

In the
United States District Court
For the
Western District of Wisconsin

Luke A. Weiland and
J.D.W., a minor¹ and N.J.W., a minor,
by their mother and next friend, Andrea Weiland,

Plaintiffs,

v.

Case No. 24-cv-77

The City of Wisconsin Rapids, Wisconsin,
And, in their Individual Capacities,
Rodney Krakow and Dean Fleisner,

Defendants.

COMPLAINT

I. NATURE OF ACTION

101. This is a civil rights action arising out of the unlawful seizure of the persons of the Plaintiffs, by the individual Defendants, in violation of the Plaintiffs' rights to be free from unreasonable seizures, secured to them by the Fourth and Fourteenth Amendments to the Constitution of the United States.

¹ Pursuant to rule 5.2(a)(3) the minor plaintiffs are identified only by their initials.

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, Luke A. Weiland, is a natural person and an adult with the capacity to sue in this Court.

302. The Plaintiff, J.D.W., is a natural person and a minor with the capacity to sue in this Court by his next friend pursuant to Rule 17(c)(2) Fed. R. Civ. Pro.

303. The Plaintiff, N.J.W., is a natural person and a minor with the capacity to sue in this Court by his next friend pursuant to Rule 17(c)(2) Fed. R. Civ. Pro.

B. Defendants

304. Defendant Rodney Krakow is an adult resident of Wisconsin. At all times relevant to this lawsuit, Defendant Krakow was employed as a police officer for the City of Wisconsin Rapids, acting under color of law within the meaning of 42 U.S.C. § 1983, and within the scope of his employment as that term is used in § 895.46, Wis. Stats.

305. Defendant Dean Fleisner is an adult resident of Wisconsin. At all times relevant to this lawsuit and to this day, Defendant Fleisner was employed as a police officer for the City of Wisconsin Rapids, acting under color of law within the meaning of 42 U.S.C. § 1983, and within the scope of his employment as that term is used in § 895.46, Wis. Stats.

306. Defendant City of Wisconsin Rapids, Wisconsin, is a Wisconsin city with the capacity to sue and be sued in this Court. Defendant City of Wisconsin Rapids is liable for the unlawful acts of the Defendants Krakow and Fleisner because they were acting within the scope of their employment pursuant to Sec. 895.46, Wis. Stats. The Plaintiff does not allege that the wrongful acts alleged herein were carried out pursuant to a custom or policy of the City of Wisconsin Rapids.

IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION

401. On January 29, 2023, Luke A. Weiland was driving northbound in his wife's black 2011 Toyota Tundra, an extended-cab pickup truck, on Highway 34

from Wisconsin Rapids toward Rudolph with three minor children in the vehicle: J.D.W. (age 14), N.J.W. (age 12) and their friend, R.B. (age 12).

402. The four were driving to Mosinee, Wisconsin to a youth baseball practice session scheduled to begin at 10 a.m.

403. At approximately 9:20 a.m., as he drove north from the intersection of County Road DD, Weiland saw a police car in his rear-view mirror with its emergency flashers activated.

404. Weiland immediately pulled along the shoulder to allow the police vehicle to pass him, but after a short distance realized squad car was trying to pull him over, not go around him.

405. Weiland immediately put on his turn signal, as he saw an upcoming side road (Willow Road) where he planned to stop to avoid stopping on the state highway.

406. Weiland pulled his vehicle over onto the shoulder of the turn lane to Willow Road, stopped, and put his vehicle in park.

407. Not sure at this point why he was being pulled over, Weiland requested that his son, J.D.W., who was seated in the front passenger seat, immediately find the insurance and vehicle registration papers in the glove compartment, to provide to the officer if requested.

408. Weiland then opened his window to communicate with the officer and everyone in the vehicle waited for the officer to approach.

409. Shortly after stopping the officer, who was later identified as

Rodney Krakow, stepped out of his vehicle and crouched between the open door of his vehicle and the body of the vehicle and began screaming at Weiland. Krakow screamed at Weiland to turn the vehicle off and to put the keys outside on the roof.

410. Weiland immediately complied with this direction.

411. Krakow then screamed that everyone should keep their hands on the ceiling outside the truck, which made no sense to anyone in the truck.

412. Officer Krakow was acting erratically, yelling, and shouting demands that made no sense and his behavior was concerning to everyone in the Weiland truck to the point that they thought something might be wrong with the officer to be behaving in this manner.

