

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Philip Dominic Salvia,

Plaintiff,

v.

Case No. 14 cv 237

Adam Fell, Chris Weiss, and
David Davis,

in their Individual Capacities,

Defendants.

COMPLAINT

I. NATURE OF ACTION

101. This is a civil rights action arising out of (1) the actual and threatened enforcement of rules, regulations and policies that unlawfully restrict the Plaintiff's right to freedom of the press in the Wisconsin State Capitol, in violation of the First Amendment to the Constitution of the United States; and (2) the unlawful arrest of the Plaintiff for alleged violations of these unconstitutional regulations, without probable cause, in violation of the Fourth Amendment to the Constitution of the United States.

II. JURISDICTION AND VENUE

201. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

202. The Western District of Wisconsin is the proper venue for this action because the Plaintiff's claims arose within the geographical boundaries of the Western District of Wisconsin within the meaning of 28 U.S.C. § 1391(b).

III. PARTIES

A. Plaintiff

301. The Plaintiff, Philip Dominic Salvia, is an adult male citizen of the United States with the capacity to sue and be sued in this Court. He is a member of the press, as that term is used in the First Amendment to the United States Constitution, as a radio personality on The Devil's Advocates talk show, which is broadcast every weekday on "The Mic" 92.1 FM radio station in Madison, Wisconsin. He has covered and wishes to continue to cover protests, demonstrations, and other newsworthy events in the Wisconsin State Capitol.

B. Defendants

304. Defendant Officer Adam Fell is, on information and belief, an adult resident of Wisconsin. At all times relevant to this lawsuit,

Defendant Fell was employed as an officer of the Wisconsin State Capitol Police, acting under color of state law within the meaning of 42 U.S.C. § 1983, and within the scope of his employment as that term is used in Wis. Stats. §895.46.

305. Defendant Chris Weiss is, on information and belief, an adult resident of Wisconsin, and was, at all times relevant to this lawsuit, a Sergeant of the Wisconsin State Capitol Police acting under color of state law within the meaning of 42 U.S.C. § 1983, and within the scope of his employment as that term is used in Wis. Stats. §895.46.

306. Defendant David Davis is, on information and belief, an adult resident of Wisconsin, and was, at all times relevant to this lawsuit, a Sergeant in the Wisconsin State Capitol Police acting under color of state law within the meaning of 42 U.S.C. § 1983, and within the scope of his employment as that term is used in Wis. Stats. §895.46.

IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION

401. On July 24, 2013, the Plaintiff was arrested by one or more of the Defendants, and issued citation P 414309 by Defendant Fell, for being present in the Wisconsin State Capitol Rotunda, during an event called the “Solidarity Sing-along,” in a public area of the Wisconsin State Capitol, where the Wisconsin State Capitol Police had determined not to permit such gatherings, which allegedly were occurring in violation of the then-current “emergency” version of Wis. Admin. Code § ADM 2.14(2)(v).

402. At the time Mr. Salvia was cited, the Administrative Rule under which he was cited, Section Adm 2.14(2)(v) of the Wisconsin Administrative Code, had been temporarily amended by emergency rules issued in April of 2013 (and which expired as of September 12, 2013), and, as so amended, it provided:

Adm 2.14 Rules of Conduct.

(2) In order to preserve the order which is necessary for the enjoyment of freedom by occupants of the buildings and facilities, and in order to prevent activities which physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public service, or administrative functions, and pursuant to s. 16.846, Stats., whoever does any of the following shall be subject to a forfeiture of not more than \$500:

* * *

(v) Without approval of the department, conducts an event in those buildings and facilities managed or leased by the department or on properties surrounding those buildings.

The term "event," which appeared in §2.14(2)(v) when the emergency rules were in place, was defined at § Adm 2.03(3m), which was not altered by the emergency rules:

"Event" means any performance, ceremony, presentation, meeting, rally, organized tours not led by department or legislative staff or officials, festival, reception or the like held in public areas of state facilities or buildings. The term "event" does not include activities such as: informal tourist activities; constituents or members of the public visiting elected officials otherwise conducting routine business with any state agency or state entity.

403. Prior to issuing the Plaintiff the citation, Defendant Fell noticed Plaintiff Salvia taking pictures of the sing-along, approached him, and instructed him that he was participating in an unlawful event and needed to leave the Capitol, or be arrested.

404. In response, the Plaintiff began to walk away, intending to obey the command to leave the area.

405. At that point, Defendant Weiss ordered Defendant Fell to "95 him!"

406. "10-95" is the standard police radio code for "subject in custody."

