

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

VIRGINIA D. BARRETT,

Plaintiff,

13 CV 4118 (NSR)

vs.

**FIRST AMENDED COMPLAINT**

CITY OF NEWBURGH, ROBERT  
VASTA, JOSEPH BURNS,

Defendants.

-----X

By and through her counsel, Michael H. Sussman, plaintiff, Virginia D.

Barrett, hereby alleges as follows against defendants:

I. **PARTIES**

1. At all relevant times, the plaintiff, Virginia Barrett, [hereinafter referred as “plaintiff”] has resided in the City of Newburgh within this judicial district.

2. Defendant City of Newburgh [hereinafter referred to as “city” or “defendant city”] is a municipal corporation which is situated within this judicial district.

3. Defendants Robert Vasta and Joseph Burns were police officers employed by the City of Newburgh at the time of the incident which gives rise to this lawsuit.

Upon information and belief, these defendants are both still employed by defendant City and do business within this judicial district.

## II. JURISDICTION

4. As plaintiff contends that defendants violated her right to be free from the use of excessive force, causing her injury, in violation of the Fourth Amendment to the United States Constitution, this Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. secs. 1331, 1343 (3) & (4) and 42 U.S.C. secs. 1983 and 1988.

## III. STATEMENT OF FACTS

5. On October 12, 2012, plaintiff resided with her then-boyfriend, Alexander Miles, at 788C Broadway, Newburgh, New York.

6. On that day, police officers, including both defendant Vasta and Burns, employed by defendant City, conducted an authorized search at and of their residence.

7. Said search was apparently based upon information which the police department had received claiming that Miles was selling marijuana.

8. During the search, though she was not an original target of the search and had engaged in no illegal conduct, upon information and belief, defendants Vasta and Burns approached and apprehended plaintiff.

9. After plaintiff was apprehended and while defendants Burns and/or Vasta were making physical contact with her, Miles screamed at the police officers that she recently had, and was recovering from, shoulder surgery and could not move her arms in a manner which would permit her to be cuffed behind her back.

10. After plaintiff so advised defendants Burns and Vasta, one of them, in the immediate presence of the other, intentionally and without any law enforcement necessity continued to force plaintiff's arms behind her back and cuffed her while the other, while proximate to her, failed to intervene and prevent this unlawful action.

11. Defendants' act and omission, as set forth in paragraph 10 above, needlessly and wantonly exacerbated plaintiff's shoulder injuries and caused her to have substantial pain and suffering and a second operation on her shoulder.

12. Defendants Burns and Vasta lacked any law enforcement basis for handcuffing plaintiff as she had committed no crime or offense, was committing no crime or offense and was not assisting any third party do so or obstructing any police function.

13. In handcuffing plaintiff as they did, defendants acted in a malicious and sadistic manner, ignoring plaintiff's cries of pain which followed the warning provided by Miles as to her actual physical condition.

14. There have been numerous instances of police misconduct reported to the City of Newburgh during the seven years preceding this event.

15. Some examples of the claims reported to the City of Newburgh follow:

a. On March 11, 2005, Lawrence Burley claims that PO Robert Vasta cursed at and threatened him with serious bodily harm. After being advised that Mr. Burley was not a suspect, Vasta called a large number of police officers to the scene, kicked Mr. Burley in the face and was present as other police officers pepper-sprayed him and kicked him numerous times in the face and head. Mr. Burley was then falsely charged with criminal offenses arising from his contact with the police who beat him and after trial, all charges were dismissed. The police involved faced no disciplinary sanction.

b. On March 11, 2005, as he was waiting outside Mr. Burley's resident, Mr. Jackson was grabbed by the jacket and neck and thrown to the ground and struck in the side of his face by City Police officers who had not, by then, identified themselves to him. One officer was defendant Nicholas Cardinale. Mr. Jackson was taken to the police station in cuffs, cuffed to a bench for three-four hours and ignored as he questioned why he was there and sought medical attention. He was ultimately charged with disorderly conduct, had a trial and was acquitted. He sustained serious physical and mental injuries. Jackson and Burley filed a federal civil rights cases through John Cobb, Esq. They filed suit in late April 2007 and

their suit settled in April 2010. No police officer was disciplined or sanctioned for his conduct toward these men.

