

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HOLLY A. MANVILLE,

Plaintiff

COMPLAINT

Civ. No.:

JURY TRIAL DEMAND

vs.

TOWN OF GREECE; CHIEF OF POLICE MERRITT RAHN,
In His Individual and Official Capacities;
SERGEANT THOMAS SCHAMERHORN, OFFICER VISCONTE,
OFFICER PHILLIPS, In Their Individual and Official Capacities,

Defendants.

PRELIMINARY STATEMENT

1. This action seeks declaratory, injunctive and equitable relief, compensatory and punitive damages, costs and attorney fees for the deprivation of the Plaintiff Holly Manville's ("Plaintiff") constitutional rights as a result of the sexual assault and battery upon her by Sergeant Thomas Schamerhorn.

JURISDICTION

2. Plaintiffs bring this action to recover damages for the violation of their civil rights under the Fourteenth Amendment to the United States Constitution, codified at 42 U.S.C. §1983 and 42 U.S.C. §1985(3), and the United States Constitution, Amendments Five and Fourteen.
3. Jurisdiction is invoked pursuant to 28 U.S.C. §§1331 and 1332 (federal question) and §1343 (civil rights).

4. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. §§2201 and 2202.
5. Compensatory and punitive damages are sought pursuant to 42 U.S.C. §1983.
6. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. §1988 and Fed.R.Civ. P. Rule 54.
7. As mandated by the Supremacy Clause in relation to actions brought pursuant to 42 U.S.C. §1983 and 1985, plaintiffs do not have to comply with Municipal Law Section 50- e with regard to filing a Notice of Claim with regard to federal causes of action.

VENUE

8. This action properly lies in the Western District of New York, pursuant to 28 U.S.C. §1343(3) because the claims arose in this judicial district and the defendants reside and or do business in Monroe County

PARTIES

9. At all times herein mentioned, Plaintiff was and is a female and a resident of the Town of Greece, County of Monroe, State of New York.

10. At all times herein mentioned, defendant Town of Greece was and is a municipal corporation duly organized and existing under the laws of the State of New York.

11. At all times herein mentioned, defendant Town of Greece maintained and was responsible for overseeing, supervising and regulating all conduct engaged in and undertaken by the defendant Town of Greece Police Department.

12. At all times herein mentioned, defendant Sergeant Thomas Schamerhorn (“Sgt. Schamerhorn”), Officer Visconte, and Officer Phillips, were police officers employed by the defendant Town of Greece.

13. At all times herein mentioned, defendant Merritt Rahn was the Chief of Police of defendant Town of Greece.

14. At all times herein mentioned, defendant Town of Greece maintained, and was responsible for, overseeing, supervising, and regulating all conduct engaged in by the Town of Greece police personnel while such personnel were engaged in police business, including that of defendant Sgt. Schamerhorn.

FACTS

1. Background History

15. Upon information and belief, Sgt. Schamerhorn was the subject of 13 separate complaints filed by 13 separate women earlier in his career that involved him engaging in virtually identical conduct to the facts alleged herein: in each, traffic stops involving these 13 women ended with Sgt. Schamerhorn wrestling them to the ground and inflicting some sort of injury on them.
16. Upon information and belief, Sgt. Schamerhorn's pattern of conduct came to light when one of those 13 women, Elia Visconte, sued the Town of Greece.
17. Elia Visconte alleged that Sgt. Schamerhorn forcefully pushed her against her car, grabbed her chest after placing her in the back of his police vehicle, then placed handcuffs on her wrists so tightly that she required surgery to correct the damage inflicted upon her.
18. Elia Visconte's lawsuit settled for nearly a quarter million dollars in August of 2004.
19. Upon information and belief, at that juncture, the Town of Greece Police Department identified Sgt. Schamerhorn's patterns of conduct, took him off the road, and went through a disciplinary process that included a psychological evaluation and an arbitrator.

20. Upon information and belief, the determination of the evaluator was that Sgt. Schamerhorn would probably engage in similar conduct in the future; nonetheless, Sgt. Schamerhorn was put back on the road a year and a half later.
21. Thereafter, upon information and belief a program of close supervision was created which required Sgt. Schamerhorn to log a report with every citizen contact he had.

