

DC-23-02802
CAUSE NO. _____

TORRY OSBY,

Plaintiff,

vs.

FRANCISCO CASTILLO, and
DALLAS COUNTY, TEXAS,

Defendants.

§ IN THE DISTRICT COURT
§
§
§ 191st
§ _____ JUDICIAL COURT
§
§
§
§ DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

COMES NOW, Torry Osby, Plaintiff, files this Original Petition complaining of Defendant Francisco Castillo and Defendant Dallas County, Texas, and for causes of action, would respectfully show this Court as follows:

NATURE OF THIS CASE

This lawsuit is about a Dallas County Sheriff Deputy live-streaming a traffic stop onto social media and releasing personal private identifying information about the person who had been stopped to over a hundred people viewing the live-stream of the stop. The facts of this case beg the question: how many other traffic stops of Dallas County citizens has Deputy Castillo or any other Dallas County Sheriff’s Deputy live-streamed over social media?

SUMMARY

Imagine an officer pulling over a driver on a traffic stop, and then loudly proclaiming to people walking down the sidewalk who the driver is, when he was born, where he lives, and his driver license number. This shocking invasion of privacy is essentially what occurred in this case, only to over a hundred people on the internet.

On March 2, 2021, Deputy Francisco Castillo, while employed and on duty as a Dallas County Sheriff’s Deputy, conducted a traffic stop of Torry Osby. Deputy Castillo live-streamed

Mr. Osby's private personal identifying information contained on his driver license in real time during the stop to the general public, on the social media platform TikTok, thereby violating Mr. Osby's right to privacy. Undoubtedly, there was no legitimate government interest at the time Deputy Castillo live-streamed Mr. Osby's personal identifying information to over one hundred TikTok users who were watching Deputy Castillo's live video at the time. Mr. Osby only learned that his private personal identifying information had been live-streamed over TikTok during the traffic stop because one of the people watching Deputy Castillo's video found Mr. Osby by using Mr. Osby's information that was live-streamed on TikTok and reached out to alert Mr. Osby that his information had been live-streamed to everyone watching the video.

During police encounters, people divulge information they would not share with the public, including a combination of their name, date of birth, address, and driver license number. While the act of being stopped on the side of the road by a police officer occurs in plain sight of those driving and walking nearby, the identity of the person stopped, and the nature of the stop are not broadcast to those passersby and can be embarrassing to the person stopped.

I.
DISCOVERY CONTROL PLAN LEVEL

1.1 It is the Plaintiff's intent that Discovery be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

II.
STATEMENT OF CLAIM OF RELIEF
PURSUANT TO TEX. R. CIV. P. 47

1.2 Plaintiff seeks monetary relief pursuant to Tex. R. Civ. P. 47(c)(1).

III.
JURISDICTION AND VENUE

2.1 Venue is proper in Dallas County pursuant to §15.002(a)(1) of the Texas Civil Practice and Remedies Code, because the incident which forms the basis of this lawsuit occurred in Dallas County, Texas.

2.2 Subject matter jurisdiction of this cause rests with this Honorable Court as the amount in controversy exceeds its minimum jurisdictional requirements.

2.4 *In personam* jurisdiction is satisfied as the Defendants resides in and/or transact business in the State of Texas, such that this Court's exercise of personal jurisdiction over Defendant is consistent with all applicable statutory requirements and constitutional.

2.5 Additionally, this is a claim brought under the Texas Tort Claims Act (TTCA), Texas Civil Practice and Remedies Code chapter 101. The Court has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury or death caused by the negligence of the defendant's employee, in this case Dallas County, in the use or condition of personal property, if that employee would be personally liable to the plaintiff under Texas law. Tex. Civ. Prac. & Rem. Code Section 101.021(2). This claim, as set out more fully in Count III, involves personal injury caused by the negligence in the use/misuse of personal property by Francisco Castillo, defendant Dallas County, Texas' employee, and that employee would be personally liable to plaintiff under Texas law.

2.6 No exception to the waiver of immunity applies to reinstate Defendant Dallas County's governmental immunity for this claim.

2.7 On August, 23, 2021, Plaintiff filed notice of his claim with Defendant Dallas County, Texas

2.8 On September 22, 2021, Defendant Dallas County, Texas acknowledged receipt of Plaintiff's claim.

IV.
PARTIES

3.1 Plaintiff Torry Osby (hereinafter "Mr. Osby" or "Plaintiff") is an individual residing in Tarrant County, Texas.

3.2 Defendant Dallas County, Texas, is a political subdivision of the State of Texas located in the Northern District of Texas. Dallas County, Texas can be served through its County Judge, Clay Jenkins, at 500 Elm Street, Suite 700, Dallas TX, 75202, or wherever he may be found.

3.3 Defendant Francisco Castillo is an individual residing in Dallas County, Texas, and at all times relevant to this lawsuit Defendant Castillo was employed as a Sheriff's Deputy with the Dallas County Sheriff's Office. Defendant Castillo may be served at his place of employment at the Dallas County Sheriff's Office, located at 133 N Riverfront Blvd #31, Dallas, TX 75207, or wherever he may be found. Defendant Castillo is being sued in his individual capacity.

V.
FACTS AND ALLEGATIONS

Defendant Castillo Used His Law Enforcement Encounters to Gain Followers on TikTok.

