

DISTRICT COURT

ARREST: Negligence, § 1983 (search not attended by female) claims stemming from erroneous driver's license status rejected... Gustafson.

(The background is from the complaint.) Misty Cleverley, then 17, was stopped 2/20/01 by Billings Officer Reid and cited for inoperative headlight, no insurance, and no registration. She appeared in Billings Municipal Court and furnished proof of insurance and the registration and these citations were dismissed and she forfeited \$60 bond for the headlight charge. She alleged that Municipal Court erroneously reported the insurance citation to DMV which suspended her license in 9/01, and that after repeated requests to Municipal Court she was assured in 1/02 that her valid license status had been confirmed. She alleges that on 12/6/01 she was stopped by Laurel Officer Sauter and cited for driving with a suspended license, and that she adamantly denied that it was suspended and presented it to him but that he called her a liar but allowed her to drive off. She alleges that she called Municipal Court and explained that she was visiting her parents in Shelby and because of winter weather she would like a continuance for the 12/12/01 appearance date and was advised that she could appear 1/3/02. She alleges that she appeared 1/3/02 and presented her license and pled not guilty, and that Sauter again accused her of lying and Judge Kerr requested suspension of her license for failure to appear 12/12/01 and the State immediately suspended it. The suspension remained in effect until her initial appearance 1/3/02 and Kerr asked DMV to reinstate her driving privileges upon payment of a \$25 reinstatement fee. She alleged that as of 1/28/02 Kerr had not inquired of DMV as to her driving status and issued an arrest warrant for failing to appear for an omnibus hearing on the suspended license charge. She alleges that on 1/30/02 she was arrested by Sauter and another officer and booked into the Laurel jail where they searched her without any female present although she had requested that one be present and her mother was available. She alleges that Kerr finally called DMV the next day and confirmed that her license was not suspended and thereafter dismissed the charge. She alleges that she was moving to Shelby with her mother's assistance and they had to spend 2 nights at a Billings motel due to the arrest and court appearance. She alleges that at 11 p.m. 7/6/03 she was stopped by a Yellowstone Co. deputy and cited for driving with a suspended license, no insurance, and stolen plates. Her license was confiscated and she alleges that she was left alongside the road at night with her 9-month-old infant without any protection or ability to call anyone or any food for her infant and told that if she got in and drove her car she risked being cited again. She appeared before JP Hernandez who set bond at \$350 payable at \$20/mo. She retained a lawyer who succeeded in getting charges dismissed and correcting her driving record. She sued Billings, Laurel, and Yellowstone Co. asserting claims of defamation, negligence, and § 1983 relating to false reporting of her license status, accusations of lying, arrest, search, booking, incarceration, meeting bonding requirements, abandonment on the streets of Billings with her infant, missing work, travel expenses, embarrassment, humiliation, ridicule, and attorney fees & costs associated with clearing her record and defending against the charges. The Court previously granted judgment on the pleadings for Laurel and Billings on some claims based on judicial immunity and statute of limitations. Laurel and Billings now request summary judgment as to negligence and § 1983. (Yellowstone Co. was not served.)

Laurel cannot be liable in negligence for erroneous information which may have been provided to DMV regarding Cleverley's driver's license since it was not supplied by Laurel. While Sauter may have owed her a duty of reasonable care when he made the stop, there are no facts from which a jury could reasonably conclude that he breached that duty. Cleverley concedes that he had no reason to question validity of the information he received when he made the stop. Therefore she cannot establish a negligence claim against Laurel. And judicial immunity precludes negligence liability for Billings for erroneous reporting of convictions.

Cleverley's § 1983 claim is defeated by probable cause for the license citation and no evidence of policy or custom. Sauter saw her tailgating and thus had probable cause and justifiably initiated a stop, and subsequently relied on information from DMV to lawfully cite her for the suspended license. When he executed a second stop for inoperative headlight he lawfully ran a warrant and driver's license check. Again, he had no reason to question the information he received as to her license or that she had a warrant for her arrest, and therefore lawfully arrested her. Cleverley asserts that she was subjected to a thorough search without a female present, which she alleges is the § 1983 policy or custom. Laurel asserts that there is no constitutional right for a female to be free from a lawful search by a male officer—that it is not unconstitutionally unreasonable for a male officer to conduct a pat-down search of a female prisoner. Cleverley has shown nothing more than an isolated incident where Sauter conducted a pat-down without the presence of a female. She has failed to demonstrate that Laurel has established a policy of male officers conducting pat-down searches of female detainees or that such was the chosen course among alternatives. Nor has the Court been presented facts establishing continuing, widespread patterns of unconstitutional misconduct or deliberate indifference to or tacit authorization of such conduct after notice to officials or actual injury by acts pursuant to custom.

Summary judgment for Laurel and Billings on the negligence and § 1983 claims.

Cleverley v. Billings and Laurel, Yellowstone DV-05-563, 5/16/06.

Gale Gustafson (Gustafson & Rohrer), Conrad, for Cleverley; Mark Parker & Casey Heitz (Parker, Heitz & Cosgrove), Billings, for Billings; Jared Dahle (Nelson & Dahle), Billings, for Laurel.