413. Although Krakow was acting extremely bizarrely, Weiland and the children immediately complied with his demand the best they could and put their hands up to the ceiling of the truck.

414. Weiland and the children held their hands up to the ceiling of the vehicle for several minutes, and became more and more confused as to what was happening as there was absolutely no communication from Krakow.

415. After several minutes, Officer Krakow became even more erratic and drew his gun, crouched behind the door of his vehicle, and pointed his gun at Weiland and the children who remained in the vehicle with their hands raised to the ceiling.

416. Everyone in the car became extremely concerned and frightened for their lives at this point.

417. An additional Wisconsin Rapids police officer, Officer Douglas Van Berkel, arrived on the scene and effectively blocked off Highway 34.

418. At this time, Officer Van Berkel also stepped out of his squad car, and also drew his weapon and pointed it at Weiland and the three children in the Weiland vehicle who still had their hands raised.

419. The children became extremely upset as there was no communication from officer Krakow and now there were two guns pointed at them.

420. No one attempted to initiate any communication with Weiland, who was immediately complying with every shouted demand, who did not attempt to get out of his vehicle, who did not attempt to approach the officers, who had not been driving erratically and who was simply complying with the orders to keep his hands on the ceiling of his vehicle.

421. Krakow then demanded that Weiland step out of the vehicle and keep his back toward Krakow.

422. Once again, Weiland complied.

423. Krakow continued to yell at Weiland to step backwards, then to take two steps left, which Weiland did with his hands in the air.

424. Krakow continued to yell at Weiland to move further to the left, which Weiland did.

425. Once Weiland was past the back of his truck, Krakow shouted to Weiland to drop to his knees (at the edge of the paved surface of the road) and Weiland did this, kneeling on the frozen pavement.

426. The temperature was about five degrees above zero.

427. Weiland had his license and registration in his hand the entire time and Krakow never asked Weiland for his name, nor did he attempt to look at the ID. Krakow eventually grabbed the paperwork and threw it to the ground.

428. After throwing the license and registration, Krakow handcuffed Weiland.

429. Officer Van Berkel continued to keep his gun aimed at Weiland even after he was handcuffed.

430. At this time, a third officer, Sergeant and acting Shift Supervisor, Dean Fleisner, arrived on the scene and further blocked off Highway 34.

431. Fleisner was able to see Weiland with his officers' guns pointed at him.

432. Fleisner then drew his weapon and pointed it at Weiland's vehicle.

433. Krakow never attempted to de-escalate the situation in any manner, he did the exact opposite by crouching by his vehicle, screaming and acting erratically, providing no communication about what was going on and then, for no reason, drawing and pointing his weapon at Weiland and the children.

434. By this point, Wood County Dispatch had telephoned Weiland's wife, Andrea Weiland, as she was the registered owner of the vehicle Weiland had been driving.

435. She said that her husband was driving three children to Mosinee for baseball and that there was absolutely no reason that they should think he was

intentionally not pulling over.

436. Weiland's wife further said that she worked with the K9 unit, and that her husband was an attorney in Wisconsin Rapids, spent much of his time in the courthouse and was personal friends with Sheriff Becker and other law enforcement officers.

437. The dispatcher then relayed that information to the officers on the scene and commented something along the lines of "He's stopped now and I'm sure he's going to have a heck of a story about this ordeal for you later."

438. Weiland's wife had no idea what the dispatcher was talking about and wondered if there had been some terrible accident. She had the dispatcher confirm that Weiland and the children were safe and they then ended the call.

439. Once Weiland was handcuffed and standing near the back of the squad car, Krakow asked him who the passengers in the Weiland vehicle were.

440. Weiland explained that they were his two young sons and their friend and that they were on their way to baseball practice.

441. Krakow then placed Weiland in the back of his squad car.

442. Krakow asked Weiland if there were weapons in the vehicle, and Weiland informed him that he was a licensed concealed-carry holder.

443. Weiland offered to show Krakow his permit and informed him that there was a 9 mm handgun in the center console.

444. Weiland remained sitting in the back of the squad car with an

unidentified female sitting in front right (passenger) seat of the squad car.

445. Weiland asked her if she had witnessed everything that was going down, explaining that he would probably be needing her as a future witness.

