

STATE OF VERMONT

**SUPERIOR COURT
Orleans Unit**

**CIVIL DIVISION
Docket No. 14-1-21 Ossc**

CHRISTIAN GOULET

v.

DEBRA MUNSON

DECISION

Plaintiff Christian Goulet claims damages against Debra Munson, a Vermont State Police Lieutenant, for violation of civil rights. A hearing was held August 25, 2021. Plaintiff was represented by Attorney David Sleight, and Defendant was represented by Attorney David Groff.

As a law enforcement officer, Ms. Munson brought criminal charges against Mr. Goulet for possessing a loaded rifle in a motor vehicle. In the Criminal Division, Mr. Goulet successfully suppressed the evidence against him on the grounds that the evidence was obtained through a warrantless search. Mr. Goulet now relies on that decision in this suit against Ms. Munson in her individual capacity for violation of civil rights pursuant to 42 U.S.C. §1983, and seeks damages for expenses incurred as a result of the dismissed charges.

The facts are not in dispute. In November of 2019, during hunting season, Mr. Goulet stopped the pickup truck he was driving in the travel land of a country road between open fields and rolled down his window to watch a deer running across the field. He used his cell phone to video record the deer. Sgt. Munson (now Lieutenant Munson) approached in her marked cruiser from the opposite direction. There was no other traffic. She also saw the deer. As she neared his vehicle and slowed down, his vehicle began to move forward. Her vehicle passed his as she slowed down and she then came to a stop. As she did, she saw Mr. Goulet roll up his window and proceed forward, driving away from her. She backed up until she was opposite Mr. Goulet's truck, which had now stopped, rolled down her window, and asked what was going on. They both remained in their respective driver's seats and talked through their open windows. He said he was watching a deer in the field. He stuttered as he talked.

She asked where his rifle was, suspecting he had one because of the circumstances (hunting season, watching a deer) although she did not see any signs of a rifle. At first he said, "What?" and seemed hesitant and when she asked if he had a rifle he said no. He actually did have a rifle in a gun case on or under the back seat. She thought he was lying and continued to question him, and within approximately 30 seconds, he admitted that he had a rifle in the back. At that point she asked him to show it to her, and he said he didn't have to. She ordered him to get out of the truck. Her tone was demanding and impatient. He said he wasn't doing anything illegal and asked if he was committing a crime, and she responded shortly, "you are now."

As they stood outside near the truck, he kept asking her what he did wrong and why he was stopped. He was not confrontational or impolite. She was authoritarian and abrupt. She kept saying that the reason he was stopped was that he had stopped his vehicle in the middle of the road. He said he had not come to a complete stop and that he was looking at a deer and took a video of it. She then said he had just admitted to a second violation: using a cell phone while driving. She again said he was stopped for a traffic violation but she also said she knew he was lying when she asked about a rifle. She asked again to see the rifle and he refused. Other officers that she had called arrived. She seized the truck, applied for a search warrant, the warrant was granted, and following execution of the search warrant, the rifle in the vehicle was found to be loaded. He was then charged in the criminal case.

At the heart of both the criminal case and this case is a law that prohibits the carrying of loaded long guns in vehicles and requires that a person in a vehicle with a long gun must, upon demand of a law enforcement officer, produce it for determination of whether it is loaded or not. The provision is found in Title 10 in Chapter 113 entitled "Game" in Section 4705 entitled "Shooting from motor vehicles or aircraft; shooting from or across highway; permit." As the title suggests, section (a) prohibits shooting wild animals from motor-propelled vehicles. Section (b) is as follows:

(b) A person shall not carry or possess while in or on a vehicle propelled by mechanical power or drawn by a vehicle propelled by mechanical power within the right-of-way of a public highway a rifle or shotgun containing a loaded cartridge or shell in the chamber, mechanism, or in a magazine, or clip within a rifle or shotgun, or a muzzle-loading rifle or muzzle-loading shotgun that has been charged with powder and projectile and the ignition system of which has been enabled by having an affixed or attached percussion cap, primer, battery, or priming powder, except as permitted under subsections (d) and (e) of this section. A person who possesses a rifle, crossbow, or shotgun, including a muzzle-loading rifle or muzzle-loading shotgun, in or on a vehicle propelled by mechanical power, or drawn by a vehicle propelled by mechanical power within a right-of-way of a public highway shall upon demand of an enforcement officer exhibit the firearm for examination to determine compliance with this section.

