

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

BENJAMIN BURRUSS,)
)
Plaintiff,)
)
v.)
)
GARNETT (CHIP) RILEY,)
)
JATANNA RIGSBY,)
)
KANIE D. RICHARDSON,)
)
ROBERT WARFEL,)
)
PETER MAINZER,)
)
JASON BEACH,)
)
ANDREW HOLMES,)
)
SEAN HACKNEY,)
)
MICHAEL EASTON,)
)
GREG DAVIS,)
)
JASON MARDEN,)
)
JAMES MORRIS)
)
JEFF SNEAD, and)
)
ALBEMARLE COUNTY, VIRGINIA,)
)
Defendants.)
_____)

Case No. 3:15cv00065

FIRST AMENDED COMPLAINT

The Plaintiff, Benjamin Burruss, by and through his attorneys and for his First Amended Complaint against the Defendants herein, alleges as follows:

INTRODUCTION

1. This case arises out of the unlawful seizure and detention of Plaintiff Benjamin Burruss (“Burruss”) on November 21, 2013. Burruss was seized by law enforcement officers, taken from his truck and detained for 72 hours against his will, without probable cause and in violation of the rights guaranteed to him by the Fourth and Fourteenth Amendments to the United States Constitution.

2. The unlawful seizure and detention of Burruss were caused and carried out by officers and agents of Albemarle County, Virginia, or other persons acting under color of state law, and Burruss seeks relief for the deprivation of his rights pursuant to 42 U.S.C. § 1983.

3. Burruss also brings claims under the law of the Commonwealth of Virginia for false imprisonment and battery actions against those Defendants who instigated, requested, directed, carried out, or otherwise caused the seizure and detention of Burruss without legal justification.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for the deprivation of rights secured by the Constitution and the laws of the United States. This Court also has subject matter jurisdiction over the state law claims under 28 U.S.C. § 1367.

5. Venue properly lies in the Western District of Virginia under 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to this action occurred within this District.

PARTIES

6. Plaintiff Benjamin Burruss is a 58-year-old male. At all times relevant to this Complaint, he resided within Albemarle County, Commonwealth of Virginia.

7. Defendant Garnett (Chip) Riley (“Riley”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacities. In all respects set forth in this Complaint, Riley acted under color of the law of the Commonwealth of Virginia.

8. Defendant Jatanna A. Rigsby (“Rigsby”) is a police officer with the Albemarle County Police Department. She is sued in her individual and official capacities. In all respects set forth in this Complaint, Rigsby acted under color of the law of the Commonwealth of Virginia.

9. Defendant Kanie D. Richardson (“Richardson”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacities. In all respects set forth in this Complaint, Richardson acted under color of the law of the Commonwealth of Virginia.

10. Defendant Robert Warfel (“Warfel”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Richardson acted under color of the law of the Commonwealth of Virginia.

11. Defendant Peter Mainzer (“Mainzer”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Richardson acted under color of the law of the Commonwealth of Virginia.

12. Defendant Jason Beach (“Beach”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Beach acted under color of the law of the Commonwealth of Virginia.

13. Defendant Andrew Holmes (“Holmes”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Holmes acted under color of the law of the Commonwealth of Virginia.

14. Defendant Sean Hackney (“Hackney”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Hackney acted under color of the law of the Commonwealth of Virginia.

15. Defendant Michael Easton (“Easton”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Easton acted under color of the law of the Commonwealth of Virginia.

16. Defendant Greg Davis (“Davis”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Davis acted under color of the law of the Commonwealth of Virginia.

17. Defendant Jason Marden (“Marden”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Marden acted under color of the law of the Commonwealth of Virginia.

18. Defendant James Morris (“Morris”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Morris acted under color of the law of the Commonwealth of Virginia.

19. Defendant Jeff Snead (“Snead”) is a police officer with the Albemarle County Police Department. He is sued in his individual and official capacity. In all respects set forth in this Complaint, Snead acted under color of the law of the Commonwealth of Virginia.

