduct as described.

101. Based on information and belief, Defendant Morrison and the Town of Colchester have, with deliberate indifference to the rights of citizens, sanctioned a *de facto* policy, practice and/or custom of removing persons of color from vehicles during traffic stops at a higher rate than white drivers as evidenced by road-side collection data, and that these removals occurred not for the sake of officer safety or with reasonable suspicion of the commission of a crime but as the direct result of Defendants' unchecked racial biases in unlawfully seizing and searching individuals of color in motor vehicle stops.
102. Article 11 of the Vermont Constitution is self-actuating and there is an implied private right of action for damages available directly under Article 11. *State v. Zullo*, 2019 VT 1.

REQUEST FOR RELIEF

103. Accordingly, Mr. Moore respectfully requests this Court:
- a. declare that Defendants violated his Fourth and Fourteenth Amendment rights to be free from unreasonable search and seizure as guaranteed by the Fourteenth Amendment to the United States Constitution, his enhanced rights guaranteed to be free from unlawful seizure, to wit, the exit order from the Cobalt as guaranteed by Article 11 in the Vermont Constitution as recently interpreted in *State v. Zullo, supra*;, his Fourteenth Amendment right to equal protection of the laws, and his Title VI right to be free from discrimination based on race;
 - b. award him damages for his personal injuries; including but not limited to emotional distress, harm to dignity, eight months spent in custody of the Vermont Department of Corrections prior to the dismissal of his

criminal charges, economic loss, fear, anxiety, humiliation, and out-of-pocket expenses in excess of \$75,000;

- c. award him punitive damages as the Court sees fit against Defendants Bitca and Morrison for their unlawful conduct;
- d. order the defendants to reimburse his reasonably incurred costs and attorney's fees as provided for by 42 U.S.C. § 1988(b); and,
- e. mandate any other relief as it sees just.

Dated this 26th day of February, 2019 at Burlington, VT.

Respectfully submitted,



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