

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at FRANKFORT

[Filed Electronically]

KIANTE RUSSELL and)
SHIAN WASHINGTON,)
)
PLAINTIFFS)
)
v.)
)
CITY OF FRANKFORT, KENTUCKY)
Serve: William May)
Mayor)
315 West Second Street)
Frankfort, KY 40601)
)
-and-)
)
TRAVIS ELLIS, individually)
Serve: 5674 Jam Court)
Independence, KY 40151)
)
-and-)
)
LARRY G. CURTIS, individually)
Serve: Franklin Police Department)
300 West Second Street)
Frankfort, KY 40601)
)
-and-)
)
DANIEL J. BULLARD, individually)
Serve: Franklin Police Department)
300 West Second Street)
Frankfort, KY 40601)

COMPLAINT

I. Introduction

1. Plaintiffs Kiante Russell and Shian Washington seek recovery of both the substantial actual damages they have suffered as a consequence of Defendants’ misconduct and

abuse of power, and punitive damages to deter Defendants from committing similar wrongful acts in the future. As more fully set forth below, Plaintiffs were maliciously prosecuted by Defendants as a consequence of their having engaged in protected First Amendment activity and following an unlawful forced entry into their residence and arrest. Plaintiffs' arrest, imprisonment and prosecution were totally lacking in probable cause, and all charges against them were dismissed for that reason at the conclusion of an evidentiary hearing on their Motions to Dismiss for Lack of Probable Cause and a Motion to Suppress for violations of their protected constitutional rights in the Franklin District Court on November 17, 2019. The evidence adduced at that hearing demonstrated that Defendants have an alarming ignorance of the rights of the citizens they are sworn to protect, have a frighteningly expansive view of their power to forcibly enter private residences and arrest citizens who have not engaged in any criminal conduct, and will go to great lengths to avoid any accountability for their own misconduct.

II. Jurisdiction and Venue

2. Plaintiffs seek damages from Defendants under the Civil Rights Act of 1871, 42 U.S.C. §1983, for gross and unconscionable violations of the rights, privileges and immunities guaranteed them by the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. Accordingly, this Court has jurisdiction of this case pursuant to the provisions of 38 U.S.C. §§1331 and 1343. Plaintiffs also seek to recover damages under the supplemental jurisdiction of this Court on their state claims of malicious prosecution and intentional infliction of emotional distress/outrage. Because all the events made the subject of this complaint occurred in Franklin County, Kentucky, and because the actual damages sustained by Plaintiffs as a result of Defendants' misconduct exceed the minimum jurisdictional limits of this Court, venue is proper in this Court.

III. Parties

3. Plaintiffs are both residents of Franklin County, Kentucky.

4. Defendant City of Frankfort, Kentucky (“Frankfort”), at all times mentioned herein, employed, was responsible for the establishment of policies either formally or by custom and practice for, and was responsible for the employment, training, supervision and conduct of, its Chief of Police Travis Ellis, and the officers and employees of the Frankfort Police Department (“FPD”).

5. Defendant Travis Ellis was at all times during the misconduct at the heart of Plaintiffs’ claims Chief of the FPD, and as such established policies either formally or by custom and practice for, and was responsible for the employment, training, supervision and conduct of, the officers and employees of the FPD.

6. Defendants Larry G. Curtis and Daniel J. Bullard are officers and employees of the FPD, personally and directly initiated, continued and procured Plaintiffs’ groundless and malicious prosecution through their mistreatment, arrest and incarceration of Plaintiffs and their active participation in Plaintiffs’ prosecution.

IV. Nature of Defendants' Conduct

7. Defendants, individually and in conspiracy with one another, engaged in the conduct described below under color of the law of the Commonwealth of Kentucky and the City of Frankfort. The individual Defendants named above knowingly participated or acquiesced in, contributed to, encouraged, implicitly authorized or approved the conduct described below. The offenses described below resulted from the failure of the Defendants Frankfort and Ellis to employ qualified persons for positions of authority, and/or to properly or conscientiously train and supervise the conduct of such persons after their employment, and/or to promulgate appropriate

operating policies and procedures either formally or by custom and practice to protect the constitutional rights of persons like Plaintiffs. Defendants' conduct was objectively unreasonable, intentional and grossly negligent, indicated active malice toward Plaintiffs and a total, deliberate and reckless disregard for and indifference to their constitutional and common law rights, and justifies an award of punitive damages in addition to the actual damages they are entitled to recover.

V. Facts

8. Plaintiffs Kiante Russell and Shian Washington are African-American residents of Frankfort, Kentucky. On August 12, 2018, Kiante was 21 years old, and Shian was 22. Due to prior traumatic experiences of abuse, Shian had been diagnosed with, and was being treated for, post-traumatic stress disorder. Neither Kiante nor Shian had ever been arrested or charged with a criminal offense.

9. In the early morning hours of August 12, 2018, Kiante, who was walking to the apartment of his girlfriend, Shian, was detained by a Franklin County Deputy Sheriff, and Defendants Curtis and Bullard. Kiante was questioned about alleged thefts from vehicles in the area, and he denied any knowledge. Kiante offered to allow the officers to search him, was asked for and voluntarily produced his ID (which was run through dispatch), and was released after no warrants were found for his arrest. Kiante told the officers Shian's apartment address, and he asked them if they would mind driving him there. The officers refused.

10. Upon arriving at Shian's apartment, Kiante told her about his encounter with the police. Shian, believing that Kiante's detention was unjustified and harassing, walked outside, stood on the landing immediately outside the front door of her apartment, and when Defendants Curtis and Bullard drove by, yelled at them and went back inside her apartment.

