

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MARIO GOROSTIZA,

Plaintiff,

v.

CITY OF ALBANY POLICE OFFICER
CONOR O'SHEA, CITY OF ALBANY
POLICE OFFICER STEVEN MICHAEL
ALBERT, CITY OF ALBANY POLICE
OFFICER LUKE DEER, CITY OF ALBANY
POLICE SERGEANT JIMM LEWIS and
JOHN DOES Nos. 1 THROUGH 16,

Defendants.

Case No. 1:19-cv-648 (BKS/DJS)

**42 U.S.C. § 1983 COMPLAINT
FOR DAMAGES**

**FALSE ARREST AND UNLAWFUL
IMPRISONMENT**

USE OF EXCESSIVE FORCE

FAILURE TO INTERVENE

SUPERVISORY LIABILITY

DEMAND FOR JURY TRIAL

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NOW COMES plaintiff, MARIO GOROSTIZA, by and through his attorneys, E. STEWART JONES HACKER MURPHY, LLP, complaining of defendants, CITY OF ALBANY POLICE OFFICER CONOR O'SHEA, CITY OF ALBANY POLICE OFFICER STEVEN MICHAEL ALBERT, CITY OF ALBANY POLICE OFFICER LUKE DEER, CITY OF ALBANY POLICE SERGEANT JIMM LEWIS and JOHN DOES Nos. 1-16, inclusive, alleging as follows:

BACKGROUND AND JURISDICTION

1. This is an action for money damages bought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343.

2. The defendants made an unreasonable seizure of plaintiff in violation of his rights under the Fourth and Fourteenth Amendments of the United States Constitution and violated those same Amendments by using excessive force against plaintiff. Despite the presence of numerous other defendant officers, none intervened to prevent or stop these violations of plaintiff's rights. Defendant officers who were present in a supervisory capacity failed to appropriately supervise and direct the remaining defendant officers to prevent or stop these violations of plaintiff's rights.

PARTIES

3. The plaintiff is a resident of the State of New York.

4. At all times relevant hereto, defendants City of Albany Police Officer Conor O'Shea (hereinafter "O'Shea"), City of Albany Police Officer Steven Michael Albert (hereinafter

“Albert”), City of Albany Police Officer Luke Deer (hereinafter “Deer”), City of Albany Police Sergeant Jimm Lewis (hereinafter “Lewis”), and John Does (hereinafter “Does”) Nos. 1-16 were duly-appointed law enforcement officers of the police department of the City of Albany, acting under color of the statutes, ordinances, regulations, policies, customs and usages of the City of Albany.

FACTS

1. On March 16, 2019, while in the City of Albany, New York, defendants responded to a call of a noise complaint concerning a residence located at or around 523 First Street.

2. On said date, having committed no crime, plaintiff was lawfully in the City of Albany, New York, in the vicinity of 510 First Street, on the side of a public street, over 100 feet away from and on the opposite side of the street of, 523 First Street.

3. Defendants O’Shea, Albert, Deer and an unknown number of Doe defendants were positioned on the street outside of 523 First Street.

4. Without any warrant or lawful cause to do so, defendants O’Shea, Albert, Deer and Does 1-4 began walking from 523 First Street directly toward plaintiff, who was standing quietly on the side of the street, out of the lane of travel.

5. While walking and while out of earshot of plaintiff, one of the afore-described defendants stated his intention to arrest plaintiff.

6. While approaching plaintiff, defendants O’Shea, Albert, Deer and Does Nos. 1-4 walked past at least three civilian individuals, whom they did not assault or arrest, to reach

plaintiff.

7. At least two of the aforementioned civilian individuals were standing in the street, in the lane of travel, when defendants O'Shea, Albert, Deer and Does Nos. 1-4 passed by on their way toward plaintiff.

8. As soon as defendants O'Shea, Albert, Deer and Does Nos. 1-4 reached plaintiff, one of the afore-described defendants struck plaintiff in the face with a closed fist.

9. A second member of the group of defendants O'Shea, Albert, Deer and Does Nos. 1-4 grabbed plaintiff bodily, pinned his arms to his side and slammed his body to the ground, causing plaintiff to strike his head on the pavement.

10. During this seizure of plaintiff, defendants O'Shea, Albert, Deer and Does Nos. 1-4 continued to assault plaintiff by several means, including but not limited to, kicking, punching, spraying plaintiff with pepper spray, and using a stun gun and/or taser on plaintiff.

