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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

<p>Gilbert Narvaez 515 W Westmoreland St Philadelphia, Pa 19140</p>	<p>Docket No. 15cv1471</p>
<p>Plaintiff,</p>	
<p>vs.</p>	
<p>City Of Philadelphia 1515 Arch St Philadelphia, Pa 19102</p>	
<p>and</p>	
<p>Officer Christopher Hulmes, City of Philadelphia Police Department 1515 Arch St Philadelphia, Pa 19102</p>	
<p>Defendants.</p>	

FILED

JUN 9 2015

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

AMENDED COMPLAINT

Plaintiff, Gilbert Narvaez, by and through his counsel, Christopher J. Evarts, Esq., bring this Complaint (the "Complaint"), against the Defendants, and alleges as follows:

JURISDICTION AND VENUE

1. This lawsuit presents a federal question under 42 U.S.C. 1983, 1985, 1986 and 1988, 28 USC 1331 and 1367(a) supplemental jurisdiction. Declaratory and injunctive relief is

authorized pursuant to 28 U.S.C. §2201 and 2202 and Fed. R. Civ. P. 37.

2. Venue is appropriate in the federal district because all parties reside in this District and or conduct business in this District

PARTIES

3. The Plaintiff, Gilbert Narvaez, is an adult individual with a last known address of 515 W Westmoreland St 19140

4. Defendant, the City of Philadelphia, is a municipal corporation, duly organized and existing by virtue of the law of the Commonwealth of Pennsylvania.

5. Defendant, Officer Christopher Hulmes, is an adult individual with a last known business address is within the City of Philadelphia

6. At all relevant times, Officer Hulmes was employed by defendant, the City of Philadelphia, as a police officer of the City of Philadelphia Police Department.

FACTUAL BACKGROUND

7. Plaintiff was sentenced in Philadelphia Court Of Common Pleas on September 20, 2012 to a sentence of three (3) to eight (8) years for Possession with Intent to deliver and related offenses. Plaintiff served a total of twenty-seven (27) months.

8. Plaintiff's conviction was based on the false testimony of an officer Christopher Hulmes. Officer Hulmes testified under oath that he observed Plaintiff on April 20, 2011 standing on southeast corner of Mascher and Cambria Streets, Philadelphia where he allegedly engaged in a drug transaction between two other individuals.

9. During an initial pat down by other City of Philadelphia Police Officers, Plaintiff was found to not have any drugs or money on his person when arrested and was not selling or purchasing drugs at the time but was visiting his girlfriend.

10. During a second search of Plaintiff's person in the rear of the hospital and in front

of several other City of Philadelphia Police Officers, Officer Hulmes unbuttoned Plaintiff's pants, dropped them to Plaintiff's knees together with his underwear, and walked behind Plaintiff. Once behind Plaintiff, Officer Hulmes spread Plaintiff's buttocks. Then, Officer Hulmes walked in front of Plaintiff and grabbed Plaintiff's penis and pulled back his foreskin. At no time, were any medical staff present assisting Officer Hulmes with this search.

11. Officer Christopher Hulmes testimony was false. In August 2014, the City Of Philadelphia acknowledged that he was testifying falsely in drug cases and removed him from observing and making arrests in drug transactions. Officer Hulmes was put on desk duty in August 2014 Officer Hulmes admitted that in 2011 he lied under oath to obtain a May 2010 search warrant and during the drug and weapon case of Arthur Rowland which caused The Honorable James Murray Lynn to suppress the evidence. In January 2012 and call his actions reprehensible.

12. On April 23, 2015, Officer Hulmes was arrested for perjury stemming from testimony that the officer provided that lead to convictions for illegal drug arrests.

13. On May 14, 2015, the Honorable Barbara A. McDermott declared invalid the conviction and sentence of Plaintiff for the following offenses:

35 § 780-113 §§ A30: Manufacture, Delivery, or Possession with intent to Manufacture of Deliver

18 §903 §§ C: Conspiracy – Manufacture, Delivery, or Possession with intent to Deliver or Manufacture

35 § 780-113 §§A-16: Intentional Possession Controlled Substance by Person Not Regulated.

14. The District Attorney's Office nolle prossed the foregoing convictions since, at the time Plaintiff was sentenced, the District Attorney knew that Officer Hulmes was falsely testifying and did not reveal this to defense counsel.

15. As a result of the invalidation of the foregoing convictions, Plaintiff now timely brings the following claims against Defendants. *See, e.g., Heck v. Humphrey*, 512 U.S. 477, (1994) (holding that a plaintiff may state a cognizable claim for damages pursuant to 42 U.S.C. §1983 once a conviction or sentence has been declared invalid by a state tribunal authorized to make such ruling).

COUNT 1

VIOLATION OF 42 U.S.C. §§1983 *et seq.*, FALSE ARREST AGAINST ALL DEFENDANTS

16. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

17. The City of Philadelphia and Officer Hulmes violated 42 U.S.C. §§1983 *et seq.* by depriving Plaintiff of his constitutional rights by engaging in a false arrest of a United States citizen.

18. At all relevant times, Officer Hulmes was acting under the color of state law and pretense of the statutes, ordinances, regulations, customs, and usages of the City of Philadelphia and under the authority of his office as a police officer for said City and County of Philadelphia when he made the illegal arrest and search and seizure of Plaintiff.

19. Officer Hulmes violated Plaintiff's constitutional rights when he committed the illegal arrest and search and seizure.

20. The City acknowledged that Hulmes was making false arrests in August 2014 when the City Of Philadelphia removed him from making drug arrests and confined him to desk duty

21. It was not until August 2014 that the City officially acknowledged the illegal behavior of Officer Hulmes.

22. Plaintiff had not committed any offense and the Defendant the City of Philadelphia through its agents, servants, and/or employees, including but not limited to Defendant Officer Hulmes did not have reasonable grounds or probable cause to believe that Plaintiff committed any offense.

23. Defendant the City of Philadelphia through its agents, servants, and/or employees including, but not limited to, Defendant Officer Hulmes were aware that probable cause did not exist for the arrest and detention of Plaintiff and that said arrest and detention were unlawful and without justification or excuse.

24. Upon information and belief in all of the wrongful acts above alleged, Defendant the City of Philadelphia through its agents, servants, and/or employees including but not limited to Defendant Officer Hulmes acted without reasonable or probable cause and with malicious intent to arrest, oppress, and injure Plaintiff and such actions were committed in bad faith.

25. Said false arrest was committed upon Plaintiff, in part, due to his racial status and the bias of the Defendant Officer Hulmes as well as for reasons unknown to Plaintiff at the present time.

26. As a direct and proximate result of the above-described unlawful and malicious acts of Defendant Officer Hulmes, all committed under color of their authority as a police officer, and while acting in that capacity, Plaintiff suffered damage, all of which is in violation of his rights under the laws and Constitution of the United States, in particular the First, Fourth, Fifth, Eighth, and Fourteenth Amendments thereof, and 42 U.S.C. §§1981, 1983, and 1985 (2) and (3).

27. As a further result of the above-described acts, Plaintiff was deprived of his rights and immunities secured to him under the Constitution and laws of the United States and of the

Commonwealth of Pennsylvania including but not limited to his rights under the Fourteenth Amendment to be secure in his person, to be free from punishment without due process, and to equal protection of the laws.

28. As a proximate result of the Defendants' actions, Plaintiff, Gilbert Narvaez, was greatly humiliated, injured in his reputation, and character, and has suffered great mental anguish and pain, all to Plaintiff's damage in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 2

VIOLATION OF 42 U.S.C. §§1983 *et seq.*, FALSE IMPRISONMENT AGAINST ALL DEFENDANTS

29. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

30. Plaintiff was falsely imprisoned for period of approximately twenty-seven (27) months total, by the Defendants, the City of Philadelphia, through its agents, servants, and/or employees, including but not limited to Defendant, Officer Hulmes, who procured and /or effected said false imprisonment knowing their actions to be wrongful and malicious and without any basis.

31. Defendants, the City of Philadelphia and Officer Hulmes, intended to confine Plaintiff, and Plaintiff was conscious of the confinement and Plaintiff did not consent to the confinement.

