

CYNTHIA H. HARDAWAY, ESQ.
60 Park Place, 16th Floor
Newark, New Jersey 07102
(973) 672-7963
Attorney for Plaintiff
Tyshon Orr

RECEIVED-CLERK
U.S. DISTRICT COURT

2005 MAY 11 P 3: 28

TYSHON ORR
Plaintiff,

v.

**CITY OF ELIZABETH, ELIZABETH
POLICE DEPARTMENT, OFFICER
HECTOR CIFUENTES, individually
and in his official capacity, YOHARA
KINIERY, individually and in her
official capacity, and JOHN DOES 1
through 10, JANE DOES 1 through 10,
and ABC Corp. through XYZ,
individually, jointly and severally,
Defendants.**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO.:**

05-2485 (WHW)

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

TYSHON ORR is a citizen of the State of New Jersey and residing at 314
Magnolia Avenue, City of Elizabeth, State of New Jersey, County of Union, by way
of complaint against the defendants hereby says:

1. JURISDICTION AND VENUE

1. Jurisdiction of this court is evoked pursuant to 28 U.S.C. § 1331 in as
much as this matter involves causes of action arising under 42 U.S.C. §§ 1983, 1985,
1986 and the Fourth, Fifth and Fourteenth Amendment to the United States
Constitution.

2. Jurisdiction of this court is evoked pursuant to 28 U.S.C. 1343 in as
much as this matter involves causes of action seeking redress for the deprivation
under color of state law of rights existing under the Fourteenth Amendment to the

United States Constitution and 42 U.S.C. §1983.

3. The jurisdiction of the claims based on New Jersey law which are set forth in this complaint is invoked pursuant to pendant jurisdiction of this Court.

II. PARTIES TO THE ACTION

4. Plaintiff Tyshon Orr, at all times relevant resided and currently resides at 314 Magnolia Avenue, Elizabeth, New Jersey.

5. Upon information and belief, defendant City of Elizabeth is a municipal corporation in Union County, New Jersey organized under the laws of the State of New Jersey whose principal place of business is One Police Plaza, Elizabeth, New Jersey 07201.

6. Defendant Officer Hector Cifuentes, at all times relevant, was employed by the City of Elizabeth as a police officer.

7. Defendant Officer Yohara Kiniery, at all times relevant, was employed by the City of Elizabeth as a police officer.

8. Defendants John Does 1 through 10 are fictitious names of other individuals who aided and abetted and/or conspired with defendants to deprive plaintiff of his civil rights.

III. BACKGROUND AND NATURE OF ACTION

9. Plaintiff Tyshon Orr is an African-American male approximately twenty-three years of age.

10. At all times mentioned herein, defendants Cifuentes and

Kiniery, were police officers for the City of Elizabeth, and were on duty acting under color of law.

11. On or around May 13, 2003 at approximately 8:00 p.m., plaintiff was standing in the area of East Grand and Oak Street when Officers Cifuentes and Kiniery approached plaintiff and forced him to enter their patrol car against his will.

12. Thereafter, the defendant Officers Cifuentes and Kiniery drove plaintiff to Warnaco Park in Roselle, New Jersey. The defendant officers drove plaintiff to a secluded area of the park and forced plaintiff to strip down to his jeans and t-shirt. Then the defendant officers discarded plaintiff's jacket, shoes, and shirt.

13. While inside of Warnaco Park, the defendant officers assaulted plaintiff, who never resisted the unlawful detention. Thereafter, the defendant officers left plaintiff inside of the park without his shoes, jacket, or shirt. Plaintiff was left bruised, scared, and in pain. Plaintiff suffered injuries to his cheek and ribs.

14. After the defendant officers drove away, plaintiff used his cell phone to call a friend to come to Warnaco Park and pick him up. While plaintiff was waiting near a tree for his friend to arrive, he was approached by two individuals who offered to take him to the hospital. Plaintiff indicated that he did not want to go to the hospital, but he accepted a ride to another area of the park to continue waiting for his friend to pick him up.

15. Eventually, plaintiff's friends arrived and drove him home. Plaintiff did not go to the hospital as a result of his injuries. However, he did suffer bruises to the area around his cheek and ribs.

16. On November 13, 2003, Officers Cifuentes and Kiniery arrested

plaintiff and falsely accused him of several drug related offenses. After a jury trial, plaintiff was acquitted of the charges approximately two years later.

17. As a result of the assault and false arrest by the defendant officers, plaintiff has suffered and continues to suffer severe and permanent physical and psychological injuries.

IV. INCORPORATION OF ALLEGATIONS

18. All of the allegations in each of the foregoing paragraphs are incorporated by reference into each of the following claims for relief as if fully set forth in each such claim.

V. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF

(Assault and Battery)

19. The defendants committed an assault and battery upon plaintiff by forcing him into their police vehicle and subsequently beating him in Warnaco Park. Such actions of said defendants caused permanent injury to plaintiff.