4.1 Defendant Castillo is a user of TikTok, a social media video hosting application.

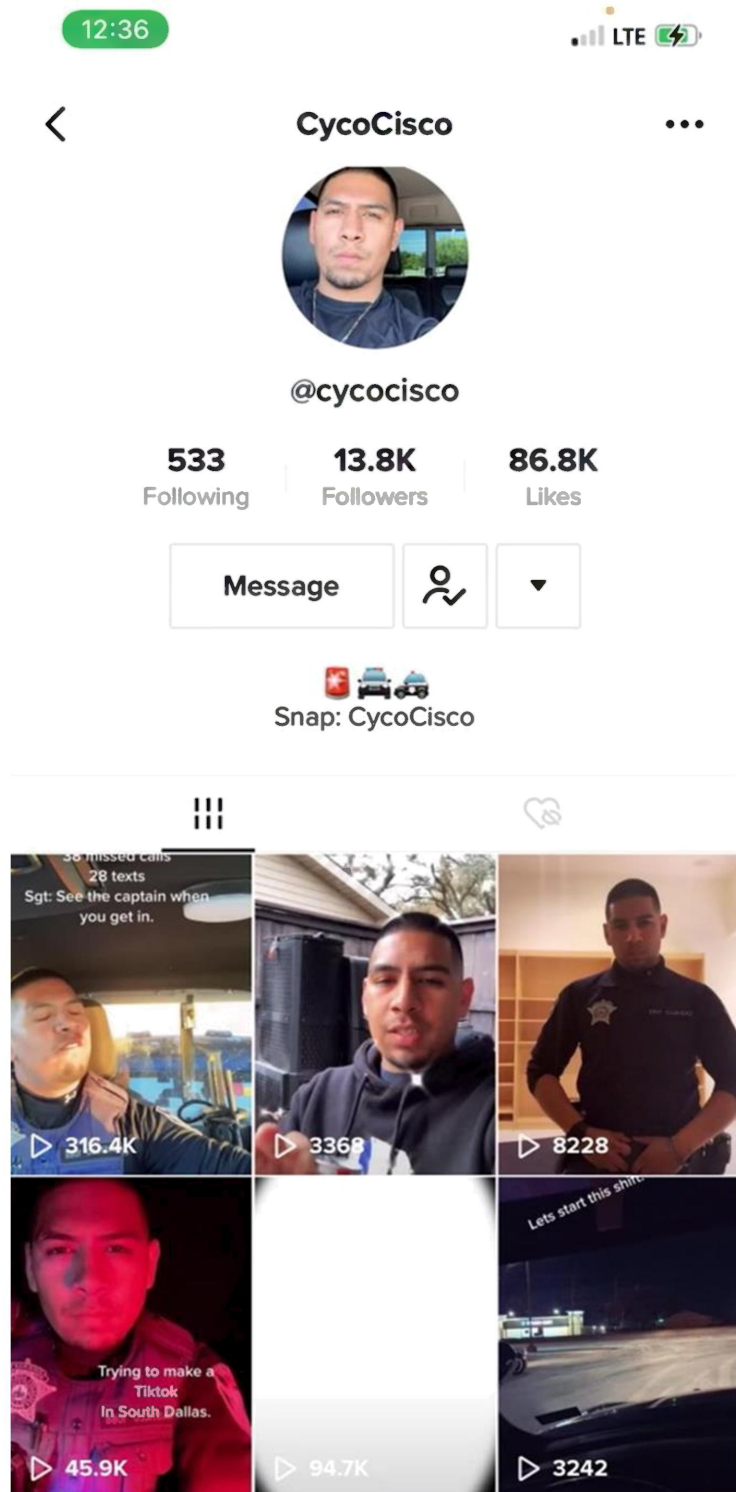
4.2 TikTok is a global video-sharing application that hosts user-submitted videos, which can range in duration from fifteen seconds to ten minutes.

4.3 TikTok has over 700 million users globally and over 100 million users in the United States alone. Fifty million of these U.S. users use the application on a daily basis.

4.4 TikTok users can live-stream videos in real time to the application where other users can watch in real time.

4.5 Defendant Castillo's username on TikTok is "CycoCisco".

4.6 Below is a screenshot of Defendant Castillo's TikTok profile taken in August of 2021.



4.7 Defendant Castillo has three images below his profile picture indicating he is a police officer; to wit, a siren, the front view of a police car, and the side view of a police car.

4.8 This demonstrates that Defendant Castillo is marketing his TikTok account as a law enforcement officer's account.

4.9 At the time this screenshot was taken, Defendant Castillo had over thirteen thousand followers of the account CycoCisco, meaning over thirteen thousand users follow the CycoCisco account and are alerted when CycoCisco live-streams videos.

4.10 At the time this screenshot was taken, Defendant Castillo had over eighty-six thousand "likes" on the account CycoCisco, meaning that over eighty-six thousand users have "liked" videos live-streamed and posted on the account CycoCisco.

4.11 Defendant Castillo was live-streaming traffic stops that he was conducting as a Dallas County Sheriff's Deputy to gain followers, views, and "likes" on his TikTok account CycoCisco.

4.12 The screenshot from August 2021 above shows six videos on Defendant Castillo's TikTok account CycoCisco.

4.13 Four of these videos depict Defendant Castillo in his Dallas County Sheriff's Office uniform and/or engaged in law enforcement activities while working for the Dallas County Sheriff's Office.