11. It is clearly established that:

Kentucky law does not criminalize arguments and noise that disturb only police officers because such conduct does not risk public alarm.... Indeed, because the First Amendment requires that police officers tolerate coarse criticism, the Constitution prohibits states from criminalizing conduct that disturbs solely police officers.

Kennedy v. City of Villa Hills, Ky., 635 F.3d 210, 215-16 (6th Cir. 2011), *citing Commonwealth v. Jones*, 880 S.W.2d 544, 546 (Ky. 1994); *see also Cohen v. California*, 403 U.S. 15, 26 (1971); *Sandul v. Larion*, 119 F.3d 1250, 1254-55 (6th Cir. 1997).

12. Despite the fact that Shian's conduct was brief, and was not intended to cause, and did not cause, any public inconvenience, annoyance or alarm, and despite the fact that neither Curtis nor Bullard heard what Shian said, Curtis and Bullard decided to arrest Shian for disorderly conduct. They stopped, exited their cruisers, and approached Shian's apartment. Curtis and Bullard shined flashlights into the windows of Shian's apartment and ordered Shian to open her front door, and then began beating on and kicking her front door. Shian ran upstairs and awoke her mother, Amanda Lillard, who was asleep in an upstairs bedroom. Ms. Lillard walked downstairs, and no sooner than she had unlatched the front door to see what the police wanted, Curtis and Bullard, without consent, bulled their way into the residence. Kiante, who was standing next to Ms. Lillard, was attacked by Curtis who, without cause, began beating him. While he was being beaten by Curtis, Kiante was tased by Bullard. Curtis and Bullard handcuffed Kiante and arrested him for hindering prosecution or arrest and resisting arrest; then they ordered Shian, who was standing at the top of the stairs, to come down. Shian refused, telling Curtis and Bullard that she had PTSD and was terrified by their misconduct. Curtis and Bullard said they didn't care, and told Shian she was under arrest. Shian descended the stairs and was handcuffed and arrested for disorderly conduct. Shian was taken outside and placed in the back of Bullard's vehicle where her

skin immediately started burning – and was told that was because Bullard had pepper-sprayed someone in the back seat of his vehicle earlier that evening. Curtis and/or Bullard then conducted, directed, and/or supervised an unwarranted search of Shian’s apartment, seizing Kiante’s backpack, PlayStation and cellphone and breaking through an upstairs door jamb in the process. There was nothing illicit about Kiante’s backpack, PlayStation or cellphone, and they were returned to him when he was released from custody later that day.

13. Following Kiante and Shian’s arrests, Curtis and Bullard intentionally and knowingly misrepresented material facts in their reports of the incident in their Uniform Citations and in the Narrative of the KYIBRS Report of the incident.

14. As a consequence of these intentional and knowing misrepresentations, Kiante and Shian were prosecuted on their respective charges until, at a November 17, 2019 hearing on the their Motions to Dismiss and to Suppress in Franklin County District Court, Curtis and Bullard’s account of the incident was demonstrated to be so lacking in credibility, reliability, any semblance of probable cause, and any basic recognition of the law controlling their conduct, that the charges against Kiante and Shian were summarily dismissed at the conclusion of the hearing.

15. Prior to his employment as an officer of the FPD, Curtis was an officer of other law enforcement agencies. While so employed, Curtis amassed a disciplinary history that clearly demonstrated his lack of fitness for any subsequent law enforcement employment, or at least law enforcement employment that vested him with the power and authority to exercise force against, arrest, imprison, and/or prosecute American citizens.

VI. Causes of Action

Count I

16. Defendants' conduct was objectively unreasonable, intentional, reckless, deliberate,

wanton and/or malicious, and was indicative of their total, deliberate and reckless disregard of and indifference to Plaintiffs' constitutional and common law rights and the risk of harm to them occasioned by such conduct.

17. Plaintiffs believe and, after reasonable discovery, will show that their treatment by Defendants was the result of customs and practices of Defendants that are contrary to or expressly violate common standards, policies, procedures and protocols and that such customs and practices were the "moving force" behind Plaintiffs' injury. Such practices constitute an arbitrary use of government power, and evince a total, intentional, deliberate and unreasonable disregard for and indifference to the constitutional and common law rights of persons like Plaintiffs, and the wholesale violations of those rights likely to result from the regular and systemic pursuit of such customs and practices.

18. As a result of the foregoing, Plaintiffs, through Defendants' objectively unreasonable, deliberately indifferent, and grossly negligent -- if not reckless, intentional and/or malicious -- conduct, were subjected to malicious prosecution, unsupported by any probable cause, and were denied due process of law in violation of the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

Count II

19. By virtue of the foregoing, Defendants maliciously prosecuted Plaintiffs in violation of their state rights.

Count III

20. By virtue of the foregoing, Defendants intentionally, maliciously and in bad faith purposely inflicted upon Plaintiffs severe emotional distress, causing them injury that cannot be

compensated pursuant to the claims asserted in Counts I and II above.

VII. Damages

21. As a consequence of Defendants' conduct, Plaintiffs have suffered substantial mental pain and suffering, a wanton and unjustified deprivation of their liberty, and a criminal prosecution that Defendants' maliciously initiated, continued and procured. Plaintiffs are entitled to recover from Defendants the actual monetary damages required to compensate them for their mental pain and suffering, the loss of their liberty, and the expenses, inconvenience and distress they experienced in the course and as a consequence of their criminal prosecution. In addition, Plaintiffs are entitled to recover from Defendants punitive damages to punish them for and deter any repetition of the mistreatment to which Plaintiffs were subjected.

WHEREFORE, Plaintiffs respectfully request trial by jury, an award of actual and punitive damages, costs and attorneys' fees pursuant to 42 U.S.C. §1988, interest on all such sums at the maximum legal rate until paid, and all other relief to which they are entitled.

Respectfully submitted,

/s/ Gregory A. Belzley

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