

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

OTIS ASHFORD and
DELL JONES

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:09cv0116RHW

CITY OF MOSS POINT; MOSS POINT OFFICER
JOHNNY VAUGHN, in his official and individual capacities;
MOSS POINT OFFICER BRANDON ASHLEY, in his
official and individual capacities; MOSS POINT OFFICER
MICHAEL UPCHURCH, in his official and individual capacities,

DEFENDANTS

COMPLAINT
JURY TRIAL DEMANDED

COMES NOW Plaintiffs, Otis Ashford and Dell Jones, and bring this action against the Defendants, City of Moss Point and its Police Officers, Johnny Vaughn, Brandon Ashley and Michael Upchurch in their individual and official capacities. This is an action for injunctive relief and to recover damages to vindicate the civil rights of Otis Ashford and Dell Jones. The actions of the Defendant described herein constitute violations of 42 U.S.C. § 1983, and the First and Fourth Amendments to the United States Constitution.

PARTIES

1. Plaintiff, Otis Ashford, is an adult resident of Jackson County, MS, residing at 4430 Walter Street, Moss Point, MS 39563.
2. Plaintiff Dell Jones is an adult resident citizen of Jackson County, MS,

residing at 4053 West Pine Street, Moss Point, MS 39563.

3. Defendant, City of Moss Point is a political subdivision of the State of Mississippi and at all relevant times operated under color of state law. Defendant City of Moss Point is responsible for the City of Moss Point Police Department and for the actions of its officers acting under color of state law. The City of Moss Point may be served with process through Mayor Aniece Liddell at 4412 Denny Street, Moss Point, MS 39563.
4. Defendant, Johnny Vaughn was formerly a police officer with the Moss Point Police Department and held such position at all relevant times to the facts of this Complaint and also acted under color of state law. His current residence is unknown to Plaintiffs, but he may be served in his official capacity through the Mayor of Moss Point at 4412 Denny Street, Moss Point, MS 39563 and may be served in his individual capacity at wherever he may be found when such location becomes known to Plaintiffs.
5. Defendant, Brandon Ashley, is an adult resident of Jackson County, MS and at all relevant times was a police officer with the City of Moss Point and also acted under color of state law. He may be served in his official capacity through the Mayor of Moss Point at 4412 Denny Street, Moss Point, MS 39563 and may be served in his individual capacity at City of Moss Point Police Department, 4329 McInnis Avenue, Moss Point, MS 39563.
6. Defendant, Michael Upchurch, is an adult resident of Jackson County, MS and at all relevant times was a police officer with the City of Moss Point and also

acted under color of state law. He may be served in his official capacity through the Mayor of Moss Point at 4412 Denny Street, Moss Point, MS 39563 and may be served in his individual capacity at City of Moss Point Police Department, 4329 McInnis Avenue, Moss Point, MS 39563.

JURISDICTION

7. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 because this action seeks a remedy under 42 U.S.C. § 1983, and the First and Fourth Amendments to the United States Constitution.
8. This Court has jurisdiction to declare the rights of the parties and to award any further necessary and proper relief pursuant to 28 U.S.C. §§ 2201 and 2202. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive relief. This Court has authority to award costs and attorney's fees under 42 U.S.C. § 1988.
9. Venue is proper action pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiffs' claims occurred within Jackson County Mississippi which is located within the Southern Division.

STATEMENT OF FACTS

10. On the evening of April 18, 2008, Plaintiff Otis Ashford was visiting his sister's, Plaintiff Dell Jones, home at 4053 West Pine Street in Moss Point, MS to check on Plaintiffs' mother who had been to the doctor earlier in the day.
11. While sitting in the living room of the home of Plaintiff Dell Jones, Plaintiffs heard a commotion outside of the home.

12. Plaintiffs' brother resided in a home directly next door to Plaintiff Jones and their mother resides in home directly behind Plaintiff Jones' home.
13. In response to hearing a commotion outside the home, Plaintiff Ashford stepped out onto Plaintiff Jones' enclosed screened porch area.
14. The enclosed porch, which is part of Plaintiff Jones' residence, is accessible from outside via a storm door with locking latch. The porch leads directly into the living area of Plaintiff Jones' home.
15. As Plaintiff Ashford stood in the enclosed screen porch to investigate the commotion to see if it involved Plaintiffs' brother, Plaintiff Jones also came out onto the porch and remained behind her brother, Plaintiff Ashford.
16. It was dark outside and there was no lighting to enable Plaintiff Ashford to identify the men he saw on ground in front of Plaintiffs' brother's home.
17. Plaintiff Ashford called out to two men he saw on the ground, one on top of the other, "Let my brother go." Plaintiffs both believed that it was their brother involved in the altercation they were observing.
18. One of the individuals on the ground told Plaintiff Ashford to get back inside the interior of the home. The individual did not identify himself.
19. Plaintiff Ashford did not leave the enclosed front porch area, wanting to assure himself that his brother was not in any danger.
20. Thereafter, the two individuals who had been struggling on the ground passed by Plaintiff Jones' porch and Plaintiffs realized for the first time that one of the individuals was a Moss Point police officer, Defendant Officer Johnny

Vaughn, who was escorting the other gentleman to the street in front of Plaintiff Jones' home.

