

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

NATHANIEL RAY ALLEN, Individually

Plaintiff,

vs.

CASE NO.:

CITY OF FORT MYERS, a municipal
corporation; DOUGLAS BAKER, as Fort
Myers Chief of Police; JACQUELYN
GARRETT, individually and in her official
capacity; and AUDENIA THOMAS,
individually and in her official capacity,

2: 110-CV-900-FTM-38CM

Defendants.

COMPLAINT

COMES NOW the Plaintiff, NATHANIEL ALLEN, and hereby sues the Defendants, CITY OF FORT MYERS, DOUGLAS BAKER, Fort Myers Chief of Police, JACQUELYN GARRETT, and AUDENIA THOMAS and alleges as follows:

PARTIES

1. Plaintiff, NATHANIEL ALLEN (hereinafter "Plaintiff" or "Allen"), was at all times relevant hereto, a citizen of Florida residing part-time in Lee County, Florida and part-time in the State of California and was over the age of eighteen.
2. At all material times hereto, Defendant, CITY OF FORT MYERS (hereinafter "City"), is a municipal corporation in Lee County, Florida.
3. Fort Myers Police Department is the law enforcement division of the City of Fort Myers and consists of a police chief and police officers who, at all times relevant were acting under the color of law.

4. At all times material hereto, DOUGLAS BAKER, as the Fort Myers Chief of Police (Baker), was the Chief of Police for Fort Myers, and as such, was a constitutional officer of the State of Florida, whose position was organized and exists under and by virtue of the laws of the State of Florida.
5. At all times material hereto, Baker was the employer of JACQUELYN GARRETT and AUDENIA THOMAS, who at all times material hereto was acting under the color of law as law enforcement officers of the State of Florida.
6. At all times material hereto, Defendant JACQUELYN GARRETT is believed to be a resident of Lee County, Florida.
7. At all times material hereto, Defendant AUDENIA THOMAS is believed to be a resident of Lee County, Florida.

VENUE AND JURISDICTION

8. This action presents a federal question pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
9. More specifically, this action is brought by Plaintiff, in part, pursuant to 42 U.S.C. § 1983 and § 1988 for violations of Allen's Fourth and Fourteenth Amendment rights and pursuant to 28 U.S.C. § 1367 for various State tort claims more specifically set forth below.
10. Pursuant to § 768.28(6)(a), Florida Statutes, Plaintiff has notified City of his claims prior to the filing of this action and said claims were not resolved as the City did not respond to said notice.
11. Plaintiff has also complied with § 768.28(6)(a) by providing notice and service to the Florida Department of Financial Services.

12. Venue is proper in this Court as the wrongful acts complained of occurred within the Middle District of Florida, Fort Myers Division, and the Defendants are located in Lee County, Florida where the Court is situated.
13. All conditions precedent to the filing of this action have occurred, accrued, or have been waived as a matter of law.

GENERAL ALLEGATIONS

14. On or about February 16, 2015 a sixteen (16) year old girl (the girl) called 911 and reported that a man in a truck pulled next to her on South Cleveland Avenue and began masterbating.
15. She described the man as being "mixed race" in his 40's or 50's with a gray or white goatee.
16. She further informed the 911 operator the man was headed south on Cleveland Avenue and had turned right (west) from Cleveland Avenue near Colonial Boulevard.
17. Sergeant Jacquelyn Garrett (Garrett) and Officer Kelsey Evenson of the Fort Myers Police Department (FMPD) were the first to respond to the call.
18. Garrett met with the girl who gave Garrett the same description of the man who exposed himself to her and informed Sergeant Garrett that she was 16 years old.
19. At the same time, Officer Evenson saw a truck driven by Allen turn east onto Colonial Boulevard and informed Sergeant Garrett via radio of same.
20. What should have been apparent about the truck seen by Evenson is that it was lifted and it would have been impossible for the girl to have seen through the passenger side window from her car.
21. Garrett caught up with Allen's truck and pulled him over at Colonial Boulevard and Fowler Street, several blocks east of Cleveland Avenue.