4.14 The video in the top left of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County uniform and inside of his Dallas County Patrol car with caption "38 missed calls 28 texts Sgt: See the captain when you get in." This video had over 316,400 views at the time the screenshot was taken.

4.15 The video in the top right of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County Sheriff’s Office uniform. This video had 8,228 views at the time the screenshot was taken.

4.16 The video in the bottom right of the block of six videos in that screenshot shows a viewpoint from Defendant Castillo looking through the windshield of his Dallas County patrol car with the caption “Lets start this shift”. This video had 3,242 views at the time the screenshot was taken.

4.17 The video in the bottom left of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County Sheriff’s Office uniform with the caption “Trying to make a Tiktok in South Dallas.” This video had over 45,900 views at the time the screenshot was taken.

4.18 Defendant Castillo saw that he got more views when he was engaged in law enforcement activity while on duty for Dallas County Sheriff’s Office and while being depicted as a law enforcement officer with the Dallas County Sheriff’s Office.

4.19 These police videos were in fact gaining Defendant Castillo followers, views, and “likes” on his TikTok account CycoCisco as is demonstrated by the increase in followers and likes on his account.

4.20 Below is a screenshot of Defendant Castillo’s TikTok profile taken on February 9, 2023.



4.21 At the time this screenshot was taken, Defendant Castillo had over seventeen thousand followers of the account CycoCisco, meaning over seventeen thousand users follow the CycoCisco account and are alerted when CycoCisco live-streams videos – an increase from August of 2021.

4.22 At the time this screenshot was taken, Defendant Castillo had over ninety-five thousand “likes” on the account CycoCisco, meaning that over ninety-five thousand users have “liked” videos live-streamed and posted on the account CycoCisco – an increase from August of 2021.

Defendant Castillo Violated Mr. Osby’s Right to Privacy

4.23 On March 2, 2021, Defendant Castillo conducted a traffic stop on Torry Osby.

4.24 Mr. Osby was driving to work at his job at a Walmart Distribution Center.

4.25 Defendant Castillo, under username CycoCisco live-streamed Mr. Osby’s traffic stop on TikTok so that everyone watching Defendant Castillo’s video could watch the traffic stop in real time as he live-streamed it on the application.

4.26 When Defendant Castillo began live-streaming Mr. Osby’s traffic stop, each of the followers of CycoCisco were alerted that the live-stream had started so that they could view it.

4.27 Defendant Castillo was live-streaming Mr. Osby’s traffic stop to gain views, followers, and “likes” on his TikTok account CycoCisco – and not for a legitimate government purpose.

4.28 At no point did Defendant Castillo inform Mr. Osby that he was being live streamed on TikTok.

4.29 At no point did Mr. Osby consent to being live-streamed on TikTok.

4.30 Defendant Castillo accused Mr. Osby of speeding even though Mr. Osby was not speeding as he had his cruise control on and was driving under the speed limit.

4.31 Defendant Castillo approached Mr. Osby's vehicle and asked Mr. Osby for his driver license.

4.32 Mr. Osby provided Defendant Castillo with his driver license as requested.

4.33 Defendant Castillo walked back to his patrol vehicle.

4.34 Defendant Castillo told Mr. Osby he would give him a verbal warning for speeding instead of a citation.

4.35 Defendant Castillo did not give Mr. Osby a citation for speeding because Mr. Osby had not been speeding, as his car was set to cruise control under the speed limit.

4.36 When Defendant Castillo pulled Mr. Osby over, Defendant Castillo knew that Mr. Osby was not speeding.

4.37 Defendant Castillo only pulled Mr. Osby over so that he could live-stream the stop in an attempt to gain more "likes" and followers for his TikTok account CycoCisco.

4.38 The traffic encounter ended with Mr. Osby receiving a verbal warning and no citation.

4.39 At no point did Defendant Castillo inform Mr. Osby that the traffic encounter was being live streamed onto TikTok.

4.40 Mr. Osby had no idea – and no reason to believe – that the law enforcement encounter with Defendant Castillo had been live-streamed or broadcast to the public.

4.41 Approximately twenty minutes later, Mr. Osby received a message from a stranger on Facebook messenger named "Stanley Sensational" saying that he had watched a live stream of

the traffic stop and he and other views had seen the personal identifying information contained on Mr. Osby's driver license.

4.42 Below is a screen capture of the discussion between Mr. Osby and "Stanley Sensational" where "Stanley Sensational" provided Mr. Osby with Defendant Castillo's username "cycocisco".

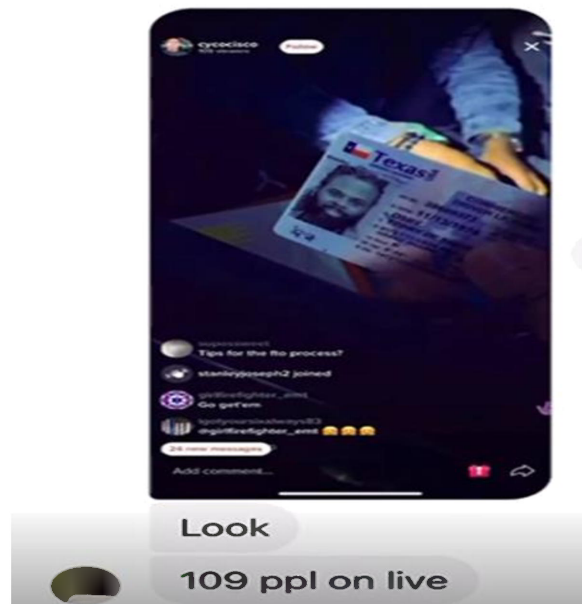


4.43 Additionally, Stanley Sensational informed Mr. Osby that Defendant Castillo did not intend to give Mr. Osby a ticket and “just wanted to show his viewers what he do”.

