

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ABILIO HERNANDEZ, et al.,)	
)	Case No. 4:17-CV-25
<i>Plaintiffs,</i>)	
)	Judge Travis R. McDonough
v.)	
)	Magistrate Judge Susan K. Lee
JASON BOLES, et al.,)	
)	
<i>Defendants.</i>)	

AGREED FINAL PRETRIAL ORDER

This Court conducted a Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure on July 9, 2018. Drew Justice appeared as counsel for the plaintiffs and Amanda Jordan and Peakco Jenkins appeared as counsel for the defendants. The following action was taken:

I. Jurisdiction

This is an action for violation of Plaintiffs' civil rights under the Fourth Amendment. Jurisdiction of the Court is invoked pursuant to 42 U.S.C. § 1983. The jurisdiction of the Court is not disputed.

II. Pleadings

The pleadings are amended to conform to this pretrial order.

III. General Nature of the Claims of the Parties:

- a. **Claims:** The following claims (including claims stated in the complaint, counterclaims, crossclaims, third-party claims, etc.) have been filed:

- i. Civil Rights violation pursuant to 42 U.S.C. § 1983 for unreasonable search and seizure under the Fourth Amendment

b. Stipulated Facts: The following facts are uncontroverted.

- i. At the time of the traffic stop on December 17, 2015, defendants Jason Boles and Donnie Clark were acting under color of state law as employees of the Tennessee Highway Patrol.
- ii. The plaintiffs were traveling in a 2002 GMC Yukon driven by Abilio Hernandez.
- iii. While traveling on Interstate 24, the plaintiffs passed Trooper Boles, who was located in the interstate crossover.
- iv. Trooper Boles, using his radar, determined that Mr. Hernandez was traveling 77 mph in a 70 mph zone.
- v. Trooper Boles activated his blue lights and pulled the plaintiffs over on Relco Drive off Exit 114 at 11:52 a.m.
- vi. At 11:59 p.m. dispatch informed Trooper Boles that the National Crime Information Center (“NCIC”) report for both Mr. Hernandez and Mr. Betancourt were negative.
- vii. At 12:00 p.m., Trooper Boles returned to the plaintiffs’ vehicle and asked Mr. Hernandez to step out and began to question him.
- viii. Among other questions, Trooper Boles asked Mr. Hernandez if he had been in trouble before and he responded that he had been in trouble for a cocaine-related charge.

- ix. At approximately 12:05, Trooper Boles requested licenses from Mr. Rodriguez and Mr. Perez.
- x. Trooper Clark ran all four occupants through the Blue Lighting Operations Center (“BLOC”).
- xi. At 12:13 p.m., dispatch informed Trooper Boles that the National Crime Information Center (“NCIC”) report for both Mr. Rodriguez and Mr. Perez were negative.
- xii. Sergeant Robert Argraves, who was employed with the Coffee County Sheriff’s Department, arrived with a drug dog at 12:17 p.m.
- xiii. At the time the dog arrived, the BLOC search was still pending.
- xiv. The dog handler said that the dog alerted to the outside of the vehicle at approximately 12:19 p.m.

c. Plaintiffs’ Theory:

The four Plaintiffs were traveling on the interstate when they were stopped by Defendant Jason Boles for going seven miles over the speed limit. Both Defendants — Trooper Jason Boles and Trooper Donnie Clark — are from a division of the Tennessee Highway Patrol that pulls people over for minor traffic violations and then investigates them for serious felonies. From the very beginning, Trooper Boles acted far more interested in the Plaintiffs' travel destination than the actual speeding violation. After checking the car registration and the driver license for both the driver and the front passenger, and after verifying that neither person had any active warrants, Trooper Boles abandoned any pretense of a traffic seizure. He just ordered the driver out of the car to interrogate him about his activities. At about the same time as this interrogation began, Defendant Donnie Clark arrived. Both Troopers seized the Plaintiffs on the side of the road for

roughly eighteen minutes to investigate them for potential drug trafficking. The Troopers never tried to write a traffic citation, never intended to write a traffic citation, and never did write a traffic citation. Seizing the Plaintiffs in this manner violated their Fourth Amendment rights.