2. Allegations of Plaintiff

22. In or about the same time that the Visconte matter settled, in the summer of 2004, at approximately 11:00 p.m., Plaintiff, a young single mother, was stopped by Sgt. Schamerhorn while driving her vehicle on Long Pond Road coming home from her job at the Monroe Gold Club.
23. Sgt. Schamerhorn would not inform Plaintiff why he pulled her over, but issued her a ticket to her for turning without stopping at a red light.
24. Shortly thereafter, during the summer of 2004, Sgt. Schamerhorn pulled Plaintiff over again.
25. Addressing Plaintiff by her first name, Sgt. Schamerhorn failed to inform Plaintiff why he pulled her over, but did not issue a ticket to her at that time.

26. Later than fall, on October 24th, 2004 at 12:00 a.m., Plaintiff was stopped again by Sgt. Schamerhorn on Long Pond Road.
27. Plaintiff was compelled to exit her vehicle by Sgt. Schamerhorn, who addressed Plaintiff by her first name.
28. After exiting her vehicle, Plaintiff was grabbed by Sgt. Schamerhorn, her feet kicked out beneath her, causing her to fall to the pavement and strike her chin; Sgt. Schamerhorn then placed his knee in Plaintiff's back and Plaintiff was pulled up in mid-air by her handcuffs, that were inordinately tight, and remained on her wrists for several hours,
29. After the arrest, Plaintiff's father complained to Sgt. Schamerhorn's supervisor for over two hours about the amount of unnecessary and degrading force that Plaintiff was subject to during her arrest by Sgt. Schamerhorn.
30. No further action was taken by the Greece Police.
31. For several months between October 2004 and June of 2007, Sgt. Schamerhorn did not approach Plaintiff.
32. That ended in the early morning hours of June 2007.

33. On June 21st, 2007 at 12:24 a.m., Plaintiff is pulled over while traveling on Latta Road in the Town of Greece.
34. Sgt. Schamerhorn, addressing Plaintiff by her first name, compels her to exit her vehicle yet again.
35. Frightened, Plaintiff informed Sgt. Schamerhorn that she “does not trust him” and demands the presence of a female officer.
36. Sgt. Schamerhorn refused Plaintiff’s requests by informing her “you have no rights.”
37. Plaintiff suggested that Sgt. Schamerhorn contact a female officer from another police agency.
38. Sgt. Schamerhorn began to yell at Plaintiff; Plaintiff, out of fear, rolled up her window.
39. Sgt. Schamerhorn then radioed for assistance; four police officers appeared at the scene.
40. Plaintiff exited the vehicle and is compelled to perform a number of field sobriety tests, such as “bend down and touch her toes” with all of the other officers making sexual innuendo, and flashing their lights on her halter top.

41. Plaintiff persisted to request the presence of a female officer.
42. Sgt. Schamerhorn requested that Plaintiff “tilt her head back” while performing a “finger to the nose” test, in order to view Plaintiff’s breasts, which Plaintiff refused.
43. At that point, Plaintiff was placed under arrest, but is not read her Miranda rights.
44. Plaintiff was slammed against the police vehicle and placed in handcuffs while Sgt. Schamerhorn placed his hands on Plaintiff’s bare breasts and fondled them , and placed his hands on Plaintiff’s inner thighs, all the while, pressing himself into Plaintiff’s buttocks with an erection while pressing her against the car. All the while, Plaintiff was screaming for help, but the other officers rendered no assistance to the Plaintiff.
45. When asked by another officer whether Plaintiff has “anything” in her car, Sgt. Schamerhorn replies by stating “she wouldn’t know if she were fucked up the ass.”
46. Again, Plaintiff’s father complains to Sgt. Schamerhorn’s supervisors about the treatment of his daughter; that same supervisor denied that there were even other officers present, despite the fact that officers Vicsonte and Phillips are listed on the police report.

FIRST CAUSE OF ACTION

Violations of 42 U.S.C. § 1983: Excessive Force

47. Plaintiff repeats the allegations contained in the above stated paragraphs of the Complaint as if fully set forth herein.

48. In engaging in the conduct described, by assaulting and battering Plaintiff, defendant Sgt. Schamerhorn, in his official and individual Capacity, deprived plaintiff of her civil rights pursuant to 42 U.S.C. § 1983 by using excessive force and by subjecting Plaintiff to a gratuitous sexual assault. Further, as a police officer employed by defendant Town of Greece defendant was clearly acting under the color of State law.

49. That the aforementioned misuse of authority and power by defendant Sgt. Schamerhorn was egregious and shocking to the conscience. As a direct result, Plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to engage in the physical contact with her person, against her will, and was caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

50. Such deprivations were in violation of the rights secured to the Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

51. As a result of defendant's deprivation of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.
52. That Plaintiff demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION

Violation of 42 USC § 1983: Equal Protection Violations

53. Plaintiff repeats and re-alleges the above enumerated paragraphs as though they were fully stated herein.
54. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." Here, it is alleged that the defendants, and each of them, discriminated in the enforcement of New York State Law that requires investigation and remedy of harassment, assault, and battery against a particular minority by police officers.
55. The defendants Town of Greece, Chief of Police Merritt Rahn, Sgt. Schamerhorn, Officers Visconte and Phillips were acting under the color of state law when they discriminated against the Plaintiff as members of an identifiable class and /or "class of one," and that the discrimination was intentional. Further the law in this area was clearly established at all relevant times stated herein. The defendants failed to enforce the

laws and rules of the state of New York which pertain to harassment, assault, and battery against women and to prevent physical and emotional harm to the Plaintiff, and that they treated the Plaintiff's complaints of harassment differently from other types of harassment for an extend period of time, thus failing to protect the Plaintiff. The actions taken by defendants and each of them constitute deliberate indifference: defendants failed to conduct any investigation into Plaintiff's complaints of Sgt. Schamerhorn's conduct , took no action to locate or arrest harassing members of their community and constitutes deliberate indifference, as does the lack of training afforded to the police officers of the Town of Greece to identify victims of such abuse of power and to properly take action to stop further harm to the Plaintiff.

56. As a direct and proximate result of the acts and omissions of the above named defendants, jointly and severally, Plaintiff has suffered severe emotional distress, including, but not limited to anxiety and mental distress.
57. Plaintiff demands judgment against the defendants in the form of damages in an amount to be determined at trial in compensatory damages.

THIRD CAUSE OF ACTION

DEPRIVATION OF PLAINTIFFS' CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANT TOWN OF GREECE FAILING TO PROPERLY SUPERVISE, TRAIN AND INVESTIGATE THE CONDUCT OF DEFENDANT SGT. SCHAMERHORN

58. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth herein.
59. Defendant Town of Greece was on actual and/or constructive notice of the propensity of defendant Sgt. Schamerhorn to abuse and misuse his power and authority as a police officer employed by defendant Town of Greece.
60. Upon information and belief, defendant Town of Greece was on notice of defendant Sgt. Schamerhorn's propensity to abuse and misuse his power and authority as a police officer employed by defendant Town of Greece, as, upon information and belief, defendant Sgt. Schamerhorn was the subject of a myriad of prior complaints as a result of acts of misconduct, and that the Town of Greece had received 13 prior complaints about his misconduct with women in the Town of Greece Police Department.

61. Upon information and belief, defendant Town of Greece, through its officers, employees or agents, were on notice of Sgt. Schamerhorn's propensity toward improper conduct and to misuse and abuse his power and authority as a police officer of the Town of Greece through other incidents involving defendant Sgt. Schamerhorn of which plaintiffs are not currently aware.
62. Defendant Town of Greece intentionally, knowingly and/or with reckless indifference did disregard and/or failed to investigate the prior incidents involving defendant Sgt. Schamerhorn, or, in the alternative, did investigate such incidents but failed to take such action as was necessary, and therefore acted recklessly and with gross indifference and callous disregard in failing to remedy the situation regarding Sgt. Schamerhorn's misconduct towards women during traffic stops.
63. As a result of defendant Town of Greece's reckless indifference and gross negligence in disregarding and/or failing to properly investigate the prior incidents involving defendant Sgt. Schamerhorn, he was allowed to sexually assault and batter and deprive Plaintiff of her civil rights as a United States citizen.
64. Upon information and belief, defendant Town of Greece intentionally, knowingly or with deliberate indifference failed to properly train or supervise their police officers, thereby allowing defendant Sgt. Schamerhorn to engage in the improper conduct.