11. At all times, plaintiff did not resist the actions of defendants in any way.

12. At all times, defendants took no action to assault, arrest, or imprison the civilian individuals standing by plaintiff, in the street, or on the sidewalk. Defendants focused exclusively on plaintiff.

13. Defendants O'Shea, Albert, Deer and Does Nos. 1-4 then placed handcuffs on plaintiff.

14. Defendant Deer thereafter forcibly pulled plaintiff into a standing position.

15. Defendants Deer, O'Shea, Albert, and Does Nos. 1-14 then arrested plaintiff.

16. Defendants Deer, O'Shea, Albert, and Does Nos. 1-14 deprived plaintiff of his

freedom of movement and liberty.

17. At all times during the events described above, defendant police were engaged in a joint venture. The individual police defendants assisted each other in performing the various actions described and lent their physical presence, support and the authority of their office, to each other during the described events.

18. At all times during the events described above, defendants materially aided and worked with each other.

19. At all times during the events described above, defendants Deer, O'Shea, Albert, and Does Nos. 1-14 were supervised directly by defendants Lewis and Does Nos. 15-16.

20. Defendants Lewis and Does 5-16 were in close proximity to defendants O'Shea, Albert, Deer and Does Nos. 1-4 when said defendants assaulted plaintiff and falsely imprisoned plaintiff.

21. Defendants Lewis and Does Nos. 5-16 were able to and did observe defendants O'Shea, Albert, Deer and Does Nos. 1-4 when said defendants assaulted plaintiff and falsely imprisoned plaintiff.

22. Defendants Lewis and Does Nos. 15-16 were encharged with the duty to supervise the actions of defendants Deer, O'Shea, Albert and Does Nos. 1-14.

23. The above actions of defendants caused substantial pain and physical injury to plaintiff, including but not limited to bruising, contusions, lacerations, wrist injury, nerve damage, chronic pain and psychological and emotional trauma.

24. On or about March 16, 2019, defendants filed charges against plaintiff, alleging

that plaintiff had committed the violation of Disorderly Conduct, in violation of New York State Penal Law § 240.20(6), and the crimes of Inciting to Riot, in violation of Penal Law § 240.08, and Resisting Arrest, in violation of Penal Law § 205.30.

25. Defendants knowingly filed these charges against plaintiff without probable cause and with the intent to justify their use of excessive force upon plaintiff and the unlawful arrest and imprisonment of plaintiff.

26. On or about April 2, 2019, the Albany County District Attorney's Office (hereinafter "the People") filed a motion to dismiss plaintiff's criminal charges under Criminal Procedure Law § 170.40(1).

27. On or about April 3, 2019, Albany City Court Judge Holly Trexler dismissed all the charges filed against plaintiff.

28. As a direct and proximate result of the acts of the defendants, the plaintiff suffered the following injuries and damages:

- a. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure of his person, malicious prosecution, and to not be subjected to excessive force;
- b. Physical damages, including medical expenses, pain and suffering and psychological and emotional trauma;
- c. Economic loss, including loss of income and other expenses; and
- d. The actions of the defendants violated the clearly established and well settled

Federal constitutional rights of plaintiff, including freedom from the unreasonable seizure of his person, malicious prosecution, and freedom from the use of excessive, unreasonable force against his person.

COUNT ONE

42 U.S.C. §1983

**False Arrest and Unlawful Imprisonment
(Defendants Deer, O'Shea, Albert and Does Nos. 1-14)**

29. Plaintiff realleges and incorporates by reference herein all preceding paragraphs of plaintiff's complaint.

30. Even though plaintiff committed no crime and posed no threat, defendants Deer, O'Shea, Albert and Does Nos. 1-14, acting without probable cause, falsely arrested and unlawfully imprisoned plaintiff by chasing plaintiff, beating him, handcuffing him, arresting him, placing him into police custody, and imprisoning him.

31. As a direct and proximate result of this false arrest and unlawful imprisonment, plaintiff suffered damages.

32. Plaintiff claims damages for the injuries set forth above under 42 U.S.C. §1983 against defendant police officers and detectives for violations of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution while acting under color of law.

33. These damages include, but are not limited to, loss of his physical liberty; physical damages, including medical expenses; pain and suffering and psychological and emotional trauma as well as economic loss, including loss of income and other expenses arising

out of his injuries.

