

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA

FILED

2009-2 P 3:03

U.S. DISTRICT COURT
EASTERN DIST. TENN.

No. 1:09-cv-26

WILLIAM HENRY WALKER, SR., §
Plaintiff, §
§
vs. §
§
CITY OF CHATTANOOGA, §
§
KENNETH FREEMAN, §
In his individual capacity and as agent for §
City of Chattanooga and Chattanooga §
Police Department, and §
§
EDWIN MCPHERSON, §
In his individual capacity and as agent for §
City of Chattanooga and Chattanooga §
Police Department, §
Defendants. §

JURY DEMAND

Collier | Lee

COMPLAINT

Introduction:

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983 to redress the deprivation of rights secured to the Plaintiff by the Fourth, and Fourteenth Amendments to the United States Constitution; Article 1, §§ 7, 8, and 13 of the Tennessee Constitution; and the statutory and commons laws of the State of Tennessee by the Defendants.

2. Plaintiff avers that the individually named officers of the Chattanooga City Government (“City”), the Chattanooga Police Department (“Department”), made an unreasonable seizure of the Plaintiff without the due process of law.

3. In addition, Plaintiff avers that these individual Defendants assaulted, battered, humiliated, and tortured the Plaintiff.

4. Plaintiff also maintains that these individual Defendants committed these violations and torts as a result of policies, customs, and/or procedures of the City and Department.

Jurisdiction and Venue:

5. This is an action to redress the deprivation of rights secured to the Plaintiff by the Fourth, and Fourteenth Amendments to the United States. Thus, this Court is vested with original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

6. The Plaintiff invokes supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 and *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966) over the Plaintiff's cause of action under the constitutional, common law, and statutory laws of the State of Tennessee in that the said laws form the same case or controversy.

7. Venue is proper in this Court, Chattanooga Division, pursuant to 28 U.S.C. §1391(B). All acts complained of occurred within Hamilton County, a political sub-division of the State of Tennessee, and physically located within the fourteen county district of this Court.

a. The Plaintiff is a resident of the Hamilton County, Tennessee.

b. The individual Chattanooga defendant officers Freeman ("Freeman"), and McPherson ("McPherson") are to the best of the Plaintiff's knowledge and belief, also residents of Hamilton County, Tennessee.

c. The City is a political sub-division of the State of Tennessee, and the Department is a law enforcement agency and governmental arm of the City, likewise located in Hamilton County, Tennessee.

The Parties:

8. At all times relevant to this cause of action, the City, is a political sub-division of the State of Tennessee organized and existing under the laws of the State of Tennessee.

a. The City finances the Department and provides rules and regulations for the operation of the Department.

9. At all times relevant to this cause of action, Department, is a law enforcement agency created under Tennessee state law and regulated by the laws of the State of Tennessee as to:

a. The training and certification of its law enforcement employees;

b. The supervision and disciplinary treatment of its individual officers and agents;

c. To create rules and regulations to properly identify police officers who have a recurring pattern of misconduct or conduct that would place its supervisory personnel on notice and the City on notice of officers who are a threat to citizens;

d. To create rules and regulations to properly investigate police officers who have a recurring pattern of misconduct or conduct that would place its supervisory personnel on notice and the City on notice of officers who are a threat to citizens; and

e. To not retain or promote police officers who have a recurring pattern of misconduct or conduct that would place its supervisory personnel on notice and the City on notice of officers who are a threat to citizens.

10. At all times relevant to this cause of action, the individual defendant officers Freeman, and McPherson were employed by the City and Department and acted under the color of law, statute, ordinance, regulation, custom, or usage. In addition:

a. At all times relevant to this cause of action, Freeman acted in his official capacity as agent, servant, and employee, as defined under TENN. CODE ANN. § 29-20-102, for the City and Department. Plaintiff sues this defendant in his individual and official capacities.

b. At all times relevant to this cause of action, McPherson acted in his official capacity an agent, servant, and employee, as defined under TENN. CODE ANN. § 29-20-102, for the City and Department. Plaintiff sues this defendant in his individual and official capacities.

Factual Basis for Complaint:

11. On or about December 24, 2008, Plaintiff was employed as a “greeter” with Wal-Mart Stores, Inc., at the store location in Collegedale, Tennessee.

a. Plaintiff was 71 years old, stood 5’4” and wears a hearing aid.

12. Plaintiff’s duties included checking all persons leaving the store for their receipts and to ask customers to produce their receipts if the store security device, located at the exit / entrance of the store, sounded an alarm.

