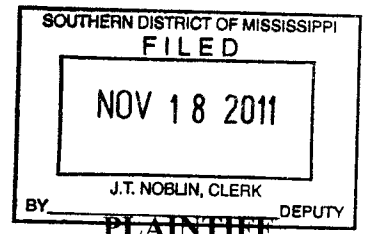


IN THE UNITED STATES DISTRICT COURT
OF SOUTHERN MISSISSIPPI
~~GULFPORT~~ DIVISION
Southern



Sandra Howard

V.

CIVIL ACTION NO.: 1:11cv440LG-Jmr

City of Long Beach, Mississippi, Officer Shawn Johnson,
In his official and individual capacities, and Officer
Melissa Peterson, in her official and individual capacities

DEFENDANT

COMPLAINT
Jury Trial Demanded

This is an action to recover damages to vindicate the civil rights of Sandra Howard. Plaintiff alleges that Defendants illegally detained and arrested her in violation of the United States Constitution. She brings this action to recover actual and punitive damages against the Defendant Officers in their individual capacities, actual damages, and injunctive relief against the Municipal Defendant for violations of the United States Constitution. Specifically, she requests damages for violation of her First Amendment right to engage in a protest in a traditional public forum, for unreasonable detention and seizure under the Fourth Amendment and for violation of due process and for arbitrary governmental action under the Fourteenth Amendment, and for violation of the public policy of the State of Mississippi.

Plaintiff shows the Court the following facts to support this action:

PARTIES

1.

The Plaintiff, Sandra Howard, is an adult resident of Harrison County, Mississippi residing at

141 Via don Rey-D, Long Beach, Mississippi 39560.

2.

The Defendant, CITY OF LONG BEACH, MISSISSIPPI, is a political subdivision of the State of Mississippi. Defendant City of Long Beach is responsible for the City of Long Beach Police Department and for the actions of its officers acting under color of law. Defendant City of Long Beach may be served with process upon Mayor William Skellie, Jr, at 201 Jeff Davis Avenue, Long Beach, Mississippi.

3.

The Defendant, SHAWN JOHNSON, an adult resident citizen of Mississippi, is an Officer with the Long Beach Police Department, and is sued in his individual and official capacities. Defendant Johnson may be served with process in his individual capacity at the Long Beach Police Department located at 202 Alexander Road, Long Beach, Mississippi 39560 and in his official capacity through the Mayor of the City of Long Beach at 201 Jeff Davis Avenue, Long Beach, Mississippi 39560. At all relevant times, Defendant Johnson acted under color of law.

4.

The Defendant, MELISSA PETERSON, an adult resident citizen of Mississippi, is an Officer with the Long Beach Police Department, and is sued in her individual and official capacities. Defendant Peterson may be served with process in her individual capacity at the Long Beach Police Department, located at 202 Alexander Road, Long Beach, Mississippi 39560, and in her official capacity through the Mayor of the City of Long Beach at, 201 Jeff Davis Avenue, Long Beach, Mississippi 39560. At all relevant times, Defendant Peterson acted under color of law.

JURISDICTION

5.

This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343(a) because this action seeks a remedy under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, the First Amendment to the United States Constitution, the Fourth Amendment to the United States Constitution, and the Due Process Clauses of the Fourteenth Amendment of the United States Constitution.

6.

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.

7.

Venue is proper in this action pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiff's claims occurred in Long Beach, Mississippi, which is within the Southern District of Mississippi, Gulfport Division.

STATEMENT OF FACTS

8.

Plaintiff Sandra Howard is a native and resident of the Mississippi Gulf Coast. Prior to the BP Oil Spill in the spring of 2010 Plaintiff had never participated in a First Amendment protected protest. However, after evacuating from her home during Hurricane Katrina, she was determined to take action to protect the area where she was raised, and where she was raising her family.

9.

On June 12, 2010, soon after the Deepwater Horizon oil spill on the Mississippi Gulf Coast,

Plaintiff and her family arrived at the Kangaroo Express gas station, which sells BP gasoline, located at address 124 Hwy 90 E., Long Beach, Mississippi, to participate in a protest against BP. The Kangaroo Express is directly across the street from the Gulf waters. While her family gathered their signs, Plaintiff began to walk on the sidewalk in front of the Kangaroo Express holding a protest sign. Plaintiff's intent was to exercise her First Amendment rights in a public forum.

10.

Within five minutes of Plaintiff's arriving at the Kangaroo Express, Defendant Officers Johnson and Peterson arrived. Upon information and belief they were responding to a complaint about the protest from the manager of the Kangaroo Express. Plaintiff was the only protester on the sidewalk in front of the Kangaroo Express, and apart from her two family members no other protesters had arrived at the station.

11.

Defendant Officers Johnson and Peterson entered the store briefly and then approached Plaintiff as she continued to walk on the sidewalk holding her sign. Officers Johnson and Peterson told her she was bothering customers and asked her to move across the street. She informed the officers that she was holding a peaceful protest and that she had a permit. Due to road construction there was not a sidewalk across the street and the public parking area was not in view of the road. Additionally, Plaintiff had chosen her location on the public sidewalk in front of the Kangaroo Express, with its prominent BP sign, as the best place to convey her message. Defendant Officers told Plaintiff to stop her protest and move off the sidewalk onto Kangaroo Express property to talk with them. Plaintiff believed that the property where they wanted her to stand was owned by the Kangaroo Express and told the officer that she could not go onto Kangaroo Express land because she would be trespassing.

12.

Defendant Officer Peterson informed Plaintiff that she did not have a right to disturb the business with her protest. Plaintiff told Defendant Officer Peterson that she respects the police, but that she was exercising her First Amendment rights. Defendant Officer Johnson then demanded that she stop protesting, and informed her that if she did not stop by the count of three she would be arrested. In response to that demand, Plaintiff turned back toward him to stop. As she turned Defendants grabbed and handcuffed her and placed under arrest. As her young son and husband watched, she was taken into custody and transported to the Long Beach police station.

13.

Defendant Officer Johnson reported that after her arrest Plaintiff continued to be disorderly by reasserting her First Amendment rights and stating, "This is wrong. I have a right to make a peaceful protest, I have a permit."

14.

At the Long Beach police station Plaintiff was shackled to a bench in view of the public area of the station and processed. Her bail was set at \$665.00 and she was transported to the Harrison County Adult Detention Center. Plaintiff was charged with disorderly conduct, failure to obey the order of a police officer, pursuant to Miss. Code Ann 97-35-7. Plaintiff's family was unable to post bail until the following morning and she was forced to spend the night in the Harrison County Adult Detention Center. Prior to this time, Plaintiff had never been arrested for a criminal offense, nor had she ever been incarcerated or in the custody of the police.

15.

At no time did Plaintiff violate the City of Long Beach ordinances; she did not trespass onto Kangaroo Express property, nor did she obstruct traffic on the public sidewalk. Defendant Officers

improperly attempted to detain Plaintiff while she protested peacefully and legally in a traditional public forum, and then arrested her without probable cause.

16.

Plaintiff has been required to attend numerous court dates in both the Municipal Court and Harrison County Court. She waited well over a year before the criminal charge was resolved on appeal to the County court. On October 3rd, 2011, Judge Robin Midcalf in the Harrison County Court signed an order placing the charge in the file "for lack of evidence." (Exhibit "A")

17.

Plaintiff's arrest has had a chilling effect on her exercise of her First Amendment rights. Although she continued to be passionately concerned about the impact of the oil spill, she has been deterred from protesting against the BP oil spill at the Kangaroo Express in Long Beach. She believes that the symbolism of protesting in front of the BP station, in full view of the white sands of the Gulf Coast sends a very powerful message. While Plaintiff did participate in one event in a different municipality where there was a legal observer present, she has not felt safe protesting in front of the BP Station where she was arrested, and has not otherwise felt comfortable exercising her First Amendment rights.

18.