21. Defendant Vaughn told Plaintiff Ashford that he would be back to get him as he walked by the porch area where Plaintiff Ashford and Plaintiff Jones continued to stand.

22. Neither Plaintiff ever left the confines of the enclosed porch.

23. Upon seeing that it was an officer who was involved in the commotion outside, both Plaintiffs turned to enter the living area of Plaintiff Jones' home; Plaintiff Ashford first, followed by Plaintiff Jones.

24. Without warning, the storm door to Plaintiff Jones' enclosed porch was snatched open and Defendant Vaughn rushed into Plaintiff Jones' residence.

25. Defendant Vaughn reached over Plaintiff Jones to grab Plaintiff Ashford from behind, trapping Plaintiff Jones in between Defendant Vaughn and Plaintiff Ashford.

26. Defendant Vaughn instructed Plaintiff Jones to get out of the way and pulled Plaintiff Ashford out onto the porch. Defendant Vaughn then threw Plaintiff Ashford onto the porch furniture and ground.

27. Another Moss Point Police Officer, Defendant Michael Upchurch, entered the enclosed porch area and proceeded to spray both Plaintiff Jones and Plaintiff Ashford with pepper or chemical spray.

28. Defendant Vaughn and Defendant Upchurch repeatedly struck Plaintiff Ashford, who was not resisting, with their hands. Defendant Upchurch also

struck Plaintiff Ashford repeatedly using his radio as a weapon.

29. Plaintiff Jones got the telephone in her home and remained in the doorway between her living room and the enclosed porch as she called 911 and reported to them that "they're trying to kill my brother." She informed 911 of her address and that there were officers present who were beating her brother, Plaintiff Ashford.

30. Another Moss Point Police Officer, Defendant Brandon Ashley, arrived on the scene. He entered the enclosed porch and was instructed by Defendant Vaughn to tase Plaintiff Ashford. Defendant Ashley then tased Plaintiff Ashford approximately four times.

31. After being repeatedly struck by the three Defendant Officers, sprayed with chemical spray by Defendant Upchurch, and tased by Defendant Ashley, Plaintiff Ashford lost consciousness.

32. Two of the Defendant Officers drug the unconscious Plaintiff Ashford to the street and laid him down next to a police cruiser, face down.

33. As a result of the spraying, seeing her brother beaten, drug down the street and laid down next to a cruiser, Plaintiff Jones passed out.

34. An ambulance had been called to the scene and it transported Plaintiff Jones to the hospital.

35. Plaintiff Ashford was transported by cruiser to the Moss Point Police Department. Once there, an ambulance was called and Plaintiff Ashford, who remained unconscious, was transferred to the hospital, where he was admitted

and remained overnight and was released on Sunday.

36. Plaintiff Jones was treated at the hospital and released the same night.

37. Plaintiff Ashford had to post bond to be released from the hospital.

38. Plaintiff Ashford attempted to go to work the next day but due to the pain he was suffering from as a result of the beating and tasing, he left work at approximately 10:00 a.m. that morning.

39. Plaintiff Ashford was charged with disorderly conduct and resisting arrest, but these charges were later dismissed.

40. Plaintiff Jones was not charged with any offense.

41. The Defendant Officers did not have probable cause to arrest Plaintiff Ashford in violation of the Fourth Amendment to the United States Constitution.

42. The Defendant Officers had neither consent nor exigent circumstances to justify their entry into Plaintiff Jones' home in violation of the Fourth Amendment to the United States Constitution.

43. The Defendant Officers used more force than was reasonably necessary against both Plaintiff Jones and Plaintiff Ashford in violation of the Fourth Amendment of the United States Constitution.

44. The Defendant Officers entered Plaintiff Jones' residence, used force against both Plaintiffs and arrested Plaintiff Ashford, at least in part, based on Plaintiffs exercising their right to inquire about the commotion that was occurring outside Plaintiff Jones' home in violation of their rights under the First Amendment to the United States Constitution.

45. Upon information and belief, the City of Moss Point was on notice of a history of abuses of authority on the part of Defendants Vaughn, Upchurch and Ashley, but failed to provide the officers with adequate supervision and training, thus exhibiting deliberate indifference to the likelihood that Defendants Vaughn, Upchurch and Ashley would commit future abuses. The injuries to Plaintiffs described in this Complaint were a direct result of the failure by Defendant City of Moss Point to provide Defendants Vaughn, Upchurch and Ashley with adequate supervision and training.

