

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KEVIN O'DONNELL and MICHELE  
O'DONNELL,

Plaintiffs,

**COMPLAINT**

vs.

POLICE OFFICER ROBERT CARD,

Defendant.

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By and through their counsel, Michael H. Sussman, plaintiffs allege as follows:

**I. PARTIES**

1. Plaintiffs Kevin and Michele O'Connell are husband and wife and reside in the City of Port Jervis, County of Orange, State of New York.

2. Plaintiffs are of legal age.

3. 3. At all relevant times, defendant Robert Card was a police officer employed by the City of Port Jervis. All the actions and omissions taken by defendant Card and as set forth hereinafter were taken under color of state law.

## **II. JURISDICTION**

4. As plaintiffs contend that defendants violated rights secured to them by 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.

5. Plaintiffs have filed no prior legal action in any court of competent jurisdiction seeking relief from the acts complained of herein.

## **III. FACTUAL ALLEGATIONS**

6. On September 6, 2009, plaintiff Kevin O'Donnell [hereinafter referred to as "KO"] was riding a motorcycle when a motorist, Donald Blumenberg, crashed into him.

7. This event happened in broad daylight in the middle of downtown Port Jervis.

8. After the crash, KO was able to call his wife, plaintiff Michelle O'Donnell, who attended to the scene.

9. Upon arrival at the scene, MO saw KO leaning over and holding his shoulder and knees.

10. Other than the other driver, Blumenberg, there were no civilians on Pike or King Streets, the cross-streets at which the accident occurred.

11. After MO approached her husband, defendant Card pulled up in a police vehicle on Pike Street.

12. Defendant card exited his vehicle and approached KO and Blumenberg.

13. At the scene, KO was in pain and stated that Blumenberg could explain to the officer what happened so long as he told the truth.

14. As Blumenberg gave a false account of the incident, KO told Blumenberg, "Come on now, be a man about it. You have insurance, don't you?"

15. KO then explained what happened to defendant Card who did not comprehend and asked KO to repeat what had occurred.

As KO did so, Blumenberg began interrupting with a false account of the incident.

16. KO explained a second time what had happened and defendant Card then raised his arms and told KO to stop talking, stop talking.

17. Defendant Card then went to his police vehicle and retrieved a paper and pencil.

18. KO then stated to defendant Card, "I don't know how to explain it any better. I already told you twice."

19. With that, standing about four feet from KO, defendant Card angrily yelled at him, "Now, you are going to be an asshole about it."

20. Hearing that comment, KO turned around and backed up toward his wife.

22. As he approached KO with an angry look, defendant stated, "So, this is how you want to do this."

23. Defendant Card then charged at KO waving pepper spray in his right hand and lunged for his neck.

24. Defendant Card attempted to grab plaintiff KO's throat, while pushing MO out of the way.

25. After defendant attempted to grab KO's throat, KO turned his back toward defendant Card and surrendered his right arm to the police officer.

26. Defendant Card then took KO's arm with his right hand and hooked his left around around KO's throat.

27. As he was being so choked, KO said to defendant Card, "you're a real tough guy."

28. At the time KO made this comment, there were no civilians other than Blumenberg and MO in the area.

29. Defendant Card then took KO around the neck and slammed him to ground right near where MO was standing.

30. As defendant Card was then forcibly pulling KO's arms behind his back, causing him substantial pain, MO told defendant Card to "please stop, don't pull his arm behind his back."

31. As he was pulling KO's arms, defendant Card's chest was on top of plaintiff's back.

32. In this controlling position, defendant Card pepper sprayed KO in the face.

33. As this was transpiring, MO made no effort to intervene to prevent defendant Card from so mistreating her husband.

34. After pepper spraying KO, defendant Card threw the can down the road.

35. Seeing what she thought was a piece of her husband's motorcycle in the road, MO seized this metal object and placed it in the flower bed outside of Gino's restaurant.

36. After pepper spraying KO, defendant Card and KO got to their feet.

37. As they were elevating to their feet, defendant Card swung his fist over KO's head.

38. No crowd had assembled and no one was present on the roadway or street.

39. After his first punch failed to land on KO, defendant Card began to swing again at KO.

40. As Card launched this second punch, KO swung back at Card and missed.

41. After swinging twice at KO, defendant Card took a baton out of his uniform and tripped, falling to the ground.

42. KO pointed toward defendant Card and stated, "you are out of control."

43. At this point, a civilian who had exited the corner restaurant directed KO to "get on the ground."

44. KO complied with this direction and kneeled down on the ground with his arms and wrist extended in front of him.

45. At this point, three additional police officers came, made physical contact with plaintiff KO, swung him around on the ground, face first, pepper sprayed him a second time and got him up and into a police car.

46. On or about September 6, 2009, defendant Card charged plaintiff with three crimes, Assault Second, a Class D Felony, Resisting Arrest, a Class A Misdemeanor and Disorderly Conduct, a violation.

