

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOUGLAS K. UHDE,

Plaintiff,

ORDER

v.

03-C-323-C

MARK K. BITSKY, Deputy Sheriff;
GARY A. SILKA, Deputy Sheriff and Detective;
TAMMY L. KROETZ, Deputy Sheriff,
BRIAN EZMAN, Warden Badge Number 211;
MATTHEW SHERD, Police Officer,

Defendants.

It has come to my attention that the July 22, 2003 order granting plaintiff leave to proceed in this case contains two errors. First, although I concluded that plaintiff stated a claim upon which relief may be granted with respect to his claim that defendants Mark Bitsky and *Matthew Sherd* had violated his right to be free from unreasonable searches and seizures, I inadvertently stated in the order portion of the opinion that I was granting plaintiff leave to proceed on this claim against Mark Bitsky and *Gary Silka*.

Second, I dismissed Brian Ezman from the case after concluding that plaintiff had not alleged facts from which an inference could be drawn that Ezman participated in any alleged unconstitutional conduct. However, I overlooked plaintiff's allegation in his

complaint and in the allegations of fact set out in the July 22 order, that Ezman, along with defendants Bitsky and Silka, was alleged to have placed cartridges in his shotgun and “paint and wood fibers upon the muzzle end of the aforementioned shotgun to make it appear as if the aforementioned shotgun had been used by the Plaintiff in an Armed Burglary.” As I noted in the order granting plaintiff leave to proceed against defendants Bitsky and Silka, the court of appeals has recognized a cause of action under 42 U.S.C. § 1983 for an officer’s fabrication of evidence when such actions violate the due process clause of the Fourteenth Amendment. See Smith v. Springer, 859 F.2d 31 (7th Cir. 1988); Jones v. City of Chicago, 856 F.2d 985 (7th Cir. 1988). Therefore, I should have allowed plaintiff to proceed against defendant Ezman on this claim.

ORDER

IT IS ORDERED that

1. Paragraph (1) of the July 22, 2003 order is deleted and the following paragraph is substituted in its place:

(1) Petitioner Douglas Uhde’s request for leave to proceed in forma pauperis is GRANTED with respect to his claims that (1) respondents Mark Bitsky and Matthew Sherd violated petitioner’s right to be free from unreasonable searches and seizures under the Fourth Amendment when they entered his house, searched his automobile and his person without his consent, placed him in handcuffs and arrested him; (2) respondent Tammy Kroetz violated his Fourth Amendment rights when she entered his house without his consent; and (3) respondents Bitsky, Silka and Brian Ezman fabricated evidence against petitioner in violation of his right to due process

under the Fourth Amendment.

2. Paragraph (3) of the July 22, 2003 order is deleted and the following paragraph is substituted in its place:

(3) Respondents Adams County, Wisconsin Sheriff's Office, Larry Warren, P. Scott Hassett and Jim Gold are DISMISSED from this action.

3. In all other respects the order remains unchanged.

4. The clerk of court is requested to arrange for service of plaintiff's complaint on defendant Brian Ezman.

Entered this 13th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge