



PP-IN-001-001

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS
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TREUNIGER
BUCKETT

INDIANAPOLIS CHAPTER OF THE)
NAACP;)
DAVID SMITH, on his own behalf)
and on behalf of a class of those)
similarly situated,)

Plaintiffs,)

v.)

THE CITY OF CARMEL, INDIANA;)
THE CARMEL POLICE DEPARTMENT;)
PHILLIP HOBSON,)

Defendants.)

IP 97-0108 C-MS

CIVIL ACTION NO.
CLASS ACTION
JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
AND INDIVIDUAL CASE FOR DAMAGES**

I. INTRODUCTION

1. This is an action brought by the Indianapolis Chapter of the NAACP and by David Smith on his own behalf and on behalf of a class of those similarly situated to permanently enjoin the policy and practice of the police department of the City of Carmel, Indiana, of conducting traffic stops of certain citizens even though there exists no cause for the stops. These stops violate both the Fourth and Fourteenth Amendments to the United States Constitution and, on behalf of a sub-class, Equal Protection and 42 U.S.C. §1981. David Smith also seeks damages because of a stop that was made by Police Officer Phillip Hobson, an officer employed by the Police Department of the City of Carmel.

II. JURISDICTION

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. §1331 and §1343. Plaintiffs' cause of action is brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

III. PARTIES

3. David Smith is an adult resident of Hamilton County, Indiana.

4. The Indianapolis Chapter of the NAACP is the Indianapolis branch of the oldest civil rights organization in the United States.

5. The City of Carmel is a municipality located in Hamilton County, Indiana. The Carmel Police Department is an agency of the City of Carmel.

6. Phillip Hobson is a police officer employed by the Carmel Police Department.

IV. CLASS ACTION ALLEGATIONS

7. This action is brought pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of a class of those similarly situated with David Smith as the class representative. The class is defined as:

All persons, past, present and future, who have been, are, or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping certain cars even though no lawful cause exists to stop the cars.

8. This action is also brought pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of a sub-class of those similarly situated with David Smith as the sub-class representative. The sub-class is defined as:

All members of racial minorities, past, present, and future, who have been, are or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping cars driven by members of racial minorities even though no lawful cause exists to stop the cars.

9. The class and sub-class are so numerous that joinder of all members is impracticable.

The exact size of the class and sub-class are unknown, but it is believed that hundreds of persons fall within the class and sub-class.

10. There are questions of law or fact common to the class, namely whether the policy and practice of the Carmel Police Department violates the Fourth and Fourteenth Amendment rights of plaintiff Smith and the class. The questions of law or fact are common to the sub-class as well, namely, whether the policy and practice of the Carmel Police Department violates Equal Protection and 42 U.S.C §1981.

11. The claims of the representative party are typical of those of the class and sub-class.

12. The representative party will fairly and adequately protect the interests of the class and sub-class.

13. The further requirements of Rule 23(b)(2) are met in this cause in that the parties opposing the class and sub-class have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

V. FACTUAL ALLEGATIONS

14. David Smith is a Sergeant with the Indiana State Police Department.

15. Sgt. Smith resides in Hamilton County, Indiana, in a subdivision located near the City of Carmel, Indiana.

16. Sgt. Smith is an African-American.

17. Sgt. Smith is a well-respected employee and officer with the Indiana State Police Department. He has been employed by the Department for 13 years. He graduated from the Law Enforcement Academy in 1983 where he received basic training in police work. This included, among other things, approximately 80 hours of training in traffic law and safety and approximately 80 hours of training in criminal law. After leaving the Academy, Sgt. Smith worked as a Road Trooper until March of 1989 when he was promoted to the position of District Detective and assigned to the Peru State Police Post where he remained until September of 1990. His duties revolved around the conducting of criminal investigations. Sgt. Smith was then transferred to the general headquarters for the State Police where he received a lateral promotion to Detective specializing in the investigation of white collar crime. In March of 1993, he was promoted to Training Sergeant. After receiving certification from the State of Indiana in 1993, Sgt. Smith began to serve at the Indiana Law Enforcement Academy as an Instructor for Emergency Vehicle Operations and Investigations.

18. Sgt. Smith is also the President of Vital Signs Defensive Driving, Inc., which teaches defensive driving techniques primarily to employees of large corporations.

19. Sgt. Smith has been a resident of Hamilton County since 1993. Before and during that time he had heard unconfirmed reports that the Carmel Police Department had a policy and practice of conducting traffic stops of certain persons without lawful cause.

20. On March 14, 1996, Sgt. Smith was traveling home in an unmarked maroon Chevrolet four door Caprice State Police car at approximately 5:45 p.m. While he was dressed in

his full State Police Officer's uniform, Sgt. Smith was not wearing his hat. Consequently, from the neck up Sgt. Smith was not identifiable as a police officer.

