

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
File No. 1:15-cv-159

JEFFREY H. RANDLEMAN,

Plaintiff,

v.

ALAMANCE COUNTY SHERIFF TERRY
S. JOHNSON, in his individual and official
capacities, and JOHN DOE CORPORATION,
in its capacity as Surety on the Official Bond
of the Sheriff of Alamance County,

Defendants.

COMPLAINT
(Jury Trial Demanded)

COMES NOW Plaintiff Jeffrey H. Randleman and states the following as his Complaint against Defendant Terry S. Johnson, individually and in his official capacity as Sheriff of Alamance County, North Carolina:

INTRODUCTION

1. Jeffrey H. Randleman served as a law enforcement officer in the Alamance County Sheriff's Office for 22 years. He had an exemplary record. In August 2014, he was subpoenaed by the United States Department of Justice to testify in a lawsuit alleging that Alamance County Sheriff Terry S. Johnson engaged in unlawful racial profiling. Resisting pressure to do otherwise, Randleman spoke truthfully and provided testimony that was damaging to Sheriff Johnson. As a result, Sheriff Johnson terminated Randleman's employment following his reelection as Sheriff in November 2014. Because Randleman testified honestly, he has lost his job and suffered severe damage to his career and reputation. Randleman brings this suit against Sheriff Johnson because the retaliatory termination violated his rights under the First

Amendment of the United States Constitution, the North Carolina Constitution, and the law of North Carolina.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 for acts committed by defendant under color of state law which deprived plaintiff of his rights under the First Amendment of the United States Constitution. This Court has original jurisdiction over plaintiff's federal claim pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

3. This case also arises under the common law and the Constitution of the State of North Carolina. This Court has pendent jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. Almost all material events giving rise to this cause of action occurred in Alamance County, North Carolina. Upon information and belief, defendant Terry Johnson resides in Alamance County, North Carolina. Under 28 U.S.C. § 1391(b), venue is proper in the United States District Court for the Middle District of North Carolina.

PARTIES

5. Plaintiff Jeffrey H. Randleman is a citizen and resident of Alamance County, North Carolina. Randleman first worked for the Alamance County Sheriff's Office (ACSO) from 1990 to 2003, when he voluntarily left employment. Defendant Johnson rehired Randleman in 2005. In August 2014, Randleman testified under subpoena in civil proceedings brought by the United States Department of Justice (DOJ) against Defendant Johnson. Defendant Johnson terminated Randleman on or about December 1, 2014.

6. Defendant Terry Johnson has been the duly elected Sheriff of Alamance County, North Carolina since 2002. Johnson has final policymaking authority for ACSO. His final

policymaking authority extends to personnel decisions. He is being sued in his individual and official capacities.

7. Defendant John Doe Corporation is a fictitious name for the Surety on the official bond of defendant Johnson as Sheriff of Alamance County pursuant to N.C. Gen. Stat. § 162-8 and § 58-76-5, whose identity is presently unknown to plaintiff. The true name of the corporation will be substituted for the fictitious name once the corporation's identity is learned.

8. Upon information and belief, defendant Johnson is protected by a bond issued by the Surety, and the Surety is a corporation authorized to conduct business in the State of North Carolina. Plaintiff institutes this action individually and, with respect to the claims on the official bond of Defendant Johnson, also on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. § 58-76-5, *et seq.*

9. Upon information and belief, defendant is insured by one or more policies of liability insurance purchased pursuant to N.C. Gen. Stat. § 153A-435 or other applicable state law with respect to all acts and omissions complained of herein, or participates in a government risk pool pursuant to N.C. Gen. Stat. § 58-23-5, or maintains a funded reserve, and to such extent, defendant has waived any official, sovereign, qualified or governmental immunity to which he might otherwise be entitled in his official capacity.

FACTS

A. Plaintiff Randleman's Career with the Sheriff's Department.

10. Randleman was first hired by ACSO in April 1990. From 1990 to 2003, Randleman worked in a variety of capacities, including as a patrol deputy and sergeant. From 1990 to 2002, Randleman worked under sheriffs Richard Frye and Gary Massey.

11. Following every election, the Sheriff of Alamance County swears deputies back in to their offices.

12. In November 2002, defendant Johnson was elected Sheriff of Alamance County. Johnson maintained Randleman's employment when he became Sheriff.

13. In December 2003, Randleman voluntarily left his employment with the ACSO to take a position with the City of Elon Police Department.

