

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KEVIN TAPIA and FELIPE HERNANDEZ,)	No.
)	
Plaintiffs,)	
)	Judge
vs.)	
)	
CITY OF CHICAGO, Chicago Police Officer K. RYAN, #13409, Chicago Police Officer CHRISTOPHER STARK, #4728, Chicago Police Officer D. MURPHY, #19354, Chicago Police Officer JOHN DOE, Chicago Police Officer RICHARD ROE,)	Magistrate
)	
)	
Defendants.)	JURY DEMANDED

COMPLAINT

Plaintiffs Kevin Tapia and Felipe Hernandez, by and through their attorneys, file this civil rights complaint against the City of Chicago and individually named Defendants of the Chicago Police Department seeking vindication and compensation for the violation of their rights guaranteed by the U.S. Constitution and Illinois state law. Plaintiffs were falsely arrested, illegally searched and maliciously prosecuted while they were canvassing in a southwest side neighborhood seeking petition signatures and distributing political information on behalf of the Grassroots Collaborative, a membership based organization that seeks policy change to improve the lives of low-wage service employees, the homeless, senior citizens, immigrants, and residents of poor and working class neighborhoods. Protected by the core of the First Amendment, residential canvassing is a time honored and vital practice necessary to the preservation of a free society and public discourse. As a result of their unjustifiable arrest, search and prosecution,

Mr. Tapia and Mr. Hernandez suffered the loss of their liberty and privacy, in addition to being harassed, ridiculed, and criminalized as young men of color for merely exercising their constitutional right to freedom of speech.

JURISDICTION AND VENUE

1. The jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C. 1983 et seq.; the Judicial Code, 28 U.S.C. §§ 1331 and 1343(a); supplementary jurisdiction; and the Constitution of the United States.

2. Venue is proper in this District under 28 U.S.C. § 1391(b). The parties reside, or, at the time the events took place, resided in this judicial district, and the events giving rise to claims also occurred in this judicial district.

PARTIES

3. Plaintiffs Kevin Tapia and Felipe Hernandez are Latino residents of the City of Chicago.

4. Defendant Officers Ryan, Stark, Murphy, Doe and Roe were, at the time of this occurrence, duly appointed Chicago Police officers. Defendants Ryan, Stark, Murphy, Doe and Roe engaged in the conduct complained of while they were on duty and in the course and scope of their employment with the City of Chicago.

5. At all times material to this complaint, Defendant Officers Ryan, Stark, Murphy, Doe and Roe were acting under color of state law, ordinance, and/or regulation. Each is sued in his individual capacity.

6. Defendant City of Chicago is a municipal corporation, duly incorporated under the laws of the State of Illinois, is the employer and principal of the Defendant Officers.

FACTS

7. On March 25, 2014, Plaintiffs Hernandez and Tapia were canvassing door-to-door on behalf of the Brighton Park Neighborhood Council and Grassroots Collaborative. They were asking individuals to sign a petition in support of a fair tax in Illinois, distributing literature on the Affordable Care Act (hereinafter “ACA”), and collecting the names and contact information for people interested in learning more about ACA.

8. They were not engaged in any illegal activity. Rather, their conduct is protected by the First Amendment of the U.S. Constitution.

9. At approximately 4:30 p.m., Defendants Ryan and Stark approached Mr. Tapia and Mr. Hernandez in a marked Chicago Police Department vehicle near 5511 S. Normandy Avenue, Chicago, Illinois.

10. Defendants Ryan and Stark stopped Plaintiffs Tapia and Hernandez and ordered them to put their hands on the hood of the squad car.

11. After Plaintiffs Tapia and Hernandez complied with their order, a Defendant Officer proceeded to pat down and frisk Plaintiffs Tapia and Hernandez, without any legal justification do to so.

12. Defendants Ryan and Stark then questioned Plaintiffs Tapia and Hernandez regarding the nature of their activity.

13. Plaintiffs Tapia and Hernandez explained they were going door-to-door, collecting signatures for a petition and distributing information on ACA on behalf of the Brighton Park Neighborhood Council and Grassroots Collaborative.

14. Defendants Ryan and Stark then demanded Plaintiffs Tapia and Hernandez show

them their identification, and again Plaintiff complied with their orders.

15. Defendants Ryan and Stark ordered Plaintiffs Tapia and Hernandez to get into the back of their police vehicle, and again Plaintiffs conceded to their demands.

16. While Plaintiffs Tapia and Hernandez were detained in the back of the Defendant Officers' squad car, Defendants Ryan and Stark searched through Plaintiffs' backpacks.

17. Defendants Murphy, Doe and Roe then arrived on the scene. They opened the door to the backseat of the car and began to further question Plaintiffs Tapia and Hernandez as to their activities. Again, Plaintiffs Tapia and Hernandez attempted to explain their political canvassing.

18. Defendant Ryan then asked Plaintiff Tapia for the password to his phone and the name of the Plaintiffs' supervisor, which Plaintiff Tapia provided.

19. Defendant Ryan searched Plaintiff Tapia's phone and found the supervisor's name and number. After finding the supervisor's name, she asked why he had two last names and why his number was from out of state. Plaintiffs Tapia and Hernandez explained he had recently moved from California.

20. Defendants Murphy, Doe and Roe removed Plaintiffs Tapia and Hernandez from the car and searched them again.

21. One of the Defendant Officers said "brick" them and they were then handcuffed by the Defendant Officers and placed back in the squad car once again.

22. Plaintiff Hernandez asked the Defendant Officers if they were being arrested, and after being told that they were, he followed up and asked why. He was told they were being arrested for "unlawful solicitation."

23. Plaintiffs Tapia and Hernandez were transported to the 8th District of the Chicago Police Department, where they were held for approximately three hours before they were released on an I-bond.

24. The individual Defendant Officers agreed they would falsely charge Plaintiffs Tapia and Hernandez with Soliciting Unlawful Business in violation of §10-8-515 of the Municipal Code of Chicago.

25. The individual Defendant Officers further agreed to draft false official reports alleging that Plaintiffs Tapia and Hernandez were soliciting insurance information, and that they did not know or disclose the name of the organization they were working for or the name of their employer.

26. As a result of the false charges filed by the individual Defendant Officers, Plaintiffs were compelled to retain an attorney and attend a court date.

27. On May 16, 2014, the charges against Plaintiffs Tapia and Hernandez were dismissed and their cases were terminated in their favor.

28. As a direct and proximate result of these individual Defendant Officers' actions, Plaintiffs suffered mental distress, humiliation, stemming in part as a result of being criminalized as young men of color, loss of liberty, loss of privacy, the infringement and denial of their First Amendment Right to freedom of speech, and loss of their property.

COUNT I
[42 U.S.C. § 1983 Claim for False Arrest and Detention]

29. Plaintiffs reallege paragraphs 1 through 28.

30. The actions of Defendants Ryan, Stark, Murphy, Doe and Roe in falsely arresting, detaining and causing Plaintiffs to be searched on March 25, 2014, without probable cause, or in

failing to prevent such misconduct, violated their Fourth Amendment rights under the United States Constitution to be free from unreasonable search and seizure, and thus violated 42 U.S.C. § 1983.

31. The actions of Defendants Ryan, Stark, Murphy, Doe and Roe were the direct and proximate cause of the violations of Plaintiffs' Fourth Amendment rights, injuries, mental suffering, anguish, humiliation, loss of personal freedom and privacy, and expenses, as set forth more fully above.

WHEREFORE, Plaintiffs demand substantial actual or compensatory damages against Defendants Ryan, Stark, Murphy, Doe and Roe and because they acted maliciously, wantonly or oppressively, punitive damages, plus the costs of this action, plus attorney's fees and such other relief as this Court deems equitable and just.

COUNT II
[42 U.S.C. § 1983 Violation of First Amendment Rights to Free Speech]

32. Plaintiffs reallege paragraphs 1 through 28.

33. The Defendant Officers' actions described above violated Plaintiffs Hernandez and Tapia's right to freedom of speech under the First Amendment to the United States Constitution.

34. The Defendants are liable to Plaintiffs for this violation of their rights, pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs demand substantial actual or compensatory damages against Defendants Ryan, Stark, Murphy, Doe and Roe because they denied and abridged Plaintiffs' rights to free speech as guaranteed by the First Amendment to the United States Constitution, punitive damages, plus the costs of this action and such other and additional relief as this Court

deems just and equitable.

COUNT III
[Pendent State Law Claim for False Arrest and Imprisonment]

35. Plaintiffs reallege paragraphs 1 through 28.

36. The arrest, detention and imprisonment of Plaintiffs, without probable cause, individually, jointly, and in conspiracy by Defendants Ryan, Stark, Murphy, Doe and Roe constituted the torts of false arrest and imprisonment under Illinois law.