20. The County of Albemarle, Virginia, is a political subdivision of the Commonwealth of Virginia and has established, manages and controls the Albemarle County Police Department. With respect to its establishment, management and control of the Albemarle County Police Department and in all other respects relevant to this Complaint, the County of Albemarle acted and acts under color of the law of the Commonwealth of Virginia.

FACTS

21. On the morning of Thursday, November 21, 2013, Burruss was temporarily residing in a hotel room at the Comfort Inn, located at 2097 Inn Drive, Albemarle County, Virginia. Burruss was preparing to head to Montana that morning to camp and hunt in order to relieve stress he had been encountering due to difficulties at his job and in his marriage.

22. That same morning, the Albemarle County Police Department (ACPD) was contacted by Burruss’s employer and asked to make contact with Burruss to check on his welfare. ACPD was given information that Burruss was located at the Comfort Inn on Inn Drive, that he was intending to go hunting, that he may have a firearm, but that Burruss had not made any statements indicating he wanted to hurt himself, or anyone else.

23. Defendant Jatanna Rigsby was in the area of the Comfort Inn and was dispatched to the Inn, arriving there in an ACPD vehicle at about 10:40 a.m. Upon speaking with employees of the Inn, Rigsby learned that Burruss was registered at the Inn and had spoken with a manager at around 9:00 a.m.

24. Defendant Rigsby then learned that Burruss had called down to the front desk and informed them that he was checking out. Defendant Rigsby informed other ACPD officers that Burruss was checking out and Defendant Rigsby then proceeded to exit the Inn.

25. As she was exiting, Defendant Robert Warfel arrived at about 10:50 a.m. in an ACPD vehicle which was equipped with a video recording device mounted on the front dashboard of the vehicle.

26. As Defendants Rigsby and Warfel met, Burruss, wearing a t-shirt, camouflage pants and a blaze orange hunting cap, exited the Inn and walked towards his truck, a dark green pickup truck, that was parked in the Inn's parking lot. Inn employees alerted the officers that this was Burruss and two officers moved toward Burruss and called out, asking to speak with him.

27. Burruss told the officers that he did not want to speak to them and entered his truck to drive off. Defendant Warfel persisted in asking Burruss to stop and speak with the officers, but Burruss asked if they had a warrant and told the officers to leave him alone.

28. At this time, Defendants Garnett (Chip) Riley and Ken Richardson arrived at the scene. Defendant Riley began attempts to speak with Burruss, but Burruss again stated that he did not wish to speak to the officers unless they had a warrant and stated that he wanted to leave.

29. At some point during this encounter, Defendant Peter Mainzer also came to and was present at the scene. In state court proceedings brought by Burruss to obtain records related to this incident under Virginia's Freedom of Information Act, Defendant Mainzer testified that he was present during the encounter with Burruss and was the ACPD officer in charge at the scene. Proceedings relating to Burruss's attempt to obtain records and documents concerning the incident are still pending in the Virginia state court system.

30. Burruss then started his truck and put it in reverse in order to leave, but Defendant Riley ordered Burruss to stop and to put the truck in park. Burruss complied with Defendant Riley's order.

31. In order to prevent Burruss from leaving, Defendants Riley and Richardson instructed Defendant Warfel and/or Rigsby to deploy a "stinger" device behind Burruss's truck, which was done at about 11:00 a.m. Upon information and belief, a "stinger" device is a portable strip with sharp upward-facing spikes that will puncture and flatten vehicle tires if a driver attempts to drive over the "stinger," thereby immobilizing a vehicle.

32. The Defendant officers then notified Burruss that if Burruss attempted to leave by backing out of the parking spot, his tires would be damaged and requested that Burruss come out of the truck to talk to them about leaving.