446. She did not respond to Weiland's inquiry or say anything to him at any time.

447. This woman was Krakow's wife.

448. Krakow informed the newest officer on scene, acting Supervisor Sergeant Fleisner, that Dad said there were 3 children in the vehicle ages 9, 10 and 11.

449. Sergeant Fleisner asked Krakow if "Dad" was Luke Weiland.

450. Krakow had never asked Weiland for his name so he picked up Weiland's ID, read it, and confirmed to Fleisner that yes, it was Luke Weiland, husband of the Registered Owner.

451. Fleisner commented that he knew Weiland and his family and that they (the officers) would be alright.

452. Sergeant Fleisner, however, proceeded to give the command to approach the vehicle. He and Officer Van Berkel then approached the three children in the vehicle with guns drawn and Krakow following closely behind them.

453. All three Officers surrounded the vehicle and the ordered front seat passenger, J.D.W., to step out.

454. Officer Van Berkel, was positioned near the passenger side back seat window, and continued to hold his gun on the only occupants now in the vehicle - the two reaming children in the back seat who still had their hands raised.

455. The children were asked why they didn't stop and they replied that they never heard anything and had no idea anyone was behind them.

456. The two remaining children were ordered out of the vehicle.

457. All three were frisked and asked if they had any weapons on them, to which all replied, "No, we are on our way to baseball practice."

458. The children were then split up and N.J.W. was brought into Fleisner's squad car, which contained a police dog.

459. The door was opened in order to put the younger Weiland child into the squad car with the dog but the wrong door was accidentally opened which allowed the dog to aggressively come out of the squad car.

460. The dog was eventually contained and the shaken child was then moved to the other side of the squad car where he was placed alone inside the vehicle, with the dog barking and scratching at the backseat divider in the vehicle.

461. The other two children were put in the back of Officer Van Berkel's vehicle.

462. Weiland, extremely upset that weapons were being pointed at the children with no explanation by the officers, was finally able to ask, "What in the hell is going on?"

463. Krakow told Weiland that the situation was being treated as a "high risk vehicle stop."

464. Weiland, still extremely confused, asked "What the hell are you talking about?"

465. Krakow told Weiland that he had driven a long way before pulling over.

466. Weiland said that he had pulled over nearly immediately once he saw a police car behind him with lights on.

467. Weiland had never heard a siren or seen any other indication that there was a police car behind him until he saw the flashing lights and reacted immediately as alleged above.

468. Weiland said that it was possible that Krakow had been behind him for several minutes before he noticed, as he was not watching his mirrors and was watching the road in front of him while he and the children were wishing their grandmother a happy birthday using the hands-free phone feature of the vehicle's sound system.

469. Weiland may have driven 1-3 miles at 61mph while Krakow was behind him based on where Krakow said he clocked him speeding and where Weiland pulled over.

470. Again, in that ~1-3 miles, neither Weiland nor any of the three children heard a siren.

471. Weiland did not speed up, nor did he turn abruptly, and he had no idea Krakow was even behind him.

472. Weiland remained handcuffed in the back of the squad car and at this point he requested that he be allowed to talk with Krakow's supervisor.

473. Krakow said "Not a problem," and Fleisner came to Weiland's side

of the squad.

474. Weiland then spoke with Fleisner and asked him, as well, "What the hell is going on here?"

475. Fleisner got very authoritative with Weiland at this point and asked him if he was a police officer.

476. Weiland said that he was an attorney. Fleisner responded that he knew who Weiland was.

477. Weiland then told Fleisner that there was absolutely no reason for him to now be sitting in the back of a squad car with handcuffs on.

478. Fleisner shut Weiland back in the squad car where he remained handcuffed for a few more minutes.

479. Fleisner turned off his body camera sound so he could have an "off the record" conversation with Wood County Deputy Saeger who had arrived on the scene.

480. Krakow asked Sergeant Fleisner to uncuff Weiland so he could sit in the truck with his boys while Krakow finished the paperwork.

481. Fleisner turned his body camera sound back on and opened the squad door to uncuff Weiland.

482. Fleisner told Weiland he could go back to his truck to tell the boys (who had, a few minutes earlier, been allowed to go back to their own vehicle) that everything was ok.

483. However, Fleisner told Weiland that he was not allowed to get

back into his vehicle.