37. Defendant Officers' actions in arresting and detaining Plaintiffs were willful and wanton.

WHEREFORE, Plaintiffs demand substantial actual or compensatory damages against Ryan, Stark, Murphy, Doe and Roe punitive damages, plus the costs of this action and such other and additional relief as this Court deems just and equitable.

COUNT IV
[Pendent State Law Claim for Malicious Prosecution]

38. Plaintiffs reallege paragraphs 1 through 28.

39. The acts of Ryan, Stark, Murphy, Doe and Roe in creating a false story, and falsely arresting Plaintiffs without probable cause, thereby causing them to lose their liberty, to be criminally prosecuted without probable cause, and to suffer emotional distress, constituted the tort of malicious prosecution under the laws of the State of Illinois.

WHEREFORE, Plaintiffs demand substantial actual or compensatory damages against Defendants Ryan, Stark, Murphy, Doe and Roe because they acted maliciously, willfully, wantonly, or oppressively, punitive damages, plus the costs of this action and such other and additional relief as this Court deems equitable and just.

COUNT V
[Pendent State Law Claim for Intentional Infliction of Emotional Distress]

40. Plaintiffs reallege paragraphs 1 through 28.

41. The conduct and actions of Defendant Officers set forth above, were extreme and outrageous, were done intentionally, willfully and wantonly, and/or knowing there was a high probability that their conduct would cause Plaintiffs severe emotional distress as set forth above.

42. As a direct and proximate result of Defendants Ryan, Stark, Murphy, Doe and Roe's extreme and outrageous conduct, Plaintiffs were injured and experienced severe emotional distress constituting intentional infliction of emotional distress under Illinois State law.

WHEREFORE, Plaintiffs demand substantial actual or compensatory damages against Defendants Ryan, Stark, Murphy, Doe and Roe and such other and additional relief as this Court deems equitable and just.

COUNT VI
[State Law Claim for Conspiracy]

43. Plaintiffs reallege paragraphs 1 through 28 and 35 through 42.

44. Defendants Ryan, Stark, Murphy, Doe and Roe, together reached an understanding, engaged and continue to engage in a course of conduct, and otherwise jointly acted and/or conspired among and between themselves to falsely arrest, maliciously prosecute Plaintiffs and/or to intentionally inflict severe emotional distress on Plaintiffs.

45. In furtherance of this conspiracy or conspiracies, the Defendants named above, together with their unsued co-conspirators, committed the overt acts set forth above.

46. The conspiracy or conspiracies were and are continuing in nature.

WHEREFORE, Plaintiffs demand compensatory damages, jointly and severally from

Defendants Ryan, Stark, Murphy, Doe and Roe, and, because these Defendants acted in a malicious, willful and/or wanton manner toward Plaintiffs, for punitive damages, plus the costs of this action and whatever additional relief this Court deems equitable and just.

COUNT VII
[Claim for *Respondeat Superior* Against Defendant City of Chicago]

47. Plaintiffs reallege paragraphs 1 through 28, 35 through 46.

48. Defendants Ryan, Stark, Murphy, Doe and Roe, were, at all times material to this complaint, employees and agents of the Defendant City of Chicago, were acting within the scope of their employment, and their acts which violated state law are directly chargeable to the defendant City of Chicago under state law pursuant to *respondeat superior*.

WHEREFORE, Plaintiffs demand judgment for substantial compensatory damages against the City of Chicago, plus the costs of this action and whatever additional relief this Court deems equitable and just.

COUNT VIII
[745 ILCS 10/9-102 Claim Against Defendant City of Chicago]

49. Plaintiffs reallege paragraphs 1 through 46.

50. Defendant City of Chicago was the employer of Defendants Ryan, Stark, Murphy, Doe and Roe, at all times relevant to this complaint.

51. Defendants Ryan, Stark, Murphy, Doe and Roe, committed the acts alleged above under color of law and in the scope of their employment as employees of the City of Chicago.

WHEREFORE, Plaintiffs, pursuant to 745 ILCS 10/9-102, demand judgment against the Defendant City of Chicago in the amount awarded to the Plaintiffs against any and all Defendants as damages, attorney's fees, costs and interest, and/or for any settlement entered into

between the Plaintiffs and any Defendant and for whatever additional relief this Court deems equitable and just.

Respectfully submitted,

Dated: February 3, 2015

/s/ Joey L. Mogul

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Plaintiffs demand trial by jury