4.44 This demonstrates that Defendant Castillo knew that Mr. Osby was not actually speeding but just wanted to pull Mr. Osby over so that he could create a live-stream video engaging in law enforcement activity to gain views, followers, and “likes” for his TikTok account.

4.45 “Stanley Sensational” informed Mr. Osby that his personal identifying information contained on his drivers’ license had been shared with viewers watching the livestream.

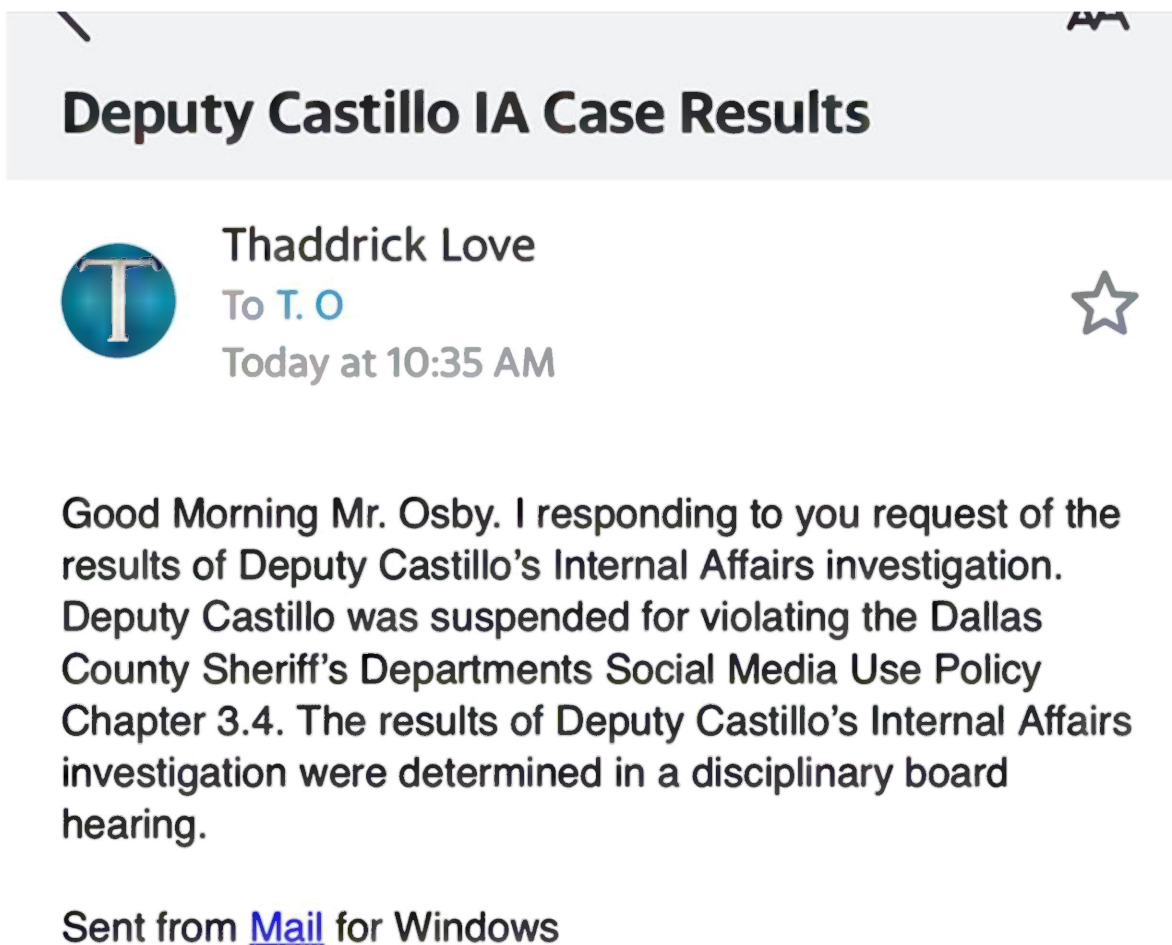
4.46 Mr. Osby’s personal identifying information, which was shared by Defendant Castillo during the livestream of the traffic stop included his height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color. Below is a screen capture of Defendant Castillo displaying Mr. Osby’s drivers’ license during the livestream.



4.47 Stanley Sensational showed Mr. Osby a screen capture of one hundred and nine viewers of the livestream of Mr. Osby’s traffic stop.

4.48 Appalled at Defendant Castillo’s shocking behavior, Mr. Osby filed a complaint against Defendant Castillo with the Dallas County Sheriff’s Office and an Internal Affairs investigation ensued.

4.49 Below is a screenshot of the email Sergeant Thaddrick Love of the Dallas County Sheriff’s Office sent Mr. Osby regarding the Internal Affairs investigation stemming from Mr. Osby’s complaint.



4.50 According to Sergeant Love, Defendant Castillo was suspended for violating Dallas County Sheriff’s Office policy.

4.51 Mr. Osby continues to suffer from mental and emotional anguish as a result of Defendant Castillo's unlawful conduct and underwent therapy following the flagrant invasion of his privacy.

