

LOUGHRY and LINDSAY, LLC
330 Market Street
Camden, New Jersey 08102
(856) 968-9201
By: Justin T. Loughry, Esquire (3473-JTL)
Attorneys for Paul James Ash.

PAUL JAMES ASH,

Plaintiff,

v.

TOWNSHIP OF WILLINGBORO,
GREGORY RUCKER, Director of the
Willingboro Twp. Police Department;
OFFICER I. CEDENO (#192); OFFICER J.
KNECHT (#187); OFFICER JIMENEZ
(#177); and OFFICERS JOHN DOES ONE,
TWO, THREE AND FOUR,

Defendants.

: UNITED STATES DISTRICT COURT
: DISTRICT OF NEW JERSEY

:
: Civil Action No.

:
: COMPLAINT AND DEMAND FOR
: JURY TRIAL

Paul James Ash, by way of Complaint against defendants, says:

PRELIMINARY STATEMENT

1. This action is brought to redress intentional violations of the First, Fourth, Fifth, Ninth and Fourteenth Amendment rights of the Plaintiff, committed by the Township of Willingboro and its Police Department, and one or more of its agents, servants, employees or officers, in effecting an unconstitutional search and seizure, and an illegal arrest and detention, of and upon the Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1343 and 1367, as one or more causes of action arise under the United States Constitution and federal law; the Court has pendent or supplemental jurisdiction as to the state law claims. Plaintiff brings this action for damages primarily under 42 U.S.C. §§ 1983 and 1988, since the conduct complained of was engaged in under color of state law, and such conduct by the defendants subjected the plaintiff to deprivations of rights, privileges and immunities secured by the United States Constitution under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. The Plaintiff also pleads a cause of action under the New Jersey State Civil Rights Act, N.J.S.A. 10:6-1 and N.J.S.A. 10:6-2.

3. Venue is proper in this District as it is the District in which the Plaintiff and the defendants reside and/or the District in which the claims arise.

THE PARTIES

4. Paul James Ash is an African-American adult male, age 51, and at relevant times, a citizen and resident of the Township of Willingboro, County of Burlington, State of New Jersey.

5. Defendant Gregory Rucker was, at all relevant times, the Director of Police of the Willingboro Township Police Department. Upon information and belief, he was at all relevant times and is the chief policy maker and supervisor for the Willingboro Township Police Department, and the official responsible for the hiring, training, discipline, and/or supervision of employees of the Willingboro Township Police Department (hereinafter "WTPD"), including without limitation, Defendant Officers

Cedeno, Knecht, Jimenez and John Does One and Two. Rucker directed, supervised, condoned and/or acquiesced in the unconstitutional conduct of the defendants Cedeno, Knecht, Jimenez and John Does One through Four and is sued in his official and individual capacities.

6. Defendant "Willingboro Township" is a municipality or municipal corporation situated within the County of Burlington, State of New Jersey, and is a "person" within the meaning of 42 U.S.C. § 1983. At all times relevant hereto, the Township of Willingboro employed the individual defendants, and through its policies, both express and de facto, directed, supervised, condoned and/or acquiesced in the unconstitutional conduct of the defendants Cedeno, Knecht, Jimenez and John Does One through Four.

7. At all times relevant, Defendant Officers Cedeno, Knecht, Jimenez and John Does One and Two were agents, servants or employees of the WTPD. Upon information and belief, each was assigned to patrol or related duties within the municipality that would routinely bring him or her into contact with members of the public in an investigatory or law enforcement capacity and in the context of routine police patrol.

8. On April 15, 2008, Cedeno encountered the Plaintiff on or at the grounds of the Willingboro High School Athletic fields. According to available police reports, Officers Knecht, Jimenez and John Does One and Two responded to the scene of the events set forth herein and assisted Defendant Cedeno.

9. John Does One and Two are known to the named defendants; they are sworn members of the WTPD who responded to the scene of Plaintiff's arrest on April 15, 2008.

10. Chief/Director Rucker and John Does Three and Four are supervisory police officers within the WTPD who were responsible for reviewing and/or investigating citizen complaints of police abuse or brutality and/or evidence of unconstitutional conduct attributed to members of the Police Department, and taking or recommending corrective or disciplinary action, and who have responsibility for training, correction, supervision or approval of officers' conduct in making arrests. Plaintiff avers and believes that, upon obtaining discovery, these defendants will be identified and shown to have failed in their responsibilities to supervise and/or train and/or review and/or investigate and/or impose sanctions for, misconduct of patrol officers such as Cedeno, Knecht and Jimenez, such that these defendants in their actions and their failures to act will have exhibited deliberate indifference to the rights of persons such as Plaintiff, and will have caused and did cause and contribute to the violations of Plaintiff's rights as set forth herein.