21. While waiting at a traffic light for the left-hand turn arrow, Sgt. Smith observed a Carmel Police car and officer facing him from the opposite direction in the right turn lane.

22. After making a legal turn off of U.S. 31 onto 136th Street, Sgt. Smith was pulled over by the Carmel Police car, driven by Officer Phillip Hobson who had activated the emergency lights.

23. There was absolutely no cause or justification for this traffic stop as Sgt. Smith was observing all traffic laws, rules and regulations. Further, the cars behind Sgt. Smith's vehicle also turned left. Nevertheless, Officer Hobson chose to pull Sgt. Smith over although he did not pull over any of the other vehicles.

24. Sgt. Smith then left his car and approached Officer Hobson's vehicle.

25. Sgt. Smith observed that Officer Hobson appeared to be shocked and surprised by the fact that Smith was a State Police Officer wearing his official State Police Officer's uniform. Officer Hobson continued sitting in his car, paused after seeing Sgt. Smith face to face, and then commented to Sgt. Smith in a halting fashion that he had pulled him over because he had three antennas on the rear of his car. Sgt. Smith, based upon his years of experience and training, believes that the antennas were mentioned as a pretext for the illegal stop.

26. Officer Hobson then quickly left the scene, leaving Sgt. Smith standing beside his vehicle.

27. Sgt. Smith believes that he was stopped by Officer Hobson because he was an African-American driving an older car in Hamilton County which did not have Hamilton County license plates.

28. On information and belief there is a policy and practice of the Carmel Police Department of stopping, without legal justification, cars driven by or containing minorities or cars driven by young persons, or drivers operating older cars without Hamilton County license plates.

29. Sgt. Smith is a victim of this Carmel Police Departments policy and practice and remains subject to being stopped again without legal justification since he remains a resident of Hamilton County and frequently drives a car without Hamilton County license plates in Carmel.

30. African-Americans make up the large majority of the membership of the Indianapolis Chapter of the NAACP.

31. The Indianapolis Chapter of the NAACP is currently aware of at least one occasion where an African-American child of one of its members was stopped, without legal justification, by a member of the Carmel Police Department. The NAACP believes that the stop was racially based.

32. The policy and practice of the Carmel Police Department of stopping, without legal justification, cars containing, among other persons, minorities, is of grave concern to the membership of the Indianapolis Chapter of the NAACP and to the chapter itself and said policy and practice injures its members .

33. The policy and practice and the threat of being stopped without legal justification is causing Sgt. Smith and the class he seeks to represent irreparable harm for which there is no adequate remedy at law. It is also causing irreparable harm to the Indianapolis Chapter of the NAACP.

34. Additionally, Sgt. Smith was harmed by the unlawful stop and has suffered mental anguish and emotional distress.

35.. At all times the actions of the defendants have been taken under color of state law.

VI. CAUSES OF ACTION

36. As to Sgt. Smith, the class, and the Indianapolis Chapter of the NAACP, the policy and practice of the City of Carmel and the Carmel Police Department of stopping, without legal justification, certain vehicles. as specified above, is unconstitutional as violating the Fourth Amendment's prohibition against unreasonable searches and seizures.

37. As to Sgt. Smith, the class, and the Indianapolis Chapter of the NAACP, the policy and practice of the City of Carmel and the Carmel Police Department of stopping, without legal justification, certain vehicles, as specified above, is unconstitutional as violating the right to travel as guaranteed by the Fourteenth Amendment to the United States Constitution.

38. As to Sgt. Smith, the sub-class, and the Indianapolis Chapter of the NAACP, the policy and practice of the City of Carmel and the Carmel Police Department of stopping, without legal justification, cars driven by or containing persons who are members of racial minorities violates 42 U.S.C. §1981 and the Equal Protection Clause of the United States Constitution.

39. The actions of Officer Hobson in stopping Sgt. Smith without justification violated Sgt. Smith's constitutional and statutory rights as specified above.

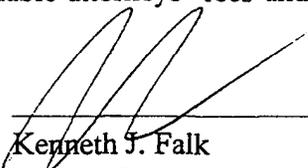
VII. JURY TRIAL DEMAND

40. David Smith demands a jury trial as to all issues triable by right by a jury.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Accept jurisdiction of this cause.
2. Certify this cause as a class action with the class and sub-class defined as specified in paragraphs 7 and 8 above.
3. Declare that the actions of the defendants are unlawful for the reasons specified in paragraphs 36-39 above.
4. Enter a preliminary injunction, later to be made permanent, enjoining the defendants from stopping the vehicles of the plaintiffs and class and sub-class members unless there exists lawful reasons to do so.
5. Award Sgt. Smith his damages.
6. Award plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. 1988.



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