13. Freeman and McPherson were leaving the store with bags in their hands.

14. Plaintiff was stationed at his duty post at an exit / entrance of the store next to the security devices.

15. Plaintiff asked Freeman and McPherson to stop and produce receipts of the goods in their bags.

16. McPherson cooperated and produced his receipt to plaintiff.

17. As Plaintiff reviewed the receipt, Freeman walked around Plaintiff and McPherson and proceeded out of the store.

18. Plaintiff asked Freeman to produce his receipt.

19. Freeman ignored Plaintiff, and continued by Plaintiff.

20. Plaintiff touched Freeman on Freeman's shoulder.

21. Freeman suddenly and without any warning to Plaintiff, turned on Plaintiff, and pushed Plaintiff to the concrete floor.

22. As a direct and proximate result of Freeman's actions, Plaintiff struck the floor with the length of his body about five to six feet from the point of Freeman's push.

23. As a direct and proximate result of Freeman's actions, Plaintiff lost consciousness for a moment, and defecated in his pants.

a. Plaintiff's supervisor, after the events described herein, allowed Plaintiff to change his clothing and gave Plaintiff a clean pair of underwear.

24. Plaintiff had not unlawfully physically assaulted nor resisted the Freeman and McPherson in any manner, and Freeman's force was unnecessary to affect the seizure, was unreasonable, and was excessive.

25. Freeman stood over the helpless Plaintiff as Plaintiff struck the floor.

26. Many members of the public came to Plaintiff's aid.

27. One person attempted to come between Freeman and the downed Plaintiff, but Freeman pushed this person with such force as to drive him through the glass doors of the store.

28. Members of the public, including a security guard, called police for assistance.

29. McPherson, a Lieutenant, and based upon information and belief, assigned to the Department's fugitive division, did not call for police assistance, did not render aid to the Plaintiff or the good Samaritan Freeman shoved through the doors by Freeman.

a. McPherson's duties as a fugitive apprehension officer routinely require him to operate and exercise police authority outside of the city limits of the City.

30. McPherson failed to prevent Freeman's assault on Freeman's victims.

31. Wal-Mart security cameras captured portions of the assault.

32. When Collegedale police arrived, Freeman and McPherson identified themselves as Chattanooga Police officers.

33. Freeman and McPherson had no warrant for their seizure of Plaintiff.

34. At all times during the events herein described, the Freeman and McPherson were engaged in a joint adventure. Freeman and McPherson assisted each other in performing the various acts described and lent their physical presence and support in performing their various actions as described and lent their physical presences and support and the authority of their respective offices to each other during the said events.

35. Freeman and McPherson used the authority of their respective offices to avoid arrest for their actions against the Plaintiff and the good Samaritan.

36. Freeman and McPherson had no legal cause or reason to inflict such injuries on Plaintiff or to allow the Plaintiff to suffer.

37. Freeman has a history of violence against members of the public known to the City and Department.

38. In the most recent incident, Freeman assaulted Lloyd Levitt in the Hamilton County Courthouse.

39. The City and Department justified Freeman's conduct by claiming Levitt got into Freeman's personal space.

40. The City and Department have a history of failure to discipline or otherwise prosecute its officers who exhibit a lengthy history of complaints from the public.

a. Unless the evidence of officer misconduct is overwhelming, such as video evidence in this Complaint or in the *McCollum* matter, or unless an outside law enforcement agency brings criminal charges, the City and Department fail to properly punish or discipline officers.

41. The City and Department show favoritism toward certain officers who commit misconduct, but not others. For example:

a. *Gary Davis*, a former police officer and sergeant who the City and Department at one time fired, the rehired after misconduct, then promoted to sergeant. It was not until federal authorities intervened with corruption charges that Davis was finally removed from his office.

b. *Steve Campbell*, a current police officer, was fired for his conduct in *McCollum v. City of Chattanooga, et al.*, (US District Court for the Eastern District of Tennessee at Chattanooga, No. 1:04-cv-336), then reinstated by the City.

c. *Jeannie Snyder*, a former assistant police chief, her conduct in a Marion County wood, and a Georgia shopping mall lead to the City to take extraordinary measures to retrieve her from the wood and mall, and all comments about her conduct were attributed by the City and Department as protected by “HIPPA.”

d. *Jamie Riddel* was injured in an off duty vehicle accident. The Department disseminated her condition and did not give her the same privacy concerns as those of Snyder.

e. *Senior members of the Department* held a mandatory shift change meeting in 2004 wherein they directed their officers to use whatever means was at their disposal; to “be warriors,” and if the officers made a mistake, that they “had their backs.” These senior members did not give any clarification of these directives until after the incident that lead to the *McCollum* civil suit.

f. *Chattanooga officer Glen Lemley* (his father was a former supervisor for the Department) in his deposition in *Cross vs. City of Chattanooga*, (Hamilton County Circuit Court, Docket number 06-C-1110), testified to a long history of prescription pain killer use for chronic back pain. Lemley testified that the City, did not require him to undergo a second mental evaluation for his fitness as a police officer when the City hired him a second

time, even though he put on his initial background application that he took medications for a nervous or psychological condition. Lemley testified that he was once arrested in Georgia for terrorist threats against a former wife. He was also found in contempt of court for harassing, harming, or abusing a former wife. Despite this knowledge, the City and Department failed to require Lemley to take a drug screen, and rehired him without conducting second background investigation. Lemley remains a police officer.