11. Each of the defendants was acting within the scope of his/its employment and/or under color of law as agents, servants or employees of the WTPD. Each is sued in both official and individual capacities.

ALLEGATIONS OF FACT

12. Plaintiff re-alleges and incorporates by reference as if fully stated herein the allegations of all previous paragraphs of the Complaint.

13. On or about April 15, 2008, in the Township of Willingboro, on publicly-owned property at or near the Willingboro High School, Plaintiff was lawfully on the premises at or near the athletic fields adjacent to the high school building, for the purpose of using the recreational fields area. The time was approximately 8:15 p.m.

14. The Township had posted visible signs at the location, establishing that the premises were open to the public until 10:00 p.m.

15. Plaintiff was getting out of his car to retrieve a baseball bat and some baseballs from his trunk to hit some baseballs at the athletic field.

16. Plaintiff was not violating any law.

17. Police Officer Cedeno approached in her marked patrol car, emerged partially from the driver's door and informed Plaintiff, erroneously, that he was "trespassing."

18. Mr. Ash was puzzled since he had used these facilities many times in the past in the evening hours and had never encountered anyone or anything suggesting that he was trespassing when doing so.

19. When Plaintiff began politely to raise a question with Officer Cedeno, the defendant, demanded that he move away from his vehicle and get on the curb. Plaintiff put down the bat and balls on the trunk of his vehicle and moved away from his car as directed; he stood on the curb. Plaintiff explained that he had a lower back issue that would make sitting down on the curb uncomfortable, and made a reasonable request that he not be required to sit on the curb. At no time did Plaintiff ever disobey a lawful directive or threaten the law enforcement officers in any way.

20. Defendant Officer Cedeno apparently radioed for back-up; other officers, including – upon information and belief – Knecht and Jimenez, arrived in minutes, and one of said officers physically forced Plaintiff to sit on the curb and handcuffed him. Upon information and belief, John Doe Officers One and Two also arrived.

21. Plaintiff had not committed any violation of any law, and there was no reason in law or fact for the arrest or seizure of his person, and no articulable, factual basis to suspect him of criminal wrongdoing.

22. After the police handcuffed Plaintiff without probable cause, they began searching the interior of his vehicle, without a search warrant, without probable cause, and without any other legally sufficient basis. They lacked probable cause for that search; there was no basis in law or fact for them to conduct the search.

23. An officer opened the trunk; the officers collectively began a search of the trunk, jettisoning articles out on to the pavement and looking inside various containers or bags.

24. The officers had no justification in law or fact, and no warrant, to permit that search. At the time of the search, the officers had handcuffed Plaintiff and forced him to sit twenty feet or more away from the vehicle. He had complied and was not presenting any interference or difficulty or posing any threat to the officers.

25. As a result of the illegal search, the officers found a firearm in a secure container inside the trunk. They then took Plaintiff away and told him they were charging him with unlawful possession of a firearm.

26. Plaintiff was then arrested, charged, processed, and lodged in the Burlington County Jail overnight.

27. At the Jail, Plaintiff underwent a strip search, was doused with chemicals, given a forced shower and then was lodged in a holding cell with several other inmates. He spent the night unable to sleep, in fear of the other inmates, in crowded, unsanitary and filthy conditions.

28. Plaintiff had never been in custody before and had had no such experiences with the criminal justice system.

29. He suffered fear, humiliation and the deprivation of his liberty.

30. After a relative posted bail the next morning, he was released.

31. Within several weeks, before hiring New Jersey counsel, the Prosecutor's Office proposed to resolve the case with a diversion of the matter into Pretrial Intervention ("PTI").

32. Without admission of wrongdoing on his part, Mr. Ash entered into and ultimately completed the PTI program, and the charge was dismissed.

FIRST COUNT

33. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

34. The conduct of defendants Cedeno, Knecht, Jimenez and John Does One and Two violated Plaintiff's federal constitutional rights to be free from unlawful restraint, unlawful seizure, wrongful arrest and unreasonable searches of his person and property.

35. As such, the aforesaid conduct constitutes an intentional violation of Plaintiff's rights to freedom from unlawful restraint/seizure, freedom from unreasonable search and seizure, and his right to privacy, liberty and bodily integrity, under the Fourth,

Fifth, Ninth and Fourteenth Amendments to the United States Constitution, all in violation of the provisions of 42 U.S.C. § 1985.

WHEREFORE, Plaintiff demands judgment against Defendant Officers and an award of compensatory and punitive damages, along with attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and such other and further relief as the Court deems just.

SECOND COUNT

36. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

37. The conduct of defendants Cedeno, Knecht, Jimenez and John Does One and Two violated Plaintiff's state constitutional rights to be free from unlawful restraint, unlawful seizure, wrongful arrest and unreasonable searches of his person and property.

