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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LARRY DUNN, as general guardian of
LEVI DUNN, a minor, and individually

Plaintiff,

vs.

LANE COUNTY, a Political Subdivision
of the State of Oregon, by and through its
Subsidiary Department, the Lane County
Sheriff's Office, LANE COUNTY
SHERIFF'S DEPUTY PAT O'NEILL,
individually and in his Official Capacity as
a Deputy of the Lane County Sheriff's
Department, CRESWELL SCHOOL
DISTRICT, a government entity,
CRESWELL MIDDLE SCHOOL
PRINCIPAL SHIRLEY BURRUS,
Individually and in her Official Capacity as
an Employee of the Creswell School
District, and WILL DAVEY, Individually
and in his Official Capacity as an
Employee of the Creswell School District,

Defendants.

Case No.:

10-6043-10

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF (42 U.S.C. §
1983 AND 28 U.S.C. § 1367)**

DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1. This is a civil action seeking damages for violations of civil rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and state tort claims.

2. The jurisdiction of this court is conferred by 42 U.S.C. § 1983 and 28 U.S.C. § 1367 providing supplemental jurisdiction for state law claims.
3. Venue in this District is proper under 28 U.S.C. § 1931(b)(1) and under 28 U.S.C. § 1391(b)(2). At least one of the Defendants resides in this District and all Defendants reside or are located in Oregon. A substantial part of the events giving rise to this Complaint occurred in this District.

PARTIES

4. Plaintiff Larry Dunn, a Lane County, Oregon resident (hereinafter "Plaintiff"), is Levi Dunn's father, a general guardian of Levi Dunn pursuant to FRCP 17(c)(1)(A). Levi Dunn (hereinafter "Levi"), born on February 5, 1996, was at all times material herein a citizen of the United States of America and a resident of Creswell, Lane County, Oregon, and Silver Springs, Nevada.
5. Defendant Lane County (hereinafter "County") is a political subdivision of the State of Oregon and has as its policing department the Lane County Sheriff's Department headquartered in Eugene, Oregon, with a satellite office in Creswell, Oregon. One of the policing functions of the Lane County Sheriff's Office (hereinafter "LCSO") is to police Creswell, Oregon and its surrounding area.
6. At all material times herein, Defendant Pat O'Neill, a Lane County, Oregon resident, was a duly appointed, employed and acting deputy sheriff of LCSO and subject to the County's right of control, acting within the scope of his employment and acting under the color of authority of his office to facilitate or accomplish the wrongful acts alleged below.

7. Defendant Creswell School District (hereinafter "CSD") is a political subdivision of the State of Oregon and has as its middle school the Creswell Middle School (hereinafter "CMS") in Creswell, Oregon. At all material times herein, Levi was a student at CMS.
8. At all material times herein, Defendant Shirley Burrus, a Lane County, Oregon resident, and Will Davey, a Lane County, Oregon resident, were duly appointed, employed and acting employees of CSD and CMS and subject to CSD and CMS's right of control, acting within the scope of their employment and acting under the color of authority of their office to facilitate or accomplish the wrongful acts alleged below.

FACTUAL BACKGROUND

9. On or about January 21, 2008, at approximately 3:58 p.m. at or near the intersection of Harvey Road and Hilegas Avenue, Creswell, Lane County, Oregon, a dog was shot and later died from the injuries. The dog was a two-year old brown and white female boxer owned by Randy Prater, who lived near the intersection at 83236 N. 6th Avenue, Creswell, Lane County, Oregon.
10. Neighbors called the Lane County Sheriff's Office, and Deputy R. Lane responded. At the scene, Deputy Lane observed that the dog had been shot, but he did not find any shell casings in his investigation.
11. Then on January 21, 2008, Defendant O'Neill of the Lane County Sheriff's Office was assigned to investigate the case. On January 25, 2008, Defendant O'Neill was contacted by Randy Prater. Prater informed Defendant O'Neill that a veterinarian had examined the dog, removed the bullet and was holding the bullet at the veterinarian's office. Defendant O'Neill retrieved the bullet from the veterinarian and logged it into evidence. The bullet

was a rifled round that any reasonable officer would know had been fired only from a gun with a rifled barrel rather than a gun with a smooth-bored barrel.