10 V.S.A. §4705(b) (emphasis added).

In the criminal case, in the decision suppressing the evidence, the trial judge ruled: "The demand for exhibition of a rifle under these circumstances is a search, and was conducted as the primary reason for continuing the stop of defendant's vehicle. Without some exception, the officer should have had a warrant." Decision, Orleans Criminal Division, Dockets 261706 & 261707, November 30, 2020 (Bent, J.), page 4. The judge did not rule on the constitutionality of the statute *per se*. He noted that there are exceptional circumstances for dispensing with the warrant requirement, that the existence of the statute cited above was not by itself sufficient, and that the State had not supported the applicability of the statute as a "special needs" exception to the warrant

requirement. Thus, he granted the motion to suppress the loaded rifle evidence, and the result was dismissal of the criminal charge.

In this case, Mr. Goulet seeks \$5,000 damages for a civil rights violation, consisting of \$4,200 for legal fees in the dismissed criminal case, \$143 for towing fees to retrieve the truck, \$200 in lost wages, and \$700 for the value of the rifle that was seized. While this total exceeds \$5,000, the maximum recoverable in Small Claims court is \$5,000.

In a pretrial memorandum, Mr. Goulet argued that he was entitled to judgment for a civil rights violation as a matter of issue preclusion based on Judge Bent's Decision that Sgt. Munson had conducted a warrantless search. For the reasons set forth in Defendant Munson's memorandum filed May 10, 2021, issue preclusion does not apply. Ms. Munson was a witness in the criminal case and not a party. She had no ability to control the criminal litigation. Moreover, she asserts qualified immunity in this case, which could be a bar to liability, and the issue of qualified immunity was absent from the criminal case. As described more fully in Ms. Munson's memorandum, many of the five elements necessary for issue preclusion as set forth in *Trepanier v. Getting Organized, Inc.*, 155 Vt. 259 (1990) are not satisfied.

Following testimony in this case, Mr. Goulet argued that even if the initial traffic stop was justified (based on Mr. Goulet's truck being stopped in the road, a violation of traffic laws), Sgt. Munson had no cause to expand her investigation into whether or not there was a violation of §4705(b), as she initially had no basis for reasonable suspicion that he was 'a person who possessed a rifle in a vehicle.' She acknowledges that she did not see any rifle in the truck before she asked him where his rifle was and that the question was for the purpose of investigating whether he had a loaded rifle in the vehicle.

Defendant's counsel argued that she had sufficient reasonable suspicion to investigate whether there was a loaded rifle in the vehicle based upon her experience of similar circumstances (8 years as a patrol officer; traffic stops involving hunters during hunting season) plus the specific facts that his conduct when she first stopped to make contact with him was to pull away, presumably suggesting that he wished to avoid an encounter with a law enforcement officer because he had something to hide.

When she first slowed down to attempt to speak with him, she had no basis for reasonable suspicion that he might have a loaded rifle in the truck. He was simply a driver of a vehicle that had been stopped in the travel lane of the road. At that point, the only basis for suspicion was for the traffic violation of stopping in the travel portion of the road. The first thing that happened was that he sought to pull away from her, but when she pursued him, he stopped. At that point she learned that he had been watching a deer. It was hunting season. It was reasonable for Sgt. Munson to conclude that a young man in a rural area in the Northeast Kingdom driving a pickup truck and stopping to watch a deer was probably a hunter. It was reasonable to conclude that he probably

owned a rifle. She knew from experience that during hunting season, hunters often carry rifles in their vehicles. In some cases, the rifles are loaded.