4.52 Mr. Osby bought cameras to put around his home and feared that other people would attempt to locate him like "Stanley Sensational" did, but with nefarious motives.

4.53 These injuries were not caused by any other means.

4.54 At the time Defendant Castillo live-streamed the traffic encounter with Mr. Osby, Defendant Castillo was performing duties in his capacity as a Dallas County Sheriff's Deputy by conducting a traffic stop on Mr. Osby.

VI. CAUSES OF ACTION

COUNT I

Right to Informational Privacy Violation of the Fourteenth Amendment Pursuant to 42 U.S.C. § 1983 Against Defendant Castillo

5.1 Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 4.1-4.53 as if fully repeated herein.

5.2 Acting under the color of law, Defendant Castillo deprived Mr. Osby of the rights and privileges secured to him by the right to informational privacy under the Fourteenth Amendment to the United States Constitution.

5.3 Plaintiff brings this cause of action pursuant to 42 U.S.C. § 1983.

5.4 In *Whalen v. Roe*, 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977), the Supreme Court recognized that the Fourteenth Amendment right to substantive due process protects an "individual interest in avoiding disclosure of personal matters." 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) ("The prohibition against government dissemination of private

information ... is found in the ‘Fourteenth Amendment's concept of personal liberty.’ ”); see also *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 457, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977) (“One element of privacy has been characterized as ‘the individual interest in avoiding disclosure of personal matters....’ ”).

5.5 The Fifth Circuit has defined this confidentiality interest as “‘the right to be free from the government disclosing private facts about its citizens.’” *Wyatt v. Fletcher*, 718 F.3d 496, 505 (5th Cir.2013) (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490, 492 (5th Cir.1985); see also *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir.1981)).

5.6 According to the Court the constitution protects individuals against invasion of their privacy by the government. The liberty interest in privacy encompasses two notions: The freedom from being required to disclose personal matters to the government and the freedom to make certain kinds of decisions without government interference. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Ramie*, 765 F. 2d at 492.

5.7 Here, Mr. Osby has a legitimate expectation of privacy in information contained on his driver license, including but not limited to his height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color.

5.8 These personal identifiers are unique to Mr. Osby.

5.9 There is a reasonable expectation of privacy in one’s own date of birth generally. *Scottsdale Unified School Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 538–39 (1998); La. Att'y Gen. Op. 09–0298 (April 5, 2010).

5.10 In *Scottsdale*, the Arizona Supreme Court recognized a privacy interest in teachers' birth dates stating, "[b]irth dates are information usually restricted to a class of persons, typically family members and friends. The only instance in which one divulges this information occurs in the business or workplace context where the information is a prerequisite for certain benefits, such as employee retirement and benefits calculations, the purchase of health or automobile insurance, credit applications, etc." 955 P.2d 534, 538-39 (Ariz. 1998).

5.11 The Fifth Circuit has previously recognized that an individual's informational privacy interest in personal identifying information such as his or her social security number is substantial, as "simultaneous disclosure of an individual's name and confidential [social security number] exposes that individual to a heightened risk of identity theft and other forms of fraud." *Sherman v. United States Department of Army*, 244 F.3d 357, 365-66 (5th Cir. 2001).

5.12 Other courts have found that individuals have substantial privacy interests in their personal information, such as their names and telephone numbers. *Highland Cap. Mgmt., LP v. Internal Revenue Serv.*, 408 F. Supp. 3d 789, 817 (N.D. Tex. 2019) (citing *Roseberry-Andrews v. Department of Homeland Security*, 299 F. Supp. 3d 9, 30 (D.D.C. 2018)).

5.13 According to the Court in *Texas Comptroller of Public Accounts*, "nor is it relevant that birth dates may be readily available from other sources. "An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Texas Comptroller of Public Accounts v. Attorney General*, 354 S.W.3d 336, 356 (Tex. 2010) (citing *U.S. Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994)).

5.14 Further, “the Supreme Court has held that government employees have a privacy interest in nondisclosure of their home addresses, even though “home addresses often are publicly available through sources such as telephone directories and voter registration lists.” *Id.* (holding that such addresses were exempt from disclosure under Freedom of Information Act Exemption 6)).

5.15 “Identity theft, without question, is becoming one of the fastest growing criminal and consumer offenses in the twenty-first century. *Id.* at 343 ((citing *Daly v. Metropolitan Life Ins. Co.*, 4 Misc.3d 887, 782 N.Y.S.2d 530, 535 (N.Y.Sup.2004) (denying defendant’s motion for summary judgment in negligence action against insurer who disclosed consumers’ names, social security numbers, and date of birth information))).”

5.16 The Federal Trade Commission estimated 27.3 million reported cases of identity theft, causing billions of dollars in damages, in the five years preceding early 2003.” *Id.* (citing *Thomas Fedorek, Computers + Connectivity = New Opportunities for Criminals and Dilemmas for Investigators*, 76-Feb. N.Y. St. B.J. 10, 15 (February, 2004)).

5.17 A date of birth obtained in combination with other data about an individual can be used in at least two harmful ways: to obtain sensitive information about an individual and to commit identity theft. *Id.*; citing *Daly v. Metropolitan Life Ins. Co.*, 782 N.Y.S.2d at 535–36; *Scottsdale Unified Sch. Dist. v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 539 (1998). Tex. Att’y Gen. OR2006–01938, at 3.