22. Allen, an African American, was 28 years old at the time and, other than driving a truck at the time, did not in any way fit the description given by the girl.
23. Despite Allen not fitting the description given by the girl and despite knowing the girl was 16 years of age, Garrett detained Allen for "Exposure of Sexual Organs to a Minor Under 16 Years of Age", and took him to the Fort Myers Police Department for detention and questioning.
24. Exposure of sexual organs to a 16 year old is a misdemeanor and law enforcement officers in Florida are not permitted to arrest for a misdemeanor unless they observed the purported criminal act.
25. At the scene Officer Timothy McCormick refused to be involved in Allen's arrest and informed Garrett he did not believe Allen was the right person due to the height of Allen's truck and because Allen did not match the girl's description.
26. At FMPD Detective Audenia Thomas (Thomas) interrogated Allen, and for the first time, informed him of the allegations against him.
27. Allen adamantly denies the allegations and explains that he was in Red Lobster on Cleveland Avenue when the incident is alleged to have occurred.
28. Thomas did not check out Allen's alibi prior to arresting him for "Exposure of Genital Organs" to a 16 year old.
29. FMPD held Allen for more than 5 hours before an assistant state attorney contacted FMPD and informed them they could not hold Allen for a misdemeanor that was unobserved by a law enforcement officer.
30. Captain James Mulligan (the acting Chief at the time), three (3) hours after Allen was arrested, was informed Thomas had arrested Allen under the wrong statute, however

Allen was still not released from custody for more than two (2) hours after Mulligan was informed of same.

31. Chief Doug Baker subsequently stepped down as Chief when it was determined during the internal affairs investigation that he had lied about calling Captain Melvin Perry to have Allen released; his phone records showed it was a missed call.
32. At all times material hereto the City (through FMPD), Baker, Garrett and Thomas were acting under color of law as law enforcement officers certified per Fla. Stat. § 943.01, et al.
33. The State Attorney's Office conducted an investigation during the days after Allen's arrest and made the following findings:
 - a. Based on interviews of employees and review of a video from Red Lobster on Cleveland Avenue, it was determined Allen was at the Red Lobster on Cleveland Avenue at the time the incident occurred;
 - b. A review of video from retail stores along Cleveland Avenue showed it to be a different truck traveling next to the girl when the incident occurred, and the truck was lower and older, and as was described by the girl, turned west from Cleveland Avenue as opposed to having turned east;
 - c. Not only had FMPD arrested the wrong person by arresting Allen, but they improperly arrested him on a misdemeanor which no law enforcement observed.
34. The City and Baker have created a policy and practice of encouraging its officers to use racial profiling which has lead to a disparate number of African American males being detained and arrested.

35. The City and Baker encourage its officers to detain and arrest African American males in disparate numbers from white males.
36. The City and Baker have failed to properly train their officers to properly investigate purported criminal activity and to be knowledgeable of the Florida criminal statutes.
37. The City also encourages its officers to “cover up” their wrongful detentions, arrests and wrongful conduct.
38. Such policies resulted in the wrongful detention and arrest of Allen.
39. A minimum of ten (10) FMPD officers, including the Chief, were involved in the detention and investigation of Allen, as well as the cover up of same.
40. All of them conspired to participate in the illegal arrest of Allen and subsequent “cover up” of same.
41. A reasonable law enforcement officer would have performed a proper investigation and would have known Allen should not have been arrested.
42. A reasonable law enforcement officer would have known the appropriate criminal statutes.
43. At the time they unlawfully detained and arrested Allen, the City, Baker, Garrett and Thomas were aware they were illegally detaining Allen, in violation of his rights under the Florida and United States Constitution, including but not limited his rights provided by the Fourth and Fourteenth Amendments to the United States Constitution and his rights under Art. I, § 12 of the Constitution of the State of Florida.
44. In fact, Baker lied to investigators in an attempt to cover up his knowledge that Allen should not have been arrested.
45. When viewed in their totality, the actions of the City, Baker, Garrett and Thomas evidence a disregard of, or indifference to, the rights and safety of Allen.

COUNT I: VIOLATION OF 42 U.S.C. § 1983 BY GARRETT (Illegal Seizure)

46. This is a cause of action for violation of Allen's civil rights under 42 U.S.C. § 1983 for Garrett's illegal detention/seizure of Allen and for damages.
47. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 above as if fully set forth herein.
48. Allen has the right under the Fourth Amendment of United States Constitution to be free from the illegal seizure of his person by law enforcement officers.
49. On February 16, 2015, Garrett, under color of law, violated Allen's Constitutional right to be free from the illegal seizure of his person as described above.
50. No law enforcement officer in Garrett's position could have thought that such seizure would be objectively reasonable in light of the facts confronting such an officer.
51. Garrett had no legal right to seize Allen.
52. Garrett's actions were intentional, wrongful and unlawful and were carried out in furtherance of the policies and practices established by the City and Baker.
53. Garrett's actions are not acceptable in a civilized society.
54. Although such actions were taken in furtherance of a policy, practice, and custom of the City and Baker, a reasonable law enforcement officer would know that the actions were violative of Allen's Constitutional rights.
55. The acts of Garrett violated the clearly established Constitutional rights of Allen, rights of which every reasonable member of the public or governmental entity should have known.
56. As a direct result of Garrett's actions, Allen has suffered damages.
57. While viewed in their totality, Garrett's actions evidence a disregard of, or indifference to, the rights and safety of Allen.

58. Allen has retained the undersigned counsel to bring this action under 42 U.S.C. § 1983 and is entitled to recover from Garrett a reasonable fee for said counsel pursuant to 42 U.S.C. § 1988 and all other relevant Federal Statutes.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to this action and enter an award of damages in favor of Allen and against Garrett and to award Allen his attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws and/or to enter judgment against Garrett in her individual and official capacity.

COUNT II: VIOLATION OF 42 U.S.C. § 1983 AGAINST THOMAS (Illegal Seizure)

59. This is a cause of action for violation of Allen's civil rights under 42 U.S.C. § 1983 for illegal seizure brought by Allen against Thomas and for damages.
60. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 above as if fully set forth herein.
61. Allen has a right under the Constitution of the United States to be free from illegal seizures of his person by and through the Fourth and Fourteenth Amendments to the United States Constitution.
62. On February 16, 2015, Thomas, under color of law, violated Allen's Constitutional right to be free from the illegal seizure of his person as described above.
63. No law enforcement officer in Thomas' position could have thought that such a seizure would be objectively reasonable in light of the facts confronting such an officer.
64. Thomas had no legal right to seize Allen in the manner set forth above.
65. Thomas' actions were wrongful and unlawful and carried out in furtherance of the policies and practices created by the City and Baker.
66. Thomas' actions are not acceptable in a civilized society.

67. Violation of Allen's rights entitles Allen to an award of damages for loss of those rights and the damages that resulted therefrom.
68. Thomas took the actions complained of above with the knowledge that the actions were in direct violation of the United States Constitution and the rights of Allen.
69. Although such actions were taken in furtherance of a policy, practice, and custom of the City and Baker, a reasonable law enforcement officer would have known the actions violated Allen's Constitutional rights.
70. As a direct result of Thomas' actions, Allen has suffered damages.
71. While viewed in their totality, Thomas' actions evidence a disregard of, or indifference to, the rights and safety of Allen.
72. Allen has retained the undersigned counsel to bring this action under 42 U.S.C. § 1983 and is entitled to recover from Thomas a reasonable fee for said counsel pursuant to 42 U.S.C. § 1988 and all other relevant Federal Statutes.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to this action and enter an award of damages in favor of Allen and against Thomas and to award Allen his attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws and/or to enter judgment against Thomas in his individual and official capacity.

COUNT III: VIOLATION OF 42 U.S.C. § 1983 AGAINST THOMAS (False Arrest)

73. This is a cause of action for violation of Allen's civil rights under 42 U.S.C. § 1983 for Allen's false arrest by Thomas and for damages.
74. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 above as if fully set forth herein.