c. On March 20, 2005, Joseph Williams was driving in Newburgh with his friend Harold McKinley. Police Officer William Lahar allegedly stopped Williams and demanded his "f'n" license and registration. After Lahar claimed falsely that Mr. Williams had tried to run him over, other police officers, including Thomas Reynolds, Curtis Hahne, Greg Fischer, Michael Pitt and Officer Cardinale pulled plaintiff from the car with excessive force. This followed Officer Lahar's punching Williams on the left side of his face. During the use of force getting Williams out of the car, the police tore and removed his clothes. As he was driven to the police station, he was pepper-sprayed several times. He suffered pain for several years after these events, including headaches. Mr. Williams filed his lawsuit in March 2008 and it settled four years later, in April 2012. The sum of the settlement is not published, but, again, no officers were disciplined for their abusive treatment of Mr. Williams and the violation of his civil rights.

d. On May 17, 2005, Raymond Bryant sues Officer Vasta claiming he falsely arrested him for videotaping abusive police conduct on Johnston Street. Bryant claimed Vasta had no probable cause for his arrest and the criminal charges against him were dismissed by City Court for failure to prosecute in March 2006. In an Amended Complaint, Mr. Bryant claimed that, on June 22, 2006, City of

Newburgh Police Officer Michael Loscerbo falsely arrested him, making negative reference to his prior arrest. Later the same day, another City police officer, Andres Arestin, allegedly arrested Mr. Bryant on two counts of disorderly conduct. All the charges were dismissed and Mr. Bryant filed suit. Again, the City settled the claims brought in this court but did not discipline any of the offending police officers.

e. On October 26, 2005, Frederick Lee noticed a tow truck operator about to tow away his wife's legally registered vehicle. When he protested, City of Newburgh police officer Michael Pitt arrived and arrested him for disorderly conduct. Pitt manhandled Mr. Lee even after this citizen told him he had recently had back surgery. This worsened his back condition. The criminal charges were dismissed on the motion of the prosecutor. In March 2008, Lee filed suit in federal court and two years later his case settled. Details of the settlement reached in March 2010 are not known and were not made public; however, the police officer who had been the subject of multiple complaints of misconduct including, in this instance, failing to account for an injured detainee's condition, as in the instant case, was not disciplined.

f. On March 30, 2007, Jose Garcia and his son were at their home in the City of Newburgh. He heard knocking at the front and opened the door to find uniformed and plainclothes police standing outside. One officer, D'Angelico, stepped into the

house and seized plaintiff by his neck and pulled him outside. Once outside, he was handcuffed and forced to the ground. He was questioned, indicated he did not know who the police were looking for and was then arrested for obstructing governmental administration. After trial, the charge was dismissed. Mr. Garcia filed suit for false arrest and excessive force in February 2008. His lawsuit was settled before the end of that year. The sum of the settlement is not known and, upon information and belief, the defendant disciplined no police officer for his actions.

g. On July 22, 2007, James Follini, Jr. and his girlfriend, Ca'Londa Curie, were patrons at Torches. Upon leaving and seeking a taxi cab, four Newburgh Police Officers, Palermo, Mugnano, Reynolds and Hinspeter, approached the couple and baselessly alleged that Mr. Follini had engaged in some form of domestic violence toward Currie. When Follini and Currie both denied this, the officers engaged in violent and excessive force, tasered Follini and repeatedly struck him. Officer Reynolds then charged him with a myriad of misdemeanors. Trial was held in February, March and April 2008 and not guilty verdicts were returned on all charges. Mr. Follini filed suit in July 2008 and his case settled for an undisclosed sum some four years later. Upon information and belief, none of the four officers involved faced any discipline for their use of excessive force against Mr. Follini.

h. On August 12, 2007, police officers Michael Pitt and Curtis Hahne arrested Chris Allen and charged him with disorderly conduct, resisting arrest and obstructing governmental administration. They so charged Mr. Allen after using excessive force against him and failing to provide him with medical care. These officers falsely claimed they did provide him medical care. After a trial, the City Court Judge acquitted Mr. Allen on all charges. He filed a lawsuit on July 29, 2008; his suit settled three years later. Upon information and belief, neither of the officers who beat Mr. Allen and filed false police reports were subject to any departmental discipline.