After roughly eighteen minutes of drug investigation, the Troopers brought a drug dog to the scene. Allegedly the dog alerted for drugs. After debating at length whether the dog had alerted properly, the Troopers finally searched the vehicle and found a bag with a large number of re-encoded gift cards. They arrested all four Plaintiffs for possession of the cards. No drugs were found. The four Plaintiffs spent a lengthy period in jail awaiting trial, but the cases against them were ultimately dismissed. The criminal prosecution and the time in jail were brought about by the unconstitutional seizure on the side of the road. Also, since it was the Troopers' conscious plan all along to search the car and to prosecute the Plaintiffs for any contraband inside, the resulting prosecution was foreseeable. Proximate cause is therefore satisfied.

d. Defendants' Theory:

Defendants deny that the traffic stop on December 17, 2015, violated the Plaintiffs' rights under the Fourth Amendment. Troopers Boles and Clark were diligent in their efforts to complete the traffic stop and therefore, the stop was not unreasonably prolonged while they awaited the arrival of a drug dog. Defendants are entitled to qualified immunity for their actions during the traffic stop.

e. All Other Parties' Claims: Not applicable

IV. Contested Issues of Law

The contested issues of law are 1) whether Defendants unreasonably prolonged the traffic stop in violation of the Fourth Amendment; and 2) whether Plaintiffs are entitled to recover

damages for injuries stemming from their arrest and incarceration should Defendants be found to have unreasonably prolonged the traffic stop.

Defendants have a pending motion in limine to limit evidence of damages to only those injuries from any invasion of privacy between the period when Trooper Boles received the negative NCIC report and the dog sniff. The following motions are pending:

- a. Defendants' First Motion in Limine to Limit Evidence of Damages
- b. Defendants' Second Motion in Limine to Exclude Toxicology Report

V. Exhibits

The parties have disclosed all exhibits in accordance with Fed. R. Civ. P. 26(a)(3)(C). All exhibits to be introduced have been pre-marked in such a way as to allow the Court to determine which party is offering them. The parties have prepared a joint list of exhibits. The parties have endeavored to stipulate to the admissibility of all exhibits to the extent possible. The parties cannot stipulate to the admissibility of the following exhibits:

- i. Tennessee Bureau of Investigation Official Forensic Chemistry Report—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the report does not relate to whether Defendants unreasonably prolonged the traffic stop.
- ii. Coffee County Jail booking records for Abilio Hernandez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.
- iii. Coffee County Jail booking records for Norge Rodriguez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

- iv. Coffee County Jail booking records for Jose Perez-Fonseca—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.
- v. Criminal court file of Abilio Hernandez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.
- vi. Criminal court file of Lazaro Betancourt—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.
- vii. Criminal court file of Norge Rodriguez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.
- viii. Criminal court file of Jose Perez-Fonseca—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

VI. Witnesses

The parties have disclosed all witnesses in accordance with Fed. R. Civ. P. 26(a)(3)(A). A list comprised of the names of all witnesses, their addresses and telephone numbers is as follows:

a. For Plaintiff(s):

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
1. Abilio Hernandez	can be contacted through counsel	
2. Lazaro Betancourt	can be contacted through counsel	
3. Norge Rodriguez	can be contacted through counsel	

- | | | |
|-----------------------|----------------------------------|--------------|
| 4. Jose Perez-Fonseca | can be contacted through counsel | |
| 5. Jason Boles | 301 Plus Park, Nashville | 931-409-0598 |
| 6. Donnie Clark | 301 Plus Park, Nashville | 931-273-4731 |
| 7. Scott Dickson | 1420 Neal St., Cookeville | 931-393-0783 |
| 8. Robert Argraves | 261 Bush Road, Manchester | unknown |

b. For Defendant(s):

- | | <u>Name</u> | <u>Address</u> | <u>Telephone No.</u> |
|----|--------------|--------------------------|----------------------|
| 1. | Jason Boles | 301 Plus Park, Nashville | 931-409-0598 |
| 2. | Donnie Clark | 301 Plus Park, Nashville | 931-273-4731 |

VII. Other Matters

- a. **Trial:** This case is set for trial before the undersigned and a jury at 9:00 a.m. on July 16, 2018. Counsel shall be present on the first day before commencement of trial to take up any preliminary matters. The probable length of trial is 2 days. The parties should be prepared for trial on the scheduled date. If this case is not heard immediately, it will be held in line until the Court's schedule allows the trial to begin. The parties demand to have a jury trial.
- b. **Possibility of Settlement:** There is little likelihood for settlement. No demand has been made by plaintiffs.
- c. **Miscellaneous Matters:** An interpreter will be needed, as Spanish is the plaintiffs' primary language.

* * *

This Final Pretrial Order shall supplant the pleadings and is agreed upon by the parties as of July 9, 2018. Fed. R. Civ. P. 16; *see U.S. v. Hougham*, 364 U.S. 310, 315 (1960); *see also Ricker v. Am. Zinser Corp.*, 506 F. Supp. 1 (E.D. Tenn. Sept. 11, 1978), *aff'd*, 633 F.2d 218 (6th Cir. 1980).

SO ORDERED.

/s/ Travis R. McDonough

**TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE**

**APPROVED AS TO FORM AND
SUBSTANCE:**

/s/ Drew Justice

Counsel for Plaintiffs

/s/ Amanda S. Jordan

Counsel for Defendants