38. As such, the aforesaid conduct constitutes an intentional violation of Plaintiff's rights to freedom from unlawful restraint/seizure, freedom from unreasonable search and seizure, and his right to privacy, liberty and bodily integrity, under the New Jersey State Constitution, all in violation of the provisions of the New Jersey Civil Rights Act.

WHEREFORE, Plaintiff demands judgment against Defendant Officers and an award of compensatory and punitive damages, along with attorneys' fees and costs pursuant to the New Jersey Civil Rights Act, and such other and further relief as the Court deems just.

THIRD COUNT

**(Versus the Township of Willingboro and its Police Department,
Director Rucker and John Does Three and Four)**

Case 1:10-cv-01900-RMB -KMW Document 1 Filed 04/14/10 Page 9 of 11

39. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

40. The defendants, Township of Willingboro, Willingboro Township Police Department, Police Director Gregory Rucker and John Does Three and Four [collectively, "the supervisory defendants"] have a non-delegable duty to hire, train and supervise, investigate and discipline or sanction members of the municipal police force and to institute policies, practices and customs so as to ensure that no member of the police force conducts unreasonable searches and seizures upon and of the citizens and residents of the municipality and members of public generally; the defendants have a duty to ensure that WTPD officers understand and abide by the requirements of the federal and state Constitutions and abide by their restrictions on search and seizure and their protections of privacy.

41. Upon information and belief, and upon a reasonable belief that discovery will reveal evidence so demonstrating, the supervisory defendants were on actual and/or constructive notice that one or more of Defendants Cedeno, Knecht or Jimenez and other members of the WTPD engaged from time to time in the practice or custom of warrantless searching of automobiles after the arrest and neutralization of the driver, without probable cause and without a warrant.

42. Discovery will reveal that at some point, supervisory defendants became aware of the violation of Plaintiffs clear right to be free of improper arrest and search without probable cause and acquiesced in the violation.

43. As of April 2008, these searches violated clearly established law, and defendants had an obligation to train and supervise so as to prevent such Fourth

Amendment violations, not to acquiesce in them, and to discipline officers who engage in them. The defendants have knowingly and/or recklessly, with deliberate indifference, failed to fulfill said duty and have failed to institute policies and/or practices to prevent, penalize and cure such abuses. In this case, the constitutional violations were captured on video, and despite the availability of that video to the supervisory defendants, upon information and belief, no discipline or corrective action has been taken against the individual defendants.

44. Upon information and belief, the defendants' failure to hire, train and supervise subordinates to refrain from such unconstitutional conduct is a violation of citizens' or suspects' federal and state constitutional rights, amounts to a pattern, practice and/or policy of lax or no supervision and lax or no correction of subordinates when they engage in conduct that violates the constitutional rights of citizens to be free from such unreasonable searches and seizures. The pattern, practice or policy is also exhibited by a failure adequately to train and supervise officers regarding, inter alia, the requirements to lawfully detain citizens, and to lawfully search their persons and property.

45. The pattern, practice or policy and failure to supervise amounts, at minimum, to deliberate indifference to the rights of persons such as Plaintiff.

46. The pattern, practice or policy and the failure to supervise is, upon information and belief, likewise evidenced by the supervisory defendants' failures to discipline officers who engage in inappropriate and unlawful activities during their investigative inquiries or encounters with citizens.

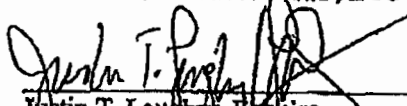
47. The various injuries suffered by Plaintiff all proximately result from the deliberate indifference of the supervisory defendants to the protection of the rights,

privileges and immunities of Plaintiff as guaranteed by the United States Constitution and laws of the United States, in violation of 42 U.S.C. § 1983, and the New Jersey State Constitution and State Civil Rights Act. As a result, the Plaintiff has suffered pain, anguish and monetary loss, and will continue to so do in the future.

WHEREFORE, the Plaintiff seeks judgment against the Defendants, an award of punitive and compensatory damages, attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988 and the New Jersey State Civil Rights Act, and such other and further relief as the Court deems just.

