

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HECTOR SANTIAGO,

Plaintiff, **COMPLAINT AND
JURY DEMAND**

-against-

DETECTIVE RUSSELL KILGORE, DETECTIVE
CHRISTOPHER MCMANUS, DETECTIVE
SPECIALIST LICHT, DETECTIVE NEWMAN,
DETECTIVE JOSEPH PARELLA, DETECTIVE
DEMATTEO, THE CITY OF YONKERS, AND JOHN
DOE OFFICERS ##1-4,

DOCKET #

ECF CASE

Defendants.

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PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiff seeks relief for the violation of his rights secured by 42 USC §1983, §1988 and the Fourth Amendment to the United States Constitution, common law and the laws and Constitution of the State of New York.

2. The claim arises from a November 22, 2022, incident in which Detectives and Officers of the Yonkers Police Department ("YPD"), acting under color of state law, intentionally and willfully subjected Plaintiff to, among other things, false arrest, false imprisonment, malicious prosecution, assault, battery and excessive force.

3. Plaintiff seeks monetary damages (special, compensatory, and punitive) against Defendants, as well as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC §1331, 42 USC §1983, and the Fourth

Amendment to the United States Constitution. Supplemental and Pendent party jurisdiction is asserted.

5. Venue is laid within the United States District Court for the Southern District of New York in that Defendant City of Yonkers is located within and the events giving rise to the claim occurred within the boundaries of the Southern District of New York.

PARTIES

6. Plaintiff Hector Santiago is a Yonkers resident. He serves his city as a Commissioner of the Yonkers Human Rights Commission. In addition, he is the founder and Chief Executive Officer of Stop and Shake, a non-profit organization that promotes good relations between police and communities. At the time of the incident, he was employed by Y-ZONE, a non-profit organization dedicated to helping Yonkers residents be successful in the digital world. He is also a well-known activist in Yonkers Democratic politics.

7. Detectives Russell Kilgore, Christopher McManus, Joseph Parella, Newman, DeMatteo and Special Detective Licht were at all times here relevant employees of the YPD and are sued in their individual and official capacity. None were in police uniform at the time of the incident.

8. The City of Yonkers is a municipal corporation organized under the laws of the State of New York.

9. All other defendants were at all times here relevant employees of the NYPD, and are sued in their individual and official capacities.

10. At all times here mentioned defendants were acting under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the City of Yonkers and State of New York.

FACTUAL ALLEGATIONS

11. On November 22, 2022, Mr. Santiago left his home to attend a Yonkers City Council meeting regarding term limits.

12. A few days prior to the meeting, Mr. Santiago had surgery on his right shoulder to repair a torn rotator cuff. On the day of the meeting, his arm was in a sling.

13. When he arrived inside the City Council chamber where the meeting was being held, it was a raucous scene with members of the public on both sides of the issue yelling out.

14. There were no available places to sit, so Mr. Santiago went to the back of the room behind the last bench for seating and watched the proceedings. Unbeknownst to him, he was standing by Defendant Detective Specialist Licht.

15. When one of the members of the City Council, Tasha Diaz, began to have a personal argument with a member of the public on a topic unrelated to term limits – even calling her “ignorant” -- the crowd again became boisterous.

16. Ms. Diaz’ tirade against certain audience members lasted for several minutes. Throughout that time, the crowd was loud and boisterous in response to Diaz’ protests and insults.

17. At one point during the loud disorder inspired by Council Member Diaz, Mr. Santiago yelled out “Vote”. Far from intending to cause alarm, annoyance or inconvenience, he just wanted the council to vote so the tension in the room created by Ms. Diaz would subside. When he yelled out “vote”, many other people were more loudly remonstrating.

18. Though Defendant Licht, who was standing within inches of Mr. Santiago, saw no reason to interact with Santiago nor to arrest him, Defendant Detective Kilgore¹ made a beeline

¹ It is notable that at the time of this incident Detective Kilgore was in a relationship with an elected judge whom Mr. Santiago opposed in his capacity as a Democratic Party activist by supporting a rival candidate.

for Mr. Santiago.

19. Without identifying himself Detective Kilgore grabbed him and forcefully pulled him by his left arm out of the chamber. Special Detective Licht then forcefully grabbed his injured arm to physically move him out of the chamber.

20. The other Defendant YPD Detectives joined in, causing Mr. Santiago to be roughly handled and causing him serious physical pain, including to his injured shoulder and arm.

21. Mr. Santiago did not know these men were officers, nor had they identified themselves as such. Nevertheless, Mr. Santiago tried to comply with the officers by walking out of the chamber, but while doing so he was shoved into the seating benches by Defendant McManus for no legitimate purpose.

