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U.S. DISTRICT COURT

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HUSHEL SCOTT

Plaintiff,

vs.

ELIZABETH POLICE
DEPARTMENT; CITY OF
ELIZABETH; AND JOHN DOES I - X,
Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.

06-2964
(JLL)

COMPLAINT and JURY DEMAND

I. NATURE OF ACTION

1. Plaintiff, an African-American citizen of the United States, brings this lawsuit seeking relief to redress the injuries he suffered during his detention by the Elizabeth Police on or about June 21, 2005. In the manner detailed herein, the Defendants under color of state and municipal law, detained, seized and searched the Plaintiff, imprisoned the Plaintiff, and intentionally treated him differently on account of his race in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 1983, and the Constitution of the State of New Jersey, Art. I, Paragraphs 1, 5 and 7.

II. JURISDICTION AND VENUE

2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1343 and 1367.

3. Venue is proper in this district because the conduct out of which this action arose occurred in this district. 28 U.S.C. § 1391(b).

III. THE PARTIES

4. Plaintiff is a citizen of the United States, an African-American male, who resides at 622 East Curtiss St., Linden, New Jersey.

5. Defendant City of Elizabeth is a municipal corporate body politic which provides a number of services to those residing within its borders, including provision of police protection, and is a person within the meaning of 42 U.S.C. § 1983.

6. Defendant Elizabeth Police Department, is in charge of and responsible for responding to residents' complaints in Elizabeth, New Jersey, and administering police protection as necessary, consistent with the protections afforded to accused wrongdoers by the Constitutions of the United States and the State of New Jersey, as well as protections afforded by Federal and State statutes.

7. John Does I – X, are fictitious defendants, whose identities are unknown, and who at all times relevant, assisted, aided and abetted the named defendants in their unlawful treatment of plaintiff.

8. Upon information and belief, all Defendants are residents of the State of New Jersey.

IV. FACTS GIVING RISE TO THIS ACTION

9. On June 21, 2005, Plaintiff was arrested by officers of the Elizabeth Police Department and charged with violating a final restraining order.

10. During the entirety of his arrest and transport to the Elizabeth Police Department, Plaintiff was cooperative, respectful and totally compliant.

11. On the date of his arrest, Plaintiff was initially approached by two officers, one of whom appeared to be Hispanic and the other Caucasian. The officers asked Plaintiff to ride with them to see if he could be identified by the complainant. The Plaintiff complied fully.

12. After Plaintiff was identified by the complainant, the officers placed Mr. Scott under arrest and transported him to police headquarters without handcuffs and without incident.

13. After arriving at the police station, Plaintiff was escorted into a cell by the arresting officers.

14. After being escorted into the cell, Plaintiff was ordered to place his hands behind his back, and was then placed in handcuffs, again without incident.

15. After being placed in handcuffs, Mr. Scott went to sit down and before he could do so was pulled from behind by one of the officers and slammed to the ground, where he laid in pain trying to grasp for air.

16. Mr. Scott cried out in pain and asked to have the handcuffs removed.

17. Mr. Scott tried to gain the attention of the officers and let them know that he was injured, but they refused to respond to his pleas for medical assistance.

18. The next day, the desk officer asked Mr. Scott what happened, and he told the officer that he needed medical attention.

19. The desk officer called for an ambulance and Mr. Scott was walked to the ambulance and then transported to Trinitas Hospital by EMS. He was not placed in a wheelchair or on a stretcher until after he arrived at the hospital.

20. Upon examination, the doctors determined that Mr. Scott had suffered multiple broken ribs and a punctured lung.

COUNT I
Violation of Civil Rights—42 U.S.C. Section 1983
(Fourth and Fourteenth Amendments; N. J. Const., Art. I, Par. 5)

21. Plaintiff hereby realleges Paragraphs 1 through 20 and incorporates them herein by reference.

22. Defendants, under color of statute, ordinance, reputation, custom and usage have subjected and caused Plaintiff, in part, on account of his race (Black), to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and laws, in the following particulars:

- (a) his right to liberty protected by the Fourteenth Amendment, and the New Jersey Constitution, Art. I, Paragraph 1;
- (b) his right to be free as a person against cruel and unusual punishment, secured to him by the Eighth and Fourteenth Amendments, and the New Jersey Constitution;
- (c) his right to be secure in his property against unreasonable searches and seizures, secured to him by the Fourth and Fourteenth Amendments, and the New Jersey Constitution, Art. I, Paragraph 7; and,
- (d) his right to equal protection of the laws as enjoyed by similarly situated Caucasian citizens of the United States secured to them by the Fourteenth Amendment, and the New Jersey Constitution, Art. I, Paragraph 5.

