

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STEVEN BIERFELDT,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:09-cv-01117-RMU
)	
JANET NAPOLITANO,)	
)	
Defendant.)	

**STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE**

Pursuant to Fed. R. Civ. P. 56 and Local Civil Rule 56.1, defendant Janet Napolitano, Secretary of Homeland Security ("DHS") sets the following statement of material facts as to which there is no genuine issue:

1. On March 29, 2009, plaintiff Steven Bierfeldt arrived at the St. Louis Airport carrying a number of items including a metal money box, which was stored in his laptop bag. Complaint, ¶ 17.

2. Plaintiff voluntarily entered the screening process and placed his bag on a conveyor for x-ray screening. Id.

3. Because the x-ray screening of plaintiff's laptop bag was inconclusive due to the presence of an opaque object on the x-ray image, Transportation Security Officer ("TSO") Devore began a search of plaintiff's bag to determine that it did not conceal a weapon. Declaration of Ron Bardmass ("Bardmass Decl."), ¶ 6.

4. In doing so, TSO Devore found a metal box that contained a large sum of money. Complaint, ¶ 18.

5. When plaintiff failed to answer questions about the currency, TSO Devore summoned Supervisory Transportation Security Officer ("STSO") Ron Bardmass. Bardmass Decl., ¶ 7.

6. Plaintiff failed to answer TSO Bardmass's questions that were intended to determine whether plaintiff had any legitimate explanation for the large sum of money. See Transcript ("Tr.") at 10 (STSO Bardmass explaining to the St. Louis Airport Police that "[w]hile I had them out [at the checkpoint], I tried to ask him some questions just to clear things up").¹

7. STSO Bardmass led plaintiff to a small office just behind the checkpoint and to try to resolve the matter. Complaint, ¶ 5; Bardmass Decl., ¶ 8.

8. Once in the office, STSO Bardmass examined the box to verify its contents Bardmass Decl., ¶ 11.

9. In order to determine whether the currency actually constituted an unusually large sum, he asked plaintiff if he knew how much money was in the box, to which plaintiff replied that he did not "know exactly." Tr. at 1.

10. STSO Bardmass also inquired about plaintiff's occupation in order to determine whether plaintiff would understandably be carrying an large amount of currency, to which plaintiff responded: "Am I legally required to tell you that?" Tr. at 1.

11. After plaintiff continued to persistently rebuff his efforts to clarify whether there was a need to notify law enforcement of the large quantity of currency found in plaintiff's carry-

¹ As explained in the Complaint, ¶ 20, plaintiff recorded his interaction with TSA personnel and Airport Police officers, which the American Civil Liberties Union has made available at its website. See <http://www.aclu.org/safefree/general/39922res20090618.html>. A transcript of that recording is included as Attachment 1 to the Declaration of Ron Bardmass ("Bardmass Decl.").

on bag, STSO Bardmass concluded he would be unable to make that determination on his own and asked TSO Devore to summon the St. Louis Airport Police Department. Tr. at 1.

12. The St. Louis Airport Police Department is the law enforcement entity with jurisdiction over Lambert-St. Louis International Airport. See <http://www.flystl.com/fystl/security/police>. It is responsible for traffic control, criminal investigations, and enforcement of local, state and federal laws at the airport. Id.

13. According to the transcript, Officer Shelton of the St. Louis Airport Police arrived within a minute. Tr. at 2.

14. Officer Shelton also tried to ask plaintiff basic questions to resolve the matter with plaintiff responding as follows:

Shelton: How much money do you have in here?

Bierfeldt: I don't know the exact amount.

Shelton: Where does this come from; where is it coming from?

Bierfeldt: It's coming from somewhere.

Shelton: Where?

Bierfeldt: Where?

Shelton: I'm not going to play games with you.

Tr. at 3.

15. At that point, Officer Shelton called his dispatcher and explained that plaintiff had a large sum of money and was refusing to answer questions regarding it. Tr. at 3.

16. Shortly thereafter, other officers from the St. Louis Police Department arrived. Compl., ¶ 23.

17. Officer Shelton continued to try to elicit information that would allay any doubts

about cash in plaintiff's possession. But to each question that probed anything other than his identity or destination, plaintiff responded by asking whether he was "legally required" to answer the questions. Tr. at 4-5.

18. Officer Shelton tried to respond by explaining the purpose of his questions:

Shelton: You're coming in with some money, but you don't want to answer any questions, you know, how much, how much it is and why it's in your possession. I mean

Bierfeldt: Right, I'm saying I don't know.

Shelton: Why is it a secret why you have money or something?

Bierfeldt: I don't know the exact amount. You're asking where my employment is and I'm simply asking if I am legally required

Shelton: Well I 'm asking . . . The question is why do you have this money? That is the question. That is the major question.

* * * *

Bierfeldt: Am I'm being detained because of the law, sir?

Shelton: Because you have a large sum of money that you can't answer why you have it.

Tr. at 4.

19. Plaintiff finally stated that the box contained approximately \$4700, (Tr. at 5), but he continued to refuse to answer questions regarding why he possessed such a large sum of money. Tr. at 6-7.

20. Although plaintiff had initially claimed that the money was his, he later stated that "the money does not belong to [him]." Tr. at 7. Instead, he stated that the money was simply "in his possession." Tr. at 8.

21. At that point, airport police informed plaintiff that he was going to take him down

to the station to "find out if [plaintiff] stole it." Tr. at 7.

22. Before taking him down for further questioning, a plain clothes officer, who was the Duty Sergeant from the St. Louis Police Department, arrived and noticed that plaintiff had some campaign materials, which seem to indicate that he was working for Campaign for Liberty. Complaint., ¶ 29.

23. When the Airport Police Duty Sergeant asked plaintiff whether he worked for Campaign for Liberty, plaintiff confirmed that he worked for Campaign for Liberty and that the money constituted contributions to that organization. Tr. at 11.

24. Plaintiff was then released by the St. Louis Airport Police. Id.

25. The Transportation Security Administration ("TSA") has adopted a uniform set of standard operating procedures ("SOP") and directives that are applicable to screening operations. Declaration of William Switzer ("Switzer Decl."), ¶ 3-8.

26. TSA has issued Management Directive 100.4 applicable to Transportation Security Searches, which went into effect on September 24, 2007. Id. at ¶ 6.

27. That directive was revised on September 1, 2009. Id. at ¶ 7.

27. TSA has also issued Operation Directive 400-54-2, entitled "Discovery of Contraband During Screening." Id. at ¶ 8.

Respectfully Submitted,

TONY WEST
Assistant Attorney General

SANDRA M. SCHRAIBMAN
DC Bar No. 188599
Assistant Branch Director

s/Marcia K. Sowles
MARCIA K. SOWLES, DC Bar No. 369455

Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W. Room 7114
Washington, D.C. 20530
Tel.: (202) 514- 4960
Fax: (202) 616- 8470
E-mail: marcia.sowles@usdoj.gov

Of Counsel

Marc Pilcher
Attorney-Advisor
Office of Chief Counsel
Transportation Security Administration

Attorneys for Defendant