20. As a proximate result of defendants' actions, plaintiff has sustained permanent injuries. These injuries have caused and will continue to cause plaintiff great pain and suffering, both mental, emotional and physical.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

B. SECOND CLAIM FOR RELIEF

(false imprisonment and false arrest)

21. The defendants' actions in illegally detaining plaintiff in Warnaco Park and unlawfully arresting plaintiff constituted false arrest and false imprisonment. Defendants actions were further committed with malice, willfulness, and a wanton disregard for the rights of plaintiff under both federal and state law.

22. As a proximate result of defendants' actions, plaintiff has sustained permanent injuries and has incurred medical bills and expenses. These injuries have caused and will continue to cause plaintiff great pain and suffering, both mental, emotional and physical.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

C. THIRD CLAIM FOR RELIEF

(Illegal Seizure and Use of Excessive Force)

23. The defendant officers, acting under color of law, unlawfully detained plaintiff, used excessive physical force against him even though he did not resist the unlawful detention. These acts were committed maliciously and intentionally against plaintiff. The defendant officers further subjected him to arrest absent probable cause, thereby depriving him of liberty, and subjecting him to excessive force in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and against the laws of the State of New Jersey. Such

actions by the defendant officers were committed with wanton disregard for the rights of plaintiff.

24. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish, and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

D. FOURTH CLAIM FOR RELIEF

(breach of duty)

25. The defendant officers breach their duty owed to plaintiff to serve and protect the public. The defendant officers breach that duty by unlawfully detaining plaintiff, assaulting him, and falsely arresting him without probable cause. The defendant Officers and the City of Elizabeth further had a duty to provide immediate medical attention to plaintiff's injuries. Instead, the defendants subjected plaintiff to great pain and suffering by refusing him medical attention and leaving him in Warnaco Park after assaulting him.

26. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

E. FIFTH CLAIM FOR RELIEF

(Municipal Liability-federal and state)

27. Defendant City of Elizabeth, in violation of 42 U.S.C. § 1983, and state negligence laws, failed in their duty to plaintiff to adequately train, and supervise the defendant officers, who at all times were acting within the scope of their employment and pursuant to a municipal custom or policy, so as to prevent the violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, the laws of the State of New Jersey, and the New Jersey State Constitution. Such a failure on the part of defendant City of Elizabeth amounted to a deliberate indifference to the constitution rights of plaintiff.

28. Defendant City of Elizabeth is further liable to plaintiff under the theory of respondeat superior, and directly liable to plaintiff under § 1983 for implementing a policy, followed by the defendant officers, which lead to the deprivation of plaintiff's liberty in violation of the Fourteenth Amendment and his rights guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

29. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish,

and permanent psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

F. SIXTH CLAIM FOR RELIEF

(Infliction of Emotional Distress)

30. All named defendants negligently or intentionally subjected plaintiff to emotional distress by falsely accusing him of criminal activity, assaulting him, and illegally detaining him, and preventing him from seeking immediate medical attention for his injuries.

31. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish, and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

G. SEVENTH CLAIM FOR RELIEF

(Malicious Prosecution-federal and state claim)

32. Defendants, with actual malice, instituted a criminal action against plaintiff, absent probable cause for the proceeding, and said proceeding terminated

favorably to plaintiff. Thus, defendants are liable to plaintiff, under 42 U.S.C. § 1983 and state law, for malicious prosecution.

33. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

H. EIGHTH CLAIM FOR RELIEF

(Abuse of Process-state claim)

34. Defendants made an improper use of the legal process by initiating criminal charges against plaintiff. Defendants were further motivated by malice and an ulterior motive in initiating said legal proceedings.

35. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish, and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

I. NINTH CLAIM FOR RELIEF

(Conspiracy-federal claim)

36. All named defendants conspired with one another to deprived plaintiff of his rights as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and having the power to prevent through its agents and assigns the violation of said rights, refused to do so in violation of 42 U.S.C. § 1986.

37. As a result of the foregoing deprivations, plaintiff has been permanently injured, damaged or otherwise harmed and unlawfully, which has caused him and will continue to cause him to suffer anxiety, humiliation, embarrassment, mental anguish, and psychological damages.

WHEREFORE, plaintiff requests judgment against defendants for compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

J. TENTH CLAIM FOR RELIEF

38. Defendant (s) John Docs and Janc Docs are fictitious names intended to identify any and all parties, including individuals, corporations and/or entities whose identities are presently unknown to plaintiff, who together with the named defendants were responsible for the deprivation of plaintiff's rights as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, the New Jersey State Constitution and state law, and in violation of 42 U.S.C. §§ 1983, 1985 and 1986.

WHEREFORE, plaintiff requests judgment against defendants for

compensatory and punitive damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

JURY DEMAND

Pursuant to R. 38 of the Federal Rules of Civil Procedure, plaintiff demands a jury trial on all issues so triable.

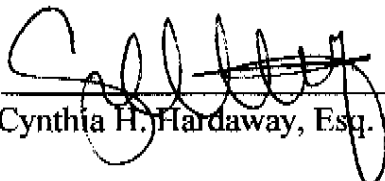
DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that Cynthia H. Hardaway, Esq. is hereby designated as trial counsel.

