

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOSTAFA SOLIMAN,)	
)	
Plaintiff,)	No. 13-cv-1734
)	
vs.)	Judge
)	Magistrate Judge
CITY OF BERWYN,)	
Berwyn Police Officers)	
DAVE GREEN and)	
MATTHEW BOSKOVIC,)	Jury Demand
)	
)	
Defendants.)	

COMPLAINT

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983, and the common law and statutes of the State of Illinois.

2. Jurisdiction for Plaintiff’s federal claims is based on 28 U.S.C. §§ 1331 and 1343(a). Jurisdiction for Plaintiff’s state claims is based on supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that the claims arose in this district as alleged below.

Parties

4. Plaintiff is a resident of Cook County, Illinois.

5. The Defendant-Officers are duly appointed and sworn Berwyn police officers. At all times relevant to this Complaint, the Defendant-Officers were acting in the course and scope of their employment, and under color of state law, ordinance and/or regulation.

6. The Defendant-Officers are sued in their individual capacities.

7. Defendant CITY OF BERWYN is a municipal corporation, duly incorporated under the laws of the State of Illinois, and is the employer and principal of Defendants-Officers.

Facts

8. On or about December 7, 2012, at approximately 12:30 a.m., Plaintiff, along with a friend, Juan, went to the Fill Up Station, a bar in Berwyn, Illinois.

9. Once inside the bar, Plaintiff and Juan received stares from the other patrons.

10. The bartender told Plaintiff and Juan that she would not accept their identification and that they needed to leave.

11. Plaintiff and Juan are not Caucasian. The bartender and other patrons were all Caucasian.

12. Plaintiff and Juan began to leave the bar.

13. While leaving, Juan made a sarcastic remark to Plaintiff.

14. Upon information and belief, Defendant-Officer DAVE GREEN (“Defendant GREEN”) overheard the remark.

15. Defendant GREEN followed Plaintiff and Juan outside of the bar.

16. Defendant GREEN ordered Plaintiff and Juan to come back to him.

17. Juan turned around and Defendant GREEN pushed him in the chest.

18. Plaintiff told Defendant GREEN to leave them alone, and that they were leaving.

19. Defendant GREEN then displayed his Berwyn police badge and his gun.

20. Plaintiff again told Defendant GREEN they did not want any trouble and were leaving.

21. Defendant GREEN told Plaintiff to “shut the fuck up” and then punched Plaintiff in the ear.

22. The punch cause Plaintiff significant pain in his ear.

23. Plaintiff and Juan walked away from Defendant GREEN as he continued to threaten them and display his gun and badge.

24. Plaintiff and Juan called 911 and reported the assault and battery.

25. Numerous Berwyn police officer arrived on the scene, including Defendant-Officer MATTHEW BOSKOVIC (“Defendant BOSKOVIC”).

26. Upon information and belief, Defendant BOSKOVIC was assigned to investigate the complaint of Plaintiff and Juan.

27. Defendant BOSKOVIC paid little attention to Plaintiff and Juan and spent more time talking with Defendant GREEN.

28. Defendant BOSKOVIC failed to document Plaintiff and Juan's injuries and the fact that Defendant GREEN struck them.

29. Defendant BOSKOVIC did not arrest Defendant GREEN for assault and battery.

30. Defendants GREEN and BOSKOVIC conspired and acted together to cover up the unreasonable seizure and use of excessive force by Defendant GREEN.

31. Defendants made out false and incomplete official reports and gave a false and incomplete version of the event to other police officers investigating the incident in order to cover up their own misconduct.

32. Two days after the incident, Plaintiff was still experiencing pain in his ear.

33. Plaintiff went to MacNeal Hospital and was diagnosed with an eardrum perforation.

34. Each individual Defendant-Officer acted willfully and wantonly, maliciously, and with a conscious disregard and deliberate indifference to Plaintiff's rights.

35. As a direct and proximate result of the acts of the Defendants described above, Plaintiff suffered damages including loss of physical liberty, physical pain and suffering, emotional distress and pecuniary damages including medical expenses.

COUNT I
(42 U.S.C. § 1983 – Unreasonable Seizure)

36. Plaintiff realleges paragraphs 1 through 35 as if fully set forth herein.

37. After Defendant GREEN punched Plaintiff in the ear, Plaintiff was seized.

38. Defendant GREEN did not have a reasonable suspicion, based on specific and articulable facts, that Plaintiff was involved in criminal activity at the time.