65. As a result of defendant Sgt. Schamerhorn's reckless indifference, callous disregard and failure to properly investigate as described above, Plaintiff has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANT TOWN OF GREECE FOR RATIFYING THE CONDUCT OF DEFENDANT SGT. SCHAMERHORN

66. Plaintiffs repeats and realleges each and every paragraph set forth above as if fully set forth herein.
67. In allowing defendant Sgt. Schamerhorn to continue his employment as a Town of Greece Police Officer, subsequent to numerous prior incidents similar to the incidents complained of, and after having been placed on notice, either actual or constructive, of such prior similar incidents while employed by the Town of Greece, defendant Town of Greece ratified defendant Sgt. Schamerhorn's misuse and abuse of his power and authority as a police officer employed by defendant Town of Greece.
68. Upon information and belief, defendant Sgt. Schamerhorn was not disciplined with regard to his excessive use of force upon Elia Visconte, such that he had no qualms whatsoever about using excessive force on Plaintiff in or about the same time period .

69. As a proximate result of defendant Town of Greece's acts and/or omissions set forth above, Plaintiff has sustained severe emotional injuries, pain and suffering and loss of enjoyment of life, and has been damaged in an amount to be determined by a jury .

FIFTH CAUSE OF ACTION

DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANT VILLAGE TOWN OF GREECE FOR THE POLICY, PRACTICE AND CUSTOM OF THAT DEFENDANT IN CONDONING THE ACTS OF DEFENDANT SGT. SCHAMERHORN

70. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth herein.
71. Upon information and belief, defendant Town of Greece knew or should have known that the aforesaid failure to properly train or supervise and/or the aforesaid failure to adopt proper policies, procedures or standards, and/or the failure to properly investigate and reckless disregard or gross indifference would result in the deprivation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments to the United States Constitution and by virtue of 42 U.S.C. § 1983.

72. That as a result of defendant Town of Greece's failure to take remedial action concerning prior abuses of police authority by defendant Sgt. Schamerhorn, and/or defendant Town of Greece's failure to properly investigate prior similar incidents, and/or the reckless disregard or gross indifference by said defendant, the Town of Greece had a policy, practice or custom which encouraged or permitted its police officers to engage in such conduct. That defendant Town of Greece intentionally, knowingly, maliciously and/or recklessly permitted and/or allowed the continuation of such a policy, practice or custom.

73. That as a result of defendant Town of Greece's failure to affirmatively prevent conduct such as that of defendant Sgt. Schamerhorn, defendant Sgt. Schamerhorn was allowed the excessive use of force/sexual assault and violation of the constitutional rights of the Plaintiff as it was an accepted policy, practice and custom of the Town of Greece to condone such conduct, of not only Sgt. Schamerhorn, but other Town of Greece police officers as well

74. That as a result of defendant Town of Greece's failure to affirmatively prevent conduct such as that of defendant Sgt. Schamerhorn, an ongoing patter of abuse against women during routine traffic stops is ongoing.

75. Upon information and belief, as a direct and proximate result of such policies, practice or customs, defendant Town of Greece intentionally, deliberately or with reckless indifference deprived Plaintiff of her constitutional and civil rights.

76. Plaintiff has suffered, presently suffer, and will suffer in the future, severe and extreme emotional distress, loss of enjoyment of life, and damages associated with the deprivation of her constitutional and civil rights.
77. That the aforesaid reckless indifference, callous disregard and/or gross neglect by defendant Town of Greece represents egregious conduct that is shocking to the conscience.
78. As a direct and proximate result of defendant Town of Greece's reckless indifference, callous disregard and/or gross neglect, Plaintiff was caused to undergo severe humiliation and gross indignities resulting from the assault and battery and false imprisonment complained of, and was caused and will continue to undergo and endure severe mental anguish, humiliation, economic hardship and loss of enjoyment of life as a consequence thereof, and has been damaged in an amount to be determined by a Jury.

SIXTH CAUSE OF ACTION

DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANT SGT. SCHAMERHORN INDIVIDUALLY

79. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth herein.

80. In engaging in the conduct described, by sexually assaulting and battering the Plaintiff, defendant Sgt. Schamerhorn deprived her of her civil rights pursuant to 42 U.S.C. § 1983. Further, as a police officer employed by defendant Town of Greece, defendant Sgt. Schamerhorn was acting under the color of State law.
81. That the aforementioned misuse of authority and power by defendant Sgt. