

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

COREY A. SCOTT, individually, DEMIR)
FISHER, individually, ARTIE McFADDEN,)
a minor, by his next friend, JANETTE)
McFADDEN,)

Plaintiffs,)

v.)

JASON BEVARD, individually, CLINT)
COWLING, individually,)

Defendants.)
)
)
)

COMPLAINT

Plaintiffs Corey Scott ("Scott"), DeMir Fisher ("Fisher"), and Artie McFadden ("McFadden") (collectively, "plaintiffs"), by their attorneys, make their complaint against defendants as follows:

INTRODUCTION

1. On November 24, 2000, the plaintiffs, three high school varsity basketball players, were traveling with their coach, the driver, to a holiday basketball tournament in Galesburg, Illinois. Not far from home in Peoria, Illinois, the trip took a detour. The coach's car was pulled over by state trooper Bevard, allegedly because the car was speeding. But the trooper's focus quickly shifted from the white driver to the African-American passengers. Based on various and shifting pretexts, each was unlawfully searched. And 17-year-old Corey Scott was isolated, interrogated, and then called a "mother-fucking nigger" by Trooper Bevard in an attempt to intimidate Scott to disclose where the drugs that did not exist were hidden in the

vehicle. The passengers' only crime was the color of their skin, for which they paid with indignity and humiliation.

2. By this complaint, plaintiffs seek judicial redress for violations of their civil rights.

3. Plaintiffs bring their claim pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. § 2201 et seq. seeking declaratory and monetary relief for violations of the Fourth Amendment protection against unreasonable searches and seizures, and the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs also seek damages under Illinois tort law and the Illinois Hate Crime Act, 720 ILCS 5/12-7.1.

JURISDICTION AND VENUE

4. The jurisdiction of the Court is founded on 28 U.S.C. §§ 1331, 1343(a)(3) & (4), and 1367.

PARTIES

5. Plaintiffs are residents of Peoria, Illinois. They are, and by physical appearance are identifiable as, African-Americans.

6. Scott is a high school senior who plays varsity basketball for Woodruff High School ("Woodruff") in Peoria, Illinois.

7. Fisher is a high school senior who played varsity basketball for Woodruff during the 2000-2001 academic year.

8. McFadden is a high school senior who played varsity basketball for Woodruff during the 2000-2001 academic year.

9. Defendant Jason Bevard ("Bevard") is an officer of the Illinois State Police ("State Police"). Bevard is sued in his individual capacity for money damages.

10. Defendant Clint Cowling ("Cowling") is an officer of the State Police. Cowling is sued in his individual capacity for money damages.

11. At all times pertinent hereto, all defendants were acting under color of state law and their conduct constituted state action.

FACTUAL ALLEGATIONS

12. On November 24, 2000, at about 4:40 p.m., Scott was the front-seat passenger in a vehicle driven by Bob Ketcham ("Ketcham"), the Assistant Coach of Woodruff's varsity basketball team. Ketcham is white. The vehicle was traveling westbound on Interstate 74 east of the Foresthill overpass in Peoria County, Illinois. Fisher and McFadden were back-seat passengers in Ketcham's vehicle.

13. The foursome was headed to a holiday basketball tournament in Galesburg, Illinois. All four were wearing dress shirts, trousers, and ties.

14. Trooper Bevard stopped Ketcham's vehicle allegedly because the car was speeding. Bevard walked to the driver's side door and asked to see Ketcham's driver's license and proof of insurance. He then looked at Scott and asked whether he had a license. Scott said he was not carrying his license, but upon inquiry by Bevard, accurately told Bevard his name was "Corey Scott."

15. Bevard walked back to his vehicle. Shortly thereafter, he came back to the passenger side of Ketcham's vehicle and ordered Scott to exit the vehicle. Bevard erroneously claimed Scott had provided him with false information. Scott exited the vehicle as ordered.

16. Bevard then ordered Scott to stop and, without Scott's consent or sufficient lawful justification, Bevard searched Scott, including searching inside his clothing and shoes. No contraband was found.

17. Bevard ordered Scott to get inside his patrol car.

18. While Scott was in Bevard's squad car, Bevard interrogated Scott about whether there were drugs in Ketcham's vehicle. Bevard had no basis for believing that Ketcham's vehicle was carrying contraband.

19. Scott told Bevard there were no drugs. Refusing to accept this answer, Bevard continued the interrogation and told Scott: "Alright you mother-fucking nigger, this is your last chance to tell me what's in the car." Scott advised that he knew of no drugs in the car.

20. Later, as a result of Scott having filed a formal complaint against Bevard for his conduct on November 24, 2000, the State Police asked Scott to take a polygraph examination. Scott voluntarily took the State Police-administered test on January 4, 2001. Sergeant Marc Bell of the State Police issued a report on January 8, 2001 stating:

There were no indications of deception on the polygraph records when the subject [Scott] answered the following questions:

November 24, 2000, did Trooper Bevard use any racial slurs in your presence? Answer: Yes

November 24, 2000, did Trooper Bevard call you a "mother fucking nigger"? Answer: Yes

Did Trooper Bevard call you a "mother fucking nigger" when you were alone with him in his car? Answer: Yes

It is the opinion of the examiner, based on the polygraph records, that the subject is telling the truth to the above listed questions.
(emphasis added)

21. A canine unit appeared on the scene, including Trooper Cowling. Consent was sought to search Ketcham's vehicle, and the canine then did a walk around of Ketcham's vehicle. A search of the inside of the passenger compartment of Ketcham's vehicle followed.