22. When he was finally allowed to exit the chamber, he was grabbed by Defendant Kilgore just on the other side of the door. When Mr. Santiago moved his arm to get Defendant Kilgore to stop forcefully holding him, Defendant Kilgore wound up and punched Mr. Santiago in the face.

23. This caused a police melee in which the already injured Plaintiff was pulled and shoved this way and that and forcefully brought to the ground by the Defendant officers, including some of the Defendant detectives.

24. Mr. Santiago was handcuffed and taken out of the building by Detective Kilgore. As Kilgore walked him outside, he said in sum and substance to Mr. Santiago that he (Kilgore) is “about that life” and challenged him to fight when his arm got better.

25. Mr. Santiago was arrested and charged by Detective Kilgore with assaulting an officer, a Class D felony punishable by 7 years in prison. He spent approximately 20 hours in police custody.

26. Detective Kilgore plainly lied in his reports and sworn criminal complaint against the Plaintiff. Detective Kilgore swore that Mr. Santiago “struck [him] in his chest and neck with his left elbow and forearm.” He also swore that Mr. Santiago tried to avoid arrest by turning away from him and using another person as a shield to avoid arrest.

27. Video capturing the incident plainly shows that Mr. Santiago did not strike Kilgore in the neck and chest, and, to the extent that Mr. Santiago “turned away”, it is purely due to Kilgore winding up and punching him in the side of the face, causing him to turn sideways. Finally, the injured Plaintiff did not use anyone as a shield, did not have the ability to do so, and was in fact completely helpless at the hands of the police who were pulling and pushing him around.

28. The criminal complaint sworn by Detective Kilgore also charged Mr. Santiago with Resisting Arrest, Obstructing Governmental Administration, and Disorderly conduct.

29. As a result of Detective Kilgore’s false charges made by him in an accusatory instrument, Mr. Santiago was forced to attend more than 20 court appearances from November 2022 to July 2023 with criminal charges hanging over him.

30. Detective Kilgore continued the false and malicious prosecution against him at trial, testifying under oath to the same fabricated facts contained in his criminal complaint that Mr. Santiago had struck him in the chest and neck even though video footage clearly shows that did not happen, among other false testimony.

31. Detective McManus also testified at the trial. He truthfully testified that he pushed Mr. Santiago into the seating benches, but he falsely testified that he did that because Santiago pushed him and made him lose his balance. This false testimony is clearly contradicted by video.

32. All of the specious charges lodged against Mr. Santiago were dismissed before the

finder of fact received the case for a verdict except for Disorderly Conduct. On that charge, the finder of fact found him not guilty. Mr. Santiago committed no crime or violation in the course of the incident.

33. Defendants Kilgore and McManus persisted in their prosecution of him even though video footage plainly shows that Mr. Santiago did not commit a crime and in fact it is the Defendants who committed a crime against Mr. Santiago.

34. To date, neither the Orange County District Attorney nor the Westchester County District Attorney have not prosecuted any of the Defendants for assaulting Mr. Santiago. Both claim they do not have jurisdiction.

35. For its part, the Yonkers Police Department claims that its “investigation” revealed “no wrongdoing” on the part of the officers.

36. Within 90 days of the events giving rise to this claim, plaintiffs filed written notice of claim with the City of New York, Comptroller’s Office. Over 30 days have elapsed since the filing of that notice, and this matter has not been settled or otherwise disposed of.

37. At all times during the events described above, the Defendant police officers were engaged in a joint venture violating Plaintiff’s rights. The individual officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during said events. They failed to intervene in the obviously illegal actions of their fellow officers against Plaintiff.

38. During all of the events above described, Defendants acted maliciously and with intent to injure and harm Plaintiff.

39. As a direct and proximate result of the acts of Defendants, Hector Santiago suffered the following injuries and damages:

- a. Violation of his rights pursuant to the Fourth Amendment to the United States Constitution to be free from an unreasonable search and seizure;
- b. Physical pain and suffering;
- c. Emotional trauma and suffering, including fear, embarrassment, humiliation, severe emotional distress, frustration, extreme inconvenience, depression and anxiety;
- d. Lost wages; and
- e. Loss of liberty.

FIRST CAUSE OF ACTION
(FALSE ARREST AND FALSE IMPRISONMENT AS TO ALL DEFENDANTS)

40. The above paragraphs are here incorporated by reference.
41. Defendants subjected Plaintiff to false arrest, false imprisonment, and deprivation of liberty without probable cause.
42. There was no reasonable expectation of successfully prosecuting Plaintiff.
43. Plaintiff was aware of his confinement and did not consent.
44. Defendants either directly participated in his arrest or failed to intervene in the obviously unconstitutional actions of fellow officers despite having the opportunity to do so.
45. Defendants have deprived Plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to Plaintiff under common law, 42 USC §1983 and the New York State Constitution.
46. Plaintiff was damaged by false arrest, imprisonment, and deprivation of liberty caused by Defendants.

