UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

16-CV-20001-FAM

WARREN REDLICH, pro se,

Plaintiff,

vs.

THE CITY OF CORAL GABLES, CRAIG LEEN, individually and as City Attorney for the City of Coral Gables, the CORAL GABLES POLICE DEPARTMENT, EDWARD HUDAK individually and as Police Chief, OFFICERS ALEJANDRO ESCOBAR, AUGUSTIN DIAZ, JOEL RIOS, and JOHN DOE #1-42, THE REYES LAW FIRM, PA, ISRAEL U. REYES and MANUEL A. GUARCH, KATHERINE FERNANDEZ RUNDLE, individually and as State Attorney of the 11th Judicial Circuit, and ASSISTANT STATE ATTORNEYS JAMES ROE #1-4 individually, and OFFICERS ROBERT MOE #1-4, of the MIAMI-DADE GABLES POLICE DEPARTMENT.

Defendants.
_____/

REPLY IN SUPPORT OF THE CORAL GABLES DEFENDANTS' MOTION FOR RULE 11 SANCTIONS

The City of Coral Gables Defendants, including the City and its Police Department, as well as its officers, officials and agents sued in their individual capacities (collectively "Defendants"), by and through their undersigned counsel, do hereby submit this Reply in Support of their Motion for Rule 11 Sanctions [DE 36], and respond to the arguments and assertions contained in Plaintiff's Memorandum In Opposition to Rule 11 Motion [DE 37], as follows:

Introduction

> Federal Rule of Civil Procedure 11, states in pertinent part:
>
> By presenting to the court a pleading, written motion or other paper … an attorney…certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Rule 11(b)(2), Fed.R.Civ.P.

Plaintiff admits in his Complaint that "a Florida appellate court has ruled that drivers do not have such rights in checkpoints" to refuse to obey the minimal necessary and legitimate demands of officers at a valid sobriety checkpoint. (Complaint, ¶ 18, [DE 1], referring to *Rinaldo v. State*, 787 So. 2d 208 (Fla. 4th DCA 2001)). Nonetheless, it is Plaintiff's stated intent to compel this court to act where he believes federal courts have not yet spoken -- that the request to hand over a driver's license during a DUI checkpoint violates the driver's constitutional protections. However, and central to Defendants' Motion for Rule 11 Sanctions, Plaintiff ignores that his Complaint has established on its face that the individual Defendants each acted consistently with *Rinaldo.* While Plaintiff may conceivably be able to craft some pleading which provides "a nonfrivolous argument for extending, modifying, or reversing" the existing law, the current Complaint fails on that front, and no claim against any individual defendant who acts in compliance with existing law will ***ever*** overcome their qualified immunity. Rule 11(b)(2); s*ee Lee v. Ferraro*, 284 F. 3d 1188, 1193-94 (11th Cir. 2002) (qualified immunity offers complete protection for government officials sued in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a

reasonable person would have known so as to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation) (internal citations omitted).

Rule 11 Sanctions Are Appropriate

As Plaintiff's Memorandum of Law acknowledges, these Defendants complied with the safe harbor requirement of Rule 11 and provided adequate time and notice so that Plaintiff could correct the most basic errors in his Complaint. Specifically, Plaintiff attempts to bring state law claims against the City, but has failed to comply with the requirements of §768.28, Fla.Stat. Plaintiff has sued the City of Coral Gables Police Department, which is not an "entity" capable of being sued. But the most egregious action warranting the imposition of Rule 11 sanctions is Plaintiff's persistence in suing seven City employees or agents individually, when the only conduct alleged against any of them is that each acted in compliance with existing law.

The Complaint demonstrates that the City's legal officers and advisors, advised the police officers on the status of clearly established law and the procedures to follow. Yet, the Plaintiff cites only his own legal conclusions and ignores the applicability of both absolute and qualified immunity in defending his decision to sue the City's attorneys individually and adding a wholly unsupported claim for punitive damages against them. The claims against the Chief of Police and the three line police officers alleged to be acting consistent with the advice of counsel, are even more tenuous. None of Plaintiff's claims as pled survive a motion to dismiss, but rather appear to be specifically calculated to bring notoriety to himself and increase the sale of his "book". (Complaint, ¶ 13 [DE

1]). Such disregard for the express requirements of Rule 11 merit sanctions against the Plaintiff who is an attorney both in Florida and New York.