12. Based upon a report from fellow sheriff Sergeant Harrold about purportedly seeing a .22 rifle leaning up against the wall behind the door at Plaintiff's residence when he contacted the Dunn's residence on January 21, 2008, Defendant O'Neill contacted Larry Dunn to obtain permission to speak with Levi. Defendant O'Neill did not communicate to Larry Dunn that someone had seen a rifle behind the his door or that he considered Levi to be a suspect in the shooting of the dog. Instead, he advised Larry Dunn that he was doing some follow up questioning involving the dog shooting and needed to ask Levi some follow-up questions, to which Larry Dunn gave his assent.

13. On February 20, 2008, Defendant O'Neill contacted Levi at his school, CMS. Defendant O'Neill met with Levi, along with Defendant Burrus and Defendant Davey in Defendant Burrus's office. During this meeting, Levi told Defendant O'Neill that he did not know anything about the dog shooting until someone knocked on his door and told him about it, as he had walked to the video store and came home and fell asleep. Levi told Defendant O'Neill that the dog was nice and not mean. Defendant O'Neill repeated his questions about the shooting of the dog, and Levi repeated that he did not know about the dog until someone came to his house because he had walked to the video store and then fell asleep. The deputy repeated his questions and Levi repeated his answers. Levi asked multiple times to be able to leave to return to class but these requests were denied. Defendant O'Neill continued to interrogate Levi Dunn.

14. During the interrogation, Defendant O'Neill would not take no for an answer despite how many times Levi denied his involvement. Burrus assisted O'Neill by telling Levi to tell

the officer what he wanted to hear and to answer the questions and confess. Levi held strong to the truth and even tried to “pinkie swear” that he did not shoot the dog. However, Defendant O’Neill continued his attempts to force a confession. The other Defendants did not protect this vulnerable student. After continued pressure to admit to the shooting, Levi stated that if he did shoot the dog, he did not remember it. After a short break, the interrogation continued and Levi continued to deny shooting the dog. He again swore that he did not do it. O’Neill then began to threaten a ballistic examination and Levi again swore that he did not shoot the dog. He stated that he loved that dog and would never want to hurt her. O’Neill still would not relent. At this point Levi was very scared and uncomfortable, given that an authority figure with a gun and a badge was telling him that he did something that Levi knew he did not do. Knowing that he did not do anything wrong, but concluding that he must tell the deputy what he needed to hear to get himself out this intimidating and coercive situation, Levi falsely confessed to shooting the dog with his pellet gun. Defendants knew or should have known that this sort of interrogation tactic with a young and impressionable child without a parent present had a substantial and unacceptable risk of resulting in a false confession.

15. On February 20, 2008 (the same day), Defendant O’Neill and Defendant Davey took Levi from CMS to Levi’s home without his father’s permission or knowledge. They paraded him through the public to his home and publicly had him demonstrate the pellet gun for all the neighbors to see. Defendants O’Neill and Davey knew that in a small town like Creswell this public humiliation of Levi would cause the community to conclude that he was a suspect in the dog death. This put him at substantial risk of ridicule.

16. Levi showed Defendant O'Neill and Defendant Davey where his pellet gun was kept. It was not a .22 rifle as O'Neill originally had suspected. Nonetheless, Defendant O'Neill confiscated the pellet gun, a Crosman 760 Pumpmaster .177 pellet/BB Cal (4.5mm) pellet gun. The pellet gun was designed to shoot either a 4.5 mm BB, or a .177 caliber pellet. A simple Google search would have shown that Levi's pellet gun had a smooth-bored barrel that could not possibly have shot the bullet that killed this dog.
17. At the time of this false confession, Levi was 12 years old. At no point during this questioning or the trip to his home was Larry Dunn present, nor did Defendants Burrus, Davey or O'Neill contact Larry Dunn to advise him about what had happened, despite Larry Dunn having entrusted CSD, Burrus and Davey with his son's care. Defendants colluded to create a coercive environment for Levi and acted in concert to coerce Levi to falsely confess.
18. After concluding his questioning of Levi, Defendant O'Neill contacted Larry Dunn and advised him of Levi's admission. Larry Dunn told Defendant O'Neill that the gun identified by Levi could not have been used to shoot the dog because it could not shoot the size of bullet he believed killed the dog. This insurmountably exculpatory information was not further investigated by Defendants and was instead ignored. Defendants had their minds made up.
19. After his coerced confession and after being displayed publicly by Defendants as a suspect, Levi began to experience difficulties at his school; students began calling him names like "dog killer" and otherwise harassing him. Levi began to get into altercations at school, and his grades were affected. On February 27, 2008, Defendant Davey sent a