14. In December 2005, defendant Johnson rehired Randleman. Randleman returned to ACSO as a patrolman.

15. Defendant Johnson was reelected Sheriff in November 2006. Johnson maintained Randleman's employment after his reelection.

16. On January 10, 2007, the United States Immigration and Customs Enforcement (ICE) entered into a Memorandum of Agreement with defendant Johnson, which granted ACSO limited authority to investigate and enforce immigration violations pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g) (the 287(g) program).

17. In February 2008, defendant Johnson appointed Lieutenant Randy Denham to supervise ACSO's 287(g) program. Lieutenant Denham supervised the program until its termination in 2012.

18. In 2008, plaintiff Randleman was one of several officers who became 287(g)-certified. This certification permitted him to investigate immigration offenses for individuals within ACSO's custody.

19. In or about June 2008, defendant Johnson appointed Randleman an immigration task force officer. In this position, Randleman conducted immigration investigations on individuals who had not been arrested or booked.

20. In or about December 2008, an audit of ACSO concluded that defendant Johnson had not been authorized to name an immigration task force officer. Randleman then left that position, and returned to a corporal position in the Alamance County Detention Center.

21. Following his service in the detention center, Randleman transferred to the patrol division and ceased working on any immigration-related matters.

22. In June 2010, DOJ began investigating defendant Johnson regarding allegations of discriminatory policing and unconstitutional searches and seizures.

23. Defendant Johnson was reelected Sheriff in November 2010. Johnson maintained Randleman's employment after his reelection.

24. On September 18, 2012, DOJ issued an 11-page summary of its investigation into ACSO and detailed charges of discrimination. It then terminated Alamance County's participation in the 287(g) program.

B. The United States Department of Justice Files Civil Rights Claims Against Sheriff Johnson for Racial Profiling.

25. On December 20, 2012, DOJ filed suit against defendant Johnson in his official capacity as Alamance County Sheriff (the "DOJ Suit"). DOJ alleged that ACSO, at the direction of defendant Johnson, intentionally discriminated against Latino persons in Alamance County "by targeting Latinos for investigation, detention, and arrest, and conducting unreasonable seizures and other unlawful law enforcement actions in violation of the United States Constitution and federal law."

26. ACSO's alleged discriminatory conduct included "disproportionately referring Latinos for immigration investigations at the Alamance County Jail" and "typically bas[ing] their

decisions on whether to refer arrestees to 287(g) or ICE officers on their assumptions about the nationality or ethnicity of the arrestees.ö

27. DOJ subpoenaed Randleman's testimony, and he was deposed on June 17, 2013. In his deposition, Randleman testified about incidents in which defendant Johnson instructed him to conduct immigration investigations on arrestees Johnson assumed to be Latino, and also on Alamance County employees and other citizens he assumed to be Latino.

28. Both ACSO and DOJ moved for summary judgment in the DOJ Suit in early March 2014. DOJ cited Randleman's deposition testimony in its briefs on the motions as evidence of defendant Johnson's discriminatory animus.

29. On June 20, 2014, United States District Court Judge Thomas D. Schroeder denied DOJ's motion for summary judgment and denied defendant Johnson's motion for summary judgment as it related to racial discrimination claims.

C. Randleman Testifies in the DOJ Trial Against Sheriff Johnson.

30. Judge Schroeder presided over a bench trial in the DOJ Suit from August 12 to August 22, 2014 (the "DOJ Trial").

31. An important component of DOJ's case was testimony from current and former ACSO employees to demonstrate defendant Johnson's discriminatory intent.

32. Former employees testified that defendant Johnson made a number of statements explicitly demonstrating his discriminatory intent. For example, a former employee testified that defendant Johnson instructed subordinates to "go get them Mexicans." Another former employee testified that when the owner of a trailer park complained to defendant Johnson about "Mexicans" in the park, defendant Johnson told the former employee, "I want every chili-shitter in that park arrested."

33. ACSO aggressively challenged the credibility of these former employees. ACSO presented them as disgruntled former employees who harbored a grudge against defendant Johnson.

34. The majority of ACSO's current employees were hostile witnesses to DOJ.

35. As a current employee of ACSO, Randleman's testimony was a critical component of the DOJ's response to ACSO's credibility arguments.

36. Before the trial, Randleman had heard conversations around ACSO disparaging any "moles" in the department. These conversations made Randleman uncomfortable and made him fear that he would be targeted for retaliation if he testified truthfully.

37. Notwithstanding these concerns, on August 14, 2014, Randleman testified truthfully about his experiences at ACSO. Randleman testified that he was asked to check the immigration status of people who were not yet in custody of ACSO, almost all of whom appeared to be Hispanic. Randleman testified that:

- a. He was e-mailed a list of 17 county employees with instructions to verify the individuals' Social Security numbers. Randleman was not told why individuals' information needed to be verified. All but one of the individuals had a Hispanic surname; all but one had valid Social Security numbers.
- b. Defendant Johnson asked Randleman to investigate a case of identity theft involving the wife of an Alamance County resident who organized rallies against the county's Hispanic community. Defendant Johnson met with Randleman and the victim personally, and ordered Randleman to travel approximately 200 miles to Weaverville, North Carolina, to bring the perpetrator into custody. This was the only instance defendant Johnson called Randleman into his office for such a

crime, and the only time Randleman could recall being asked to travel outside Alamance County to make an arrest. At trial, when asked if it was his perception that this case was given to him "because the case was brought to the sheriff by a high-profile promoter of getting rid of Hispanic immigrants," Randleman answered "yes."

- c. Defendant Johnson asked Randleman to investigate a driver who was in an automobile accident with an Alamance County Commissioner. Defendant Johnson gave Randleman a photograph of the driver, who appeared to be Hispanic. Although the driver had not even been ticketed as a result of the accident, defendant Johnson instructed Randleman to run his name through the immigration database. Randleman's investigation revealed no problems with the driver's immigration status. Randleman testified that he believed that Johnson asked him to investigate the driver because the driver was Hispanic.

38. Randleman also testified that other officers discussed hearing defendant Johnson on ACSO radio saying "if he's Hispanic, take him to jail."

39. Johnson was displeased with Randleman's testimony and was displeased with Randleman because of that testimony.

40. The court took a recess in the middle of Randleman's testimony. During this recess, defendant Johnson approached Randleman and commented about what a "good memory" he had. After Randleman resumed his testimony, he observed Johnson's visible displeasure with his testimony.

41. Randleman continued to testify truthfully despite defendant Johnson's behavior.

42. At the conclusion of his direct examination, Randleman testified that he was worried that he would be fired because of his testimony.

43. The DOJ Trial concluded on August 22, 2014. In his closing arguments, DOJ's attorney highlighted Randleman's testimony many times and argued that Randleman's credibility was unassailable.

44. On October 17, 2014, DOJ and ACSO each filed proposed findings of fact and conclusions of law. DOJ's filing relied heavily on Randleman's testimony, while ACSO's filing spent many pages challenging the relevance Randleman's testimony.

D. Johnson Terminates Randleman Following His Testimony.

45. Defendant Johnson ran unopposed in November 2014, and was reelected to a new term as Sheriff.

46. Following his 2014 reelection, Defendant Johnson decided not to re-swear Randleman in as a deputy, terminating his employment.

47. Shortly before Thanksgiving, Captain Kim Wilson called Randleman, informed him that he would be let go, and told him to meet with Chief Deputy Tim Britt on Monday, December 1, 2014. Wilson apologized, and told Randleman she did not know why he was being terminated.

48. On December 1, Randleman met with Britt and Richard Longamore, ACSO's Director of Personnel. Britt told Randleman that defendant Johnson had decided not to swear Randleman back in to his office, and that Randleman would instead be terminated. Randleman asked Britt why he was being terminated. Britt apologized and said that he did not know. Britt admitted that there were no problems with Randleman's job performance.

49. At the time of his termination, Randleman was earning approximately \$46,000 per year, with benefits. Had he worked for 23 additional months, he would have secured guaranteed health insurance for life among other retirement benefits.

50. Following his 2014 reelection, defendant Johnson did not terminate any other of the approximately 120 ACSO law enforcement officers by exercising his authority not to swear them back in to their offices. Randleman was the only ACSO officer that Johnson terminated.

51. Defendant Johnson waited three months to terminate Randleman because he thought it would appear less incriminating if Randleman were terminated as a part of the process of swearing officers back in to their offices.

52. Randleman was never told why he was terminated.

53. In his 22 years of service, Randleman had only one disciplinary complaint filed against him. Following investigation of that complaint, Randleman was exonerated.