COUNT TWO

**42 U.S.C. §1983
Use of Excessive Force
(Defendants Deer, O'Shea, Albert and Does Nos. 1-4)**

34. Plaintiff re-alleges and incorporates by reference herein all preceding paragraphs of plaintiff's complaint.

35. Defendants Deer, O'Shea, Albert and Does 1-4, by the actions detailed above, including but not limited to spraying pepper spray, deploying a stun gun or taser, punching, striking, beating, kicking and handcuffing plaintiff, used excessive force in violation of plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

36. As a direct and proximate result of the use of excessive force, plaintiff was damaged by defendants.

37. These damages include, but are not limited to, loss of his physical liberty; physical damages, including medical expenses; pain and suffering and psychological and emotional trauma as well as economic loss, including loss of income and other expenses arising out of his injuries.

COUNT THREE

**42 U.S.C. §1983
Failure to Intervene
(Defendants Lewis and Does Nos. 5-17)**

38. Plaintiff re-alleges and incorporates by reference herein all preceding paragraphs in plaintiff's complaint.

39. Defendants Lewis and Does Nos. 5-16 had a duty to intervene to prevent the use of excessive force against plaintiff.

40. Defendants Lewis and Does Nos. 5-16 viewed, heard, witnessed and otherwise were aware of and in proximity to the use of excessive force against plaintiff.

41. Defendant Lewis and Does Nos. 5-16 had a reasonable opportunity to intervene to prevent the unlawful arrest and false imprisonment of plaintiff.

42. Defendants Lewis and Does Nos. 5-16 had a duty to intervene to prevent the unlawful arrest and false imprisonment of plaintiff.

43. Defendants Lewis and Does Nos. 5-16 viewed, heard, witnessed and otherwise were aware of and in proximity to the unlawful arrest and false imprisonment of plaintiff.

44. Defendant Lewis and Does Nos. 5-16 had a reasonable opportunity to intervene to prevent the unlawful arrest and false imprisonment of plaintiff.

45. Defendants Lewis and Does Nos. 5-16 failed to intervene.

46. As a direct and proximate result of the above, plaintiff was damaged by defendants.

47. These damages include, but are not limited to, loss of his physical liberty; physical damages, including medical expenses; pain and suffering and emotional trauma as well as economic loss, including loss of income and other expenses arising out of his injuries and resultant permanent disability.

COUNT FOUR

42 U.S.C. §1983

**Supervisory Liability
(Defendants Lewis and Does Nos. 15-16)**

48. Plaintiff re-alleges and incorporates by reference herein all preceding paragraphs in plaintiff's complaint.

49. Defendants Lewis and Does Nos. 15-16 were at all times relevant the direct supervisors of all remaining defendants.

50. Defendants Lewis and Does Nos. 15-16 were present for and directly aware of the imminent use of excessive force against plaintiff.

51. Defendants Lewis and Does Nos. 15-16 were present for and directly aware of the imminent unlawful arrest and false imprisonment of plaintiff.

52. Defendants Lewis and Does Nos. 15-16 were present for and directly aware of the actual use of excessive force and unlawful seizure and arrest of plaintiff by all remaining defendants.

53. Defendants Lewis and Does Nos. 15-16 had the opportunity to direct defendants to refrain from and/or cease the use of excessive force and unlawful seizure and arrest of plaintiff.

54. Defendants Lewis and Does Nos. 15-16 failed to properly supervise all remaining defendants to prevent or to stop the use of excessive force or the unlawful seizure and arrest of plaintiff.

55. As a direct and proximate result of the above, plaintiff was damaged by defendants.

56. These damages include, but are not limited to, loss of his physical liberty;

physical damages, including medical expenses; pain and suffering and emotional trauma as well as economic loss, including loss of income and other expenses arising out of his injuries.

DEMAND FOR JURY TRIAL

57. Plaintiff demands a jury trial on all causes of action.

WHEREFORE, plaintiff requests that this Court:

- a. Award compensatory damages to plaintiff against the defendants, jointly and severally;
- b. Award punitive damages against defendants, as determined by the jury;
- c. Award reasonable attorney's fees and costs to the plaintiff on all counts;
- d. Award costs of this action to the plaintiff; and
- e. Award such other and further relief as this Court may deem appropriate.

Dated: June 2, 2019

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