32. Defendants', the City of Philadelphia and Officer Hulmes, words, actions, and the charges laid by them were willful, malicious, false, wrongful, without reason or basis and

without probable cause and committed in bad faith and solely for the purpose of falsely imprisoning Plaintiff and damaging Plaintiff in his reputation and depriving him of his liberty.

33. As a direct and proximate result of the above-described unlawful and malicious acts of Defendant, Officer Hulmes, all committed under color of their authority as police officer, and while acting in that capacity, Plaintiff suffered damage, all of which is in violation of his rights under the Constitution of the United States, in particular the First, Fourth, Fifth, Eighth, and Fourteenth Amendments and the laws thereof, and 42 U.S.C. §§1981, 1983 and 1985 (2) and (3).

34. Plaintiff was injured in his reputation and property by the actions of the aforesaid Defendants, the City of Philadelphia and Officer Hulmes, in furtherance of the false imprisonment, and Plaintiff was deprived of having and exercising his rights and privileges as a citizen of the United States in violation of 42 USC 1981, 1983, and 1985 (2) and (3).

35. As a proximate result of the actions of Defendant, Officer Hulmes, all committed under color of his authority as police officer of Defendant, the City of Philadelphia, Plaintiff was injured and suffered damage in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 3

VIOLATION OF 42 U.S.C. §§1983 *et seq.*, ABUSE OF PROCESS AGAINST ALL DEFENDANTS

36. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

37. The actions of the Defendant, Officer Hulmes, in causing Plaintiff to be arrested

falsely, imprisoned, and prosecuted, were effected for the ulterior purpose of causing Plaintiff to be unlawfully deprived of his liberty and civil rights, to suffer inconvenience, humiliation, shame, embarrassment, damage to his reputation and good name, and to incur legal expenses.

38. The arrest, imprisonment, and prosecution of Plaintiff by Defendants, the City of Philadelphia and Officer Hulmes, was wrongful, malicious, willful, and without justification or excuse and an abuse of judicial process.

39. As a direct and proximate result of the above-described unlawful and malicious acts of Defendant, Officer Hulmes, all committed under color of their authority as police officer, and while acting in that capacity, Plaintiff suffered damage, all of which is in violation of his rights under the laws and Constitution of the United States, in particular the First, Fourth, Fifth, Eighth, and Fourteenth Amendments and the laws thereof, and 42 U.S.C. §§1981, 1983, and 1985 (2) and (3).

40. As a further result of the above-described acts, Plaintiff was deprived of his rights and immunities secured to him under the Constitution and laws of the United States and of the Commonwealth of Pennsylvania including but not limited to his rights under the Fourteenth Amendment to be secure in his person, to be free from punishment without due process, and to equal protection of the laws.

41. By reason of the foregoing, the Plaintiff was under color of process, unlawfully deprived of his liberty and civil rights, caused to suffer inconvenience, humiliation, shame and embarrassment, damage to his reputation and good name in a sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that

this Court deems just and proper.

COUNT 4

FAILURE TO SUPERVISE AGAINST DEFENDANT, CITY OF PHILADELPHIA

42. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

43. The failure of Defendant, the City of Philadelphia, to adequately train, supervise, discipline, or in any way control the behavior of Defendant, Officer Hulmes, in the exercise of his police functions, and his failure to enforce the laws of the Commonwealth of Pennsylvania and the regulations of Defendant, the City of Philadelphia, is evidence of the reckless lack of cautious regard for the rights of the public including Plaintiff. Further, Defendants, the City of Philadelphia and Officer Hulmes, exhibited a lack of that degree of due care which prudent and reasonable individuals would show.

44. The failure of the Defendant, the City of Philadelphia, to train, supervise, discipline or in any other way control the Defendant, Officer Hulmes, and other officers assigned to the narcotics unit in the exercise of their detective and police functions and their failure to enforce the laws of the Commonwealth of Pennsylvania and the regulations of the Defendant, the City of Philadelphia, was carried out willfully, wantonly, maliciously and with such reckless disregard for the consequences as to display a conscious disregard for the dangers of harm and injury to the citizens of Philadelphia, including Plaintiff.