54. Randleman had always received positive performance evaluations.

55. There was no legitimate reason to terminate Randleman's employment in December 2014.

56. Defendant Johnson terminated Randleman because of his truthful testimony in the DOJ Trial.

57. Defendant Johnson would not have terminated Randleman if Randleman had committed perjury and given testimony more favorable to defendant Johnson.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 and U.S. Const. Amend. 1)

58. The allegations in the preceding paragraphs are incorporated by reference.

59. This claim under 42 U.S.C. § 1983 is brought against defendant Johnson in his official and individual capacities.

60. Randleman's testimony at the DOJ Trial was truthful, was compelled by subpoena, was outside the scope of his ordinary job responsibilities, and was on a matter of public concern.

61. Randleman's testimony constituted protected activity in that he exercised his constitutional right to free speech guaranteed by the First Amendment to the United States Constitution.

62. Randleman's right and obligation to testify truthfully at the DOJ Trial outweighed any claimed interest on the part of defendant Johnson or ACSO.

63. Defendant Johnson terminated plaintiff Randleman because of his testimony at the DOJ Trial.

64. There was no legitimate nondiscriminatory reason to terminate Randleman's employment.

65. By terminating Randleman in retaliation for his testimony, defendant Johnson violated Randleman's rights under the First Amendment of the United States Constitution, in violation of 42 U.S.C. § 1983.

66. Randleman's right not to be terminated in retaliation for his testimony was clearly established at the time of his termination. *See Lane v. Franks*, 134 S. Ct. 2369, 2378, 189 L. Ed. 2d 312 (June 19, 2014).

67. As a proximate result of defendant's wrongful conduct, Randleman has suffered a loss of wages and benefits, emotional distress, humiliation, loss of reputation, and other damages.

68. Defendants' actions were done maliciously, willfully, or wantonly, or in a manner that demonstrates a reckless disregard for Randleman's rights. As a result of defendants' conduct, Randleman is entitled to recover punitive damages.

SECOND CAUSE OF ACTION
(Wrongful Discharge in Violation of North Carolina Public Policy)

69. The allegations in the preceding paragraphs are incorporated by reference.

70. This claim is brought against defendant Johnson in his individual and official capacities.

71. Plaintiff Randleman was terminated for testifying truthfully in the DOJ Trial against defendant Johnson, his employer. Randleman's speech was protected by the North Carolina Constitution. N.C. Const. Art. I § 14.

72. Randleman was terminated for refusing to testify falsely or incompletely. Committing perjury is prohibited by N.C. Gen. Stat. § 14-209. There was no legitimate nondiscriminatory reason to terminate Randleman's employment.

73. By terminating Randleman in retaliation for his truthful testimony, defendant Johnson violated North Carolina public policy. *See Sides v. Duke University*, 74 N.C. App. 331, 342, 328 S.E.2d 818, 826 (1985); *Williams v. Hillhaven Corp.*, 91 N.C. App. 35, 39, 370 S.E.2d 423, 425 (1988); *Lenzer v. Flaherty*, 106 N.C. App. 496, 515, 418 S.E.2d 276, 287 (1992).

74. As a proximate result of defendant's wrongful conduct, Randleman has suffered a loss of wages and benefits, emotional distress, humiliation, loss of reputation, and other damages.

75. Defendants' actions were done maliciously, willfully, or wantonly, or in a manner that demonstrates a reckless disregard for Randleman's rights. As a result of defendants' conduct, Randleman is entitled to recover punitive damages.

THIRD CAUSE OF ACTION
(North Carolina Constitution)

76. The allegations in the preceding paragraphs are incorporated by reference.

77. This claim is brought against defendant Johnson in his official capacity.

78. Randleman's testimony at the DOJ Trial constituted protected activity in that he exercised his constitutional right to free speech guaranteed by Article I, Section 14 of the North Carolina Constitution.

79. By terminating Randleman in retaliation for his providing truthful testimony, defendant Johnson violated Randleman's right to free speech under the North Carolina Constitution. *See Corum v. Univ. of N. Carolina Through Bd. of Governors*, 330 N.C. 761, 780, 413 S.E.2d 276, 288 (1992).

80. To the extent Randleman's Second Cause of Action is barred by the doctrine of governmental immunity, Randleman does not have an adequate remedy under state law for defendant's violation of his right to free speech.

81. As a proximate result of defendant's wrongful conduct, Randleman has suffered a loss of wages and benefits, emotional distress, humiliation, loss of reputation, and other damages.

82. Defendants' actions were done maliciously, willfully, or wantonly, or in a manner that demonstrates a reckless disregard for plaintiff's rights. As a result of defendants' conduct, Randleman is entitled to recover punitive damages.

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