75. This cause of action is brought to redress those damages resulting from Thomas' illegal arrest of Allen.
76. Allen has a right under the Constitution of the United States to be secure from unlawful restraint of his person and liberty by and through the Fourth and Fourteenth Amendments to the United States Constitution.
77. "A warrantless arrest without probable cause violates the Constitution and provides a basis for a section 1983 claim. Case v. Eslinger, 555 F.3d 1317, 1326 (11th Cir. 2009) quoting Kingsland v. City of Miami, 382 F.3d 1220, 1226 (11th Cir. 2004).
78. On February 16, 2015, Thomas, under color of law, violated Allen's Constitutional right to be free from unlawful restraint by physically arresting him without a warrant and without probable cause.
79. No law enforcement officer in Thomas' position could have thought that such restraint of Allen by Thomas would be objectively reasonable in light of the facts confronting such an officer.
80. Thomas had no legal right to arrest Allen and prevent Allen from moving freely about.
81. Thomas' actions were wrongful and unlawful and were carried out in furtherance of the policies and practices created by the City and Baker.
82. Thomas' actions are not acceptable in a civilized society.
83. Violation of Allen's rights entitles Allen to an award of damages for loss of those rights and the damages that resulted therefrom.
84. Although such actions were taken in furtherance of a policy, practice, and custom of the City and Baker, a reasonable law enforcement officer would have known that the actions violated Allen's Constitutional rights.
85. As a direct result of Thomas' actions, Allen has suffered damages.

86. While viewed in their totality, Thomas' actions evidence a disregard of, or indifference to, the rights and safety of Allen.

87. Allen has retained the undersigned counsel to bring this action under 42 U.S.C. § 1983 and is entitled to recover from Thomas a reasonable fee for said counsel pursuant to 42 U.S.C. § 1988 and all other relevant Federal Statutes.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to this action and enter an award of damages in favor of Allen and against Thomas and to award Allen his attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws and/or to enter judgment against Thomas in her individual and official capacity.

COUNT IV: VIOLATION OF 42 U.S.C. § 1983 AGAINST THE CITY AND BAKER

88. This is a cause of action for violation of civil rights under 42 U.S.C. § 1983 against the City and Baker and for damages based upon the alleged being taken in furtherance of the City's policies and practices.

89. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

90. Allen has a right under the Constitution of the United States to be secure from unlawful search and unlawful restraint of his person and liberty pursuant to the Fourth and Fourteenth Amendments to the United States Constitution.

91. Allen has the clearly established right under the United States Constitution and Constitution of the State of Florida to be free from the illegal seizure/detention of his person.

92. In violation of his Constitutional rights, Allen was wrongfully searched, seized, and falsely arrested on February 16, 2015 at the hands of Garrett and Thomas who were acting

in accordance with, and in furtherance of, the policies and practices of the City and Baker as more fully described above.

93. It is the custom and policy of the City and Baker to encourage its law enforcement officers to use racial profiling which leads to the illegal detentions and arrests of African American males.
94. It is the custom, policy and practice of the City and Baker to fail to train its officers to properly investigate purported crimes and to apply the proper law and statutes in performing such investigations and making arrests.
95. It is a custom, policy and practice of the City and Baker to ignore and fail to discipline misconduct by his deputies when they use excessive force against citizens.
96. On or about February 16, 2015, Defendants City and Baker, through their employees and agents, acting in a course and scope of their duties as law enforcement officers, under the color of law, deprived Allen of his rights under the United States Constitution in violation of 42 U.S.C. § 1983, in that, Allen was illegally detained, arrested and restrained, causing damages to Allen.
97. Violation of his Constitutional rights entitles Allen to an award of damages for loss of those rights and the damages that resulted thereof.
98. The City and Baker, through their employees and agents acting in the course and scope of their duties as law enforcement officers, took the actions complained of above with knowledge that the actions were in direct violation of the United States Constitution and the rights of Allen.
99. The acts of the City and Baker violated the Constitutional rights of Allen.

100. The policies, customs and procedures of the City and Baker, or lack thereof, were the driving force causing Garrett and Thomas to act as above described, and resulting in the illegal detention and seizure of Allen.
101. The actions of Garrett and Thomas were approved or ratified by the City and Baker.
102. When viewed in their totality, the actions of Garrett and Thomas, as ratified by the City and Baker evidence the City's disregard of, or indifference to, the rights and safety of Allen.
103. As a direct result of the policies, customs and procedures of the City and Baker, Allen suffered damages resulting from the violation of his Fourth and Fourteenth Amendment rights.
104. Allen has retained the undersigned counsel to bring this action under 42 U.S.C. § 1983 and is entitled to recover from the City and Baker a reasonable fee for said counsel pursuant to 42 U.S.C. § 1988.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to this action and enter an award of damages in favor of Allen and against the City and Baker and to award Allen his attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws and/or to enter judgment against the City and Baker in his official capacity. Allen further requests injunctive relief to prevent the City and Baker from continuing the policies, procedures, and practices set forth herein.

