

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

---

Roger Hoepfner and Marjorie Hoepfner,

Plaintiffs,

v.

Case No. 17-cv-430

Marathon County

and

Chief Deputy Chad Billeb,  
Captain Greg Bean, Lieutenant Sean McCarthy,  
and Deputy Matthew Anderson  
in their individual capacities,

Defendants

---

SECOND  
AMENDED  
COMPLAINT

---

**I. NATURE OF ACTION**

101. This is a civil rights action arising out of the Defendants' unnecessary and completely disproportionate full military-style invasion of the Plaintiffs' homestead and grounds which entailed the unlawful seizure of some of the Plaintiffs' property, the arrest of Plaintiff Roger Hoepfner without probable cause to believe he had committed any criminal offense, and subjecting both Plaintiffs to excessive force, all in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States.

**II. JURISDICTION AND VENUE**

201. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 1343(a)(3) (jurisdiction over civil rights actions under 42 U.S.C. § 1983).

202. The Western District of Wisconsin is the proper venue for this action because the Plaintiff's claims arose within the geographical boundaries of the Western District of Wisconsin within the meaning of 28 U.S.C. § 1391(b).

### **III. PARTIES**

#### **A. Plaintiffs**

301. The Plaintiff, Roger Hoepfner, is an adult male citizen of the United States with the capacity to sue and be sued in this Court, and the husband of Plaintiff Marjorie Hoepfner.

302. The Plaintiff, Marjorie Hoepfner, is an adult female citizen of the United States with the capacity to sue and be sued in this Court, and the wife of Roger Hoepfner.

#### **B. Defendants**

##### **1. Marathon County**

303. Marathon County is a Wisconsin unit of local government with the capacity to sue and be sued in this Court.

##### **2. Chief Deputy Chad Billeb.**

304. Chief Deputy Chad Billeb, is, on information and belief, an adult male resident of Wisconsin.

305. At all times relevant to this lawsuit, Defendant Billeb was Chief Deputy of the Marathon County Sheriff's Department.

306. At all times relevant to this lawsuit, Defendant Billeb was acting under color of state law within the meaning of 42 U.S.C. § 1983.

307. At all times relevant to this lawsuit, Defendant Billeb was acting within the scope of his employment by Marathon County within the meaning of Wis. Stat. § 895.46.

**3. Captain Greg Bean.**

308. Captain Greg Bean is, on information and belief, an adult male resident of Wisconsin.

309. At all times relevant to this lawsuit, Defendant Bean was a Captain in the Marathon County Sheriff's Department.

310. At all times relevant to this lawsuit, Defendant Bean was acting under color of state law within the meaning of 42 U.S.C. § 1983.

311. At all times relevant to this lawsuit, Defendant Bean was acting within the scope of his employment by Marathon County within the meaning of Wis. Stat. § 895.46.

**4. Lieutenant Sean McCarthy.**

312. Lieutenant Sean McCarthy is, on information and belief, an adult male resident of Wisconsin.

313. At all times relevant to this lawsuit, Defendant McCarthy was a Lieutenant in the Marathon County Sheriff's Department.

314. At all times relevant to this lawsuit, Defendant McCarthy was acting under color of state law within the meaning of 42 U.S.C. § 1983.

315. At all times relevant to this lawsuit, Defendant McCarthy was acting within the scope of his employment by Marathon County within the meaning of Wis. Stat. § 895.46.

**5. Deputy Matthew Anderson.**

316. Deputy Matthew Anderson is, on information and belief, an adult male resident of Wisconsin.

317. At all times relevant to this lawsuit, Defendant Anderson was a Lieutenant in the Marathon County Sheriff's Department.

318. At all times relevant to this lawsuit, Defendant Anderson was acting under color of state law within the meaning of 42 U.S.C. § 1983.

319. At all times relevant to this lawsuit, Defendant Anderson was acting within the scope of his employment by Marathon County within the meaning of Wis. Stat. § 895.46.

**IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION**

**A. The Context of the October 2, 2014, Raid.**

401. In 2008, the Town of Stettin brought an action, Case No. 2008-CV-528, in the circuit court for Marathon County, Wisconsin, against the Plaintiffs herein, Roger and Marjorie Hoepfner, seeking judicial enforcement of certain town ordinances relating to farm equipment, rubbish, and other property located on the Hoepfners' premises.

402. The Hoepplers retained counsel in the person of Attorney Ryan Lister, who set out to negotiate a resolution of the Town's concerns with the Hoepplers and who represented the Hoepplers in the Town's lawsuit.

403. Attorney Lister remained counsel of record for the Hoepplers in Case No. 2008-CV-528 throughout its life.

404. A settlement agreement was reached, whereby the Hoepplers agreed to relocate and remove certain property from their premises by August 30, 2009.

405. In June, 2009, the circuit court entered an order, based on the parties' settlement agreement.

406. Approximately one year later, in July 2010, the Town filed a motion for contempt and enforcement of the settlement agreement, alleging that the Hoepplers had not fulfilled the obligations they had undertaken in the agreement.

407. The circuit court scheduled the motion for hearing on August 24, 2010.

408. At the contempt hearing on August 24, 2010, the parties entered into an agreement in which the Hoepplers agreed to a finding of contempt and, as purge conditions, agreed to relocate or remove most of the property at issue from their premises within thirty days. The agreement provided the Hoepplers had nine months to relocate the farm equipment at issue.

409. That agreement was memorialized in a September 24, 2010, court order, which provided, in part: "The [Hoepplers] hereby stipulate to a finding of contempt, and this Court Order is hereby considered the purge attempt by the

[Hoeppners]. Any further hearings shall be limited solely to the punishment for the contempt.”

410. In October, 2010, the court conducted a hearing to determine whether the Hoeppners had satisfied the purge conditions. The parties disputed whether the Hoeppners had satisfied the conditions, so the circuit judge visited the property with the parties.

411. After the visit, but before the circuit court could hold a follow-up hearing, the Hoeppners appealed the September 24, 2010, contempt order. The circuit court then stayed the matter pending resolution of the Hoeppners’ appeal.

412. The Wisconsin Court of Appeals dismissed the Hoeppners’ appeal for lack of jurisdiction. It concluded the circuit court had not yet imposed a sanction for the Hoeppners’ contempt and therefore the entire matter had not been resolved. It also concluded that the order finding the Hoeppners in contempt could not be appealed because it had been entered pursuant to the parties’ stipulation, and the Hoeppners had therefore waived any objection to it.

413. The case was remanded to the circuit court, and the circuit court found that the Hoeppners still had not complied with the purge conditions. The court then held various hearings over a period of time to determine whether the Hoeppners had yet purged their contempt.

414. On May 24, 2011, the circuit judge again visited the property with the parties and determined that the Hoeppners were not in compliance with the court’s order and thus still had not purged their contempt. The court imposed a daily monetary

penalty for each of the days upon which the Hoepplers had failed to purge their contempt, and authorized additional forfeitures for each day the Hoepplers remained in noncompliance thereafter. The court also stated that if the Hoepplers did not remove the property by June 24, 2011, it “will be authorizing the town to remove whatever property is not in compliance.” The court directed the Town to draft a proposed order.

415. On June 14, 2011, the Town mailed a proposed order to the circuit court for its approval. In its letter of transmittal, the Town also advised the court that “the Town has contacted Wilichowski Realty & Auctions, who will be present on the property on June 27, 2011, to comply with our proposed Order of May 24, 2011.” After receiving no written objection from the Hoepplers, the court signed the proposed order on June 23, 2011. The June 23, 2011, order provided, in part:

The Town ... [is] authorized after June 24, 2011, to enter upon the Defendants’ premises and remove or cause to be removed all farm equipment, pallets, and other material required by the Court’s Order signed September 24, 2010 [the contempt order], to be removed and/or which in any respect is in violation of said Order and to dispose of the said property as set forth in paragraph 4 of [the Town’s] Motion to the Court dated July 28, 2010.

