

2012 WL 1241205 (Ala.Cir.Ct.) (Trial Pleading)
Circuit Court of Alabama.
Jefferson County

Willie Lee THOMPSON, Plaintiff,

v.

CITY OF BIRMINGHAM, as a person under 42 U.S.C. § 1983; A.C. Roper, Chief of
Police of the City of Birmingham; Officer Terry Davis; Officer Daniel Walls, Defendants.

No. CV-2012-901141.
April 12, 2012.

Complaint

[Wendy Brooks Crew](#), [Alyson Hood Rains](#), Crew & Howell, P.C., 2001 Park Place North, Suite 550, Birmingham, AL 35203, (205) 326-3555.

1. This is a civil rights action brought to vindicate the Plaintiff Willie Thompson's, (hereinafter referred to as "Thompson"), rights under the United States Constitution, the Alabama State Constitution, and under the statutory laws of the United States and Alabama.

2. This is an action for damages sustained by Thompson who is a resident of Jefferson County, Alabama, and who is over nineteen (19) years of age, against Defendant Officers Terry Davis and Officer Daniel Walls, officers of the Birmingham Police Department in Jefferson County, who unlawfully seized the Plaintiff and/or used unreasonable force on the Plaintiff, all of which actions occurred in Jefferson County and serve as the basis of this complaint, and the Chief of Police for the City of Birmingham, A.C. Roper, who is responsible for the conduct of the Defendant Officers. This is also an action for damages sustained by the Plaintiff as a result of the actions and/or inactions of the City of Birmingham, a municipality, sued in its individual capacity as well as an entity, for failure to assure proper training and supervision of personnel, and to implement significant procedures to discourage unlawful official conduct.

BACKGROUND

3. On July 7, 2010, Plaintiff Thompson met his daughter, Willie Fannette Thompson (hereinafter referred to as "Fannette"), at their family owned property on Gamma Street in Birmingham, Alabama. Thompson and Fannette were meeting to clean up trash that various persons in and around the neighborhood had placed on their family lot. Fannette and Thompson have been consistently cleaning their family lot since the death of Thompson's mother.

4. Plaintiff Thompson arrived at the family lot to find Fannette standing and talking with Defendant Davis. Plaintiff Thompson then asked Defendant Davis and Fannette what was going on. Officer Davis told Plaintiff Thompson that a neighbor had complained about the trash that was on the Thompson property being placed in boxes along the street. Plaintiff Thompson explained to Defendant Davis that the City of Birmingham had been picking up the boxed trash in that location for years and the city had given Fannette a date when the trash would be removed. Defendant Davis began yelling extremely obscene language at the Plaintiff and his daughter, threatening to cite both Fannette and he with a five hundred dollar (\$500) fine, as well as threatening to inflict physical harm.

5. Aware that Fannette and he had discussed the trash pickup schedule and placement with the City earlier that day, Plaintiff Thompson told Defendant Davis, "That's fine, we will have the opportunity to dispute the citation in the court of law." As

Plaintiff Thompson put the trash down, Defendant Davis replied, “You are under arrest.” Defendant Davis then proceeded to arrest the Plaintiff. At no point did the Plaintiff attempt to flee or resist arrest.

6. After Plaintiff Thompson and Fannette were placed under arrest and in handcuffs, several other Birmingham Police Department Officers, including Defendant Walls, arrived on the scene with their guns pointed at the Plaintiff and his daughter, the officers violently yelling for the Plaintiff and his daughter to get on the ground.

7. Given that Plaintiff Thompson was seventy-four (74) years old at the time, he informed the officers that he was unable to get on the ground because of his age and prior injuries to his knees. He also explained to the officers, including Defendants Davis and Walls, that he was not trying to resist arrest saying “I can’t get down on the ground with my hands cuffed behind me.” Defendant Walls continued to yell at the Plaintiff, demanding he “get down on the ground, get down on the ground now” with his gun pointed at the Plaintiff apparently ready to fire his weapon at the Plaintiff and his daughter with the clear intent to threaten, intimidate, and frighten them.

