

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

BETHANY V. BOWEN,)	CASE NO. 4:CV 07-
Plaintiff,)	
)	
v.)	COMPLAINT
)	
HON. JEFFRE CHEUVRONT,)	CIVIL ACTION
Defendant,)	
)	
IN HIS OFFICIAL CAPACITY AS)	
JUSTICE OF THE DISTRICT COURT)	
FOR THE STATE OF NEBRASKA.)	

INTRODUCTION AND NATURE OF CONTROVERSY

In accordance with 42 U.S.C. § 1983 (amended Oct. 19, 1996 by Pub.L. 104-317, Title III, § 309©), 110 Stat. 3853), this is an action seeking declaratory relief regarding the constitutionality of an order rendered by a judicial officer for the State of Nebraska compelling a crime victim to use, and refrain from using, certain language in her testimony as a witness during a criminal trial. Despite the fact that this order encroaches on the Plaintiff’s First and Fifth Amendment and other fundamental rights, and threatens the rights of all private persons, judicial review to determine whether this order violates federal constitutional principles is unavailable to the Plaintiff under Nebraska law.

Guidance from this court will be beneficial to all state courts because, according to Joshua Marquis, District Attorney for Clatsop County, Oregon, who also serves as Vice President of the National District Attorneys’ Association, the practice of state court

judges issuing orders restricting the language of victims and witnesses has increased substantially in recent years. It has not yet been reviewed for compliance with federal constitutional law.

PARTIES

1. Plaintiff Bethany V. Bowen, formerly of Lincoln, Nebraska, resides at 7121 Rock Ridge Lane, Alexandria, VA, and is a citizen of the United States.

2. Defendant Jeffre Chevront is and was, at the time of the transactions and occurrences alleged, a judicial officer for the State of Nebraska subject to the duties and requirements imposed by the U.S. Constitution and applicable federal law.

JURISDICTION

3. This action arises under the First, Fifth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C.A. § 1983, wherein the Plaintiff, a citizen of the United States, alleges the Defendant violated her federal constitutional rights in transactions and occurrences taking place within the district of Nebraska.

CLAIMS FOR RELIEF

COUNT I. FREEDOM OF SPEECH

4. On or about November 2004, Pamir Safi was arrested and charged with sexual assault in violation of Nebraska criminal law. The prosecution arose out of an incident that occurred on or about October 31, 2004 in Lincoln, Nebraska. The state of Nebraska accused Safi of committing sexual assault against the Plaintiff in this matter, Bethany Bowen, then a senior at the University of Nebraska-Lincoln.

5. Prior to the start of the first trial, Safi's counsel filed a motion to forbid the use of certain words during trial. Judge Jeffre Chevront, the judicial officer and defendant in

this proceeding, allowed Safi's motion and issued an order on January 26, 2006 forbidding the Plaintiff and all witnesses to use certain words and phrases including "rape", "victim" and "sexual assault". The prosecutor opined that the court's ruling was unlawful but declined to file an interlocutory appeal after determining that he lacked procedural and substantive authority to seek judicial review. Thus the People, as represented by the prosecutor, have no access to review of this issue by the Nebraska courts.

6. Prior to taking testimony from the Plaintiff and all witnesses, Judge Cheuvront placed the Plaintiff and all witnesses under legal oath to testify fully, truthfully and accurately. The Plaintiff and other witnesses repeatedly and mistakenly referred to the forbidden terms. Safi's counsel objected and/or moved for a mistrial several times in response thereto. The jury was never apprised of the court's language order.

7. The first trial ended in a mistrial in November 2006 after the jury failed to reach a verdict.

8. Prior to the start of the second trial in July 2007, Safi's counsel again filed a motion to forbid use of certain words during trial. Judge Cheuvront allowed Safi's motion and issued an order forbidding all witnesses to use the words: "rape", "victim", "assailant", "sexual assault kit" and "sexual assault nurse examiner". Judge Cheuvront further ordered that the phrase "sexual assault kit" would be referred to as the "sexual kit" and the "sexual assault nurse examiner" would be referred to as a nurse with expertise in "sexual examination".

9. Prior to the start of the second trial in July 2007, a prosecution motion to forbid use of the terms "sex" and "intercourse" was denied by Judge Cheuvront.

10. Prior to the start of the second trial in July 2007, Judge Chevront issued a second order requiring witnesses to sign an “acknowledgment form”. This form obligated witnesses to acknowledge the court’s language order described in paragraph 8 and outlined the potential for contempt sanctions and other punishment for noncompliant witnesses.

11. Plaintiff declined to sign said acknowledgment form and on July 9 2007, prior to the start of the second trial but after the start of jury selection, on July 11, 2007 Plaintiff filed a motion with Judge Chevront asking to be held in contempt for the purpose of facilitating an expedited appeal of the courts’ orders prior to trial. Under Nebraska law, an adjudication of contempt is the accepted prerequisite to appeal for private third parties aggrieved by court orders in criminal cases. Judge Chevront did not act on the Plaintiff’s motion.

12. The following day, Plaintiff sought concomitant relief from the Nebraska Supreme Court via a Writ of Habeas Corpus. The writ was denied on without comment the next day thus precluding the Plaintiff’s access to meaningful review of the merits in the Nebraska courts. Letter of denial entered on July 12, 2007.

