

Janice Gaskins	)	CASE (S) #
Plaintiff	)	S2013000174
vs.	)	1419T077579
"State of New Jersey"	)	1419T077578
aka		
Scott Weaver	)	1419T077577
Defendant		

**MENDHAM TOWNSHIP
NEW JERSEY**

COUNTERCLAIM

Comes now the Plaintiff, Janice Gaskins, and for her Counterclaim against Defendant alleges and says:

GENERAL ALLEGATIONS

1. On the evening of November 20, 2013, a friend and I were driving in my car (that my daughter uses to and from work) on Washington Road in Mendham. We drove past a police car with his headlights on the broad side of my car. He immediately turned left behind my car and threw on the lights of his car that encompass the whole of the car before him. Officer Weaver then turned on his emergency lights indicating he wanted me to stop.
2. The officer asked for ID and eventually asked me to come out of my car. I complied (he didn't tell me I had the right not to). He asked some questions of me then asked if I smoked marijuana because he smelled an odor of it. Eventually, Officer Weaver mislead me into consenting to a search of my vehicle. He misled me into the search by stating that if I did not consent that my car would be impounded and then searched by dogs. I took that to mean that my car would be towed somewhere and then searched etc. and would not be available for my daughter to get to work with the next day.
3. Another male officer was on the scene and was to "watch" us while the officer searched my car. No one was watching Officer Weaver search my car nor was he equipped with a camera to take pictures of where he supposedly "found" this "evidence" that he is *claiming that he found* in my vehicle. I asked Officer Weaver to show me his "evidence" and his answer was "I don't have to do that." This evidence was not documented in any other way other than to say it was secured in locker #6 in his police report. He did not take photographs, show on videotape, nor have the other officer witness where he found this "evidence".

4. We were handcuffed and transported to the Mendham Police Department where we were Mirandized, fingerprinted, photographs were taken of us, and we were detained for over an hour while a female officer was dispatched to search us of which she found nothing.
5. During this time Officer Weaver commenced, completed, and signed a Complaint/Summons/Warrant. Outside of the actors mentioned in this Counterclaim, no one else came in or left the police station while I was there.

COUNT I

FALSE IMPRISONMENT

6. Plaintiff re-alleges paragraphs 1 through 5.
7. On November 20, 2013, the Defendant, without warrant or due process of law, unlawfully arrested Plaintiff, and acting contrary to law, did falsely imprison the Plaintiff, depriving her of her liberty.
8. As a result of the Defendant's false imprisonment of the Plaintiff, the Plaintiff had her right to liberty violated, suffered mental anguish, humiliation, shame, and public ridicule.

COUNT II

FALSE IMPRISONMENT

9. Plaintiff re-alleges paragraphs 1 through 5.
10. The defendant, upon arresting Plaintiff, brought her to the Mendham Police Dept to be booked and detained. Defendant made no attempt to bring the Plaintiff before a proper Judge or Court as is required by due process.
11. The acts of the Defendant in deciding how to deal with the Plaintiff after her arrest, and failing to take her to a Judge or Court to so decide, constitute false imprisonment by the Defendant.

COUNT III

ASSAULT AND BATTERY

12. Plaintiff re-alleges paragraphs 1 through 5.
13. Due to the unlawful acts of the Defendant, the Plaintiff suffered a series of assaults and batteries upon her person, including arrest, handcuffing, imprisonment, physically searched, forced fingerprinting and booking procedures, and harassment.

COUNT IV

FRAUD

14. On the actual complaint/summons/warrant – Officer Weaver is acting as an attorney which is fraudulent. Officer Weaver is not a lawyer and is not qualified to issue a warrant.

15. On the Complaint/Summons/Warrant it states: "The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons."
16. Warrant has "rubber stamped signatures."
17. The "State of New Jersey" (a fiction) alleges a "personal injury" by the activity of which Plaintiff inflicted upon the "State of NEW JERSEY". What injury?

