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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EDWARD M. SMALLS,

Plaintiff,

v.

THE TOWNSHIP OF
ENGLEWOOD, ENGLEWOOD
POLICE DEPARTMENT, P.O.
MICHAEL HARGRAVE, P.O.
JOHN AND JANE DOES 1-10,
SHEILA BUTLER, BERGEN
COUNTY PROSECUTOR'S
OFFICE, JOHN MOLINELLI,
ROBERT BIGGOTT, JAMES
SANTULLI, SHARON PFEIFFER,
DEEPA JACOBS, ROBERT
BIGOTT, WARDEN BERGEN
COUNY JAIL, ABC ENTITIES 1-5
(as yet unidentified municipal
entities, subdivisions, agencies,
departments); JOHN DOES 1-10(as
yet unidentified individuals),

Defendants.

FIRST AMENDED COMPLAINT

11 CV 7210 (KSH) (PS)

DEMAND FOR JURY TRIAL

Plaintiff Edward M. Smalls, ("PLAINTIFF") by and through his attorneys, Robert Blossner, Vikrant Pawar and Robert J. Rudy III, Esq. hereby alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff bring this action for compensatory and punitive damages and attorney fees pursuant 42 U.S.C. §§ 1981, 1983, 1985 and 1988 for violations of his civil rights as secured by statutes and the Constitution of the State of New Jersey and the United States.

2. Plaintiff alleges violations of his rights secured by the First, Fourth, Eighth, and Fourteenth Amendments and further allege violation of their rights protected under the state laws.

3. Jurisdiction is founded upon 28 U.S.C. §§1331, 1343, and 1367.

4. Venue is properly laid in this District under 28 U.S.C. §1391(b).

5. Plaintiff demands a trial by jury pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. Plaintiff is an African American citizen of the United States and at all relevant times a resident of the State of New Jersey.

7. Defendants Township of Englewood and Englewood Police Department are municipal corporations and organized and existing under and by virtue of the laws of the State of New Jersey.

8. Defendant Michael Hargrave (“HARGRAVE”) is an employee, agent, and/or servant of the Englewood Police Department and at all times herein was acting under color of state law.

9. Defendants, John Molinelli, James Santulli, Sharon Pfeiffer, and Deepa Jacobs, are agents, servants, employees or members of the Bergen County Prosecutor's Office and at all times herein was acting under color of state law.

10. Defendant Bergen County Jail is a governmental entity formed within the County of Bergen to house detainees. Defendant Robert Bigott is the warden of the Bergen County Jail and is responsible for the appointment, training, supervision and conduct of all jail personnel and at all times herein was acting under color of state law.

11. At all times relevant hereto individual defendants were acting in the capacity of agent, servant and/or employee of the Bergen County Jail and were responsible for the policy, practice, supervision, implementation and conduct of all Jail matters and were responsible for the training, supervision, and conduct of all jail personnel.

12. At all times relevant hereto, defendants John and Jane Doe (1-10) were uniformed corrections and medical staff employed by the jail, acting in the capacity of agents, servants, and employees of defendant County within the scope of their employment as such

13. Sheila Butler is a citizen of the United States and a resident of the State of New Jersey.

14. John and Jane Does are individuals whose identity is currently unknown and who are agents servants and/or employees of the Township of Englewood, Englewood Police Department, Bergen County Prosecutors Office, and/or Bergen County Jail and at all times herein acting under color of state law. All known and unknown state actors are sued in their individual, official and supervisory capacities.

FACTUAL BACKGROUND

15. On December 12, 2009, Plaintiff was at the residence of Sheila Butler (“BUTLER”) at 291 Pindle Avenue, Englewood, New Jersey.

16. At said time and place Butler falsely reported to the Englewood Police Department that she did not know Plaintiff and that he was harassing her.

17. At said time and place Defendant Hargrave went to Butler’s residence.

18. At that time Hargrave witnessed plaintiff and Butler involved in a verbal altercation during the evening hours.

19. Plaintiff heard someone approaching him from the rear and unaware who was approaching him ran from the location. Apparently, plaintiff was running away from defendant Hargrave who did not identify himself as a police officer and gave chase to plaintiff.

20. Hargrave, utilizing his service revolver, used excessive force and shot plaintiff in the back of the leg without justification causing him serious bodily injury and resulting in an improper seizure.

21. In order to justify the shooting Hargrave, and/or other members of the Englewood Police Department, manufactured and fabricated evidence by placing and/or reporting to investigative officers of the prosecutor’s office that plaintiff possessed a razor blade and attempted to assault Hargrave with it.