22. Trooper George Halsey arrived at the scene. One of the defendant officers subjected Fisher and McFadden to a body search without their consent or sufficient lawful justification. Fisher's personal possessions also were searched without his consent or sufficient lawful justification.

23. No guns, drugs, contraband, or evidence of criminal activity was found during any of the officers' searches. The entire detention of Scott, Fisher, McFadden, and Ketcham by the State Police lasted at least 30 minutes.

24. As a result of the stop, Scott was issued a citation for allegedly not wearing a seat belt.

25. Plaintiffs were detained, harassed, intimidated, interrogated, and searched on the basis of race and without sufficient lawful justification.

26. Bevard used a racial slur ("mother-fucking nigger") to harass and intimidate Scott.

27. Within two weeks after the November 24, 2000 incident, Scott filed a written complaint with the State Police. Despite the fact that Scott submitted to a State-administered

polygraph examination and the results showed he was telling the truth, the State Police determined that Scott's complaint was unfounded.

28. On June 7, 2001, the Honorable Glenn H. Collier of the Tenth Judicial Circuit of the State of Illinois, Peoria County, Illinois, granted defendant Scott's motion for a directed verdict in State v. Scott, No. 00-TR-35966, holding that there was insufficient evidence to convict Scott for the charge of not wearing his seat belt.

29. Each defendant personally participated in the unlawful conduct, acted jointly with the other defendant who participated or acquiesced in the unlawful conduct, failed to intervene to stop other law enforcement officers from engaging in the unlawful conduct, or knew of and condoned the unlawful conduct.

30. Defendants' acts were willful, wanton, malicious, oppressive, and done with conscious disregard and deliberate indifference for plaintiffs' rights. Therefore, plaintiffs are entitled to punitive damages in an amount to be determined at trial.

31. Defendants' actions were motivated by animus based upon plaintiffs' racial appearance.

32. As a direct and proximate result of defendants' unlawful conduct described above, plaintiffs have been denied their constitutional and statutory rights and have suffered and continue to suffer humiliation, embarrassment, mental fright, and emotional distress.

CLAIMS FOR RELIEF

COUNT I Unlawful Search and Detention (Against all defendants)

33. The allegations of paragraphs 1 to 32 are realleged and incorporated by reference as if fully set forth herein.

34. Defendants' actions described above in unlawfully subjecting plaintiffs to lengthy detentions, interrogations, and searches, without consent or sufficient lawful justification, deprived plaintiffs of their right to be free from unreasonable searches and seizures, in violation of the Fourth Amendment of the U.S. Constitution.

COUNT II
Denial of Equal Protection
(Against all defendants)

35. The allegations of paragraphs 1 to 32 are realleged and incorporated by reference as if fully set forth herein.

36. Defendants' actions described herein constitute a denial of equal protection of the laws based on plaintiffs' race or racial appearance, in violation of the Fourteenth Amendment of the U.S. Constitution.

COUNT III
Assault
(Against defendant Bevard only)

37. The allegations of paragraphs 1 to 32 are realleged and incorporated by reference as if fully set forth herein.

38. Defendant Bevard intentionally and unlawfully detained, invasively searched, and forcefully interrogated plaintiff Scott without his consent. Bevard acted with racial animus as evidenced by his use of the racial slur "mother fucking nigger."

39. Bevard's acts gave Scott a reasonable apprehension that he would suffer imminent harm in the form of a battery.

40. Bevard had the apparent ability to inflict imminent harm upon Scott.

41. Bevard's actions described above constitute assault in violation of Illinois tort law.

COUNT IV
Illinois Hate Crime Act Violation
(Against defendant Bevard only)

42. The allegations of paragraphs 1 to 32 are realleged and incorporated by reference as if fully set forth herein.

43. Defendant Bevard assaulted plaintiff Scott because of Scott's race and color. Bevard's racial animus is evidenced by his use of the racial slur "mother fucking nigger" when interrogating Scott.

44. Accordingly, Bevard's actions as described herein violate the Illinois Hate Crime Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court, as to all defendants jointly and severally, except as to Counts III and IV, which are against defendant Bevard only:

A. Issue a declaratory judgment that defendants' conduct as complained herein violated plaintiffs' constitutional rights;

B. Award reasonable and appropriate compensatory damages to plaintiffs, in an amount to be ascertained at trial, for defendants' unlawful acts described above;

C. Award exemplary and punitive damages to plaintiffs, in an amount to be ascertained at trial, to deter similar unlawful acts in the future;

D. Award plaintiffs' costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the Illinois Hate Crime Act, 720 ILCS 5/12-7.1; and

E. Award such other and further relief as this Court deems necessary and proper.

Dated: May 8, 2002

Respectfully submitted,

By: _____
One of Plaintiffs' Attorneys

Harvey Grossman
Adam Schwartz
The Roger Baldwin Foundation
of ACLU, Inc.
180 North Michigan Avenue
Suite 2300
Chicago, IL 60601
312-201-9740

Richard J. O'Brien
David B. Johnson
Jamie L. Secord
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603
312-853-7000

Donald R. Jackson
456 Fulton Street
Suite 218
Twin Towers
Peoria, IL 61602
309-637-1010