407. Defendant Fell then told Mr. Salvia he was under arrest.

408. Mr. Salvia asked, "For what, exactly?"

409. Defendant Fell said, "For participating in an unlawful event."

410. As he was being arrested, Mr. Salvia said:

I thought I was just covering the event? I was just taking pictures of the crowd and reading the sign.

Am I not allowed to do that as a member of the media sir?

Sir?

What? You're arresting. . .

Just for the record, I took a picture. I took a picture of the crowd as a member of the media. Does that matter to you?

(to another officer:) Does it matter to you?

(to a third officer:) Does it matter you, sir?

Working media is irrelevant?

All these other people are here with cameras and they are not getting arrested.

411. Defendant Fell then restrained the Plaintiff using flex cuffs, and escorted him to the basement of the Capitol, where he was

photographed, processed and issued a citation for allegedly violating Wis. Admin. Code § ADM 2.14(2)(v).

412. At no time on July 24, 2013, did the Plaintiff participate in the sing-along.

413. The issuance of this citation stopped and inhibited the Plaintiff from observing and photographing the Solidarity Singalong peaceful demonstration, in furtherance of his duties as a member of the press.

414. The act of the Plaintiff in observing and photographing the sing-along gathering was not disruptive of the business of the Capitol; it was no more disruptive than other members of the press who routinely photograph activities in the Capitol Rotunda during business hours.

415. The issuance of the citation to the Plaintiff as alleged above was carried out at the direction of Defendant Weiss or was ratified by him, or both.

416. The issuance of the citation to the Plaintiff as alleged above was carried out at the direction of Defendant Davis or was ratified by him, or both.

417. The citation issued as alleged above was dismissed on the motion of the Wisconsin Department of Justice.

V. BASIS OF LIABILITY

A. Facial Invalidity under the First Amendment.

501. Wis. Admin. Code § ADM 2.14(2)(v) as amended by the

emergency rules in effect on July 24, 2013, violated the First Amendment to the United States Constitution and was unconstitutional on its face in that it purported to make it unlawful for a member of the press to cover a peaceful demonstration in an area of the Wisconsin State Capitol otherwise open to the public, and in that it required government permission for First-Amendment-protected activity even by very small groups or individuals.

B. Invalidity as Applied.

502. Wis. Admin. Code § ADM 2.14(2)(v) as amended by the emergency rules in effect on July 24, 2013, violated the First Amendment to the United States Constitution and was unconstitutional as applied to the Plaintiff in that it purported to make it unlawful for a member of the press to cover a peaceful demonstration in an area of the Wisconsin State Capitol otherwise open to the public.

503. Wis. Admin. Code § ADM 2.14(2)(v) as amended by the emergency rules in effect on July 24, 2013, violated the First Amendment to the United States Constitution and was unconstitutional as applied to the Plaintiff in that it authorized the Defendants to arrest and cite the Plaintiff for violating it on the theory that by *observing* a peaceful demonstration in an area of the Wisconsin State Capitol otherwise open to the public, he was *participating* in an unlawful event.

504. The acts of the individual defendants alleged above in issuing Plaintiff Salvia a citation violated rights secured the Plaintiff by the First Amendment to the United States Constitution, under whatever authority

they were carried out.

C. Arrest without Probable Cause in Violation of Fourth Amendment.

505. The arrest of the Plaintiff in the absence of probable cause to believe that any offense had been committed violated rights secured to him by the Fourth and Fourteenth Amendments to the United States Constitution.

VI. DAMAGES

601. By virtue of the unlawful actions of the Defendants alleged above, the Plaintiff incurred attorneys' fees, financial losses, loss of liberty, loss of earning capacity, emotional distress, inconvenience, the disruption of his constitutionally-protected activity as a member of the press and other damages for which he seeks compensatory damages in an amount deemed just by the court.

602. Because the acts of the individual Defendants herein alleged were carried out maliciously or with reckless disregard for the Plaintiff's fundamental rights, the Plaintiff seeks awards of punitive damages against the individual Defendants to deter them and others similarly situated from similar wrongful acts in the future.

VII. CONDITIONS PRECEDENT

701. All conditions precedent to this action within the meaning of Rule 9(c), Fed. R. Civ. Pro., have been performed or have otherwise occurred.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays the court to grant a judgment against the Defendants awarding him damages, costs, attorney's fees and such other and further relief as the Court deems just.

Dated this Monday, March 31, 2014.

Respectfully submitted,

Philip Dominic Salvia,

Plaintiff

By

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