22. The Bergen County Prosecutor’s Office conducted only one interview with Hargrave regarding the shooting and otherwise failed to properly investigate the shooting incident.

23. In an effort to conceal his misconduct, Hargrave falsely informed the Prosecutor’s office that plaintiff came towards him with a razor blade.

24. The Bergen County Prosecutor's Office interviewed Sheila Butler and later determined that her initial version of plaintiff's alleged harassment charges were false, they interviewed her again she again lied. During plaintiff's criminal trial Sheila Butler admitted to lying.

25. The Bergen County Prosecutor's Office interviewed Sheila Butler a second time. She again lied about the nature of her relationship with the plaintiff.

26. Hargrave, the Bergen County Officer's Office, and the Englewood Police Department initiated a criminal proceeding against plaintiff and charged him with aggravated assault on a police officer, terroristic threats, assault, resisting arrest, possession of a weapon, possession of a weapon for an unlawful purpose, possession of a weapon by certain persons not to have weapons and harassment.

27. Plaintiff was detained at the Bergen County Correctional facility to await trial on bail of \$500,000.00.

28. The criminal trial ended in plaintiff's favor except for the charge of harassment, a disorderly person's offense.

29. The other charges against plaintiff were brought without probable cause.

30. The defendants acted maliciously in bringing the charges and same were brought for purposes other than bringing plaintiff to justice.

31. As direct consequence of the criminal charges brought against plaintiff, he suffered a deprivation of liberty consistent with the concept of a seizure.

32. Prior to the trial, plaintiff was detained at the Bergen County Jail and had a serious medical condition as a direct result of the shooting.

33. This condition constituted a serious medical need which required the plaintiff be kept from other inmates or conditions which could injure plaintiff's leg. Plaintiff's primary doctor ordered that plaintiff be kept in the medical unit and not in general population and that he continue to use his wheelchair as needed.

34. Defendants acting under color of state law acted with deliberate indifference and/or recklessness toward that need by removing plaintiff from the medical unit, restricting his use of medical equipment specifically provided to aid in his recovery and placing him in the jail's general population contrary to the medical advice the medical advice of his primary treating physician.

35. Said defendants knew or should have known of the substantial risk of harm to plaintiff's health and safety and disregarded said risk.

36. Defendants' actions in disregarding plaintiff's health and safety were designed to prevent plaintiff from appearing at his trial in a wheel chair.

As and For a First Cause of Action
(Deprivation of Rights under the Fourth Amendment)

37. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

38. Defendants unlawfully assaulted plaintiff and unlawfully seized him by using excessive force thereby violating his rights secured under the Fourth Amendment.

39. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety, mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Second Cause of Action
(Deprivation of Rights under the Fourteenth Amendment)

40. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

41. Defendants deprived plaintiff the process that was due as required by law and used excessive force against plaintiff and thus violated their rights secured by the Due Process Clause of the Fourteenth Amendment.

42. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety, mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Third Cause of Action
(Malicious Abuse of Process)

43. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

44. Defendants used the civil and criminal process to harass, intimidate and torment plaintiff thereby constituting malicious abuse of process.

45. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety,

mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Fourth Cause of Action
(Deliberate Indifference)

45. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

46. Defendants failed to adequately train, discipline their employees and were deliberately Indifferent to the rights of plaintiff as secured by the Constitution.

47. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety, mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Fifth Cause of Action
(Monell Liability)

48. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

49. Defendants have a pattern, practice, and custom to violate rights of the citizens and thus could be held liable under *Monell*.

50. In addition to failing to discipline, train and monitor the individual defendants' conduct, defendants have an official custom, policy and/or pattern of failing

to train, supervise or otherwise discipline their employees and which resulted in violation of violating plaintiff's constitutional rights.

51. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety, mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Sixth Cause of Action
(Conspiracy under 42 U.S.C. 1985)

52. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

53. Defendants conspired with each other to orchestrate the campaign of harassment against plaintiff and caused the violation of plaintiff's constitutional rights and also by hiding misconduct perpetrated by individual defendants.

54. As a result of the collective and individual acts by defendants, plaintiff sustained physical injuries, emotional distress, embarrassment, humiliation, anxiety, mental anguish, deprivation of liberty and property rights, violation of their constitutional rights and special damages.

As and For a Seventh Cause of Action
(Malicious Prosecution)

55. Plaintiff repeats, reiterates, and realleges each and every allegation contained in each prior paragraph with the same force and effect as if fully set forth herein.