33. While Defendant Riley spoke with Burruss, Defendants Warfel and Rigsby retrieved ACPD vehicles, drove them around the Inn and parked facing the passenger side of Burruss's truck approximately 30 feet away. The video equipment on these vehicles were operating and recorded the ensuing event. Additionally, microphones were deployed and made audio recordings of the events.

34. In addition to the presence of the "stinger", Burruss was prevented from driving his truck away by the presence of at least four (4) ACPD vehicles in the parking lot; Defendant Warfel's vehicle was parked facing the passenger side of the truck, another ACPD vehicle was parked parallel and immediately next to the driver side of the truck, another ACPD vehicle was parked to the rear and on the driver side of the truck, and the fourth ACPD vehicle was adjacent to Warfel's vehicle, blocking any exit by the truck from the parking lot. Defendants Warfel, Riley, Rigsby and Richardson also were standing in the parking lot surrounding the truck.

35. Defendant Riley asked Burruss about the presence of any weapons, and Burruss stated that he did have a gun in the backseat and had been hunting. Burruss told the officers that the gun was not loaded and that he was unaware if there was ammunition in the truck. The gun was in plain sight, with the action open. On several occasions, Defendant Riley or other officers told Burruss not to reach into the back seat of the truck, and Burruss complied with the officers' demand.

36. Defendant Riley continued to speak with Burruss over the ensuing two (2) hours, requesting that Burruss exit the vehicle so that he could help Burruss. Burruss refused these requests and continually stated that he was not going to harm anyone, that he did not want to come out of his truck, but only wanted to be allowed to drive away.

37. Defendant Riley was then told of Defendant Rigsby's communications with Burruss's wife, Kelly Burruss, and Kelly's statements that Burruss had not made any threats to harm himself or others.

38. Defendant Riley continued to speak with Burruss, who informed Defendant Riley that he had recently changed medications for depression and that he was upset because his wife had told him that she no longer loved him. Burruss also told Defendant Riley that he (Burruss) did not want to harm himself or others and that he just wanted the officers to leave so that he could think for himself. Burruss also reiterated that the firearm in his vehicle was for his hunting trip to Montana and he did not believe any ammunition was in the truck.

39. Based on these statements and the information from Kelly Burruss, Defendant Riley stated to the other officers present "We got nothin'," and told Burruss that they were going to let him leave. However, the Defendant officers did not allow Burruss to leave, and Defendant

Riley told Burruss, “I just need to check things, make sure everything is good and then you’re good to go.”

40. After Defendant Riley continued questioning Burruss, he broke off and told the other officers, “I got no reason to hold him,” explaining to the other officers that Burruss had not made any statements about harming anyone, and his depression was no different from that of many other persons.

41. The Defendant officers then began exploring other grounds to justify holding Burruss, and decided to run his vehicle information. Defendant Riley also told the other officers to call Burruss’s doctor to attempt to get a medical Emergency Custody Order (ECO).

42. Although one officer removed the “stinger” for a short time, Burruss was not told the “stinger” was removed. It was redeployed behind Burruss’s truck after Defendant Riley told the other officers, “Put the stinger back out per the Sarge.” Defendant Riley again told Burruss that they would deflate his tires if he backed up.

43. While Defendant Riley spoke with Burruss, Defendant Rigsby made contact by telephone with Kelly Burruss, who related some of the difficulties her husband was dealing with. Kelly Burruss also advised Defendant Rigsby that Burruss had not made any statements indicating that he wanted to or was going to harm himself or others and that Burruss had sent her a text message indicating he was going out west to hunt.

44. Rigsby advised Kelly Burruss that because of Burruss’s behavior and because he had not made any statements to harm himself or others, Kelly Burruss should go to the magistrate’s office in order to obtain an ECO so that the police could continue to detain Burruss.

45. Kelly Burruss told Defendant Rigsby that she would go directly to the magistrate's office to obtain an ECO. Defendant Rigsby informed the other officers that Kelly Burruss was on her way to the magistrate.

