

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY
LAW DIVISION

FEB 01 2013

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

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GERMAINE HANDY,
Plaintiff(s),

vs.

MILLVILLE POLICE DEPARTMENT,
THOMAS HAAS, Individually and in
his capacity of Chief of Police of the
Millville Police Department, CITY OF
MILLVILLE, COUNTY OF
CUMBERLAND, SHERIFF ROBERT
A. AUSTINO, Individually and in his
capacity as Sheriff of the County of
Cumberland, POLICE OFFICER
CARLO DROGO, Individually and in
his capacity as a member of the
Millville Police Department, SPECIAL
OFFICER ANTHONY SILLS,
Individually and in his capacity as a
member of Millville Police Department,
JOHN DOE DISPATCHER,
Individually and in his capacity, ABC
Entities/Corporations, THE STATE OF
NEW JERSEY

Defendant(s),

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CUMBERLAND COUNTY

DOCKET #:

Civil Action Cum L 121-13

COMPLAINT AND JURY DEMAND

The Plaintiff, Germaine Handy, residing at 200 E. Oak St., Apt. B, in the City of Millville, County of Cumberland, State of New Jersey, by way of Complaint against all of the Defendants, says:

THE PARTIES

1. Plaintiff, Germaine Handy (hereinafter "Mr. Handy" or "Plaintiff"), was at all times relevant herein a resident of the City of Millville, State of New Jersey.

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2. Defendant, Millville Police Department (hereinafter "Millville Police Department" or collectively with the other named Defendants, as "Defendants") is a policy making agency/department of the City of Millville, State of New Jersey, organized under the laws of the State of New Jersey is responsible for the hiring, supervision, training and retention of its police department, as well as the law enforcement within its jurisdiction and, at all times relevant herein, was responsible for the harm caused to Plaintiff.

3. Defendant, Thomas Haas, (hereinafter referred to as "Haas" or collectively with the other named Defendants, as "Defendants"), was at all times relevant herein the Chief of Police for the Millville Police Department acting under color of state law and was a policy maker for the Millville Police Department and, as such, was responsible for the harm caused to Plaintiff.

4. Defendant, City of Millville, (hereinafter referred to as "Millville" or collectively with the other named Defendants, as "Defendants"), is a municipality organized and existing under the laws of the State of New Jersey and is a public employer of the Millville Police Department and the Millville Prosecutor's office and certain Millville employees named as Defendants herein.

5. Defendant, Police Officer Carlo Drogo, (hereinafter referred to as "Drogo" or collectively with the other named Defendants, as "Defendants"), individually and in his capacity as a member of the Millville Police Department, was, at all times relevant herein, responsible for the harm caused to Plaintiff.

6. Defendant, Special Officer Anthony Sills, (hereinafter referred to as "Sills" or collectively with the other names Defendants, as "Defendants"), individually and in

his capacity as a member of the Millville Department, was, at all times relevant herein, responsible for the harm caused to Plaintiff.

7. Defendant, Robert A. Austino, (hereinafter referred to as "Austino" or collectively with the other named Defendants, as "Defendants"), was at all times relevant herein the Sheriff of the County of Cumberland acting under color of state law and was a policy maker for the County of Cumberland and, as such, was responsible for the harm caused to Plaintiff.

8. John Doe Dispatcher is a past and/or present employees, past and/or present supervisory employee and/or past and present agent of the above named Defendants, who acted individually and under color of state law, to wit, under color of statutes, regulations, policies, customs and were responsible for the harm caused to Plaintiff.

9. ABC Entity/Corporation is an Entity and/or corporation or other law enforcement agency who may be found to have been responsible for the actions against Plaintiff as pleaded herein.

10. All the individual Defendants pleaded herein are policy makers and acted individually and in their capacities under color of state law.

FACTUAL ALLEGATIONS

11. On September 13, 2005 at approximately 7:40 PM, Mr. Handy, was stopped by Defendant Sills for allegedly riding his bicycle on the sidewalk, in violation of a city ordinance.

12. Defendant Sills proceeded to call for back-up and Defendant Drogo, who was on routine patrol, responded.

13. Mr. Handy was interrogated for riding his bike on the sidewalk by Defendant Drogo. At the time, Mr. Handy did not have any identification on his person.

14. Defendant Drogo then detained Mr. Handy to check for outstanding warrants.

15. Mr. Handy fully cooperated and gave Defendant Drogo his personal information. Mr. Handy provided his address, (218 East Broad Street, Millville, New Jersey), date of birth, (March 18, 1974), and the spelling of his full name, (Germaine Handy).

16. Defendant Drogo then proceeded to contact the police dispatcher with said information to check for outstanding warrants.

17. No warrants were found by the police dispatcher for Mr. Handy.

18. The police dispatcher, did discover a ten year old warrant in California for a man with a different birthday, (March 14, 1972), and a differently spelled first name with a middle initial (Jermaine O. Handy).