5.18 Moreover, “there is little question that one can take personal information that’s not sensitive, like birth date, and combine it with other publicly available data to come up with something very sensitive and confidential.” *Id.* at 344.

5.19 “As the Arizona Supreme Court has observed: With both a name and birth date, one can obtain information about an individual’s criminal record, arrest record ... driving record, state of origin, political party affiliation, social security number, current and past addresses, civil litigation record, liens, property owned, credit history, financial accounts, and, quite possibly, information concerning an individual’s complete medical and military histories, and insurance and investment portfolio.” *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 539 (1998); see also *Data Tree, LLC v. Meek*, 279 Kan. 445, 109 P.3d 1226, 1238 (2005) (“An individual's social security number, date of birth, and mother’s maiden name are often used as identifiers for financial accounts or for obtaining access to electronic commerce.”); *Hearst Corp. v. State*, 24 Misc.3d 611, 882 N.Y.S.2d 862, 875 (N.Y.Sup.Ct.2009) (concluding that “a reasonable person would find the disclosure of their precise birth dates, taken together with their full name and other details of their State employment, to be offensive and objectionable”). In fact, “[a] key element from the privacy standpoint is the inclusion of residents’ date of birth.” Ira Bloom, *Freedom of Information Laws in the Digital Age: The Death Knell of Informational Privacy*, 12 RICH. J.L. & TECH. 9, at * 19 (2006).

5.20 These concerns have led courts to conclude that birth dates implicate substantial privacy interests. See, e.g., *Oliva v. United States*, 756 F.Supp. 105, 107 (E.D.N.Y.1991) (holding that, under FOIA Exemption 6, “dates of birth[] are a private matter, particularly when coupled with ... other information” and disclosure “would constitute a clearly unwarranted invasion of personal privacy”); cf. *Schiller v. INS*, 205 F.Supp.2d 648, 663 (W.D.Tex.2002) (holding that, under FOIA Exemption 7(c) “the privacy interest of these individuals in their names and identifying information, i.e. birth date, outweighs the public interest in disclosure”); *Creel v. U.S. Dep't of State*, 1993 U.S. Dist. LEXIS 21187, at *19–*20 (E.D.Tex.1997) (noting that, under FOIA

Exemption 7(c), private citizen had a “significant personal privacy interest in her home address, birth date, social security number, and telephone number”).

5.21 The private nature of the birth dates gives rise to a presumption that they are not of legitimate public concern. *Indus. Found.*, 540 S.W.2d 668 at 685.

5.22 Here, the privacy concern at issue is the simultaneous disclosure of Mr. Osby’s height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color.

5.23 The ease of identifying Mr. Osby due to Defendant Osby’s shocking disclosure of Mr. Osby’s personal identifying information is exhibited through the ability of a complete stranger “Stanley Sensational” to locate and message Mr. Osby on the social media platform Facebook only twenty minutes after Defendant Castillo disclosed Mr. Osby’s personal private identifying information.

Privacy Interest Outweighs Need for Public Disclosure

5.24 Without question there is no legitimate government interest in live-streaming Mr. Osby’s personal identifying information contained on his driver license, as it was not pursuant to any law enforcement or criminal investigative purpose.

5.25 No reasonable officer would believe that live-streaming a police/citizen encounter on TikTok would be appropriate or necessary for the pursuit of justice, protection of life, or performance of their law enforcement duties.

Damages

5.26 Mr. Osby continues to suffer from mental and emotional anguish as a result of Defendant Castillo’s unlawful conduct and underwent therapy following the flagrant invasion of his privacy.

5.27 Mr. Osby was terrified that his identify would be stolen or that his home would be broken into since his address was provided and viewers knew that he was going to work at that time.

5.28 Mr. Osby continues to suffer from mental and emotional anguish as a result of Defendant Castillo's unlawful conduct and underwent therapy following the flagrant invasion of his privacy.

5.29 Mr. Osby bought cameras to put around his home and feared that other people would attempt to locate him like "Stanley Sensational" did, but with nefarious motives.

5.30 These injuries were not caused by any other means.

5.31 At the time Defendant Castillo live-streamed the traffic encounter with Mr. Osby, Defendant Castillo was performing duties his capacity as a Dallas Police Officer by conducting a traffic stop on Mr. Osby.

COUNT II

State Law Claim Invasion of Privacy Against Defendant Castillo

5.32 Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 4.1-4.53, above as if fully repeated herein.

5.33 Texas common law recognizes the following four types of invasion of privacy claims: "1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs[;] 2. Public disclosure of embarrassing private facts about the plaintiff[;] 3. Publicity [that] places the plaintiff in a false light in the public eye[; and] 4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness." *Ross v. Midwest Commc'ns, Inc.*, 870 F.2d 271, 273 (5th Cir. 1989) (citing *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976)).

5.34 Public disclosure of private matters is actionable when publication would be highly offensive to a reasonable person and there is no legitimate public concern meriting disclosure. *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682–83 (Tex.1976), cert. denied, 430 U.S. 931, 97 S.Ct. 1550, 51 L.Ed.2d 774 (1977).