45. It is the policy, custom and practice of the Defendant, the City of Philadelphia, to (a) inadequately train, supervise, discipline or in any way control the behavior of detectives and police officers in their employ; (b) continue to employ detectives and police officers and other members of the police force without adequate training, supervision or discipline; (c) make no investigation of charges of inadequate training, supervision or discipline of Defendant, Officer

Hulmes, and other members of the police force; (d) make no effort to halt and/or discipline police officers charged with these or similar offenses, whether civilly or criminally.

46. All of these policies, customs and practices of the Defendant, the City of Philadelphia, were a proximate cause of the injuries sustained by Plaintiff.

Wherefore, Plaintiff, Gilbert Narvaez, asks that this Court declare the policies, practices and acts complained of as illegal and unconstitutional, and issue an injunction against Defendants, the City of Philadelphia and Officer Hulmes, to cease and desist from the above described activities.

COUNT 5

NEGLIGENCE IN THE PERFORMANCE OF DUTIES AGAINST ALL DEFENDANTS

47. Plaintiff repeats and realleges each and every paragraph of this complaint as set forth above and further alleges:

48. That the Defendant, the City of Philadelphia, its agents, servants and employees, including Officer Hulmes, negligently, carelessly and recklessly performed their police duties in that they failed to use such care in the performance of their police duties as a reasonably prudent police officer would have used under similar circumstances in that they carelessly, recklessly and negligently arrested the Plaintiff without making a proper investigation; and in that the Defendant, the City of Philadelphia, its agents, servants and employees, including Officer Hulmes, were otherwise careless, reckless and negligent.

49. That the aforesaid occurrence to wit: the false arrest and false imprisonment and the resulting injuries to mind and property therefrom, were caused wholly and solely by reason of the negligence of the Defendant, the City of Philadelphia, their agents, servants and employees without any negligence on the part of the Plaintiff.

50. That by reason of the aforesaid, the Plaintiff was injured in the mind and body,

still suffers and upon information and belief, will continue to suffer great physical and mental pain, and was rendered sick, sore, lame and disabled and so remains, and he was incapacitated from his usual occupation and will, upon information and belief, be so incapacitated in the future, and he has expended and incurred diverse sums of money in an effort to cure himself of said injuries to extricate himself from the indignities and humiliation foisted upon him by the actions of the Defendants, their agents, servants and employees, and; upon information and belief, will expend further sums in that direction, and the Plaintiff has been otherwise damaged.

51. By reason of the foregoing, the Plaintiff was injured and suffered damage in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 6

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

47. Plaintiff repeats and realleges each and every paragraph of this complaint as set forth above and further alleges:

48. As a result of Defendants', the City of Philadelphia and Officer Hulmes, intentional actions, which led to false arrest, prosecution and imprisonment of Plaintiff, Plaintiff suffered great mental anguish. His emotions were and continue to be severely disturbed, humiliated and embarrassed, and will remain in such state for an indefinite time in the future.

49. As a result of the mental anguish sustained by him, Plaintiff will require medical assistance for an indefinite time in the future.

50. As a result of the false arrest, prosecution and imprisonment, and the publicity caused by the same, Plaintiff has been embarrassed and humiliated to his great loss, detriment,

and suffering.

51. As a result of the circumstances under which the Defendants, the City of Philadelphia and Officer Hulmes, falsely arrested, prosecuted and imprisoned Plaintiff, Plaintiff's life has been permanently affected, all to his great loss and detriment.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 7

SEXUAL ASSAULT

52. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

53. The City of Philadelphia and Officer Hulmes violated 42 U.S.C. §§1983 *et seq.* by depriving Plaintiff of his constitutional rights by engaging in a false arrest of a United States citizen.

54. At all relevant times, Officer Hulmes was acting under the color of state law and pretense of the statutes, ordinances, regulations, customs, and usages of the City of Philadelphia and under the authority of his office as a police officer for said City and County of Philadelphia when he made the illegal arrest and search and seizure of Plaintiff.

55. Officer Hulmes violated Plaintiff's constitutional rights when he conducted the body cavity search of Plaintiff's buttocks and penis in the rear of the hospital and in front of several other City of Philadelphia Police Officers, and without any medical staff present.

56. Proper strip search and body cavity search requires that the search be:

- (a). Conducted by a licensed physician or registered nurse of the same sex, and

- (b). Conducted in private, and
- (c). Conducted in a medically acceptable manner and environment, and
- (d). Conducted under sanitary conditions, and
- (e). Conducted in accordance with Department of Corrections regulations.