19. Defendant Drogo then placed Mr. Handy under arrest, and handcuffed him.

20. An illegal search incident to the arrest allegedly led to the recovery of a small quantity of narcotics.

21. Upon returning to the station, Defendant Drogo confirmed that said warrant did not pertain to Mr. Handy.

22. Despite Mr. Handy's absence of a warrant, Defendant Drogo proceeded to charge Mr. Handy with a drug offense.

23. The trial level court declined to suppress this illegal evidence and Mr. Handy was left with no choice but to plead guilty to the charges.

24. The Appellate Division reversed the trial court and found that the police dispatcher acted unreasonably when she conveyed the warrant information to Defendant Drogo, despite the substantial discrepancies.

25. The New Jersey Appellate Court found that the police were responsible through the unreasonable and unconstitutional actions of the police dispatcher for conveying incomplete and inaccurate information to the arresting officer.

26. The New Jersey Appellate Court characterized the duties of a police dispatcher as 'the crucial link between the officer in the field and police headquarters. The officer depends on receiving the correct information from the dispatcher.'

27. The New Jersey Supreme Court, by decision dated April 26, 2011, affirmed the Appellate Court decision holding that Mr. Handy's arrest was illegal and the narcotics seized in the unlawful search were thus inadmissible.

28. The New Jersey Supreme Court found that the police dispatcher acted in a plainly unreasonable and an objectively unreasonable manner, thereby giving rise to the causes of action herein.

29. As a result of the Defendants actions Mr. Handy was unconstitutionally incarcerated for nine months in the New Jersey State Prison.

30. Mr. Handy filed the appropriate notice of tort claims against the appropriate defendants within the time provided by New Jersey law.

31. Mr. Handy has been severely and permanently injured as a result of the unlawful actions of the Defendants.

32. As a result of the actions of the Defendants, including the John Doe and ABC Entities/corporations Plaintiff, Mr. Handy, has been harmed.

COUNT I

**[VIOLATION OF 42U.S.C. §1983] - Violation of Constitutional Rights,
False Arrest, et. al.**

33. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

34. The acts of the Defendants committed under color of state law as set forth above, constitute a violation of Mr. Handy's constitutional rights under the United States Constitution.

35. Specifically, the unlawful acts of the Defendants included, but were not limited to:

- a. False arrest of Mr. Handy;
- b. Falsely imprisoning Mr. Handy;
- c. Depriving Mr. Handy of his constitutional right to due process;
- d. Failing to train law enforcement officers of the proper and appropriate police procedures;
- e. Failing to supervise and/or correctly train law enforcement officers;
- f. Failing to correct the unconstitutional practices of subordinate;
- g. Continually condoning and ratifying a history of unconstitutional acts despite numerous allegations over the years of false arrest;

- h. Implicitly and/or expressly teaching, encouraging and condoning a pattern, practice and policy of false arrest;
- i. Improperly screening, hiring, training, supervising, disciplining and retaining dangerous law enforcement officers.

36. The above acts constitute a violation of the Civil Rights Act, 42 U.S.C. §1983 for a violation of individual civil and constitutional rights under color of state law.

37. The unlawful acts of Defendants, including any John Doe and ABC Entities and/or corporations to be named jointly, severally and in the alternative, in both their individual and official capacity shock the conscious and/or were willfully indifferent to Mr. Handy's civil and constitutional rights.

38. As a result of the above-mentioned acts, Plaintiff was subject to false arrest and in violation of the Fourth Amendment to the Constitution (unreasonable search and seizure), Fifth Amendment (due process), and the Fourteenth Amendment. Said acts are a violation of 42 U.S.C. § 1983. The actions of Defendants constituted a deliberate and willful indifference to the rights of Mr. Handy, furthered by the policies and practices by the Defendant municipal bodies and Entities through its policy makers.

39. As a direct result of the action of the Defendants, including and John Does or ABC Entities/corporations, Plaintiff has suffered significant harm.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;
- b. An award of reasonable attorney's fees, costs of court and interest;
- c. An award of damages as allowed under 42 U.S.C. § 1983;
- d. Any other award and equitable relief allowed by statute or pursuant to the equitable and just power of the Court to which Plaintiff is entitled;
- e. An award for attorney's fees as allowed under 42 U.S.C. § 1983 and as allowed under any other appropriate statutes;
- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

COUNT II

[VIOLATION OF 42 U.S. § 1983] - as to the individual Defendants in their individual capacity and as to the municipal Defendants

40. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

41. The acts of the Defendants mentioned above constitute a violation of Mr. Handy's constitutional rights under the United States Constitution and were committed under color of state law.

42. The acts either shock the conscious and/or exhibited a willful and/or deliberate indifference for the rights of Mr. Handy.

43. Specifically, the unlawful acts of the Defendants included, but were not limited to:

- a. False arrest of Mr. Handy;
- b. Falsely imprisoning Mr. Handy;
- c. Depriving Mr. Handy of his constitutional right to due process;
- d. Failing to train law enforcement officers of the proper and appropriate police procedures;
- e. Failing to supervise and/or correctly train law enforcement officers;
- f. Failing to correct the unconstitutional practices of subordinate;
- g. Continually condoning and ratifying a history of unconstitutional acts despite numerous allegations over the years of false arrest;
- h. Implicitly and/or expressly teaching, encouraging and condoning a pattern, practice and policy of false arrest;
- i. Improperly screening, hiring, training, supervising, disciplining and retaining dangerous law enforcement officers.