8. Plaintiff Thompson was then forcefully placed in the back of a Birmingham Police Department police car and taken to the Birmingham City Jail.

9. As a direct and proximate result of the conduct of the Defendant Officers, the Plaintiff suffered bodily injury, severe emotional distress, and physical and psychological injuries.

10. The day of the incident, the Plaintiff was arrested for “Littering.” The charges were subsequently dismissed. Prior to this date, the Plaintiff had never been arrested for or convicted of any crime.

11. Within days of the incident, the Plaintiff went to the Birmingham Police Department and attempted to file a complaint with the Internal Affairs Division. The Birmingham Police Department refused to take his complaint against the aforementioned Defendant officers.

12. Though the Plaintiff appeared on six (6) different occasions in court to contest the criminal charges against him, the Defendant officers failed to appear and prosecute the case. Thus, the charge against the Plaintiff was dismissed. Plaintiff was caused to incur significant attorneys fees to defend himself in a case that the Defendants failed to prosecute.

13. Defendants, in an attempt to threaten, harass, and humiliate the Plaintiff, arrested him on charges known to them to be false, and incarcerated him simply to retaliate and harass him, clearly **abusing** their authority.

14. Defendant City of Birmingham and Defendant Roper, as policy makers for the City, after being put on notice of a pattern of excessive force and unreported use of excessive force, tolerated and institutionalized these practices, ratifying the above stated misconduct by:

- A) Failing to properly train, discipline, restrict and control employees;
- B) Failing to take adequate precautions in the hiring, promotion and retention of law enforcement personnel;
- C) Failing to properly investigate excessive force complaints, thus, tolerating, condoning, or encouraging excessive force by the Birmingham police by the failure to discipline or discharge the officers from this employment as a result of use of excessive force;
- D) Failing to properly train employees regarding **elderly** and disabled citizens and their constitutional rights; and
- E) Allowing police officers to file criminal charges then fail to prosecute them.

15. As a result of the conduct of Defendants City of Birmingham and Chief of Police Roper, Plaintiff sustained physical and persisting psychological injuries.

COUNT I -- TORT OF OUTRAGE

16. Plaintiff incorporates by reference paragraphs 1 through 15 of the Complaint as if fully set out herein.

17. The individual actions of the Defendants against the Plaintiff as previously set out herein, severally and in their totality, are so extreme and outrageous in nature as to shock the conscience of the community. The actions of the individual police officers were willful, malicious, and intentional as to inflict terror and trauma upon Birmingham citizens. The emotional distress caused by the Defendants was so severe that no reasonable person could or should be expected to endure it. [Hamilton v. City of Jackson, 508 F.Supp.2d 1045, 1060 \(2007\)](#).

COUNT II - ASSAULT

18. Plaintiff incorporates by reference paragraphs 1 through 17 of the Complaint as if fully set out herein.

19. Defendants Davis and Walls exercising their position of authority and acting under the color of State Law in their capacity as public officials and representatives of the City of Birmingham and Birmingham Police Department, assaulted Plaintiff by intentionally and unlawfully offering to touch the Plaintiff in such a rude and angry manner as to create in mind of said Plaintiff a well-founded fear of imminent battery, coupled with an apparent present ability by Defendant Officers to effectuate the attempt by pulling their firearms and pointing them at the Plaintiff and repeatedly shouting at him to get on the ground. The Plaintiff in this action is an **elderly** man and Defendants' rude and angry actions placed this partially incapable Plaintiff, through his inability to get on the ground due to the condition of his body, in a well-founded fear of imminent battery or severe harm. Said Defendant Officers' actions were malicious, intentional, and willful.

20. As stated in *City of Birmingham v. Thompson*, "A civil action would rest upon the invasion of a person's "right to live in society without being put in fear of personal harm." (404 So.2d 589 (Ala. 1981)). As a result of Defendants' actions, Plaintiff sustained physical and psychological injury and now lives in fear of personal harm by Defendant Officers and other Birmingham Police Department Officers.