Plaintiff suffered emotional stress, pain and suffering and trauma after being arrested in front of her son and husband, being handcuffed and put into a police cruiser on a public street, being shackled to a bench in view of the public area of the Long Beach police station and then spending a night in jail. This emotional stress was further exacerbated by having a criminal charge hanging over her head for well over a year. The Plaintiff's emotional stress, pain and suffering and trauma were caused by the actions of the individual defendants and by the actions of the City of Long Beach. The

individual Defendant's actions were taken with reckless disregard for Plaintiff's constitutional rights.

19.

Defendant City of Long Beach had an obligation to provide appropriate training for its police officers on the elements of the offense of disorderly conduct: disobeying a police officer (Miss. Code Ann. 97-35-7). Defendant City of Long Beach also had an obligation to train its police officers on the First Amendment constitutional rights of citizens to engage in protected speech in traditional public forums such as public sidewalks. Additionally, the Defendant City of Long Beach had an obligation to train its officers that language which is loud or offensive or which contains swear words is protected under the First Amendment. As a result of this failure, it is highly probable that the Long Beach Police would unconstitutionally arrest people for protected First Amendment activities such as a protest in a traditional public forum. Properly trained officers would know that the First Amendment to the US Constitution does not impede a person from enjoying these rights in front of a business, even when the business or its customers object. A properly trained police officer would have known that the actions of the Plaintiff did not meet the elements of the offense for which she was charged, and that arrest without probable cause that each element of an offense has been met is a violation of the Fourth Amendment to the US Constitution. The Plaintiff suffered harm as a result of the Defendant City of Long Beach's failure to properly train its officers.

20.

The City of Long Beach had an obligation to supervise its police officers to ensure that they comply with the state and criminal codes. The City did not properly supervise police officers to ensure that they complied with the requirements of the constitution and the relevant codes. Upon information and belief Defendant's Peterson and Johnson have not been disciplined, nor re-trained as a result of this unlawful arrest. The Plaintiff suffered harm as a result of the City of Long Beach's

failure to supervise its officers.

CAUSES OF ACTION

21.

Plaintiff re-alleges and incorporates all averments set forth in Paragraphs 1 through 20 above as though specifically set forth herein and alleges that:

22.

Defendants Johnson and Peterson's joint actions constitute intentional violations of Plaintiff's right to engage in First Amendment activities in a traditional public forum in violation of 42 U.S.C. § 1983 and the First Amendment to the United States Constitution as applied to the States through the Fourteenth Amendment.

23.

Defendants Johnson and Peterson's joint actions constitute intentional violations of Plaintiff's right to be free from unlawful seizure by way of detention of his person without probable cause in violation of 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment.

24.

The individual Defendants and the Municipal Defendant, by their actions and omissions as alleged in this Complaint, violated Plaintiffs' right to substantive due process, guaranteed by 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which prohibits arbitrary state conduct.

25.

The violations of Plaintiff's constitutional rights by Defendants Johnson and Peterson were caused by the City of Long Beach's policy and customs as described above.

26.

The actions of Defendants City of Long Beach, Johnson and Peterson 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.

27.

The individual Defendants and the Municipal Defendant's actions were the direct cause of Plaintiff's damages and they are responsible for the damages described above. Defendant further requests punitive damages against the individual Defendants for Plaintiff's unlawful seizure, for violation of Plaintiff's First Amendment rights, and for arbitrary governmental action under the Fourteenth Amendment to the United States Constitution.

28.

Plaintiff requests an injunction from this Court restraining Long Beach City police officers from interfering with a citizen's right to engage in protected First Amendment activities in a public forum, and for any unlawful seizure of a citizen exercising such rights.

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, including arrest 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 Plaintiff may be entitled.

Respectfully submitted,



Bear H. Atwood MSB#103234
Amelia McGowan MSB# 103610
American Civil Liberties Union of Mississippi
753 Congress Street
Jackson, MS 39202
(601) 354-3408 Fax: (601) 355-6465

OF COUNSEL:
Bear H. Atwood
Amelia McGowan
American Civil Liberties Union of MS
P.O. Box 2242
Jackson, MS 39225-2242
(601) 354-3408