

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOMAS GARY VITOLO,

Plaintiff,

vs.

COMPLAINT

CITY OF BEACON, JASON WALDEN,
THOMAS FIGLIA, JASON BURNS, all
police officers employed by the City of
Beacon Police Department,

Defendants.

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Plaintiff, Thomas Vitolo, by and through his counsel, Michael Sussman, hereby states and alleges as and for his Complaint:

PARTIES

1. Plaintiff is a resident of the County of Dutchess, State of New York and is of legal age. He resides at 40 Sachson Place, Wappinger Falls, New York.

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, McDonough, Figlia & Burns were 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.

JURISDICTION

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. sec. 1331, 1343 (3) & (4) 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, plaintiff was in custody, handcuffed and lying on the sidewalk in front of Dunkin Donuts on Route 52.

7. Defendants Figlia and Burns arrested plaintiff without any probable use of basis.

8. Defendant Walden charged plaintiff with Riot 2, a Class A Misdemeanor, Resisting Arrest, another Class A Misdemeanor and Disorderly Conduct, a violation.

9. Defendant Walden, the officer who wrote the informations for each of these offenses swore that “This Complaint is based on personal knowledge and information and belief, the source being, DIRECT OBSERVATION...”

10. In fact, Walden had made no direct observations which related to the three offenses for which he charged Vitolo.

11. On the basis of the Walden informations, the Dutchess County District Attorney’s Office prosecuted plaintiff.

12. At the trial of plaintiff on these matters, defendant Walden testified that he had made no direct observations concerning these three offenses.

13. On the basis of this testimony, City Court dismissed all the charges against the plaintiff.

14. On March 14, 2009, before his arrest, upon information and belief, defendants Foglia and Burns physically attacked and beat the plaintiff, throwing him to the ground without any provocation.

15. After plaintiff was handcuffed, plaintiff was bit by a police dog and was grazed by a taser.

16. At the time this happened, plaintiff was not resisting arrest or engaging in any criminal conduct.

17. At the time he was bit, plaintiff was on the ground in handcuffs.

18. When plaintiff attempted to get off the ground, upon information and belief, defendants Figlia and Burns directed plaintiff to stay on the ground; they and other police officers proceeded to throw other individuals on top of the plaintiff.

19. After his arrest without probable cause, plaintiff was removed to the City of Beacon Police Department where he was held until approximately 6:00 A.M. the following day.

20. Plaintiff suffered substantial pain and suffering as a consequence of the beating, the tasing and the dog bite.

21. Defendants acted in concert against plaintiff and are each responsible for inflicting the beating and police bite upon the plaintiff.

22. Defendants each failed to intervene to stop the wanton and unwarranted physical assault against the plaintiff inflicted by uniformed police officers.

23. Defendant City failed to properly supervise and/or train and/or discipline its police officers, thus proximately causing the injuries to plaintiff.

24. Numerous police officers employed by the defendant police agency engaged in an orgy of violence against peaceful party-goers on March 14, 2009.

25. The numerosity of officers and supervisors involved in the use of excessive force against plaintiff and others demonstrates the absence of training and supervision by defendant City of Beacon, acting through its police agency.

26. The same factors, the gross and excessive force used against this plaintiff and others and the department/city's failure to discipline any of the officers involved demonstrate that the defendant City has a pattern and practice of condoning and encouraging the use of excessive force against civilians, including

those who have been handcuffed and are defenseless against tasers or dogs or other forms of force.

27. After their use of excessive force against this plaintiff and others, the defendants conspired to file false police reports which exaggerated the conduct of this plaintiff and others and thereby sought to justify the use of excessive and injurious force.

28. These reports were approved by supervisory personnel.

29. These reports included false descriptions of the events preceding the use of physical force, false descriptions of the force used and false descriptions of the resistance to said force by the plaintiff, amongst others..

30. Said false reports were prepared by each of the defendants.

31. For the first month after this incident, plaintiff experienced pain in his right side, where he was bitten by the police dog.

32. Plaintiff has continued to experience anger, anxiety and distress as a consequence of the defendants' acts and omissions.

CAUSES OF ACTION

33. Plaintiff incorporates paras. 1-32 as if fully re-stated herein.

34. By falsely arresting plaintiff, defendants violated his rights as protected by the 4th Amendment to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

35. By inflicting excessive and wanton force against the plaintiff both before and after he was in custody or by standing by while excessive force was inflicted upon a cuffed individual, the plaintiff, defendants violated the 8th and 14th Amendments to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

36. By maliciously prosecuting plaintiff through false instruments, defendant Walden violated the due process clause of the 14th Amendment, as enforced through 42 U.S.C. sec. 1983.

37. 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

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Counsel for Plaintiff

Dated: September 15, 2010