

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OLIVIA KULSHA,

Plaintiff,

vs.

COMPLAINT

CITY OF BEACON, JASON WALDEN,
JOSEPH M. CONTI, police officers employed
by the City of Beacon Police Department,
JENNIFER CLARK, a police officer employed
by the MTA, sued in their individual capacities,

Defendants.

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Plaintiff, OLIVER KULSHA, by and through her counsel, Michael
Sussman, hereby states and alleges as and for her Complaint:

PARTIES

1. Plaintiff is a resident of the County of Dutchess, State of New York and is of legal age.

2. Defendant City of Beacon is a municipality situated in the County of Dutchess, State of New York. It may sue and be sued.

3. At the time of the acts upon which this complaint is based, defendants Walden and Conti were, as they remain, police officers employed by the City of Beacon Police Department. The actions and omissions about which plaintiff complains were undertaken by defendants under color of state law. As relevant herein, defendant Jennifer Clark was a police officer employed by the Metropolitan Transit Authority acting under color of state law.

JURISDICTION

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. sec. 1331, 1343 (3) & (4) and 1367 and 42 U.S.C. secs. 1983 and 1988.

FACTUAL ALLEGATIONS

5. On March 14, 2009, plaintiff was attending a sanctioned “Beer Pub Crawl” held in the City of Beacon.

6. At about 8:52 pm, defendant Clark arrested plaintiff.

7. On March 14, 2009, through a Felony Complaint, defendant Clark charged plaintiff with committing the crime of Assault 2nd, a Class D Felony, against her by “physically resisting and thrashing in a violent manner.”

8. On March 15, 2009, through a Felony Complaint, defendant Conti charged plaintiff with committing the crime of Assault 2nd, a Class D Felony, upon his own personal knowledge, to wit, he claimed that plaintiff kicked him in the groin in an effort to prevent him from performing a lawful duty.

9. Through sworn Misdemeanor Informations, on March 15, 2009, defendant Walden charged plaintiff with committing the crimes of Riot in the Second Degree, a Class A Misdemeanor, Resisting Arrest, another Class A Misdemeanor and Disorderly Conduct, a violation.

10. At a later date, the District Attorney of Dutchess County reduced the Assault 2nd charges to Assault 3rd charges.

11. At a jury trial held in the City of Beacon Justice Court in January 2011, the plaintiff was acquitted of all charges against her, except that because defendant Clark did not appear at the trial, the trial judge dismissed with prejudice the reduced Assault 3rd charge pertaining to her.

12. As a consequence of the charges lodged by defendants Clark and Walden, plaintiff was arrested.

13. As a consequence of the charges lodged by defendants Clark and Walden, defendant Conti took control and custody of the plaintiff and escorted her from the patrol vehicle arriving at the City of Beacon Police station to a holding cell in the same building.

14. Upon arriving at the police station, defendant Conti commenced taunting plaintiff as an overweight “bitch.”

15. Upon bringing plaintiff to the holding cell and while plaintiff was still handcuffed, Conti punched her in the face, causing her substantial bruising to her

eye and substantial headaches, which persisted for months and required medical treatment.

16. At the time of this assault, plaintiff was in defendant Conti's care and custody within the confines of the police station.

17. After so striking the plaintiff, defendant Conti fabricated a claim that she had struck him first by kicking him in the groin.

18. Said charge formed the basis of the reduced Assault 3rd charge upon which the petit jury acquitted plaintiff.

19. Defendant Clark falsely arrested plaintiff when, without probable cause that plaintiff was committing any violation of law, she jumped on top of her, making excessive physical contact with her and cuffed her.

20. This arrest occurred while plaintiff was sitting at the edge of a Dunkin Donuts parking lot in Beacon, New York.

21. Defendant Clark physically attacked the plaintiff as Kulsha was watching Beacon Police officers attack her boyfriend, Kevin Fleming, with two canines.

22. The attack on Mr. Fleming was also unprovoked and occurred as he and Kulsha were walking from the parking area to a parked taxi cab and leaving the area.

23. After falsely arresting plaintiff, Clark fabricated a felony information and claimed that plaintiff had injured her, though she sustained her injuries while attacking plaintiff.

24. In propounding his charges, Walden swore that “This Complaint is based on personal knowledge and information and belief, the source being, DIRECT OBSERVATION...”