In his Memorandum Plaintiff fails to address the fact that qualified immunity protects government officials so long as their challenged discretionary conduct "does not violate clearly established federal law." *Lassiter v. Alabama A & M University Bd. of Trustees*, 28 F. 3d 1146, 1149 (11th Cir. 1994) (*en banc)*; *Holloman ex rel. Holloman v. Harland*, 370 F. 3d 1252, 1264 (11th Cir. 2004). To be clearly established, the federal law must be preexisting, obvious, and mandatory so that a similarly situated, reasonable government agent would be on notice that his or her questioned conduct violated federal law under the circumstances. *Lassiter*, 28 F. 3d at 1149-50. Because Plaintiff himself argues that there is "no" federal law on point to violate, Plaintiff had no "nonfrivolous" basis to sue any defendant in this action in his individual capacity. Rule 11(b)(2).

In stark contrast, Defendants rely on existing and applicable law, a case which is on all "fours" with the facts of this case, and was decided applying a Fourth Amendment reasonableness analysis to the actions of a police officer at a DUI checkpoint. *Rinaldo,* 787 So. 2d at 212-13. *See also Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450-51 and 455 (1990) (Supreme Court found operation of a DUI checkpoint effectively advanced the "State's interest in preventing drunken driving" with minimal intrusion upon individual motorists who are briefly stopped, while consistent with the Fourth Amendment).

To be clear, Plaintiff's "book" seeks to profit from his theory that a driver in a DUI checkpoint should not be compelled to roll down his window in order to inhibit a line officer's ability to detect the smell of alcohol. (Complaint, ¶¶ 17-19 [DE 1]). This

theory has no support in existing Fourth Amendment case law examining DUI checkpoints, and does not otherwise qualify for Fifth Amendment protection, since rolling down a window is not testimonial and results in no compelled communication by the driver. *See Hearn v. Board of Public Education*, 191 F.3d 1329, 1333 (11th Cir. 2003) (production of body fluids is non-testimonial), citing *Schmerber v. California*, 384 U.S. 757, 761 (1966); *U.S. v. Knight*, 2012 WL 1898952, *2 (S.D. Ga. 2012) (under the U.S. constitution the prohibition against self-incrimination applies only when the evidence is testimonial and field sobriety tests which elicit only physical evidence such as slurred speech, imbalance or abnormal eye movement are not testimonial in nature), citing *Pennsylvania v. Muniz*, 496 U.S. 582, 602-05 (1990).

Yet, instead of acknowledging the clear deficiencies in his Complaint during the safe harbor period, Plaintiff now makes a half-hearted attempt to challenge the way this checkpoint was run generally. Unfortunately for Plaintiff, there are no allegations in his Complaint which establish that the selection of cars from the highway into the DUI checkpoint was anything but random. There are no allegations in the Complaint from which the court could conclude that prior notice of the checkpoint was insufficient. Defendants acknowledge that amendments to pleadings are routinely allowed, but in this case, the premise of Plaintiff's law suit – his stated purpose in pursuing litigation, is to change existing case law that he deems to be "absurd." (Plaintiff's Response to Motion to Dismiss, page 7 [DE 34]). In order to effect that change, Plaintiff sought out this checkpoint, relied on prior notice and was not harmed by the selection of his vehicle from the highway into the DUI checkpoint.

Conclusion

Based upon the foregoing points and authorities, the Coral Gables Defendants, specifically, the City of Coral Gables, the City of Coral Gables Police Department, Craig Leen, Edward Hudak, Alejandro Escobar, Augustin Diaz, Joel Rios, the Reyes Law Firm, PA, Israel Reyes and Manuel Guarch, seek an award of sanctions pursuant to Rule 11 against Plaintiff, and such further relief as this court deems just and appropriate.

Respectfully submitted,

Date: April 11, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Reply to Memorandum in Opposition to Rule 11 Motion* was filed via CM/ECF and served by e-mail on April 11, 2016, on all counsel or parties of record on the Service List below.

s/ Christine L. Welstead

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