

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VINCENT FERRI,

PLAINTIFF,

vs.

COMPLAINT

KENNETH JONES, UNDERSHERIFF,

DEFENDANT.

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BY AND THROUGH HIS COUNSEL, MICHAEL H. SUSSMAN, Vincent Ferri, the plaintiff, hereby states and deposes:

PARTIES

1. Plaintiff Vincent Ferri is a resident of the County of Orange, State of New York, within this judicial district.
2. Defendant Kenneth Jones is the Undersheriff of the Sheriff's Department in and for the County of Orange and does business and resides in Orange County. Defendant Jones engaged in the acts and omissions which form the basis of this under color of state law.

JURISDICTION

3. As plaintiff contends that defendant knowingly violated his rights as guaranteed by the First Amendment, Fourth and Fourteenth Amendments to the United States Constitution, as made actionable by 42 U.S.C. 1983 and 28 U.S.C. 1331 and 1343 (3) & (4), this Honorable Court has jurisdiction over this matter.

FACTUAL ALLEGATIONS

4. In late February 2015, plaintiff published a satiric comic strip which was part of a series concerning the potential demolition of the Orange County Government Center.
5. Plaintiff's sole purpose was to dramatize his position on an issue of public importance and to poke fun at those taking different positions.
6. Plaintiff's cartoon depicted a woman holding a bloody knife behind her back and was intended to represent a certain county legislator who plaintiff believed was selling out her prior position, and that of her political party, with regard to the demolition of the Government Center building.
7. Said cartoon was published on Facebook, plaintiff's own web site and eventually in the county's newspaper of public record.
8. On March 2, 2015, after plaintiff had so exercised his constitutional right to free speech, at the behest of defendant Jones, representative of the Sheriff's Department contacted plaintiff and told him that if he did not voluntarily come in, the Sheriff's Office would dispatch uniformed officers to arrest him and bring him in.
9. Faced with this threat, plaintiff attended to the Sheriff's Department at the Orange County jail in Goshen, New York.

10. Once at the Sheriff's Department, plaintiff was booked on the charge of Aggravated Harassment for having published and circulated the cartoon which satirized the county legislator as described above.

11. Once at the Sheriff's Department, plaintiff was photographed and fingerprinted and maintained there for approximately 45 minutes before being given an appearance ticket for the crime of Aggravated Harassment sub. 1.

12. After plaintiff entered a charge of not guilty, the charges against him pended for several weeks until mid-March 2015, when the Orange County District Attorney's Office requested that the Court dismiss the charge as not sustainable under the law.

13. In so advising the Court, the DA's office acknowledged that the county legislator had not been threatened by plaintiff, that the cartoon was not an immediate call to violence and that plaintiff had violated no law in drawing and circulating it.

14. The unconstitutionality of the statute which plaintiff was charged with violating was well known to defendant Jones as of March 2015.

15. In mid-May 2014, the Orange County District Attorney's Office had advised, *inter alia*, defendant, the Sheriff and Captain Barry, that "today, the New York Court of Appeals held subdivision 1 of the Aggravated Harassment statute, Penal Law Section 240.30, is unconstitutional under both the federal and state

constitutions. The decision identified no exceptions such as where the written or electronic communication or message threatens the immediate death or physical harm of the targeted part. Accordingly, persons cannot be charged or prosecuted under the current statute.”

16. Notwithstanding this crystal clear advice and guidance, defendant directed the arrest of the plaintiff and took credit publicly for said action.

17. The prosecution of plaintiff ended with the dismissal of the charge against him.

18. Plaintiff was detained for 45 minutes on account of his arrest on the baseless charge.

19. Plaintiff was inhibited in exercising his right to free expression and speech by said arrest, as well as subject to the public perception that he violated the law.

20. By and through said arrest, defendant intended to chill plaintiff’s exercise of his First Amendment rights as being so arrested would reasonably desist or limit his like political expressions.

21. Plaintiff was so inhibited from engaging in like political satire, concerned that his public expression might be criminalized.

CAUSES OF ACTION

22. Plaintiff incorporated paragraphs 1-21 as if fully set forth herein.

23. By falsely arresting plaintiff and causing him to be held against his will during the booking process, defendant violated plaintiff's rights as guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution as made actionable by 42 U.S.C. section 1983.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays that this Honorable Court accept jurisdiction in this matter, empanel a jury to hear this matter and award to plaintiff compensatory and punitive damages against the plaintiff as well as reasonably incurred attorneys' fees and costs pursuant to 42 U.S.C. section 1988.

Respectfully submitted,


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Dated: 12/6/16