13. On July 11 2007, Safi’s counsel filed a mistrial motion with Judge Chevront in anticipation of the Plaintiff’s noncompliance with the language order during trial. Judge Chevront scheduled a hearing on Safi’s anticipatory mistrial motion and had Plaintiff appear before him later that same day to answer questions under oath regarding her potential noncompliance. Plaintiff testified that she understood the language order but could not promise to abide an order that effectively required her to testify using words that did not accurately describe her experience. Judge Chevront

told the Plaintiff that the presumption of innocence trumped her free speech rights and that she could be incarcerated for as long as six months if she did not comply with his language order during trial.

14. On July 12 2007, before the completion of jury selection, Judge Cheuvront granted a mistrial. The order stated that a mistrial was necessary not based on the Plaintiff's anticipated noncompliance with the court's language order but because of pretrial publicity. Judge Cheuvront determined without a hearing that the Plaintiff was the cause of the publicity and the mistrial because she spoke publicly about her opposition to the court's language order and because she signed an on-line petition regarding the language order.

15. The prosecutor and defense counsel appeared in state court in August 23 2007 where it was revealed that the case will proceed to a third trial, venue will not be changed and that the defendant has waived his speedy trial rights. The next trial will not likely commence until early 2008. Judge Cheuvront will continue to serve as the trial judge.

16. Given the denial of Plaintiff's writ of habeas corpus and the Plaintiff's and people's lack of other means to seek relief in the Nebraska state courts, the declaratory relief sought here is otherwise unavailable. Furthermore, given the history of the past two trials, said language order continues to threaten the Plaintiff's rights, and the rights of all witnesses in the third trial against Safi, and raises issues that are capable of repetition yet will continue to evade review.

17. The actions of Judge Cheuvront against the Plaintiff impede Plaintiff's

exercise of her federal constitutional rights including freedom of speech, petitioning, assembly and substantial and procedural due process.

18. The actions of Judge Cheuvront have caused and threaten to continue to cause the Plaintiff to suffer injuries that chill her ability to exercise constitutionally protected activity. Plaintiff faces threatened incarceration for contempt if she testifies fully and truthfully at trial. The trial of Plaintiff's accused assailant will be stalled by future mistrial orders if the Plaintiff continues to speak out publicly or protest against the court's order.

19. Judge Cheuvront, in his official capacity as a judicial officer for the State of Nebraska, has a duty to enforce the laws consistent with the dictates of, inter alia, the First and Fourteenth Amendments to the United States Constitution which guarantee freedom of speech and enjoyment of the privileges and immunities of citizenship.

20. Judge Cheuvront abrogated his duty in a manner that infringes on Plaintiff's free speech rights as guaranteed by the United States Constitution. As a result, Plaintiff has sustained, and will continue to sustain, injuries to her rights and to her ability to exercise said protected activity.

COUNT II.

FREEDOM OF ASSEMBLY AND PETITION

21. Plaintiff realleges paragraphs 1-20 of Count I and incorporates the same by reference in this Count.

22. Judge Cheuvront in his official capacity as a judicial officer for the State of Nebraska has a duty to enforce the laws consistent with the dictates of, inter alia, the First and Fourteenth Amendments to the United States Constitution which guarantee

petitioning and assembly rights and enjoyment of the privileges and immunities of citizenship.

23. Judge Chevront abrogated his duty in a manner that infringes on Plaintiff's freedom of assembly and petitioning rights as guaranteed by the United States Constitution. As a result, Plaintiff has sustained, and will continue to sustain, injuries to her rights and to her ability to exercise said protected activity.

COUNT III.

SUBSTANTIVE DUE PROCESS

24. Plaintiff realleges paragraphs 1-23 of Counts I and II and incorporates the same by reference in this Count.

25. Judge Chevront in his official capacity as a judicial officer for the State of Nebraska has a duty to enforce the laws consistent with the dictates of, inter alia, the Fifth and Fourteenth Amendment to the United States Constitution which guarantees substantive due process rights and enjoyment of the privileges and immunities of citizenship.

26. Judge Chevront abrogated said duty in a manner that infringes on Plaintiff's constitutionally protected substantive due process rights. As a result, Plaintiff has sustained, and will continue to sustain, injuries to her rights and to her ability to exercise said protected activity.

COUNT IV.

PROCEDURAL DUE PROCESS

27. Plaintiff realleges paragraphs 1-26 of Counts I, II and III and incorporates the same by reference in this Count.

28. Judge Cheuvront in his official capacity as a judicial officer for the State of Nebraska has a duty to enforce the laws consistent with the dictates of, inter alia, the Fifth and Fourteenth Amendment to the United States Constitution which guarantees procedural due process rights and enjoyment of the privileges and immunities of citizenship.

26. Judge Cheuvront abrogated said duty in a manner that infringes on Plaintiff's constitutionally protected procedural due process rights. As a result, Plaintiff has sustained, and will continue to sustain, injuries to her rights and to her ability to exercise said protected activity.

DEMANDS FOR JUDGMENT

Plaintiff respectfully demands an expedited bench trial on all issues to the full extent provided by law.

WHEREFORE Plaintiff, Bethany V. Bowen, prays for the following relief:

1. An order declaring that the defendant herein has acted in violation of the federal constitution;
2. such other and further relief as the Court may deem just and proper.

Dated: September 6, 2007

Respectfully submitted,

Bethany V. Bowen, Plaintiff
By her attorneys

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