THEREFORE, Plaintiff demands judgment against Defendant, as his liability appears, in the sum of Ten Thousand Dollars (10,000), together with the costs and disbursements.

ARGUMENTS & STATEMENTS OF LAW

The facts in this case lead to the conclusion of law that the Defendant did not have any lawful authority to arrest the Plaintiff. The Defendant had no warrant for the arrest of the Plaintiff, and he never saw Plaintiff about to commit a crime nor did he see the Plaintiff in the commission a crime before he put on emergency lights indicating to Plaintiff that he wanted to detain her. There was no claim of a felony committed or of a breach of peace committed.

K.S.A. 22-24-2(1) is a codification of the Fourth Amendment Search and Seizure principles expressed in *Terry v Ohio*, 392 U.S. 1, 20 L. Ed. 2nd 889 (1968). That statute provides "without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed, or is about to commit a crime and may demand . . . the name, address of such suspect and an explanation of such suspect's actions." As a result of this statute and the applicable case law a law enforcement officer must have articulable facts sufficient to constitute a reasonable suspicion that a crime has been or is about to be committed in order to justify an initial traffic stop.

"The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right." *Schactman v. Dulles* 96 App DC 287, 225 F2d 938, at 941.

"No state shall convert a liberty into a privilege, license it, and attach a fee to it." *Murdock v. Penn.*, 319 US 105.

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. US*, 230 F 486, 489.

The use of handcuffs and/or plastic restraints must be the exception in extreme circumstances, rather than a matter of routine. Home Office guidance to the police on the subject in 1977 said that, "*Whether a prisoner should be handcuffed or not must depend on the particular circumstances, as for instance the nature of the charge and the conduct of the person in custody. Handcuffing should not be resorted to unless there is fair ground for supposing that violence may be used or an escape attempted*". In each situation where you might consider the use of restraints, you should ask yourself whether there is a real threat of violence against you or others, or whether there is a real chance of the prisoner escaping from you. "*Handcuffing cannot be justified unless there are special reasons for resorting to it*".

The use of handcuffs or plastic restraints is obviously a use of force, and therefore must be justified. Justification is achieved through establishing not only the legal right to use such equipment (i.e. when effecting a lawful arrest), but also through good objective grounds for so doing, in order to show that what was done was reasonable and necessary in the circumstances.

"But a constable cannot justify handcuffing a prisoner unless he has attempted to escape, or unless it be necessary in order to prevent his doing so." 51 L.R.A. 216

"Any arrest made without a warrant, if challenged by the defendant, is presumptively invalid...the burden is upon the state" to justify it as authorized by statute, and as not violative of constitutional provisions. State v. Mastrian, N.W.2d 695 (1969); Butler v. State 212 So.2d 577 (Miss 1968)

"The one arresting has "a duty to immediately seek a magistrate," and failure to do so makes a case of false imprisonment." Heath v. Boyd, 175 S. W.2d 217 (1943); Brock v. Stimson, 108 Mass. 520 (1871).

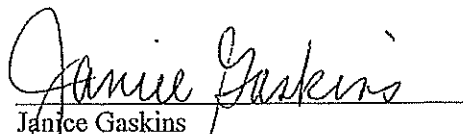
"The taking of the plaintiff's picture before conviction was an illegal act." Hawkins v. Kuhne, 137 NY Supp 1090, 153 App Div 216 (1912).

"Compulsory fingerprinting before conviction is an unlawful encroachment...[and] involves prohibited compulsory self-incrimination." People v. Helvern, 215 N.Y. Supp. 417 (1926).

"The United States Supreme Court...stressed the need for "individualized review' to avoid the issuance of "rubber stamp' warrants." State v. Paulick, 277 Minn. 140, 151 N.W.2d 596 (1967).

Dated February 20, 2014

Respectfully submitted by,


Janice Gaskins
Pro per litigant