

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

MATTHEW SOUTER,)	
)	
Plaintiff,)	
)	
v.)	C.A. # 1:20-cv-1295
)	
C. T. IRBY)	
Serve: Secretary of the Commonwealth)	
)	
and)	
)	
DEPUTY JACOBS)	
Fauquier County Sheriff's Office)	
78 West Lee St., #200)	
Fauquier, VA 20186)	
)	
and)	
)	
CORPORAL MCCAULEY)	
Fauquier County Sheriff's Office)	
78 West Lee Street, #200)	
Fauquier, VA 20186)	
)	
Defendants.)	

COMPLAINT

Preliminary and Jurisdictional Statement

1. This is an action against three deputy sheriffs for unreasonable seizure and excessive force in connection with plaintiff Matthew Souter's wrongful arrest. This case arises under the Fourth Amendment to the Constitution of the United States and 42 U.S.C. §1983. This court has jurisdiction under 28 U.S.C. §1331.

Parties

2. Plaintiff Matthew Souter is a 56-year-old resident of The Plains, Virginia.
3. Defendant C.T. Irby was at all relevant times a deputy sheriff in Fauquier County, Virginia. He is sued in his individual capacity.
4. Defendant Deputy Jacobs was at all relevant times a deputy sheriff in Fauquier County, Virginia. He is sued in his individual capacity.
5. Defendant Corporal McCauley was at all relevant times a corporal in the Fauquier County, Virginia, Sheriff's Office. He is sued in his individual capacity.

Claim for Relief

6. Mr. Souter is the owner and landlord of the home he has lived at since 2003, located at 7353 John Marshall Highway in The Plains.
7. On the evening of Saturday, November 3, 2018, Mr. Souter was in the kitchen of his home when one of his tenants, Melissa Chadwick Johnson, entered the room with her cat. As Mr. Souter understood, Ms. Johnson's cat had feline AIDS. Mr. Souter informed Ms. Johnson that she could not have her cat in the kitchen because of its illness. Over the course of the conversation, their differences gave rise to a quarrel with raised voices. During the argument, Ms. Johnson repeatedly verbally abused Mr. Souter.
8. Following the argument, Mr. Souter issued Ms. Johnson a Notice to Quit letter for various violations of the lease agreement he had with her. Mr. Souter gave Ms. Johnson 14 days to vacate the premises.

9. On November 9, 2018, Ms. Johnson filed a Criminal Complaint in Fauquier County General District Court against Mr. Souter in reference to the argument that occurred on November 3, 2018. The complaint falsely accused Mr. Souter of assault.

10. On the same day, Ms. Johnson also secured an emergency protective order against Mr. Souter, issued pursuant to Va. Code § 19.2-152.8. The emergency protective order prohibited Mr. Souter from committing “acts of violence, force, or threat, or criminal offenses resulting in injury to person or property.” The emergency protective order defined an act of “violence, force, or threat” as one that results in “bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.”

11. On the evening of November 9, 2018, Deputy Irby and Corporal McCauley served the emergency protective order to Mr. Souter at his home. The order recited its statutory basis and its prohibitions on its face, and Deputy Irby and Corporal McCauley were aware of both.

12. On November 10, 2018, Ms. Johnson telephoned the Fauquier County Sheriff’s Office where she alleged to Deputy Jacobs that Mr. Souter had terminated the electricity to her bedroom and the water to her bathroom, allegedly in violation of the emergency protective order.

13. Ms. Johnson’s claim of disruption in her utilities was false. Mr. Souter had not terminated the water or electricity to Ms. Johnson. On information and belief, Ms. Johnson had tripped the breaker to her room by using a hot plate, which she was prohibited from doing by the terms of her lease. There was no disruption to the water, which was available to all tenants.

14. The emergency protective order served by Deputy Irby and Corporal McCauley on November 9, 2018 did not address the provision of utilities, so even if Mr. Souter had interfered with them this would not have violated the order.

15. When Deputy Jacobs received the November 10th call from Ms. Johnson he had no objective basis to assess the reliability or the accuracy of Ms. Johnson's accusations, which were false. He did not speak to Mr. Souter regarding Ms. Johnson's allegations.

16. Deputy Jacobs ran Mr. Souter's name through the Fauquier County Sheriff's Office's VCIN/NCIC system to confirm the existence and stipulations of the protective order. He thus knew or should have known that the alleged termination of utilities was not prohibited by the order.

17. Deputy Jacobs proceeded to apply for and receive an arrest warrant for Mr. Souter for violating Va. Code § 16.1-253.2, which statute was not applicable to the protective order issued to him pursuant to § 19.2-152.8. Violations of emergency protective orders issued under § 19.2-152.8 are addressed in § 18.2-60.4.

18. Deputy Jacobs summoned Deputy Irby and Corporal McCauley to assist him in executing the baseless arrest warrant.

19. Deputy Irby and Corporal McCauley were aware of the false grounds under which the arrest warrant was based, as they had served the protective order to Mr. Souter one day prior.