Without more, there would have been no basis to expand the investigation from one of a traffic violation to one concerning a violation of §4705(b), as the fact that some hunters carry loaded rifles in their vehicles while others do not is insufficient, in and of itself, to investigate whether there is a rifle in any specific vehicle that is stopped for a traffic violation. In this case, there is the more specific fact that Mr. Goulet had attempted to avoid having any encounter with a law enforcement officer by initially trying to drive away. That provided a sufficient basis for a particularized suspicion that he had a loaded rifle in the truck, and justifies the expansion of the investigation into the question of where his rifle was. In addition, his initial delayed and evasive response gave rise to a suspicion of lying and supported the continuation of brief questioning even after his verbal denial. The standard was met of having a “reasonable and articulable suspicion,” based on the totality of the circumstances, sufficient for prolongation of the stop to pursue the §4705(b) investigation. *State v. Pratt*, 2007 VT 68 ¶5, *State v. Alexander*, 2016 VT 19, ¶¶ 17, 18. Thus, the claim that the §4705(b) investigation was an unconstitutional expansion of what started as a traffic stop is denied.¹

Once Mr. Goulet admitted that he had a rifle in the truck, then he was “a person who possess[ed] a rifle. . .in. . .a vehicle” and apparently subject to the statutory requirement that he exhibit it on demand for examination to determine whether it was loaded or not. Judge Bent wrote, “[t]he demand for exhibition of the rifle under these circumstances is a search. . .Without some exception, the officer should have had a warrant.” Decision at 4. The issue in this case then becomes whether Sgt. Munson violated Mr. Goulet’s constitutional rights by pursuing the demand for the rifle without a warrant. (The search of the truck itself pursuant to the warrant has not been challenged.)

In the criminal case, Mr. Goulet challenged the constitutionality of the statutory provision that requires the rifle to be produced for examination without a warrant. Judge Bent did not actually make a definitive ruling on that issue. Rather, he ruled that the State had failed in the case to justify the statute as a “special needs” exception to the constitutional prohibition against warrantless searches. Even if he had specifically found the statute to be unconstitutional, there would apparently be only a single trial judge decision with such a holding.

Law enforcement officers are entitled to qualified immunity for their actions when their conduct does not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800,


¹ Defendant’s counsel argued that law enforcement officers can always ask about the presence of guns during traffic stops out of reasonable concern for their own safety. The court finds based on the evidence that safety was not the reason the officer initially asked Mr. Goulet where his rifle was. She was not asking about firearms in general, but ‘your rifle.’ Also, she acknowledged in testimony that the reason for her question was to investigate a violation of §4705(b). Once he had admitted that he had a rifle in the vehicle, then safety was a legitimate basis for her questions and conduct, because then she knew there was a rifle in the vehicle that might potentially be loaded and be a basis for safety concerns.

817-818 (1982). The issue is whether the officer violated a clearly established protected right. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

At the time of this encounter, Sgt. Munson knew that there was in place a statute that authorized her to make a demand on a person with a rifle in his or her vehicle to determine whether it was loaded or not. Statutes are presumed to be constitutional. Plaintiff's counsel argues that Sgt. Munson was presumed to have the general knowledge that warrantless searches and seizures are unconstitutional and violate civil rights, but where there is a statute that authorizes law enforcement to make a demand and that statute has not been challenged with a result that it is generally recognized as unconstitutional, she cannot be held to have violated a clearly established protected right. There is no evidence that at that time it was clearly established that the demand provision of §4705(b) was unconstitutional. No law enforcement officer at the time would have had reason to think that by making a demand to see a rifle pursuant to §4705(b), they would be violating a clearly established protected right. She had no reason to think that she was not authorized to make the demand, or to follow through with prerequisites for the statutorily authorized examination once Mr. Goulet refused to produce the rifle for examination. Thus, she has qualified immunity for having done so.

For the foregoing reasons, Mr. Goulet's claim of violation of civil rights fails. Judgment is issued this day for the Defendant.

Electronically signed pursuant to V.R.E.F. 9(d) on August 31, 2021 at 1:02 PM.



Mary Miles Teachout
Superior Court Judge