23. At no time did the Officers of the Elizabeth Police Department have cause, or any ground to believe that a crime had been committed, that warranted the use of excessive force.

24. Officers of the Elizabeth Police Department, acting under color of law, intentionally discriminated against Plaintiff on the basis of race and failed to afford him equal protection of the law.

25. Defendants Elizabeth Police Department and the City of Elizabeth are aware that its officers, in this instance, failed to follow the policies and procedures of the Elizabeth Police Department.

26. Defendants' acts were done in knowing violation of Plaintiff's legal and constitutional rights and have directly and proximately caused Plaintiff injury, including humiliation, physical pain, mental pain and suffering.

27. To the extent that Defendants' failed to enforce its policies and procedures with respect to the use of excessive force, and to refuse to provide Plaintiff with appropriate medical treatment, in part, because he is a Black American, violates the New Jersey Constitution, Art. I, Paragraph 5, and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, on its face and as applied, and gives rise to Plaintiffs' claims for redress under 42 USC Section 1983.

28. Defendants are directly and vicariously liable for the acts of the John Doe police officers who injured plaintiff, while performing their official duties under the color of state and municipal law.

WHEREFORE, Plaintiff requests that this Court;

- (a) Award the named Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;
- (b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;
- (c) Award Plaintiff its attorneys' fees and costs; and

(d) Grant such other and further relief as the Court may deem just and proper.

COUNT II
(Disparate Racial Impact in Violation of Title VI & N.J. Constitution)
(Defendant City of Elizabeth Police Department)

29. Plaintiff hereby realleges Paragraphs 1 through 28 and incorporates them herein by reference.

30. Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, provides:

No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

31. Upon information and belief, Defendant Elizabeth Police Department receives federal financial assistance through federal grants. Federal financial assistance is being misused in the unlawful treatment of Black-Americans, based on its deprivation of constitutionally guaranteed rights to all citizens.

32. Article I, Paragraph 5 of the New Jersey Constitution, provides:

No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

33. As a result of the allegations contained herein, Defendants violated the rights guaranteed to plaintiff under 42 U.S.C. Section 2000, and the New Jersey Constitution, Art. I, Paragraph 5.

34. Defendant City of Elizabeth's violation of 42 U.S.C. Section 2000, and the New Jersey Constitution, Art. I, Paragraph 5, has caused and will cause Plaintiff, and

other Black Americans, to suffer tremendous harm and public humiliation in that Plaintiff has been and will continue to be subjected to this race-based policy.

WHEREFORE, Plaintiff requests that this Court;

- (a) Award the named Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;
- (b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;
- (c) Award Plaintiff its attorneys' fees and costs incurred in bringing this action; and
- (d) Grant such other and further relief as the Court may deem just and proper.

COUNT III

(Negligent Training)

(Defendants City of Elizabeth Police Department, City of Elizabeth)

35. Plaintiff hereby realleges Paragraphs 1 through 34 and incorporates them herein by reference.

36. At all times relevant, Defendants were responsible for the recruiting, hiring, training, and ongoing supervision of the officers of the Elizabeth Police Department.

37. Defendants had a duty to properly train the officers of the Elizabeth Police Department.

38. Defendants had a continuing duty to properly supervise the officers and employees of the Elizabeth Police Department.

39. Defendants had a duty to ensure that the officers and employees of the Elizabeth Police Department were properly trained not to violate the constitutional rights of citizens.

40. Defendants had a continuing duty to supervise its officers and employees in a manner that would ensure that they did not deprive one of their constitutionally guaranteed protections.

41. Defendants failed to properly train and supervise the employees and officers of the Elizabeth Police Department to ensure that they would not engage in the violation of one's constitutional rights.

42. As a result of Defendants' negligent training of the employees and officers of the Elizabeth Police Department, Plaintiff was harmed and continues to suffer damage, including pain, emotional distress, mental anguish, and humiliation.

WHEREFORE, Plaintiff requests that this Court;

- (a) Award the named Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;
- (b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;
- (c) Award Plaintiff its attorneys' fees and costs incurred in bringing this action, as provided in 42 U.S.C. Section 1988; and
- (d) Grant such other and further relief as the Court may deem just and proper.

COUNT IV
(Negligent Supervision)
(Defendants City of Elizabeth Police Department, City of Elizabeth,)

43. Plaintiff hereby realleges Paragraphs 1 through 42 and incorporates them herein by reference.

44. As a result of Defendants' negligent supervision of the employees and officers of the Elizabeth Police Department, Plaintiff was harmed and continues to suffer damage.