LOUGHRY and LINDSAY, LLC

By:


Justin T. Loughry, Esquire
Attorney for Plaintiff Paul James Ash

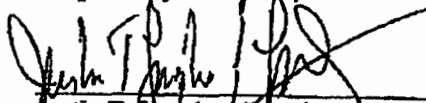
Dated:

4/14/10

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Respectfully submitted,


Justin T. Loughry, Esquire
Attorney for Plaintiff Paul James Ash

Dated:

4/14/10

RELEASE

This Release, dated 10-9-13, 2013, is given

BY the Releasor,

PAUL JAMES ASH, referred to as "I" and "Me",

TO

THE TOWNSHIP OF WILLINGBORO, PUBLIC SAFETY DIRECTOR GREGORY RUCKER, OFFICER IRIS CEDENO, OFFICER JENNIFER KNECHT, OFFICER JAIME JIMENEZ, THE PROFESSIONAL MUNICIPAL MANAGERS JOINT INSURANCE FUND AND QUAL-LYNX, referred to as "You" and "Your".

1. Release. For and in consideration of the payment to be made by or on behalf of You pursuant to Section 3 of this Release, I release and give up any and all claims which I have or may have against You, for violations of 42 U.S.C. §1983, tort claims or under any legal theory. This Release applies to all claims against You of any nature or description, resulting from any acts or omissions, including without limitation the following claims:

Any and all claims, whether or not previously alleged or asserted, for violations of my civil rights, constitutional rights, unlawful search and seizure, use of excessive force, discrimination, racial profiling, negligence, or any other act resulting in personal injury or emotional distress, together with liens of any nature whatsoever, arising out of or relating to the incident occurring on April 15, 2008 and which was the subject of the lawsuit filed in the United States District Court, District of New Jersey, Camden Vicinage, entitled, "Paul James Ash, Plaintiff vs. Township of Willingboro, Gregory Rucker, the Director of the Willingboro Township Police Department, Officer I. Cedeno (#192), Officer J. Knecht (#187), Officer Jimenez (#177), Defendants", which was assigned the civil action number 1:10-cv-019000-RMB-KMW (the "Lawsuit"), which was thereafter dismissed without prejudice and then appealed to the United States Court of Appeals for the Third Circuit where it was assigned the Court of Appeals Case No. 13-1090 (the "Appeal").

2. No Admission of Liability. This release is not meant to be construed as an admission of liability as to any party, as liability is disputed and denied. It is further specifically understood and agreed that You do not make any admission of liability by making payment pursuant to this Release and that the settlement is entered into solely for the purposes of terminating the legal proceedings in this matter.

3. Payment. In consideration for making this Release, You have agreed to pay Me a settlement of \$40,000.00 (Forty Thousand Dollars), and I acknowledge the adequacy and sufficiency thereof. I further understand and agree that I will not seek anything further from You, including any other payments from You for consequential property and/or punitive damages, costs, interest and/or attorneys' fees. Promptly upon receipt of the payment specified in this paragraph, I agree to dismiss the Lawsuit and the Appeal with prejudice.

4. Agreement to Satisfy and Indemnify with Respect to Bills and/or Liens. I agree to satisfy out of the proceeds of the within settlement all outstanding medical bills or liens asserted (including but not limited to Medicare, Medicaid, Child Support and ERISA liens) to the extent required to be paid in accordance with the law. In recognition of the obligation to satisfy all such bills and/or liens out of the aforesaid settlement proceeds, I further agree to defend and indemnify You, Your attorneys, and Your liability insurance carriers from and against any and all claims made or actions filed against You, Your attorneys or Your liability insurance carriers for payment of any such bills and/or liens. I further acknowledge that I have specifically discussed this provision of this Release with my attorney.

5. Who is Bound. I am bound by this Release. Anyone who succeeds my rights and responsibilities, such as my heir(s), successor(s), assign(s), or the executor(s) of me estate(s), are also bound. This Release is made for Your benefit and all who succeed to Your rights and responsibilities, such as Your heir(s), successor(s), assign(s), or the executor(s) of your estate(s).

6. Warranty of Capacity to Execute. I represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Release except as otherwise set forth herein and that I have the sole right and exclusive authority to execute this Release and receive the sum specified above; and that I have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

7. Representation of Comprehension of Document. In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice, and that the terms of this Release have been completely read and explained to Me by my attorney, and I fully understand and voluntarily accept the terms of this Release. I represent and certify that no pressure has been exerted upon Me to accept the terms of this Release and to settle this matter and that I have done so of my own free will. I also represent and certify that, in entering this Release and agreeing to settle this matter, I am not relying on any promises, representations, inducements or agreements other than those expressly stated herein.

8. Signature. I understand and agree to the terms of this Release.

Witnessed or Attested by:

[Signature]

[Signature]
Releasor, Paul James Ash

STATE OF New Jersey,
COUNTY OF Burlington SS:

I CERTIFY that on ~~Sept~~^{8th} October 11, 2013,

Paul James Ash personally came before me and acknowledged under oath to my satisfaction, that he is the person:

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

[Signature]
NOTARY PUBLIC

STEFFI ZAPATIER
Notary Public
State of New Jersey
My Commission Expires Aug 24, 2017