25. However, in his Information charging her with Riot, defendant Walden falsely claimed that plaintiff was acting with seventeen “co-defendants,” that plaintiff engaged in a physical altercation with uniformed City of Beacon police officers though plaintiff engaged in no such altercation, that plaintiff was given a “lawful order to disperse,” though plaintiff was not given any such order and, despite that fact, was leaving the area with her boyfriend when he was attacked and that plaintiff engaged in “violent behavior” which did create a “great risk of danger

and alarm to the public,” when no member of the public responded in any way and plaintiff did not engage in any ‘violent behavior’.

26. Likewise, in his Information charging plaintiff with the Class A “Misdemeanor” of Resisting Arrest, defendant Walden falsely claimed that plaintiff prevented a “uniformed City of Beacon police officer from making an authorized arrest for disorderly conduct.”

27. In fact, no police officer from the City of Beacon attempted to make an arrest, authorized or not, of the plaintiff.

28. Defendant Walden also falsely claimed that plaintiff pulled her arms away and kicked her legs while an unidentified officer attempted to arrest her.

29. Likewise, in his Information charging plaintiff with disorderly conduct, defendant Walden also falsely wrote that plaintiff engaged in physical altercation with uniformed City of Beacon police officers.

30. Defendant Walden also falsely wrote that plaintiff engaged in “violent behavior”.

31. Defendant Walden also falsely claimed that plaintiff's "violent behavior" did create "great danger and alarm to the public by inciting other fights to occur."

32. Nothing plaintiff did caused any "other fights to occur."

33. At the criminal trial of plaintiff, defendants conceded each of the points set forth in paras. 25 through 32.

34. On the basis of the information contained in the accusatory instruments, the Dutchess County District Attorneys' Office initiated the prosecution of the plaintiff.

35. In initiating said prosecutions, defendants acted with malicious disregard for the truth and the rights of the plaintiff, more concerned about covering the orgy of violence in which they and other members of law enforcement engaged on March 14, 2009.

36. Defendant Clark had no probable cause for arresting plaintiff.

37. Following her arrest and arraignment, plaintiff was maintained at the Dutchess County Jail.

38. Plaintiff's post-arraignment seizure was the consequence of the malicious charges filed against her by defendants Conti and Clark.

39. As a consequence of the excessive force used against her by Clark and Conti, plaintiff suffered pain and suffering which persists.

40. As a consequence of her false arrest by defendant Clark, plaintiff has suffered anxiety, emotional distress, embarrassment and humiliation.

41. As a consequence of her malicious prosecution by defendants Clark, Walden & Conti, plaintiff has suffered anxiety, emotional distress, embarrassment and humiliation.

42. Before March 14, 2009, the City of Beacon failed to properly train, supervise and/or discipline police officers for the use of excessive force and the filing of false charges.

43. Said administrative failings caused the injuries sustained by plaintiff
on
March 14, 2009.

44. Said failures were intentional and/or reckless and occasioned the violations of law to which plaintiff was subject.

45. The numerosity of City of Beacon Police officers violating the civil rights of civilians on March 14, 2000 demonstrates that such conduct was consistent with municipal policy, practice and custom.

CAUSES OF ACTION

46. Plaintiff incorporates paras. 1-45 as if fully re-stated herein.

46. By falsely arresting plaintiff, defendant Clark violated her rights as protected by the 4th Amendment to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

47. By inflicting excessive force against the plaintiff before she was in custody, defendant Clark violated the 14th Amendments to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

48. By inflicting excessive force against the plaintiff after she was in custody, defendant Clark violated the 8th Amendment to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

49. By maliciously prosecuting plaintiff through false instruments, defendants Walden, Conti and Clark violated the 4th Amendment, as enforced through 42 U.S.C. sec. 1983.

50. By maliciously prosecuting plaintiff through false instruments, defendants Walden, Conti and Clark committed the tort of malicious prosecution.

51. By failing to train, supervise and discipline its police officers and so proximately causing the other constitutional violations alleged herein, defendant City of Beacon violated the due process clause of the 14th Amendment, as enforced through 42 U.S.C. sec. 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court:

- a) assume jurisdiction in this matter;
- b) empanel a jury to hear and decide the matter;
- c) award to plaintiff compensatory damages as against these defendants, jointly and severally, in the sum of \$750,000;

d) award to plaintiff punitive damages as against the individual defendants, jointly and severally, in the sum of \$1,000,000;

e) award to plaintiff and against defendants, jointly and severally the attorneys fees and costs arising from this matter, and

f) enter any other order required by the interests of justice and equity.

Respectfully submitted,

MICHAEL H. SUSSMAN [3497]

SUSSMAN & WATKINS

PO BOX 1005

GOSHEN, NY 10924

Counsel for Plaintiff

Dated: Goshen, New York

May 6, 2011