44. The above acts constitute a violation of the Civil Rights Act, 42 U.S.C. §1983 for a violation of individual civil and constitutional rights under color of state law.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;

- b. An award of reasonable attorney's fees, costs of court and interest;
- c. An award of damages as allowed under 42 U.S.C. § 1983;
- d. Any other award and equitable relief allowed by statute or pursuant to the equitable and just power of the Court to which Plaintiff is entitled;
- e. An award for attorney's fees as allowed under 42 U.S.C. § 1983 and as allowed under any other appropriate statutes;
- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

COUNT III

[VIOLATION OF 42 U.S. § 1983] – Failure to train and/or supervise

45. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

46. The Defendant law enforcement agencies hiring, training and supervisory practices are inadequate.

47. As such, Defendant was deliberately indifferent to the rights of Mr. Handy. This failure to train reflects a deliberate and/or conscious choice by the municipality as such to have such policies become a custom, practice or policy of the law enforcement agencies.

48. As a direct result of the action of the Defendants, including and John Doe or ABC Entities/corporations Plaintiff has suffered significant harm.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and

suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;
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- d. Any other award and equitable relief allowed by statute or pursuant to the equitable and just power of the Court to which Plaintiff is entitled;
- e. An award for attorney's fees as allowed under 42 U.S.C. § 1983 and as allowed under any other appropriate statutes;
- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

COUNT IV

STATE CONSTITUTIONAL TORT

49. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

50. The New Jersey Constitution provides in Article I, P. I, that "all persons have certain unalienable rights of enjoying and defending life and acquiring and protecting property and pursuing and obtaining safety and happiness". Additionally, other clauses of the New Jersey Constitution including Articles I-XI declare the "right to

life, liberty and pursuit of safety and happiness of every person in the State of New Jersey". The illegal acts of the Defendants violated Plaintiff's state constitutional rights.

51. As a direct result of the action of the Defendants, including and John Doe or ABC Entities/corporations, Plaintiff has suffered significant harm.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;
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- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

COUNTY

COMMON LAW CAUSES OF ACTION

52. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

53. The above actions of Defendants constituted negligent hiring and/or supervision and/or disciplining and retention of dangerous police officers and/or false entering, false imprisonment, abuse of or excessive force and/or abusive process.

54. Such conduct of the Defendants is in violation of the common law of New Jersey and resulted in significant harm to Mr. Handy.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;
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- d. Any other award and equitable relief allowed by statute or pursuant to the equitable and just power of the Court to which Plaintiff is entitled;
- e. An award for attorney's fees as allowed under 42 U.S.C. § 1983 and as allowed under any other appropriate statutes;

- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

COUNT VI

FALSE IMPRISONMENT AND INVASION OF PRIVACY

55. Plaintiff repeats each and every allegation contained in the above paragraphs as if set forth at length herein.

56. The acts of Defendants constituted false imprisonment and invasion of privacy.

57. Defendants, Millville Police Department, Thomas Hass, Cumberland County Prosecutors office, and City of Millville, are liable for those acts under the *Doctrine of Respondeat Superior* and for permitting conditions to exist that facilitated and encouraged such conduct.

58. As a proximate result of the above mentioned acts, Plaintiff has been damaged and has suffered severe and permanent injuries and was forced to endure extreme pain, suffering and emotional distress, mental anguish and a deprivation of rights under the Civil Rights laws.

WHEREFORE, as a direct result of the conduct pleaded above, Plaintiff has suffered harm, including, but not limited to, permanent physical injuries, pain and suffering, an emotional torment, resulting in permanent injuries, monetary losses, loss of enjoyment of life, and as such, Plaintiff individually, prays for judgment against the Defendants, including but not limited to:

- a. An award of compensatory damages, punitive or treble damages which are allowed by common law, New Jersey state constitutional law or statutes pleaded herein;
- b. An award of reasonable attorney's fees, costs of court and interest;
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- d. Any other award and equitable relief allowed by statute or pursuant to the equitable and just power of the Court to which Plaintiff is entitled;
- e. An award for attorney's fees as allowed under 42 U.S.C. § 1983 and as allowed under any other appropriate statutes;
- f. An award of joint and several liability;
- g. Any other award as this Court deems proper and just.

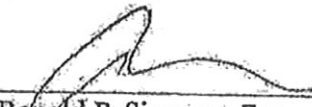
DESIGNATION OF TRIAL COUNSEL

Ronald P. Sierzega, Esquire is hereby designated trial counsel of record.

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a trial by jury as to all issues contained herein.

PUFF & COCKERILL L.L.C.
Attorneys for Plaintiff

By: 
Ronald P. Sierzega, Esq.

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