484. The temperature outside was approximately 5 degrees with a windchill at or below zero.

485. Weiland was allowed to try to calm the children down from outside the vehicle but was not allowed to get back into his vehicle to get out of the freezing cold weather.

486. All of the officers hustled back to their warm vehicles while Weiland was left to stand outside of his, for some unknown reason, for approximately 10- 15 minutes.

487. Weiland told the boys it was some kind of misunderstanding.

488. He continued to wait outside of the vehicle while Krakow remained in his squad car, with his wife in the passenger seat, writing citations to issue to Weiland.

489. Krakow eventually came out to hand Weiland two tickets, one for speeding and a second citation for resisting/fleeing scene.

490. Weiland did not say anything to Krakow at this point as there was nothing constructive that could have been communicated.

491. Weiland simply asked to see the name on his badge to ensure he knew who the officer was.

492. Only then was Weiland permitted to get back into his vehicle and to start the engine.

493. Weiland and the boys were detained at the scene from 9:22 a.m.

until 9:46 a.m., and for most of this time Weiland was required to stand outside in the cold. This was significantly longer than was necessary to issue citations to Weiland for the traffic offenses he had been observed committing and to verify that there was no more serious wrongdoing afoot and no one was in danger.

494. Weiland did not end up taking the boys to Mosinee for baseball practice, as they were too shaken up from having three guns drawn and pointed at them, so Weiland instead returned to his residence.

495. After he returned to his residence in Wisconsin Rapids, another Wisconsin Rapids officer (Officer Berger) arrived at Weiland's front door. He said that Krakow wanted him to deliver a new citation and that Weiland should rip up the other citation. The new citation was for failing to yield to an emergency vehicle and replaced the resisting / fleeing scene citation.

496. The citations were all later dismissed.

V. BASIS OF LIABILITY

A. Fourth Amendment.

1. Excessive Force.

501. The individual Defendants, Rodney Krakow and Dean Fleisner, violated all three Plaintiffs' rights to be free from unreasonable seizures when they employed

excessive force by pointing their guns at them and causing the other officer to do so as well.²

2. Unreasonable Detention.

502. The individual Defendants, Rodney Krakow and Dean Fleisner, violated all three Plaintiffs' rights to be free from unreasonable seizures when they detained the Plaintiffs at the scene for substantially longer than was necessary to accomplish the original purposes of the traffic stop, which were to issue citations to Weiland for the traffic offenses he had been observed committing and to verify that there was no more serious wrongdoing afoot and no one was in danger. *Rodriguez v. United States*, 575 U.S. 348 (2015).³

B. Sec. 895.46, Wis. Stats.

503. Defendant City of Wisconsin Rapids, Wisconsin, is liable for the unlawful acts of the Defendant Krakow and Fleisner because they were acting within the scope of their employment pursuant to Sec. 895.46, Wis. Stats. The Plaintiffs do not allege that

² See, e. g., *Jacobs v. City of Chicago*, 215 F.3d 758, 773–74 (7th Cir. 2000) (pointing gun at elderly man's head for 10 minutes even after realizing that he is not desired suspect and presented no resistance is "out of proportion to any danger that [the man] could possibly have posed to the officers or any other member of the community"); *McDonald v. Haskins*, 966 F.2d 292, 294–95 (7th Cir. 1992) (pointing gun at nine-year-old child during search was "objectively unreasonable").

³ "Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)(cleaned up).

the wrongful acts alleged herein were carried out pursuant to a custom or policy of the City of Wisconsin Rapids.

VI. DAMAGES.

A. Compensatory Damages.

601. By virtue of the unlawful actions of the individual Defendants alleged above, all three Plaintiffs suffered physical and emotional distress, and incurred treatment expenses, for which they seek awards of compensatory damages in an amount deemed just by the Court.

B. Punitive Damages.

602. Because the acts of the individual Defendants herein alleged were carried out maliciously or with reckless disregard for the Plaintiffs' fundamental rights, the Plaintiffs seek an award 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.

VIII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray the Court to grant a judgment against the Defendants awarding them damages, costs, attorney's fees and such other and further relief as the Court deems just.

Dated this Thursday, February 01, 2024.

Respectfully submitted,

Luke A. Weiland and J.D.W., a minor
and N.J.W., a minor,
by their mother and next friend, , Andrea Weiland,

Plaintiffs,

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