SECOND CAUSE OF ACTION
(MALICIOUS PROSECUTION AS TO DEFENDANTS KILGORE AND MCMANUS)

47. The above paragraphs are here incorporated by reference.

48. Defendants, acting with malice, initiated and maintained a prosecution against Plaintiff causing him to be prosecuted and tried.

49. There was no probable cause to initiate and continue a prosecution against Plaintiff.

50. The criminal proceedings were terminated favorably to Plaintiff.

51. Defendants acted under color of law to deprive Plaintiff of his civil, constitutional and statutory rights to be free from unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution when they maliciously prosecuted Plaintiff. Defendants are liable to Plaintiff under common law, state law, and 42 U.S.C. §1983.

52. Plaintiff has been damaged as a result of Defendants' wrongful acts.

THIRD CAUSE OF ACTION
(ASSAULT AS TO ALL DEFENDANTS)

53. The above paragraphs are here incorporated by reference.

54. Plaintiff was assaulted by Defendants inside the chamber when he was forcefully removed from the City Council chamber for no legitimate purpose and was assaulted outside the chamber when he was punched by Detective Kilgore then brutally arrested by Defendants.

55. Defendants made Plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.

56. Defendants either directly participated in the assault on Plaintiff or, despite having the opportunity to do so, failed to intervene in the obviously unlawful and unconstitutional acts perpetrated by fellow officers.

57. Defendants have deprived Plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to Plaintiff under common law, 42 USC §1983 and New York State laws and Constitution.

58. Plaintiff was damaged by Defendants' assault.

FOURTH CAUSE OF ACTION
(BATTERY AS TO ALL DEFENDANTS)

59. The above paragraphs are here incorporated by reference.

60. Defendants engaged in and subjected Plaintiff to immediate harmful and/or offensive touching and battered him.

61. Defendants used excessive and unnecessary force with Plaintiff.

62. Defendants have deprived Plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to Plaintiff under common law, 42 USC §1983 and the New York State Constitution.

63. Plaintiff was damaged by Defendant's battery.

FIFTH CAUSE OF ACTION
(RESPONDEAT SUPERIOR AS TO THE CITY OF YONKERS)

64. The preceding paragraphs are here incorporated by reference.

65. Defendants' intentional tortious acts were undertaken within the scope of their employment by Defendant City of Yonkers and in furtherance of the Defendant City of Yonkers' interest.

66. As a result of Defendants' tortious conduct in the course of their employment and in furtherance of the business of Defendant City of Yonkers, Plaintiff was damaged.

SIXTH CAUSE OF ACTION
**(THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
AND 42 USC § 1983 – SELECTIVE ENFORCEMENT OF CRIMINAL LAW
AS TO DEFENDANT KILGORE)**

67. The above paragraphs are here incorporated by reference.

68. Plaintiff was attending a public meeting with and adjacent to dozens of other similarly situated people.

69. Plaintiff yelled out a comment in a manner that was no more disruptive (and in fact was less so) than numerous other similarly situated people.

70. Plaintiff nevertheless was alone selected by Defendant Kilgore for arrest in connection with the same or less intrusive conduct and charging with Disorderly Conduct. Upon information and belief, no other person in the chamber was arrested or charged. In fact, others continued to yell out without being arrested.

71. Defendant Kilgore's arrest of Plaintiff was utterly arbitrary and based on bad faith, malice and an intent to injure Plaintiff without just cause.

72. Defendant acted under color of law to deprive Plaintiff of his civil, constitutional and statutory rights to equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution when Kilgore arrested him. Defendant Kilgore is liable to Plaintiff under 42 U.S.C. §1983.

73. Plaintiff has been damaged as a result of Defendants' wrongful acts.

SIXTH CAUSE OF ACTION
(THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
AND 42 USC § 1983 – FALSE ARREST, MALICIOUS PROSECUTION AND
EXCESSIVE FORCE AS TO ALL DEFENDANTS)

74. The above paragraphs are here incorporated by reference.

75. Defendants acted under color of law and conspired to deprive Plaintiff of his civil, constitutional and statutory rights to be free from unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution when they illegally and falsely arrested him, falsely imprisoned him, maliciously prosecuted him (as to Defendants Kilgore and McManus only) and subjected Plaintiff to excessive force. Defendants are liable to Plaintiff under 42 U.S.C. §1983.

76. Plaintiff has been damaged as a result of Defendants' wrongful acts.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, as follows:

- A. In favor of Plaintiff in an amount to be determined by a jury for each of Plaintiff's causes of action;
- B. Awarding Plaintiff punitive damages in an amount to be determined by a jury;
- C. Awarding Plaintiff reasonable attorneys' fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: New York, New York
September 14, 2023

TO: Defendants

Yours, etc.,
/s/
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