- letter to several parents in the CSD informing them of these incidents without naming Levi by name.
20. Defendant O'Neill forwarded his report to the Lane County District Attorney's Office, and the DA filed a Petition in Juvenile Court against Levi on April 4, 2008, for Animal Abuse in the First Degree for unlawfully and knowingly and cruelly causing the death of an animal.
 21. The bullet removed from the dog on January 25, 2008, and the 760 Crosman Pumpmaster pellet gun collected from Levi's residence on February 20, 2008, were forwarded to the Department of State Police Forensic Laboratory. On April 23, 2008, Jared W. Ford, Forensic Scientist, issued a report concluding that the Crosman pellet gun did not fire the bullet removed from the deceased dog. This report was exculpatory and the Oregon State Police provided it directly to LCSO to Defendant O'Neil's attention. Defendants Lane County and O'Neill failed to forward this report to the DA's Office and Levi's defense counsel. Not until Levi's Juvenile Court lawyer forced its release, did the DA ever get a copy of the exculpatory report. Upon receipt of the exculpatory evidence that was previously withheld by Defendants Lane County and O'Neil, the charges against Levi were dismissed on May 28, 2008.
 22. The dismissal of the charges did not resolve the problems Levi was experiencing at school. Students harassed him and called him names relating to the dog shooting. The harassment ultimately resulted in an assault of Levi by a student who hit him in the groin with a cast. The letter sent by Defendant Davey to the other parents in the district did not stop the harassment of Levi; it made it worse. On September 25, 2008, Larry Dunn released Levi's name and story to the local *Creswell Chronicle* in the hopes of stopping

the harassment; the article relayed to the public that the charges had been dropped and Levi had been exonerated. The harassment did not stop. Additionally, Levi's father Larry Dunn had to leave work early for up to a year, because Levi was afraid to be home alone due to the harassment and his fear of the authority figures who violated his trust. Larry Dunn's lost wages resulted in economic damages. Finally, Larry Dunn paid for counseling appointments for Levi due to above problems, resulting in economic damages.

I. First Claim for Relief Against All Defendants: Violations of 4th Amendment Right Against Unreasonable Search and Seizure and the 5th Amendment Right Against Self-Incrimination and Involuntary Confessions.

23. Plaintiff re-alleges paragraphs 1-22 herein.
24. By repeatedly questioning 12-year-old-minor-child Levi at CMS, refusing to end the questioning even when Levi requested to end the interview and return to class, transporting Levi to the scene of the incident to question him further, forcing Levi to demonstrate shooting a dog that he did not shoot, and seizing Levi's Crosman 760 Pumpmaster .177 pellet/BB Cal (4.5mm) pellet gun, Defendants violated Levi's Fourth Amendment right against unreasonable search and seizure and violated Levi's Fifth Amendment rights against self-incrimination and involuntary confessions.
25. As the result of Defendants' actions, Levi endured mental suffering, including but not limited to humiliation and injury to his feelings and injury to his reputation. Levi is entitled to reasonable noneconomic damages to be awarded by a jury.
26. Defendants' actions in this regard demonstrated a particularly aggravated disregard for the rights of Levi requiring an award of punitive damages.
27. Larry Dunn is entitled to economic damages for lost wages and Levi's counseling.