416. The Town, with Town Chairman Wasmundt directing the operation, and its contractors acting at its direction, entered the Hoepplers’ premises and removed property on June 27, July 1, and July 11, 2011.

417. The Hoepplers did not resist these efforts or interfere with them in any way.

418. No deputies of the Marathon County Sheriff’s Department were present during these 2011 removal operations, nor were any summoned or required.



419. The property was seized so that it could be sold to pay the monetary sanctions the circuit court had ordered the Hoepplers to pay to the Town as a consequence of the order finding them in contempt of court.

420. When they came upon the Plaintiffs' land on June 27, July 1, and July 11, 2011, the Town and its agents seized some property the seizure of which had not been authorized by the circuit court's orders.

421. When they came upon the Plaintiffs' land on June 27, July 1, and July 11, 2011, the Town and its agents seized some property that did not even belong to Roger or Marjorie Hoeppler. Only some of this property was later recovered and returned to its owners, and the Plaintiffs had to be responsible to their owners for any such items that could not be recovered.

422. On July 15, 2011, the Hoepplers filed an "emergency motion to stay auction."

423. At the hearing, which occurred before the auction, the Hoepplers argued that the Town acted improperly by relying on the June 23, 2011, order as a basis to enter the Hoepplers' premises and remove the Hoepplers' property. The Hoepplers argued that an additional hearing, after June 24, was required to determine whether the Hoepplers had complied with the court's September 24, 2010, order and purged their contempt. They asserted that the court had erroneously abdicated its authority to make this determination to the Town.

424. The circuit court disagreed. It first emphasized that its June 23 order specifically authorized the Town to enter the Hoepplers' premises after June 24

and remove the property. The court found the Hoepplers had agreed to the order by failing to object to its language before the court entered it. The court also found

[T]here was an order entered by the court that stated that [the Hoepplers] had a period of time within which to clean up the property. That it did not occur. That based on the order, the town then had the authority to collect the property for the purpose of auction to clean it up.

Based on the prior orders of the court, that that has not been accomplished; that it's apparent to the court that the property was not removed as promised, and therefore, that the auction should proceed as ordered as stated by the parties.

425. The Town provided the court with an inventory list of the items of property it claimed to have seized from the Hoepplers' land.

426. At the end of the hearing, the court authorized the auction sale of the items in the inventory list provided by the Town.

427. Not all of the property that was seized from the Plaintiffs' property was auctioned off or returned to the Plaintiffs.

428. Following the auction, and throughout 2011 and 2012, the court addressed a variety of motions. Ultimately, the court entered its final judgment on April 5, 2013. The court determined the Hoepplers had come into compliance with its order on July 11, 2011, which was the last day the Town removed property from the Hoepplers' premises. The court also finalized the forfeiture amount for the Hoepplers' failure to purge their contempt.

**B. The October 2, 2014, Surprise Raid.**

429. The proceeds of the auction were not large enough to satisfy the whole of the Town's judgment against the Hoepplers.

430. In the summer of 2014, Town Chairman Wasmundt and the Town's attorneys began to plan, with the Marathon County Sheriff's Department, for the execution of a writ of execution for the purpose of seizing the Hoepplers' property in order to satisfy the balance of the Hoepplers' debt to the Town.

431. In September of 2014, the Town, in a secret and ex parte proceeding, sought a writ of execution in Marathon County Case No. 2008-CV-528, to enable it to seize still more of the Hoepplers' property toward the end of fully satisfying its judgment against the Hoepplers.

432. On September 4, 2014, a Writ of Execution was issued in Marathon County Case No. 2008-CV-528, in favor of the Town and against the Hoepplers.

433. No notice of the application for, or the issuance of, this writ of execution was given to the Hoepplers, although Attorney Ryan Lister remained their counsel of record in Case No. 2008-CV-528 and Roger Hoeppler was also actively engaged in litigation against the Town in this Court in Case No. 14-cv-162, in this Court, in which he was represented by the undersigned Attorney Jeff Scott Olson.

434. Although the writ of execution planned for the payment by the Town of \$6,340.00 to the Marathon County Sheriff's Department for its services in connection with the execution of the writ, and, thus, it was clear that a major

deployment of deputies was anticipated, the writ was kept secret from the Hoepners for nearly a month after it was signed by the clerk of court.

435. On October 2, 2014, the Marathon County Sheriff's Department served the writ of execution upon Roger Hoepner, and immediately commenced the seizure of property ostensibly authorized by the writ.

436. The manner of service of the writ of execution and of the seizure of the Plaintiffs' property was determined in large part by Defendants Billeb, Bean and McCarthy (hereinafter referred to as "the County Defendants), the ranking Sheriff's Department personnel who participated in the action and directed the activities of other Sheriff's Department personnel.

437. At least Defendants Bean and Billeb consciously decided that the planned execution of the writ would be kept confidential within the Sheriff's Department, and that the Sheriff's Department would not inform the Hoepners in advance, either directly or indirectly, as though their counsel, of the existence of the writ, or what they intended to do by way of its execution, or when they planned to do it.

438. Defendants Billeb, Bean and McCarthy all participated in planning the manner in which the writ of execution would be executed by law enforcement personnel.

439. The writ of execution was executed by the Marathon County Sheriff's Department in force, using a military style armored vehicle to block access to

the Hoepplers' property, and deploying approximately fifteen to twenty heavily armed deputies to surround and enter the Hoepplers' property.

440. The military style armored vehicle and the large number of deputies were intended by the Defendants Billeb, Bean and McCarthy to convey, and did convey to the elderly Hoepplers, an unmistakable threat that overwhelming and perhaps deadly force might be used by the Sheriff's Department personnel present on the Hoepplers' property.

441. In combination, the large number of heavily armed law enforcement personnel and the military vehicle were intended by Defendants Billeb, Bean and McCarthy to, and they did, convey a threat every bit as real as a single officer pointing a gun at a civilian.

442. At no time prior to October 2, 2014, did any attorney, officer or agent of the Town of Stettin or any of the Defendants or any other representative of Marathon County contact the Hoepplers or Attorney Lister or Attorney Olson to advise them of existence of the writ of execution.

443. Further, no attorney, agent, or employee of the Town of Stettin or Marathon County contacted either of said attorneys after the writ was issued on September 4, 2014, to advise them that the Hoepplers could avoid execution of the writ by paying the judgment, or to give notice of the date upon which the writ would be executed.

444. Marjorie Hoeppler had serious medical issues and was in poor health.

445. Defendants Billeb, Bean and McCarthy were aware that both Roger and Marjorie Hoepfner were well into their seventies.

446. The County Defendants' plan was that Deputies Heggelund and Pitt, who were with the Sheriff's Department's civil process unit, would attempt to initiate contact with the Hoepfners and explain the writ, and then the other Sheriff's Department personnel on the scene would proceed with the seizure of the Plaintiffs' property.

447. At the time of the service of the writ of execution, Roger Hoepfner was preparing his morning diabetes check. Roger Hoepfner was also preparing medication for his wife, Marjorie Hoepfner, when said writ of execution was served by the Marathon County Sheriff's Department.

448. About twenty-four law enforcement personnel under the direction of the individual defendants assembled at a predetermined staging area on the road leading to the Hoepfners' home.

449. Roger Hoepfner heard something outside and looked out through the picture window of his home. He saw a deputy taking partial cover behind a corner of the Hoepfners' garage and aiming a gun at the Hoepfners' front door.

450. He saw another officer running across his land with an assault rifle in his hands.

451. Around this point in time one or more of the individual defendants ordered that the Sheriff's Department's armored vehicle be deployed, and it was driven to the foot of the Hoepfners' driveway.

452. At that point, Roger Hoepner believed his home might be under attack, as no one had informed him that the deputies were there to execute a court-ordered writ.

453. Roger Hoepner telephoned his lawyer, Ryan Lister, and asked him to get out to the Hoepners' as quickly as possible.

454. Roger Hoepner also called 911 to inquire about the large number of law enforcement personnel and the military vehicle.

455. When Attorney Lister arrived, Roger Hoepner felt it was safer to leave his home, and he went out to deal with the deputies.

456. Roger Hoepner walked down his driveway to speak with the Sheriff's deputies on the road at the foot of his driveway.

457. Defendant McCarthy or another deputy told Roger Hoepner that the deputies were there to execute a writ by seizing the Hoepners' property, but that Roger Hoepner could avoid the seizure of his property by paying \$80,000.00 that day.

458. Roger Hoepner asked that individual if he walked around with \$80,000.00 in his pocket.

459. Roger Hoepner was upset, speaking louder than he usually did, and gesturing for emphasis.

460. Based only on this behavior, Defendant McCarthy ordered Deputy Matthew Anderson to arrest Mr. Hoepner for disorderly conduct.

461. Deputy Anderson then handcuffed Hoepner so tightly that it caused significant pain. Roger Hoepner asked to have the handcuffs loosened, and they were.

462. The Marathon County deputies, under the direction of the County Defendants, would not allow Mr. Hoepner to return to his home to complete his diabetes check and prepare and administer his wife's medication.

463. Roger Hoepner explained that having his hands bound that closely together behind his back was causing him significant pain, and asked if the deputies could use two pair of handcuffs. This was done.

464. Roger Hoepner then stated that the handcuffs were still causing him significant pain, and asked to be handcuffed in front, and this was done.

465. Roger Hoepner was then taken from his property by a Deputy in a squad car.

466. They drove to a nearby park and discussed Mr. Hoepner's situation. Mr. Hoepner asked to be taken to the office of his financial adviser, Jeff Isaacson, located in the Peoples' State Bank building at 1905 W. Stewart Avenue, in Wausau.

467. There, Mr. Hoepner was permitted to speak with Mr. Isaacson, who arranged for \$80,000 to be paid over. Mr. Hoepner was then released from custody.



468. In order to avoid the destructive and disruptive presence and activities of the Defendants upon his property, Roger Hoepfner arranged for the immediate payment of \$80,000.00 to the Town.

469. Upon this payment being made, the County Defendants ordered the Sheriffs' Department personnel present on the Hoepfners' property to leave, and they left without confiscating any property except as alleged below.

470. This payment was something Roger Hoepfner could have done at any time if he had been given notice of the impending raid.

471. The writ of execution was extremely broad, authorizing the seizure of "any and all personal property located on 9508 Packer Drive and/or nearby parcels of real estate owned by Roger and/or Marjorie Hoepfner."

472. The writ did exclude from seizure, "any property properly claimed exempt under Wisconsin law, provided that Roger and/or Marjorie Hoepfner make their claim of exemption in writing specifically indicating what property is being claimed exempt and a narrative description of the exemption which applies."

473. The writ exempted from seizure, "any consumer goods, household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor."

474. This exemption was violated. While carrying out the writ of execution, deputies from the Marathon County Sheriff's Department, under the

direction of the County Defendants, seized a camera and a cell phone from Roger Hoepner.

475. The seizure of the camera and cell phone was carried out in part to permit Roger Hoepner from engaging in communicative activity protected by the First Amendment to the United States constitution.

476. At the time the Marathon County Sheriff's deputies served said writ of execution on Roger Hoepner, Mr. Hoepner was preparing to deliver a load of pallets to Abby Land Foods. Said pallets were of a "food grade." Deputies of the Marathon County Sheriff's Department, under the direction of the County Defendants, sprayed paint on said pallets. Said paint makes the pallets unusable as food grade pallets. This act of destruction was not authorized by the writ of execution. The inability to deliver said pallets cost Roger Hoepner \$800.00.