COUNT III- FALSE IMPRISONMENT

21. Plaintiff incorporates by reference paragraphs 1 through 20 of the Complaint as if fully set out herein.

22. Defendants Davis and Walls exercising their position of authority and acting under the color of State Law in their capacity as public officials and representatives of the City of Birmingham and the Birmingham Police Department unlawfully, maliciously, and willfully detained Plaintiff for a length of time by restricting his movement and his ability to leave without any actual civil or criminal violation, depriving him of his personal liberty.

23. Through the threat of force, the Plaintiff was compelled to remain where he did not want to be. [Hardy v. Town of Hayneville, 50 F.Supp.2d 1176 \(M.D.Ala. 1999\)](#). As a result of Defendants' actions, Plaintiff sustained physical and psychological injuries.

24. As a direct and proximate result of the conduct of the Defendants and the unlawful imprisonment of the Plaintiff, the Plaintiff suffered physical and psychological injuries as well as additional expenses.

COUNT IV- INTENTIONAL INTERFERENCE WITH GOVERNMENTAL OPERATION

25. Plaintiff incorporates by reference paragraphs 1 through 24 of the Complaint as if fully set out herein.

26. Defendants intentionally, negligently, or wantonly interfered with Plaintiff Thompson's constitutional right to file an IAD complaint when he was deprived of the ability to do so by the Department of Internal Affairs in Birmingham, Alabama. Plaintiff was not afforded the opportunity to seek justice after enduring the physical and emotional pain sustained during the incidents which occurred on July 7, 2010. As a result of Defendants' intentional interference with Plaintiff's right to maintain an action, no investigation into the underlying facts was performed by the Birmingham Police Department within the immediate time period following the arrest, despite Plaintiff's attempts to file an Internal Affairs Complaint for the conduct complained of herein, hindering Plaintiff's constitutional rights.

COUNT V -- MALICIOUS PROSECUTION

27. Plaintiff incorporates by reference paragraphs 1 through 26 of the Complaint as if fully set out herein.

28. The Eleventh Circuit “has identified malicious prosecution as a violation of the Fourth Amendment and a viable constitutional tort cognizable under § 1983.” *Kjellsen v. Mills*, 517 F.3d 1232 (11th Cir. 2008). The Court in *Delchamps, Inc. v. Bryant* stated that according to Alabama law, the elements of the common law tort of malicious prosecution include: “(1) a judicial proceeding instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff accused's favor; and (4) caused damage to the plaintiff accused.” (738 So.2d 824, 831-32 (Ala. 1999)).

29. In combination with Defendant Officer Davis's violation of Plaintiff's Fourth Amendment rights through the unlawful and unwarranted arrest of Plaintiff, Defendant Davis instituted a judicial proceeding through imposing a criminal charge against Plaintiff and subsequently willfully, intentionally, and maliciously arresting him without probable cause. Taking these elements into consideration with the dismissal of the case in Plaintiff's favor, as well as the significant costs such proceedings caused the Plaintiff to incur, and the physical and emotional damages Plaintiff suffered due to Defendants said action, Plaintiff was clearly deprived of his constitutional right to be free from malicious prosecution.

COUNT VI -- FOURTH AMENDMENT -- UNLAWFUL SEARCH AND SEIZURE

30. Plaintiff incorporates by reference paragraphs 1 through 29 of the Complaint as if fully set out herein.

31. Defendant Davis conducted an unlawful and unwarranted arrest of the Plaintiff on July 7, 2010, in violation of the Plaintiff's constitutional right to be free from unlawful search and/or seizure when Defendant Officers arrested him and proceeded to point guns at him while he stood in handcuffs exhibiting no attempt to flee or resist arrest. Plaintiff was not posing any threat to any officers or members of the community nor was he involved in any criminal activity.

COUNT VII- EXCESSIVE USE OF FORCE BY DEFENDANT OFFICERS

32. Plaintiff incorporates by reference paragraphs 1 through 31 of the Complaint as if fully set out herein.

33. Defendants Davis and Walls, exercising their position of authority and acting under the color of State Law in their capacity as public officials and representatives of the City of Birmingham and Birmingham Police Department used excessive force in violation of U.S.C. § 1983 by unlawfully drawing their weapons on an **elderly** man who was in handcuffs and displaying no signs of threatening behavior or resistance to arrest. The Plaintiff was unarmed and at no point posed any grave threat to

Defendant officers that would cause the need for the use of firearms. *Wakefield v. City of Pembroke Pines*, 2008 WL 698931 (11th Cir. 2008).

COUNT VIII -- INADEQUATE TRAINING AND SUPERVISION

34. Plaintiff incorporates by reference paragraphs 1 through 33 of the Complaint as if fully set out herein.

35. Defendants City of Birmingham and Roper failed to adequately train and supervise the Birmingham Police Officers, including Defendants Davis and Walls in the areas of seizure, arrest procedures, use of force, use of firearms, criminal ordinances, and the constitutional rights of its citizens in regard to the judicial process, causing the Plaintiff to be unnecessarily and falsely imprisoned. Defendants therefore exhibited reckless disregard for, and deliberate indifference to, the Plaintiff. Additionally, Defendants failed to monitor the activities of the law enforcement officials and failed to properly supervise their actions and conduct. As a result of the said failure to supervise and failure to train Defendant officers, the Plaintiff suffered physical and emotional injury when Defendant officers pointed guns at his daughter and him, unlawfully detained them, and otherwise threatened and harassed them without cause, provocation, or justification.

COUNT IX- DELIBERATE INDIFFERENCE THROUGH CUSTOM BY DEFENDANTS ROPER AND DEFENDANT CITY OF BIRMINGHAM

36. Plaintiff incorporates by reference paragraphs 1 through 35 of the Complaint as if fully set out herein.

37. Defendants City of Birmingham and Defendant Roper have tolerated the continued and repeated excessive use of force and seizures of Birmingham citizens such that the conduct of the Birmingham Police Department is so persistent and widespread as to constitute a custom and policy of the City and the Police Department. Although Defendants City of Birmingham and Roper have actual and constructive knowledge of Birmingham police officers' recurring use of excessive force, unnecessary and unlawful detention, intimidation, and threats of incarceration, Defendants have failed to take any corrective action. Therefore, the Defendants' inaction has amounted to a deliberate indifference to the rights of persons with whom the Defendants come into contact.

PRAYER FOR RELIEF

38. Plaintiff requests the following equitable relief:

- a. Order the Defendants, their officers, agents, and employees to refrain from engaging in any of the predicate actions forming the basis of the pattern and practice of conduct described in the foregoing.
- b. Order the Defendants, their officers, agents and employees to adopt and implement policies and procedures to remedy the pattern or practice of conduct described herein with monitoring of same, including but not limited to:
 - (1) Policies that will insure the integrity of police officers;
 - (2) Insure thorough and competent investigations of all citizen complaints against the Birmingham Police Department;
 - (3) Insure adequate training regarding diversity, excessive force and constitutional rights of citizens;
 - (4) Implement policies to prevent malicious prosecution against unwarranted arrests and imprisonment; and
 - (5) Order such other appropriate equitable relief as the interest of justice may require.

39. Grant Plaintiff compensatory and punitive damages against each of the individual Defendants and the City Defendants in their individual capacities.

40. Award Plaintiff costs and reasonable attorney fees.

41. Award such other and further relief as this Court may deem appropriate.

/s/ Wendy Brooks Crew

WENDY BROOKS CREW

/s/ Alyson Hood Rains

ALYSON HOOD RAINS

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PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL COUNTS FOR LEGAL RELIEF.

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