57. Plaintiff had not committed any offense and the Defendant the City of Philadelphia through its agents, servants, and/or employees, including but not limited to Defendant Officer Hulmes did not have reasonable grounds or probable cause to believe that Plaintiff committed any offense.

58. Defendant the City of Philadelphia through its agents, servants, and/or employees including, but not limited to, Defendant Officer Hulmes were aware that probable cause did not exist for the arrest and body cavity search of Plaintiff and that said arrest and body cavity search were unlawful and without justification or excuse.

59. Upon information and belief in all of the wrongful acts above alleged, Defendant the City of Philadelphia through its agents, servants, and/or employees including but not limited to Defendant Officer Hulmes acted without reasonable or probable cause and with malicious intent to arrest, oppress, search and injure Plaintiff and such actions were committed in bad faith.

60. As a direct and proximate result of the above-described unlawful and malicious acts of Defendant Officer Hulmes, all committed under color of their authority as a police officer, and while acting in that capacity, Plaintiff suffered damage, all of which is in violation of his rights under the laws and Constitution of the United States, in particular the First, Fourth, Fifth, Eighth, and Fourteenth Amendments thereof, and 42 U.S.C. §§1981, 1983, and 1985 (2) and (3).

61. As a further result of the above-described acts, Plaintiff was deprived of his rights

and immunities secured to him under the Constitution and laws of the United States and of the Commonwealth of Pennsylvania including but not limited to his rights under the Fourteenth Amendment to be secure in his person, to be free from punishment without due process, and to equal protection of the laws.

62. As a proximate result of the Defendants' actions, Plaintiff, Gilbert Narvaez, suffered a sexual assault, and has suffered great mental anguish and pain, all to Plaintiff's damage in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 8

PUNITIVE DAMAGES

52. Plaintiff repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

53. The acts, conduct, and behavior of Defendants, the City of Philadelphia and Officer Hulmes, performed each of them knowingly, intentionally, and maliciously.

54. By reason of the foregoing, Plaintiff is entitled to an award of punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants in amount not to exceed One Million (\$1,000,000) dollars, plus such other relief that this Court deems just and proper.

COUNT 9

ATTORNEY'S FEES

55. Plaintiff repeats, reiterates, and realleges each and every paragraph of this

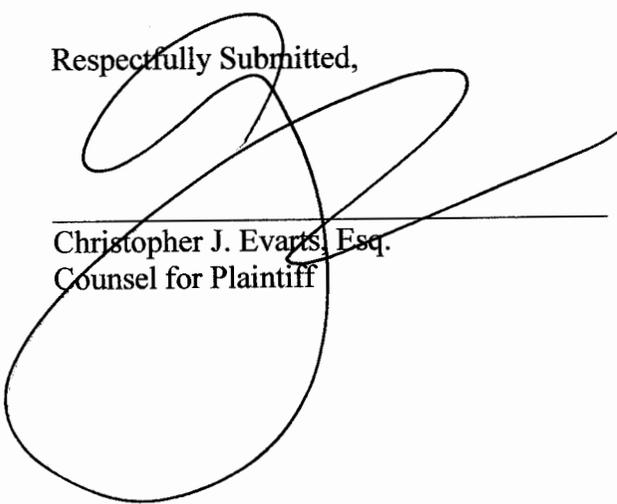
complaint and further alleges:

56. By reason of the foregoing acts and/or omissions of the Defendants the City of Philadelphia and Officer Hulmes, in violation of the VIII and XI Amendments of the United States Constitution Plaintiff has been forced to bring this lawsuit to enforce 42 U.S.C. §1983 and as a result thereof has suffered significant economic loss in the form of attorney's fees.

57. Pursuant to 42 U.S.C. §1988 Plaintiff is entitled to reasonable attorney's fees as part of the costs

WHEREFORE, Plaintiff, Gilbert Narvaez, demands judgment in his favor and against Defendants , plus such other relief that this Court deems just and proper.

Respectfully Submitted,



Christopher J. Evarts, Esq.
Counsel for Plaintiff