39. Defendant GREEN did not have any other legal justification to strike and seize Plaintiff.

40. The seizure of Plaintiff without reasonable suspicion or any other legal justification violated his Fourth Amendment right, as guaranteed by the Fourteenth Amendment,

to be free from unreasonable seizures.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant GREEN,
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT II
(42 U.S.C. § 1983 – Excessive Force)

41. Plaintiff realleges paragraphs 1 through 35 as if fully set forth herein.

42. Defendant GREEN violated Plaintiff's Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from the use of excessive and unreasonable force.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant GREEN,
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT III
(42 U.S.C. § 1983 – Civil Conspiracy)

43. Plaintiff realleges paragraphs 1 through 35 as if fully set forth herein.

44. Defendants acted in concert pursuant to an agreement to deprive Plaintiff of his constitutional rights.

45. Defendants GREEN and BOSKOVIC knowingly and intentionally schemed and worked together in a common plan to cover up the unreasonable seizure and use of excessive force by Defendant GREEN.

46. Defendant BOSKOVIC made out false and incomplete official reports in order to cover up Defendant GREEN's misconduct.

47. As described above, Plaintiff suffered harm and injury as a result of Defendants' conspiracy to deprive him of his constitutional rights.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant-Officers,
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT IV

(42 U.S.C. § 1983 – *Monell* Claim against the CITY OF BERWYN)

48. Plaintiff realleges all of the above paragraphs and counts, as if fully set forth herein.

49. At all times material to this Complaint, there existed in the CITY OF BERWYN the following practices, policies and customs: a *code of silence* in which police officers fail to report police misconduct whether it is on or off duty misconduct.

50. At all times material to this Complaint, there existed in the CITY OF BERWYN the following practices, policies and customs: of investigating complaints against police officer whether on or off duty differently than complaints against other citizens.

51. At all times material to this Complaint, there existed in the CITY OF BERWYN the following practices, policies and customs: of failing to discipline police officers whether on or off duty for misconduct. This failure to discipline officer for misconduct fosters a culture and endemic attitude among members of the Berwyn police department, including Defendant GREEN, that they may engage in misconduct against citizens with impunity, and without fear of official consequences.

52. The actions of the Defendant-Officers as alleged in this Complaint were committed pursuant to, and as a result of, one or more of the above *de facto* practices, policies and customs of the CITY OF BERWYN, the Berwyn Police Department, and its police officers.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant CITY OF BERWYN,
- b) Award Plaintiff compensatory damages,
- c) Award attorneys' fees and costs, and

- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT V
(State Law Claim for Assault)

53. Plaintiff realleges paragraphs 1 through 35 as if fully set forth herein.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant GREEN,
- b) Award Plaintiff compensatory and punitive damages,
- c) Award costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT VI
(State Law Claim for Battery)

54. Plaintiff realleges paragraphs 1 through 35 as if fully set forth herein.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant GREEN,
- b) Award Plaintiff compensatory and punitive damages,
- c) Award costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT VII
(State Law *Respondeat Superior* Claim)

55. The acts of the Defendant GREEN described in the above state-law claims of assault and battery were willful and wanton, and committed in the scope of employment.

56. Pursuant to *respondeat superior*, Defendant CITY OF BERWYN is liable for its agents' actions.

WHEREFORE, Plaintiff demands judgment against Defendant CITY OF BERWYN , and such other and additional relief that this Honorable Court deems just and equitable.

COUNT VIII
(Indemnification Claim pursuant to 745 ILCS 10/9-102)

57. The acts of the Defendant-Officers described in the above claims were willful and wanton, and committed in the scope of employment.

58. Pursuant to the Illinois Tort Immunity Act, 745 ILCS 10/9-102, Defendant CITY OF BERWYN is liable for any judgments for compensatory damages in this case arising from the Defendant-Officers' actions.

WHEREFORE, Plaintiff asks that this Honorable Court order Defendant CITY OF BERWYN to indemnify the Defendant-Officers for any judgment for compensatory damages in this case arising from their actions.

Jury Trial Demanded

Respectfully submitted,

/s/ Louis J. Meyer
Counsel for the Plaintiff

Louis J. Meyer
Daniel P. Kiss
MEYER & KISS, LLC
53 West Jackson Blvd., Suite 856
Chicago, Illinois 60604
(312) 765-0100