WHEREFORE, Plaintiff requests that this Court;

- (a) Award the named Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;
- (b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;
- (c) Award Plaintiff its attorneys' fees and costs incurred in bringing this action, as provided in 42 U.S.C. Section 1988; and
- (d) Grant such other and further relief as the Court may deem just and proper.

COUNT V
(Assault and Battery)

45. Plaintiff hereby realleges Paragraphs 1 through 44 and incorporates them herein by reference.

46. In the course of Plaintiff's detention, Officers of the Elizabeth Police Department touched the Plaintiff with unlawful force.

47. Plaintiff did not consent to being touched, and objected to being touched or otherwise restrained unlawfully by officers of the Elizabeth Police Department.

48. Defendants City of Elizabeth and the City of Elizabeth Police Department are vicariously liable for the actions of its employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court;


- (a) Award the named Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;
- (b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;
- (c) Award Plaintiff its attorneys' fees and costs incurred in bringing this action, as provided in 42 U.S.C. § 1988; and

(d) Grant such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.


Respectfully Submitted
ERIC S. PENNINGTON, PC
Attorneys for Plaintiff


Eric S. Pennington (ESP 4416)

Dated: June 14, 2006

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.


Eric S. Pennington (ESP 4416)

Dated: June 14, 2006

RELEASE

THIS RELEASE, dated February 8, 2009, is given by the Releasor, Hushel D. Scott ("Scott" or "I") to the Elizabeth Police Department, and the City of Elizabeth, referred to as "You".

1. **Release.** I release, give up and forever discharge any and all claims and rights which I may have against You arising from the action brought in the United States District Court for the District of New Jersey, captioned Hushel Scott vs. Elizabeth Police Department, City of Elizabeth, and John does I-X; Civil Action No. 06-2964 (JLL) (the "Action"). 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 the date this Release is signed. I specifically release the following claims:


Scott, on behalf of himself, his heirs, administrators, executors, representatives and/or assigns, being of lawful age, sound mind and body, hereby irrevocably and fully releases and forever discharges City of Elizabeth and Elizabeth Police Department, and their respective heirs, administrators successors, assigns, agents, officers, directors, current and former employees, representatives, attorneys, parents, subsidiaries, affiliates, insurers and all persons acting by, through, under, or in concert with any of them (collectively the "Defendant Releasees"), or any of them, from any and all actions, causes of actions, suits, charges, complaints, claims, liabilities, obligations, promises, contracts, agreements controversies, damages, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which Scott may have had or now has against any of the Defendant Releasees by reason of any matter whatsoever from the beginning of time to the date of this Release is signed, including, without limitation, any claims related to the subject matter of the Action, including, but not limited to, all claims under the State and/or Federal Constitutions; Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. § 2000e, and laws amended thereby; the Civil Rights Act of 1966, 42 U.S.C. § 1981, et seq.; the Civil Rights Statutes contained in 42 U.S.C. §§ 1983, 1985, and 1986 and any related laws; the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, et seq.; the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; and any other Federal, State or local laws, regulations or ordinances (collectively the "Civil Rights Statutes").

2. **Payment.** The City of Elizabeth (the "City") shall pay, and Scott agrees to accept, the total sum of \$81,000 (the "Payment"), in full satisfaction of any and all claims released herein. The Payment is subject to City Council approval. The payment shall be made by check in the gross amount of \$81,000, made payable to Eric S. Pennington, P.C., as attorneys for Hushel Scott, within twenty days of City Council approval of the Payment. The City hereby acknowledges that the Payment is made to satisfy Scott's allegation that he suffered personal injury, but the City specifically denies any wrongdoing in connection with those allegations.

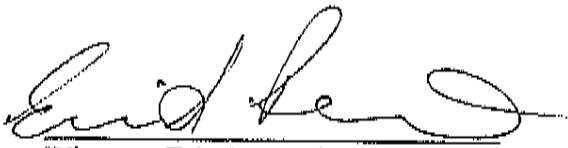
Further, I acknowledge that the Payment includes all attorneys fees to which I may be or may have been entitled as a result of claims asserted in the Action or pursuant to any of the Civil Rights Statutes asserted herein, each of which is set forth above in Section 1 of this Release.

3. **Who is bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **Signatures.** I understand and agree to the terms of this Release.


HUSHEL SCOTT

Date: March 10, 2009


Witness: Eric S. Pennington, Esq.

Date: March 10, 2009