i. On August 27, 2007, Latisha Baynes was on the front porch of her premises at 170 Lander Street with a group of other local residents. As she saw the police assaulting Victor Harris, one of her friends, she began to record the incident with her phone. Officer Thomas Reynolds seized her phone and threatened her. After taking her phone, Officer Reynolds walked over to Michael Boone and tasered him. When Baynes questioned this behavior, Reynolds attacked her and caused her to fall face first on the ground. He then tased her in the back. When she got up, he maced her in the face. He then tased her again. When she could not arise on his command, two other City police officers, Palermo & Kelly, grabbed her and began dragging Ms. Baynes to their patrol car. After she arrived at St. Lukes Hospital, Reynolds came to “visit her”: and uttered these words, “You’re fat ass

isn't so tough now, is it?" After she was charged with numerous petty crimes, these were dismissed by the City Court and she filed suit against the City on July 18, 2008. Her case thereafter settled for an undisclosed sum. No police officer was disciplined for the behavior outlined above.

j. On March 31, 2007, Antoine Cooper was approached by police officer Kevin Lahar and told to lay on his stomach with his hands behind his head. Antoine complied but Lahar directed his dog to bite and hold Cooper. The canine bit Cooper on the thigh causing serious injuries. Mr. Cooper joined a lawsuit challenging the use of the canines in this manner. The lawsuit was filed in March 2009 and settled in September 2010. Officer Lahar faced no departmental discipline for this conduct.

k. On July 2007, the same officer, Lahar, attempted to apprehend a young man named Da'Vonte Hawkins. Lahar and his dog apprehended Hawkins, but after Lahar cuffed Hawkins, he continued to allow the dog to bite the suspect. He also joined a lawsuit challenging the use of the canines in this manner. The lawsuit was filed in March 2009 and settled in September 2010. Again, Officer Lahar faced no departmental discipline for his conduct.

l. The following month, Police Officer Vasta attempted to apprehend Ben Cooper. After he cornered Cooper and the young man surrendered to him, Vasta

unreasonably ordered his dog to bite and hold Cooper causing serious injuries. Ben Cooper also joined the lawsuit challenging the use of the canines in this manner. The lawsuit was filed in March 2009 and settled in September 2010. Officer Vasta faced no departmental discipline for his conduct.

m. On August 9, 2007, PO Vasta attempted to arrest Thomas Logan who was riding his bicycle. PO Vasta dispatched his dog which pulled Logan off the bike. PO Vasta arrived and allowed the K-9 to bite and shake Logan's calf and ankle. Vasta then caused Logan to be held at the police station for 27 hours with no medical care despite his serious injuries. Logan also joined the lawsuit challenging the use of the canines in this manner. The lawsuit was filed in March 2009 and settled in September 2010. Vasta was not disciplined for the conduct outlined above.

n. On September 20, 2007, Ben Fahey and Jesse Carlson were passengers in a van which had stopped at the CITGO station on Broadway. Lt. Peter Leach and police officers Rose and Soldano used excessive force against these two men as follows: Lt. Leach punched Fahey in the head with substantial force while Fahey was eating popcorn at the side of the van. After Leach did this, Rose and Soldano jumped Fahey and continued to batter and assault him. At the same time, Carlson was in the back of the van. Leach punched and struck him in the face. Then, with Soldano's help, he threw Carlson out of the vehicle and continued to physically assault him without basis. Rose transported Carlson to the booking room at the

police station. Twice, at this location and while Carlson was cuffed, PO Rose physically assaulted him. In April 2008, after a two week trial in City Court, the charges against these defendants were dismissed and they filed suit in September 2008 against those who physically assaulted them. Their case settled in September 2011. The City took no disciplinary action against any of the officers or supervisors involved and Lt. Leach has assumed an increasingly prominent role in the police agency since this incident.

o. On July 8, 2008, Nathaniel Cobb entered the premises of the mother of his children on Carter Street in a menacing manner. She called the police and numerous police officers arrived. By their own account, to subdue Cobb, who was high on PCP, the officers repeatedly tasered him and used Chuckie – a police dog controlled by Police Officer Vasta. The dog bit him multiple times. The numerous police officers on the scene claim to have then controlled Cobb, placed him in shackles and transported him from the apartment. They did not then take him to the hospital, one block away, claiming that he was too uncontrollable to be treated. Instead, they took him back to the police station where they left him in the police vehicle. He became unresponsive. He was then transported to St. Luke's Hospital and died that night. Nathaniel's mother filed suit in early October 2008 and her case is pending in federal court. No police officers have been disciplined for the use of excessive force against Mr. Cobb.