47. In support of these allegations, Card swore out materially false and misleading informations, including, but not limited to, the following statements:

a) in support of his Information charging Disorderly conduct, Card falsely wrote that plaintiff KO stated, "Fuck you. I already told you what happened".

b) in the same Information, Card falsely claimed that, before he formed the intent to arrest KO, “[T]he actions of the defendant did cause numerous citizens to become annoyed.”

c) in support of his Information charging Resisting Arrest, Card falsely wrote that

before he attempted to arrest KO, KO’s actions “did cause numerous citizens to stop and stare at the defendants actions.”

d) in further support of the same Information, Card falsely wrote that he advised plaintiff that he was under arrest for disorderly conduct; in fact, Card never advised KO that he was under

arrest for anything.

e) in further support of this Information, Card fabricated an account of his physical contact with KO, falsely making it appear that KO was the physical aggressor and that he used “the minimal amount of force necessary to attempt to effect the arrest.”

f) finally, in support of his Felony Information, charging KO with Assault 2d, defendant Card fabricated the entire sequence of physical contact between him and KO.

48. On or about March 24, 2010, the District Attorney’s office reduced the felony

Assault Charge to Assault 3rd, a Misdemeanor.

49. At trial, a petit jury acquitted plaintiff KO of each of the offenses which Card charged him with violating.

50. After these events, on September 14, 2009, defendant Card charged MO with a Class A Misdemeanor, Obstructing Government Administration. She was arrested at the police station after a scheduled meeting with Police Chief Worden to file a civilian complaint about defendant Card.

51. In support of this charge, Card falsely swore that MO “did intentionally obstruct the lawful arrest of Kevin O’Donnell by physically retrieving your deponent’s pepper spray which was knocked to the ground by arrestee Kevin O’Donnell while Kevin O’Donnell was actively resisting the arrest of his person. The defendant did then remove said pepper spray from the arrest location and hid same in a flower planter preventing this officer from retrieving and using the pepper spray in the lawful course of an official duty.”

52. After trial on this matter, a petit jury acquitted MO of obstructing government administration.

53. By dint of the excessive force used upon him by defendant Card, KO sustained substantial exacerbation of underlying physical injuries.

54. By dint of the excessive physical force employed by defendant Card, KO sustained substantial exacerbation of his mental status, including depression, paranoia, humiliation and substantial anxiety. These conditions, as caused by defendant’s conduct, are reasonably expected to continue.

55. Plaintiff MO is a highly respected member of the community and works, as she has for many years, in the administrative offices of the local school district.

56. By falsely arresting her and accusing her of obstructing governmental administration, defendant humiliated and embarrassed plaintiff MO, causing her anxiety and stress.

57. The conduct set forth above and engaged in by defendant Card was malicious in character and nature and stemmed from malice which he developed toward the plaintiffs as a consequence of their challenging his version of these events.

58. As a consequence of his contact with, and at the instance of, defendant Card’s false and wrongful accusations, plaintiff KO was arrested and held at the police station overnight and then sent to the Orange County jail from which he was bailed the next day.

59. The arrests of both plaintiffs were without arguable probable cause.

60. The prosecutions of both plaintiffs were malicious and not informed by arguable probable cause that either broke the law.

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

61. Plaintiff incorporates paras. 1-60 as if fully re-written herein.

62. By falsely arresting plaintiff KO, defendant Card violated his right to be free of unreasonable seizure as provided by the Fourth Amendment to the United States Constitution as made actionable by and through 42 U.S.C. sec. 1983.

63. By causing the false arrest of plaintiff MO, defendant Card violated her right to be free of unreasonable seizure as provided by the Fourth Amendment to the United States Constitution as made actionable by and through 42 U.S.C. sec. 1983.

64. By maliciously prosecuting plaintiff KO, defendant Card violated rights guaranteed him by the due process clause of the Fourteenth Amendment to the United States Constitution as made actionable by 42 U.S.C. sec. 1983.

65. By maliciously prosecuting plaintiff MO, defendant Card violated rights guaranteed her by the due process clause of the Fourteenth Amendment to the United States Constitution as made actionable by 42 U.S.C. sec. 1983.

66. By using excessive force against plaintiff KO both before and after he was under arrest and thereby in custody, defendant Card violated the Fourth, Eighth and Fourteenth Amendments to the United States Constitution as made actionable by 42 U.S.C. sec. 1983.

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

WHEREFORE, plaintiffs hereby pray that this Honorable Court:

a) accept jurisdiction over this cause;

b) empanel a jury to hear and decide all claims within its jurisdiction;



- c) enter an order awarding compensatory and punitive damages against defendant Card;
- d) enter an order requiring defendant Card to take re-training in police practices before again working as a police officer at or for any jurisdiction;
- e) requiring defendant to pay their reasonably incurred legal fees and costs and
- f) enter any other order which the interests of law or equity require.

Respectfully submitted,

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Dated: May 11, 2011