46. Burruss continued to say that he would just like to leave and did not need any help. Riley continued to say that Burruss would remain there and that his boss, who on information and belief is Defendant Kanie D. Richardson or one of the John Doe Defendants, "won't let me let you leave."

47. Shortly after, Rigsby informed the other officers that Burruss's wife was going to the magistrate to get the ECO.

48. At this point, it was clear that the officers were not going to let Burruss leave. They continued to question him for another hour and a half, surrounding his truck, and not allowing him to leave. During this time, the officers shouted several commands at Burruss, mostly having to do with his placement of his hands while in the truck. In response, and without exception, Burruss complied. Burruss did not refuse or resist any order he was given. Also during this time, Richardson opened the passenger door and illuminated the dome light with the effect, over the extended period of Burruss' detention, of draining the truck's battery so that it could not start.

49. During the detention of Burruss, Defendant Riley stated several times that he could and would not let Burruss leave because Defendant Riley's boss told him that Burruss should not be allowed to leave.

50. At approximately 11:45 a.m., Magistrate Rovel Brown issued an ECO authorizing the seizure of Burruss pursuant to Va. Code § 37.2-308. The ECO recited that it was issued upon "a sworn petition" and facts presented by Kelly Burruss. However, no sworn petition

is contained in the court records of the ECO nor was any such petition provided in response to a Freedom of Information Act request for such records.

51. The information offered by Kelly Burruss to Magistrate Brown in the form of a sworn petition was consistent with the information she previously provided to the Defendants—that Burruss had not made any statements indicating that he intended to cause harm to himself or any other person. But Magistrate Brown rejected her sworn petition, because he had already issued the ECO to the police orally by telephone prior to her arrival at his office. Kelly Burruss nevertheless left the sworn petition with Magistrate Brown and returned to the Comfort Inn.

52. Once the ECO was obtained, the Defendant officers, although aware that Kelly Burruss could provide a key to Burruss's truck, instead ordered a SWAT team to extract Burruss from his car. Meanwhile, Kelly Burruss returned and delivered an extra key to the truck to the officers.

53. After holding Burruss in his car for nearly two hours, and instead of using the key they had to open the truck, a tactical team of heavily armed men, consisting of Defendants Beach, Holmes, Hackney, Easton, Davis, Marden, Morris, and Snead, came from behind the truck, used a flash grenade, broke out the drivers' side window, dragged Burruss from his car by his arms, handcuffed, and searched him.

54. The forcible removal from his car damaged Burruss's hands, which needed medical attention on site.

55. Burruss was then forcibly and against his will transported to University of Virginia Hospital to undergo a psychiatric evaluation.

56. At the time of the seizure, transportation, and detention of Burruss, none of the Defendants had probable cause to believe that Burruss had committed any crime, nor did any

Defendant have probable cause to believe (1) that Burruss had a mental illness and was in need of hospitalization, or (2) that there was a substantial likelihood that Burruss would cause physical harm to himself or others, nor did any Defendant have any other legitimate or lawful basis to seize, arrest or detain him, and as such acted with reckless and callous indifference to the rights, federally-protected and otherwise, of Burruss.

FIRST CAUSE OF ACTION

Unlawful Seizure under the Fourth Amendment – Color of State Law

57. Paragraphs 1- 56 above are hereby re-alleged as if set out in full.

58. The actions of Defendants, individually and in concert, deprived Burruss of his constitutional right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

59. The Defendants, individually and in concert, employed excessive force in effecting the seizure of Burruss thereby depriving Burruss of his right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

60. The actions of Defendants Riley, Rigsby, Richardson, Warfel, Mainzer, Beach, Holmes, Hackney, Easton, Davis, Marden, Morris, and Snead, were committed under color of state law so as to give rise to liability under 42 U.S.C. § 1983.