**Violation of Civil Rights
Under Color of Law
42 U.S.C. § 1983**

42. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Plaintiff reasserts and incorporates ¶¶ 1 through 41.

43. The force used by Freeman amounted to unlawful force that carried a high risk of causing death or serious bodily harm to the elderly and disabled Plaintiff, and was unnecessary and unreasonable under the circumstances and was the direct and proximate cause of Plaintiff's injuries and needless suffering.

44. No reasonable officer or person would have acted in such a manner toward the diminutive and elderly Plaintiff, to have stood over Plaintiff once he was downed or have ignored his helplessness under the circumstances.

45. The force used Freeman and the non-feasence of McPherson was an act that demonstrated indifference to the life and safety of the Plaintiff.

46. The failure of Freeman and McPherson to render aid to the Plaintiff for his injuries or to prevent the infliction of such harm, report the misconduct of Freeman, or to

use their office to avoid arrest, was an omission that demonstrated indifference to the life and safety of Plaintiff.

47. Freeman and McPherson acted under color of law and their negligence and intentional acts deprived the Plaintiff his rights secured to him under the United States and Tennessee Constitutions to be free from:

- a. Unreasonable seizures without due process of law.

48. The City and Department had a duty of care to the Plaintiff to ensure that its agents were properly trained in the use of force; when to render aid; to not retain, rehire or promote officers who commit misconduct, have a history of substance abuse or a history of mental health disorders; to properly investigate the backgrounds of officers rehired; to properly investigate and to train its sworn officers to report officer abuse of members of the public. This failure constitutes deliberate indifference.

49. The City and Department's continued failure to discipline its officers, to rehire, retain, or even promote officers who have committed misconduct or are unqualified to exercise the office of police officer constitutes a policy, practice, or custom of deliberate indifference to the public and Plaintiff.

50. The City and Department have a policy, practice, or custom to tolerate the abuse of the public and the public trust by their officers.

51. Consequently, the actions stated in this Complaint created an environment that allowed the defendant officers to believe that their abusive behavior would not be properly monitored, investigated, nor punished.

52. Plaintiff avers that such actions and omissions on the part of all the defendants constitutes a conspiracy violation of this law and were done to deprive the

Plaintiff of the following rights secured to him and established under the United States and Tennessee Constitutions:

- a. The right to be free from unlawful seizures and excessive force;
- b. The right not to be deprived of life, liberty, or property without

Due Process.

53. The actions of Freeman and McPherson were done with actual malice toward the Plaintiff and with willful and wanton indifference to and with deliberate disregard for the constitutional rights and statutory civil rights of the Plaintiff. Thus the Plaintiff is entitled to punitive damages, actual damages, and attorney fees pursuant to 42 U.S.C. § 1988.

54. The omissions of the City and Department constitute deliberate indifference toward the Plaintiff and with willful and wanton indifference to and with deliberate disregard for the constitutional rights and statutory civil rights of the Plaintiff. Thus the Plaintiff is entitled to, actual damages, and attorney fees pursuant to 42 U.S.C. § 1988.

State Causes of Action:

55. Plaintiff incorporates fully ¶¶ 1 through 54 as if fully set out herein and avers that such actions and omissions on the part of the defendants constitutes violations of the following state torts:

Negligence;

Negligent retention;

Assault;

Battery;

Intentional Infliction of Emotional Distress.

56. As a direct and proximate result of the acts and omission of the defendants, Plaintiff can no longer perform his duties as a greeter, and has been reassigned to duties by Wal-Mart that does not require Plaintiff to have the same amounts of contact with members of the public.

57. As a direct and proximate result of the acts and omission of the defendants, Plaintiff has endured humiliation, pain and suffering, and mental anguish that require him to seek mental health treatment.

WHEREFORE, the Plaintiff demands judgment against the Defendants *both jointly and severally* and requests the following relief:

- A. The Court award compensatory damages in the amount of ONE MILLION DOLLARS (\$1,000,000) and punitive damages against Freeman and McPherson in the amount of TWENTY MILLION DOLLARS (\$20,000,000);
- B. That the Court award attorney's fees;
- C. That the Court award costs, and discretionary costs;
- D. Any other relief the Court may deem fit and proper;
- E. Any other relief the Court may deem fit and proper pursuant to 42 U.S.C. §1988, and
- F. Allow a jury trial on all issues triable by jury.

Respectfully submitted,

By:



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