COUNT V: FALSE IMPRISONMENT BY GARRETT

105. This is a cause of action for false imprisonment and detention against Garrett and for damages.

106. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 as if fully set forth herein.
107. On or about February 16, 2015, Garrett deprived Allen of his freedom and liberty, and restrained his movements.
108. Allen did not consent to the aforementioned actions of Garrett and the restraint of Allen was against his will.
109. The restraint of Allen was caused by Garrett and was unreasonable, unwarranted, and unlawful.
110. As a direct and proximate cause of the actions of Garrett, Allen was illegally restrained and suffered damages that include bodily harm, physical discomfort and pain, physical suffering, embarrassment, humiliation, disgrace and injury, the physical and emotional aspects of which are continuing to this day and are likely to continue into the future.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to his action and enter an award of damages against Garrett for all damages allowed by law, to include damages for Allen's pain, suffering, bodily injury, loss of enjoyment of life, embarrassment, inconvenience, mental anguish and such other and further relief this Honorable Court deems just and equitable under the circumstances.

COUNT VI: FALSE IMPRISONMENT BY THOMAS

111. This is a cause of action for false imprisonment and detention against Thomas and for damages.
112. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

113. On or about February 16, 2015, Thomas deprived Allen of his freedom and liberty, and restrained his movements at the home.
114. Allen did not consent to the aforementioned actions of Thomas and the restraint of Allen was against his will.
115. The restraint of Allen was caused by Thomas and was unreasonable, unwarranted, and unlawful.
116. As a direct and proximate cause of the actions of Thomas, Allen was illegally restrained and suffered damages that include bodily harm, physical discomfort and pain, physical suffering, mental suffering, embarrassment, humiliation, disgrace and injury, the physical and emotional aspects of which are permanent and continuing to this day and are likely to continue into the future.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to his action and enter an award of damages against Thomas for all damages allowed by law, to include damages for Allen's pain, suffering, bodily injury, loss of enjoyment of life, embarrassment, inconvenience, mental anguish and such other and further relief this Honorable Court deems just and equitable under the circumstances.

COUNT VII: CIVIL CONSPIRACY AMONG ALL DEFENDANTS

117. Allen re-alleges and re-avers the allegations contained in paragraphs 1 through 45 as if fully set forth herein.
118. This is a cause of action for civil conspiracy among Baker, Garrett, Thomas and the City.
119. The City, Baker, Garrett and Thomas conspired to illegally detain and seize Allen as set forth more specifically above.

120. False Imprisonment is a crime and “the intracorporate conspiracy doctrine does not apply to alleged intracorporate criminal conspiracies.” *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1038 (11th Cir. 2000).
121. All such acts were unlawful and committed by unlawful means, and were further committed in the pursuance and furtherance of said conspiracy.
122. Allen was damaged as a result of such acts committed under the conspiracy.

WHEREFORE, for the foregoing reasons, Allen respectfully requests this Honorable Court to take jurisdiction of this cause and the parties to his action and enter an award of damages against all Defendants for all damages allowed by law, to include damages for Allen’s pain, suffering, bodily injury, loss of enjoyment of life, embarrassment, inconvenience, mental anguish and such other and further relief this Honorable Court deems just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable herein.

Respectfully submitted,




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VERIFICATION

I, NATHANIEL RAY ALLEN, a citizen of the United States and a resident of Lee County, Florida, hereby declares that I have read the foregoing and the factual allegations therein, and the facts as alleged therein are true and correct to the best of my knowledge and belief.

Dated: October 24, 2016



NATHANIEL RAY ALLEN

Sworn to and subscribed before me this 24th day of October 2016, by NATHANIEL RAY ALLEN, who is personally known by me.



NOTARY PUBLIC

(Seal)