61. The deprivation of Burruss's rights under the Fourth and Fourteenth Amendments resulted from and were caused by a policy of Defendant Albemarle County, Virginia in that the decision to seize and detain Burruss without probable cause or legal justification was made by a person, either specifically named as a Defendant herein or a John Doe Defendant, who, by virtue

of state or local law, custom and/or practice, was delegated and possessed final authority to establish policy for the County of Albemarle with respect to law enforcement matters and with respect to the actions causing the deprivation of Burruss's constitutional rights.

62. The deprivation of Burruss's rights under the Fourth and Fourteenth Amendments resulted from and were caused by a policy, custom and/or practice of Defendant Albemarle County Virginia in that the decision to seize and detain Burruss without probable cause or legal justification resulted from the Defendant County's inadequacy of police training with respect to the basis for and manner of seizing persons on the basis of being mentally ill and dangerous amounting to deliberate indifference to the rights of persons who police come in contact with. Defendants' interference with Plaintiff's constitutional right to be free from an unjustified seizure after it was clear that no probable cause existed for his detention by falsely imprisoning him, battering him, and unlawfully detaining and seizing him, were upon information and belief, a function of a policy or policies of Albemarle County which affirmatively promote or consistently and predictably result in such deprivations by failing to adequately train or supervise officers in avoiding such deprivations. Additionally, upon information and belief, it was or is the policy of Defendant Albemarle County, in cases where the officers on the scene possess adequate information which rules out on constitutional grounds the availability of further detention of a subject who is neither reasonably believed to have committed any crime, nor legally qualifies for emergency involuntary detention on grounds of mental illness which is reasonably anticipated to result in physical harm to others or to the subject himself, to directly or indirectly utilize the magistrate's power to remotely issue an Emergency Custody Order (ECO) based on inadequate, stale, discredited, incomplete, or simply false information.

63. As the proximate result of the aforesaid actions and policies of the Defendants, Burruss has sustained the damages previously set forth.

64. Pursuant to 42 U.S.C. § 1988, Burruss is entitled to attorneys' fees and costs, including expert fees, incurred in bringing the claims alleged in this count.

SECOND CAUSE OF ACTION

False Imprisonment, State Law

65. Paragraphs 1- 64 above are hereby re-alleged as if set out in full.

66. By their use of force and threats of force as described herein, one or more Defendants - including, but not limited to Riley, Rigsby, Richardson, and Warfel - instigated, requested, directed and/or carried out the arrest and detention of Burruss, thereby imposing restraints upon Burruss's liberty, without legal justification.

67. Such Defendants did so – either deliberately or negligently – without probable cause to believe that Burruss had committed any crime or posed a danger to himself or others and without any other sufficient legal excuse.

68. The aforesaid acts of Defendants were committed wantonly or in a culpable or grossly negligent manner.

69. As the proximate result of Defendants' actions, Burruss has sustained the damages previously set forth. Defendants therefore are liable to Burruss for actual damages as well as punitive damages, based on false imprisonment as defined by applicable state law.

THIRD CAUSE OF ACTION

Battery, State Law

70. Paragraphs 1- 69 above are hereby re-alleged as if set out in full.

71. By their use of force and threats of force as described herein, one or more Defendants - including, but not limited to Riley, Rigsby, Richardson, and Warfel - intentionally and offensively touched Burruss without his permission or legal excuse.

72. The aforesaid acts of Defendants were committed wantonly or in a culpable or grossly negligent manner.

73. As the proximate result of Defendants' actions, Burruss has sustained the damages previously set forth. Defendants therefore are liable to Burruss for actual damages as well as punitive damages, based on battery as defined by applicable state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

- a) That this Court award Plaintiffs nominal, compensatory and punitive damages in an amount to be determined at trial;
- b) That this Court order Defendants to pay Plaintiff's attorneys' fees and costs, including expert fees, pursuant to 42 U.S.C. § 1988; and
- c) That this Court order any and all such other and further relief as it may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff hereby demands a trial by jury.

Dated: November 18, 2016

Respectfully submitted,

BENJAMIN BURRUSS
By counsel

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