p. On October 14, 2010, Miguel Rodriguez was standing outside the Elbow Room on Broadway when, he claims, Robert Vasta arrived at the scene and requested his identification. After a brief discussion, Vasta allegedly pushed Rodriguez toward the street where he and other officers slammed him to the ground, punched and kicked him. After Rodriguez was cuffed, he was subjected to more of the same and none of the police officers intervened to stop the violence against him. Mr. Rodriguez filed an amended lawsuit against the officers in June 2012 and the case has been settled. Again, no police officers involved have been disciplined.

q. Von Ross filed a lawsuit pro se against the City claiming that while he was being arrested on January 17, 2011, he was assaulted by PO Tabachnick. The same plaintiff claims that on May 4, 2011, New Windsor and Newburgh police allowed a police canine to bite him on the left thigh and torso and his upper left arm while he was already on the ground and surrendering. Upon information and belief, no police officer was disciplined for this conduct.

r. Likewise, on October 25, 2011, Carpeah Nyenekor, Sr., filed a federal case against the department and Officer Loscerbo, claiming that this officer racially profiled him when he arrested him without cause in July 2011. He further claimed Loscerbo strip searched him in public, and then, upon his incarceration, failed to provide him needed medicines supplied by Mr. Nyenekor's fiancé. Despite this

man's complaints to the police agency and Mr. Loscerbo's involvement in several such incidents, no discipline was imposed upon him.

s. On September 3, 2011, Cordelia Smith claimed that PO Murah Davis assaulted her minor son after handcuffing him without cause and pushing him against the outside of an apartment building. The assault allegedly consisted of Davis punching her son, aged 15, nine times in the face and slamming his face into the ground and choking him. Ms. Smith filed a lawsuit on her son's behalf on November 10, 2011 and the City settled it the following April. The police officer involved suffered no disciplinary consequence.

16. As a matter of policy, the City Council and City Manager have failed and refused to punish or attempt to punish police officers who have engaged in conduct abusive of citizens' rights.

17. Said failure proximately causes to a moral certainty the perpetuation of acts of police abuse against citizens as in this case.

18. Likewise, the City of Newburgh has failed to provide proper re-training to its police officers and this failure to re-train in proper custodial procedures predictably and also to a moral certainty caused the violation of plaintiff's rights.

19. Specifically, here, though plaintiff posed no law enforcement threat and had a significant medical issue which was made known to defendants Burns and Vasta

and other police officers at the scene, including supervisory personnel, one defendant so cuffed her and the other failed to intervene and cause him to desist even after Miles' warning and plaintiff's outcry.

#### **IV. CAUSES OF ACTION**

20. Plaintiff incorporates paragraphs 1-19 as if fully restated.

21. By treating plaintiff as they did, defendants Vasta and Burns violated the Fourth Amendment as made actionable against them by 42 U.S.C. section 1983 and either used excessive force against her or condoned the use of such force though he knew it was occurring and was capable of preventing the same.

22. By failing to train, supervise and discipline its police officers, defendant City of Newburgh violated the due process rights of plaintiff as provided by the Fourteenth Amendment as made actionable by 42 U.S.C. section 1983.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Honorable court:

- a) accept jurisdiction in this matter;
- b) empanel a jury to hear and decide this matter;

- c) award to plaintiff compensatory and punitive damages against defendants Vasta and Burns;
- d) award to plaintiff compensatory damages against the City of Newburgh;
- e) award to plaintiff the reasonable attorneys' fees and costs arising from this matter and
- f) enter any order required by the interests of justice and equity.

Respectfully submitted,

  
MICHAEL H. SUSSMAN [3497]

SUSSMAN & WATKINS  
1 RAILROAD AVENUE  
PO BOX 1005  
GOSHEN, NY 10924  
(845)-294-3991

Counsel for Plaintiff

Dated: December 11, 2015