46. As a result of this incident, Plaintiff Ashford has suffered and continues to suffer ongoing harm, including, but not limited to, the physical injuries he sustained as a result of the beating, missed work, expenses from medical treatment, emotional distress, and mental anxiety as well as inconvenience in appearing for the criminal charges which were later dismissed.

47. As a result of this incident, Plaintiff Jones has suffered and continues to suffer ongoing harm, including, but not limited to, the physical injuries she sustained as a result of the actions of Defendant Officers, inconvenience, expenses from medical treatment, emotional distress, and mental anxiety.

COUNT ONE: FOURTH AMENDMENT FALSE ARREST CLAIM

48. Plaintiffs incorporate paragraphs one through forty-seven herein by reference.

49. Defendant City of Moss Point is liable for the unlawful arrest of Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United

States Constitution, as applied to the states by the Fourteenth Amendment.

50. Defendant Vaughn is liable for the unlawful arrest of Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

51. Defendant Upchurch is liable for the unlawful arrest of Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

52. Defendant Ashley is liable for the unlawful arrest of Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

53. The actions of Defendants City of Moss Point, Vaughn, Upchurch and Ashley were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff Ashford's rights under 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution

COUNT TWO: FOURTH AMENDMENT EXCESSIVE FORCE CLAIM

54. Plaintiffs incorporate paragraphs 1 through 53 herein by reference.

55. Defendant City of Moss Point is liable for the use of excessive force on Plaintiffs Ashford and Jones pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

56. Defendant Vaughn is liable for the use of excessive force on Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United

States Constitution, as applied to the states by the Fourteenth Amendment.

57. Defendant Upchurch is liable for the use of excessive force on Plaintiffs Ashford and Jones pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.
58. Defendant Ashley is liable for the use of excessive force on Plaintiff Ashford pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.
59. The actions of Defendants City of Moss Point, Vaughn, Upchurch and Ashley were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution

COUNT THREE: FOURTH AMENDMENT UNLAWFUL ENTRY CLAIM

60. Plaintiffs incorporate paragraphs 1 through 59 herein by reference.
61. Defendant City of Moss Point is liable for the unlawful entry into Plaintiff Jones' home pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.
62. Defendant Vaughn is liable for the unlawful entry into Plaintiff Jones' home pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.
63. Defendant Upchurch is liable for the unlawful entry into Plaintiff Jones'

home pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

64. Defendant Ashley is liable for the unlawful entry into Plaintiff Jones' home pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

65. The actions of Defendants City of Moss Point, Vaughn, Upchurch and Ashley were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff Jones' rights under 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution.

COUNT FOUR: FIRST AMENDMENT FREEDOM OF EXPRESSION

66. Plaintiffs incorporate paragraphs 1 through 65, as if set forth fully herein.

67. Defendants City of Moss Point, Vaughn, Upchurch and Ashley are liable for violating Plaintiffs rights of freedom of expression under to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment.

68. The actions of Defendants City of Moss Point, Vaughn, Upchurch and Ashley were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under 42 U.S.C. § 1983 and the First Amendment to the United States Constitution.

COUNT FIVE: RETALIATION UNDER FEDERAL LAW

69. Plaintiffs incorporate paragraphs 1 through 68, as if set forth fully herein.

70. Defendants City of Moss Point, Vaughn, Upchurch and Ashley are liable to

Plaintiffs under to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution for retaliation for the exercise of their rights to freedom of expression in questioning the police about their activities. The fact that it was only moments after Plaintiffs inquired about the commotion outside Plaintiff Jones' home that Defendant Officers unlawfully entered Plaintiff Jones' home, used force against both Plaintiffs and unlawfully arrested Plaintiff Ashford shows that their protected First Amendment expression was a substantial or motivating factor in the retaliation against Plaintiffs.

71. The actions of Defendants City of Moss Point, Vaughn, Upchurch and Ashley were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under 42 U.S.C. § 1983 and the First Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE the Plaintiffs respectfully pray for the following relief:

1. A finding that Defendants violated Plaintiffs' rights;
2. Compensatory damages, to be determined by a jury, against all Defendants;
3. Punitive damages against the individual Defendants in their individual capacities;
4. Expungement of all law enforcement records related to this incident;
5. Such injunctive relief as the Court deems necessary and proper;
6. Reasonable attorneys' fees and costs under 42 U.S.C. § 1988, including

the fees and costs of experts that are incurred in prosecuting this action;

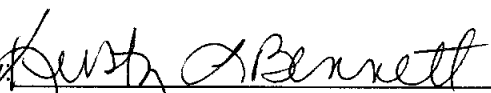
and

7. Any other relief to which Plaintiffs may be entitled.

This the 18th day of December, 2009.

Respectfully Submitted,

Otis Ashford and Dell Jones, Plaintiffs

By 

Kristy L. Bennett

Miss. Bar No. 99525

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