CERTIFICATION

Counsel certifies that this pleading is presented in compliance to R. 11 of the Federal Rules of Civil Procedure.

CYNTHIA H. HARDAWAY, ESQ.
Attorney for Plaintiff
Tyshon Orr



Cynthia H. Hardaway, Esq. (CCH3958)

DATED: May 11, 2005

LA CORTE, BUNDY, VARADY & KINSELLA

9-12,447

ATTORNEYS AT LAW
989 BONNEL COURT
UNION, NEW JERSEY 07083
(908) 810-0500
FAX: (908) 810-0513

* NY BAR
* CERTIFIED CIVIL TRIAL ATTORNEY

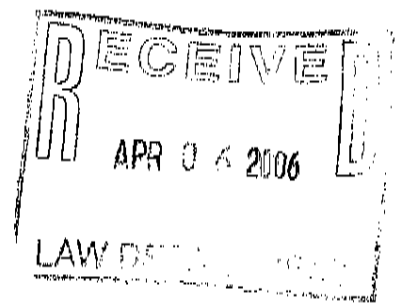
NICHOLAS S. LA CORTE (1811-1978)
GARY A. BUNDY
ROBERT F. VARADY **
CHRISTOPHER J. KINSELLA *

E-Mail: LBVKlaw@LBVKlaw.com

IN REPLY REFER TO FILE NO.

RICHARD M. BROCKWAY

April 4, 2006



Ms. Freddee Dunn
Qualcare, Inc.
242 Old New Brunswick Road
Piscataway, NJ 08854

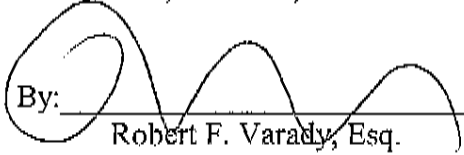
**Re: Tyshon Orr vs. City of Elizabeth, et. al.
Claim No. 42364**

Dear Ms. Dunn:

Enclosed please find a release and stipulation of dismissal. Would you kindly forward the settlement draft made payable to **Tyshon Orr and her attorney Cynthia H. Hardaway** in the amount of \$25,000.

Very truly yours,

LACORTE, BUNDY, VARADY & KINSELLA

By: 
Robert F. Varady, Esq.

RFV/sm

Encl.

cc: William Holzapfel, Esq., w/encl. ✓

RELEASE

This Release, dated February __, 2006, is given

BY TYSHON ORR

Releasor referred to as "I".

TO CITY OF ELIZABETH, ELIZABETH POLICE DEPARTMENT, OFFICER HECTOR CIFUENTES AND YOHARA KINIERY,

Releasee referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. Release. I release and give up any and all claims and rights, which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything, which has happened up to now. I specifically release the following claims:

Any and all claims for personal injury and/or property damage resulting from violations of my Federal and/or State Constitutional Rights and/or Commission of Common Law Tort, and as may be more particularly set forth in the United States District Court Matter of Tyshon Orr vs. City of Elizabeth, Elizabeth Police Department, Officer Hector Cifuentes and Yohara Kinery, et als., Civil Action No. 05-2485(WHW).

2. I further waive any right which I may have under Federal and/or State Statutes to petition the Court for payment of counsel fees incurred concerning these claims.

3. I further acknowledge that the settlement of these claims does not constitute nor should it be construed or considered as an admission of liability, guilt or non-compliance with any Federal, State or Local Law or any other wrongdoing whatsoever on the part of any party to this lawsuit.

4. I further agree that no further payment from the named defendant in the action pending in the United States District Court entitled Tyshon Orr vs. City of Elizabeth, Elizabeth Police Department, Officer Hector Cifuentes and Yohara Kinery, et als., Civil Action No. 05-2485(WHW) will be sought.

5. I understand that by signing this Release I waive and relinquish any claim, right or entitlement to any other legal or equitable relief with respect to any claim which is the subject matter of the United States District Court matter of Tyshon Orr vs. City of Elizabeth, Elizabeth Police Department, Officer Hector Cifuentes and Yohara Kinery, et als., Civil Action No. 05-2485(WHW).

6. Payment. In consideration for making this Release you have agreed to pay me a settlement of \$25,000.00 (Twenty Five Thousand Dollars).

7. I acknowledge that I am bound by this Release. Anyone who succeeds to my rights and responsibilities such as heirs or the Executor of their Estate is also bound. This Release is made for my benefit and all who succeed then rights and responsibilities such as heirs or executors or via estate.

8. Signature. I understand and agree to the terms of this Release. If this Release is made by a corporation, its proper corporate officer sign and its corporate seal is affixed.

Witnessed or Attested by:

[Handwritten signature]

[Handwritten signature] (Seal)
Tyshon Orr

STATE OF NEW JERSEY:

ss:

COUNTY OF ESSEX:

I CERTIFY that on 3-2, 2006, Tyshon Orr, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named and personally signed this document; and
(b) signed, sealed and delivered this document as his or her act and deed.

[Handwritten signature]

Prepared by: LA CORTE, BUNDY, VARADY & KINSELLA