28. Plaintiff is also entitled to attorney fees under 42 U.S.C. § 1988(b).

II. Second Claim for Relief Against Lane County and O'Neil: Violations of 14th Amendment Due Process Clause.

29. Plaintiff re-alleges paragraphs 1-22 herein.

30. By failing to provide a copy of the ballistics report to defense counsel and counsel for the state, Defendants Lane County and O'Neill withheld exculpatory evidence in violation of the Due Process Clause of the Fourteenth Amendment.

31. As the result of Defendants' actions, Levi endured mental suffering, including but not limited to humiliation and injury to his feelings and injury to his reputation. Levi is entitled to reasonable noneconomic damages to be awarded by a jury.

32. Defendants' actions in this regard demonstrated a particularly aggravated disregard for the rights of Levi requiring an award of punitive damages.

33. Larry Dunn is entitled to economic damages for lost wages and Levi's counseling.

34. Plaintiff is also entitled to attorney fees under 42 U.S.C. § 1988(b).

III. Third Claim for Relief Against All Defendants: False Imprisonment (28 U.S.C. §1367).

35. Plaintiff re-alleges paragraphs 1-22 herein.

36. By wrongfully and repeatedly questioning Levi in Defendant Burrus's office even after Levi requested to be returned to class, Defendants County, LCSO, O'Neill, CSD, CMS, Burrus and Davey intentionally confined Levi with actual or apparent physical barriers and/or through the assertion of legal authority.

37. By wrongfully transporting Levi Dunn to his home, Defendants County, LSCO, O'Neill, CSD, CMS and Davey intentionally confined Levi with actual or physical barriers and/or through the assertion of legal authority.

38. Defendants County, LCSO, O'Neill, CSD, CMS, Burrus and Davey personally and actively participated directly in the wrongful acts, or in the alternative, indirectly procured the wrongful acts.
39. Levi was aware of the confinement.
40. The confinement was unlawful; Defendants had no legal right or authority to confine Levi.
41. As the result of Defendants' intentional wrongful acts, Levi endured mental suffering, including but not limited to humiliation and injury to his feelings and injury to his reputation. Levi is entitled to noneconomic damages to be awarded by a jury.
42. Defendants' actions in this regard demonstrated a particularly aggravated disregard for the rights of Levi requiring an award of punitive damages.
43. Larry Dunn is entitled to economic damages for lost wages and Levi's counseling.

IV. Fourth Claim for Relief Against All Defendants: Intentional Infliction of Emotional Distress (28 U.S.C. §1367).

44. Plaintiff re-alleges paragraphs 1-22 herein.
45. Defendants intentionally inflicted severe mental and emotional distress upon Levi or acted knowing that distress was substantially certain to result in order to obtain a confession from Levi.
46. In forcing Levi to falsely confess to the shooting, Defendants' acts in fact caused Levi severe emotional distress.
47. Defendants' acts in forcing a 12-year-old boy to confess to a crime that he did not commit transgresses the bounds of socially tolerable conduct.

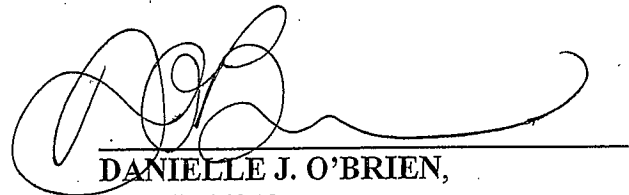
48. As the result of Defendants' intentional wrongful acts, Levi endured mental distress. Levi is entitled to noneconomic damages to be awarded by a jury.
49. Defendants' actions in this regard demonstrated a particularly aggravated disregard for the rights of Levi requiring an award of punitive damages.
50. Larry Dunn is entitled to economic damages for lost wages and Levi's counseling.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in their favor on each and every claim set forth and award them relief including, but not limited to the following;

- A. Reasonable compensation for noneconomic and economic damages to be awarded by a jury;
- B. For Constitutional claims: Plaintiff's reasonable attorney fees;
- C. Plaintiff's costs and disbursements incurred herein; and
- D. Awarding such other relief that the court deems just and proper, including but not limited to the following: requiring Lane County Sheriff's Office to record all interviews with minor-child suspects and to set court-approved guidelines for interviewing minor-child suspects.

FEBRUARY 19, 2010



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