5.35 To plausibly plead a claim of invasion of privacy by public disclosure of private facts, Plaintiff must set forth facts from which the court can reasonably infer: “(1) that publicity was given to matters concerning his private life, (2) the publication of which would be highly offensive to a reasonable person of ordinary sensibilities, and (3) that the matter publicized is not of legitimate public concern.” *Industrial Found.*, 540 S.W.2d at 682. The first element requires the private information be publicized, which “requires communication to more than a small group of persons; the matter must be communicated to the public at large, such that the matter becomes one of public knowledge.” *Id.* at 683.

5.36 In such a case, the information disclosed must have been confidential, in the sense that it was previously “secret” and that disclosure would cause harm. *Id.* at 683.

5.37 Publicity was given to matters concerning Mr. Osby’s private life, specifically his identifying information including height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color which was shared by Defendant Castillo during the livestream of the traffic stop.

5.38 The publication of this information would be highly offensive to a reasonable person of ordinary sensibilities as well-known sources of public disclosure such as FOIA and PIA, have exempted this very information from disclosure. *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994); *Sherman*, 244 F.3d at 361; *Horner*, 879 F.2d at 875 (“In our society, individuals generally have a large measure of control over the disclosure of their own

identities and whereabouts.”). This is especially true when names and addresses can be combined with other information such as birth dates or financial information. *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 736 (S.D. Miss. 2014) (“With both a name and birth date, one can obtain information about an individual’s criminal record,...social security number,...and, quite possibly, information concerning an individual’s complete medical and military histories.” (quoting *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 955 P.2d 534, 539 (Ariz. 1998) (en banc))).

5.39 Mr. Osby’s personal identifying information is not of legitimate public concern.

5.40 Mr. Osby’s personal identifying information was communicated to the public at large on the popular social media platform TikTok with over one hundred viewers actively watching the live-stream on Defendant Castillo’s TikTok account, CycoCisco, which has over seventeen thousand followers and has received over ninety-five thousand “likes.”

COUNT III

Negligent Use of Tangible Personal Property Pursuant to the Texas Tort Claim Act Against Defendant City of Dallas, Texas

5.41 Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 4.1-4.5, above as if fully repeated herein.

5.42 This claim is against Defendant City of Dallas, Texas.

5.43 Pursuant to Fed. R. Civ. P. 8(d), Plaintiff pleads this claim in the alternative to Counts I and II.

5.44 Defendant Dallas County, Texas is a political subdivision of the State of Texas, that employed Francisco Castillo to perform the role of Sheriff’s Deputy for the Dallas County Sheriff’s Office.

5.45 Defendant Dallas County, Texas was on notice of the liability for the injuries sustained by Mr. Osby as a result of Defendant Castillo's negligent and reckless use of his telephone/camera which caused the live-stream video of Mr. Osby's personal private identifying information to be disclosed to over one hundred of Defendant Castillo's followers on TikTok, as evidenced by the Tort Claims Notice letter sent to Defendant Dallas County, Texas on August 23, 2021.

5.46 A governmental unit is liable under the Texas Tort Claims Act "[i]f a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment." Tex. Civ. Prac. & Rem. Code § 101.106(f).

5.47 The TTCA defines "scope of employment" as "the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority." Tex. Civ. Prac. & Rem. Code § 101.001(5).

5.48 "An official act within the scope of his authority if he is discharging the duties generally assigned to him." *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417, 424 (Tex. 2004).

5.49 That is, an employee's scope of authority extends to job duties to which the official has been assigned, even if the official errs in completing the task. *Id.*

5.50 The TTCA provides a limited waiver of governmental liability from suit when personal injury or death is "caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." TEX. CIV. PRAC. & REM.CODE ANN. § 101.021(2).

5.51 A plaintiff must allege the injuries were proximately caused by the use of tangible personal property. See *Dallas Cnty. Mental Health & Mental Retardation v. Bossley*, 968 S.W.2d 339, 342–43 (Tex.1998); see also *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542–43 (Tex.2003) (requiring nexus between use of tangible property and plaintiff's injuries).

5.52 Defendant is a governmental unit, a county, that employed Francisco Castillo to perform the role of Sheriff's Deputy for the Dallas County Sheriff's Office.

5.53 At the time of Plaintiff's injury, Defendant Dallas County's employee, Defendant Castillo, was using his camera to record the traffic stop of Torry Osby, while acting within the scope of his duties as a police officer with the Dallas County Sheriff's Office to perform traffic stops on suspects. See *Alexander v. Walker*, 435 S.W.3d 789, 790 (Tex. 2014) (holding allegations stemming from officers' allegedly improper conduct during the plaintiff's arrest were within the general scope of the officers' employment).

5.54 Even if conducted in an improper manner, Defendant Castillo's actions remain within the general scope of duties of law enforcement officers.

5.55 Defendant Castillo did not act in good faith to perform his duties when he used his camera to record the traffic stop of Mr. Osby and broadcast the personal identifying information contained on Mr. Osby's driver license on the social media platform Tiktok to over one hundred viewers.

5.56 Defendant Castillo's negligence was the result of his use of a camera, an item of tangible personal property, which was contemporaneous with Mr. Osby's personal injury.

5.57 Defendant Castillo would be personally liable to Mr. Osby under Texas law for negligently broadcasting the personal identifying information contained on Mr. Osby's driver license on the social media platform TikTok to over one hundred viewers.

5.58 Here, Mr. Osby's injuries were proximately caused by Defendant Castillo's use of tangible personal property when he negligently used a camera to livestream the traffic encounter causing Mr. Osby's personal identifying information contained on his drivers' license to be shared with over one hundred viewers on the social media platform TikTok.

5.59 These injuries were not caused by any other means.

Count IV

Illegal Detention Claim Violation of the Fourteenth Amendment Pursuant to 42 U.S.C. § 1983 Against Defendant Castillo

5.60 Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 4.1-4.53, above as if fully repeated herein.

5.61 No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. *Terry v. Ohio*, 392 U.S. 1, 9 (1968).

5.62 Unlawful detention implicates the Fourth Amendment's proscription against unreasonable seizures. *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 845 (5th Cir. 2009) See *Terry*, 392 U.S. at 16 (“[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.”).

5.63 Under the two-part *Terry* reasonable suspicion inquiry, the court must determine whether the officer's action was: (1) “justified at its inception”; and (2) “reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry*, 392 U.S. at 19–20; *United States v. Brigham*, 382 F.3d 500, 506-07 (5th Cir.2004) (en banc).

5.64 The Supreme Court has stated that in making a reasonable suspicion inquiry, a court “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

5.65 Reasonable suspicion exists when the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure. See, e.g., *United States v. Santiago*, 310 F.3d 336, 340 (5th Cir.2002).

5.66 In evaluating the totality of the circumstances, a court may not consider the relevant factors in isolation from each other. *Arvizu*, 534 U.S. at 274.

5.67 In scrutinizing the officer's basis for suspecting wrongdoing, it is clear that the officer’s mere hunch will not suffice. *Terry*, 392 U.S. at 27.

5.68 As for the second prong of the Terry inquiry, generally, the “detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop, unless further reasonable suspicion, supported by articulable facts, emerges.” *Brigham*, 382 F.3d at 507.

5.69 Defendant Castillo deprived Mr. Osby of his constitutionally protected right to be free from unreasonable searches and seizures under the Fourth Amendment.

5.70 Defendant Castillo intentionally detained Mr. Osby without a warrant, without Mr. Osby’s consent, and without any legal justification.

5.71 Mr. Osby did not consent to his confinement and was conscious of it.

5.72 Defendant Castillo willfully detained Mr. Osby when he pulled over Mr. Osby, asked him for his driver license, and accused him of speeding even though Mr. Osby was not speeding as he had his cruise control on and was driving under the speed limit.

5.73 Mr. Osby did not consent to being detained.

5.74 Defendant Castillo did not have probable cause to support detaining Mr. Osby as Mr. Osby was not speeding as he had his cruise control on and was driving under the speed limit.

5.75 Defendant Castillo did not have authority of law to detain Mr. Osby

5.76 Defendant Castillo only pulled Mr. Osby over so that he could live-stream the stop in an attempt to gain more “likes” and followers for his TikTok account CycoCisco.

5.77 Stanley Sensational informed Mr. Osby that Defendant Castillo did not intend to give Mr. Osby a ticket and “just wanted to show his viewers what he do”.

5.78 This demonstrates that Defendant Castillo knew that Mr. Osby was not actually speeding but just wanted to pull Mr. Osby over so that he could create a live-stream video engaging in law enforcement activity to gain views, followers, and “likes” for his TikTok account.

5.79 Significantly, the traffic encounter ended with Mr. Osby receiving a verbal warning and no citation.

5.80 By knowingly and intentionally detaining Mr. Osby without consent, without probable cause, and without legal justification, Defendant Castillo deprived Plaintiff of his Fourth Amendment right to be free from unreasonable seizures.

5.81 By knowingly and intentionally detaining Mr. Osby without consent, without probable cause, and without legal justification, Defendant Castillo deprived Mr. Osby of his Fourth Amendment right to be free from unreasonable seizures.

5.82 As a result of the illegal detention, Mr. Osby suffered injuries and losses to his rights and freedoms.

5.83 As a result of the illegal detention, Defendant Castillo deprived Mr. Osby of his civil, constitutional, and statutory rights and is liable to Mr. Osby. under 42 U.S.C. § 1983.

- 5.84 Mr. Osby was damaged as a result of Defendant Castillo's wrongful acts.
- 5.85 These injuries were not caused by any other means.

VII.
JURY REQUEST

- 6.1 Plaintiff respectfully requests a jury trial.

VIII.
CONDITION PRECEDENT

- 7.1 All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

IX.
ATTORNEY'S FEES

- 8.1 If Plaintiff prevails in this action on his claims under 42 U.S.C. § 1983, by settlement or otherwise, Plaintiff is entitled to and hereby demands attorney's fees under 42 U.S.C. § 1988.

X.
NOTICE PURSUANT TO TEX. R. CIV. P. 193.7

- 9.1 Plaintiff provide notice to Defendants pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE that Plaintiff may utilize as evidence during the trial of this lawsuit, all documents exchanged by the parties in written discovery in this case.

X.
PRAYER

For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Actual damages.
- b. Prejudgment and post judgment interest.
- c. Court costs.
- d. Attorney's fees.
- e. All other relief to which plaintiff deems himself entitled.

Respectfully submitted,

/s/ Scott H. Palmer _____

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/s/ James P. Roberts _____

JAMES P. ROBERTS
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Rachel Perez on behalf of James Roberts
Bar No. 24105721
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Status as of 3/3/2023 10:35 AM CST

Associated Case Party: Torry Osby

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