20. At approximately 9 p.m. on November 10, 2018, defendants Jacobs, Irby, and McCauley arrived at Mr. Souter's home to execute the arrest warrant.

21. Upon seeing the officers in his driveway, Mr. Souter walked out of his home to inquire as to their concerns.

22. Corporal McCauley informed Mr. Souter that he was under arrest for having violated the protective order by allegedly interfering with Ms. Johnson's electricity in her bedroom.

23. On hearing defendant McCauley refer to problems with the electricity, Mr. Souter, confused, turned his head towards his home, as he was unaware of any issues with the electricity.

24. As Mr. Souter turned his head to look towards his home, defendant McCauley took hold of him in order to place him in handcuffs. Mr. Souter, who had a separated shoulder and chronic back and shoulder pain, found it difficult to bend his arms as defendant McCauley ordered.

25. In an excessive effort to gain immediate compliance, notwithstanding Mr. Souter's physical problems, Deputy Irby forcefully grabbed Mr. Souter's upper body while Deputy Jacobs grabbed Mr. Souter's legs and pulled them out from under him. Mr. Souter fell to the ground. He screamed in pain and attempted to tell the officers about his back and shoulder injuries.

26. In response to Mr. Souter's pained reaction to his fall and then to having his arms forced behind his back, defendants repeatedly tased Mr. Souter on stun mode, punched him, choked him, and otherwise abused him.

27. After handcuffing Mr. Souter, defendants dragged him face down along the gravel pathway to the gate of his yard, resulting in lacerations to Mr. Souter's face. Exhibit 1 is a photograph of Mr. Souter's face showing some of the injuries he suffered as a result.

28. Mr. Souter injuries were sufficiently serious to necessitate medical treatment, and he was taken to and treated at Fauquier Hospital where Exhibit 1 was taken.

29. Based on defendants' false statements of what had happened, a magistrate wrongfully charged Mr. Souter with violation of a protective order pursuant to Va. Code §16.1-253.2, which statute was not applicable to the order at issue; and also wrongfully charged him with attempt to flee from a law enforcement officer.

30. Mr. Souter had not violated the protective order, nor attempted to flee from the defendants. The charge for violation of a protective order was dismissed on a *nolle prosequi*, and Mr. Souter was found not guilty of the charge of attempt to flee from a law enforcement officer.

31. As a result of defendants' actions complained of herein, Mr. Souter has suffered physical injury, expense, humiliation and embarrassment, as well as violation of his constitutional rights.

32. The actions of Deputy Jacobs, Deputy Irby and Corporal McCauley here at issue were malicious, wanton, and willful, and unsupportable as a matter of black letter law that was known or should have been known to them.

Causes of Action

Count I

Unreasonable Procurement of Arrest Warrant: Dep. Jacobs

33. By securing an arrest warrant, without probable cause, as set forth above, Deputy Jacobs unreasonably violated Mr. Souter's settled Fourth Amendment rights.

Count II

Unreasonable Seizure: Dep. Irby, Dep. Jacobs, Cpl. McCauley

34. By executing an arrest warrant they knew or should have known was predicated on false grounds, defendants unreasonably seized Mr. Souter in violation of his settled Fourth Amendment rights.

Count III

Excessive Force: Dep. Irby, Dep. Jacobs, Cpl. McCauley

35. Defendants' use of force in arresting Mr. Souter as set forth above was excessive and objectively unreasonable, in violation of Mr. Souter's settled Fourth Amendment rights.

Count IV

False Arrest/ False Imprisonment: Dep. Irby, Dep. Jacobs, Cpl. McCauley

36. By arresting Mr. Souter without grounds or probable cause as set forth above, defendants restrained Mr. Souter's physical liberty without legal justification, amounting to false arrest or false imprisonment in violation of the common law of Virginia.

Count V

Malicious Prosecution: Dep. Irby, Dep. Jacobs, Cpl. McCauley

37. By compelling Mr. Souter to appear in court to answer the baseless criminal charges defendants had brought against him, defendants maliciously prosecuted Mr. Souter in violation of Virginia common law.

Count VI

Assault and Battery: Dep. Irby, Dep. Jacobs, Cpl. McCauley

38. Defendants intentionally, maliciously, and in wanton disregard for plaintiff's rights, assaulted and battered Mr. Souter, in violation of Virginia common law.

* * *

Wherefore, Mr. Souter seeks the following relief jointly and severally against defendants:

- * an award of compensatory damages in amounts appropriate to the proof at trial,
- * an award of punitive damages in amounts appropriate to the proof at trial,
- * an award of his reasonable attorneys fees and costs; and
- * such other relief as is just.

Mr. Souter requests trial by jury.

Respectfully submitted,

MATTHEW SOUTER,

By counsel

Dated: November 3, 2020

Counsel for Plaintiff:

//s// Victor M. Glasberg

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Souter\Matthew\Pleadings\Complaint