477. As a result of the actions of the County Defendants in mounting a surprise military-style raid on the Hoepners' property, supported by an armored vehicle, Marjorie Hoepner was caused to suffer severe emotional distress.

478. As a result of her emotional distress, Marjorie Hoepner required medical attention at the emergency room of Wausau Aspirus Hospital.

479. The Defendants' unlawful actions have caused Roger Hoepner and Marjorie Hoepner to suffer emotional distress and lose income from their businesses and have harmed the reputations of Roger Hoepner and Marjorie Hoepner.

**V. BASIS OF LIABILITY**

**A. Fourth Amendment.**

**1. The October 2, 2014, Surprise Raid.**

501. The Defendants violated the Plaintiffs' rights to be free from any unreasonable search or seizure when they seized and destroyed property on October 2, 2014, the seizure of which had not been authorized by the circuit court.

502. The Defendants violated the Plaintiffs' rights to be free from any unreasonable search or seizure when they deployed and exerted an unreasonable amount of physical force in connection with the October 2, 2014, operation.

503. Defendants McCarthy and Anderson violated Roger Hoepfner's Fourth Amendment right to be free from arrest absent probable cause to believe that he had committed a crime.

**B. Fourteenth Amendment.**

**1. The October 2, 2014, Surprise Raid.**

504. The Defendants violated the Plaintiffs' rights to be free from the deprivation of property without due process of law on October 2, 2014, when they seized property the seizure of which had not been authorized by the circuit court.

**C. First Amendment.**

505. The Defendants who caused the seizure of Roger Hoepfner's cell phone and camera violated rights secured to him by the First Amendment to the United

States Constitution, as they did this in order to prevent Roger Hoepfner from recording and communicating their activities on his property.

**D. Marathon County.**

506. Marathon County is liable for the wrongful actions of the individual County Defendants because they were at all times acting within the scope of their employment within the meaning of § 896.46 Wis. Stats.

507. The plaintiff does not allege that the wrongful acts alleged herein were carried out pursuant to a custom or policy of Marathon County.

**VI. DAMAGES.**

**A. Compensatory Damages.**

601. By virtue of the unlawful actions of the Defendants alleged above, the Plaintiffs incurred financial losses, loss of earning capacity, emotional distress, harm to their reputations, inconvenience, the disruption of their business and other damages for which they seek compensatory damages in an amount deemed just by the Court.

**B. Punitive Damages.**

602. Because the acts of the individual Defendant herein alleged were carried out maliciously or with reckless disregard for the Plaintiffs' fundamental rights, the Plaintiffs seek an award of punitive damages against the individual

Defendants to deter them and others similarly situated from similar wrongful acts in the future.

#### **VII. CONDITIONS PRECEDENT**

701. All conditions precedent to this action within the meaning of Rule 9(c), Fed. R. Civ. Pro., have been performed or have otherwise occurred.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray the court to grant a judgment against the Defendants awarding them damages, costs, attorney's fees and such other and further relief as the Court deems just.

Dated this Wednesday, February 14, 2018.

Respectfully submitted,

Roger Hoepfner and Marjorie Hoepfner,

Plaintiffs

By

THE JEFF SCOTT OLSON LAW FIRM, S.C.

JEFF SCOTT OLSON

State Bar Number 1016284

131 West Wilson Street, Suite 1200

Madison, WI 53703

Phone: 608 283-6001

Fax: 608 283 0945

E-mail: jsolson@scofflaw.com

/s/ Jeff Scott Olson

---

Jeff Scott Olson

ATTORNEYS FOR PLAINTIFFS

**Certificate of Service**

I hereby certify that on Wednesday, February 14, 2018, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Lori M. Lubinsky and Remzy Bitar, and I hereby certify that I have mailed by United States Postal Service the document to the following non ECF participants: none.

/s/ Jeff Scott Olson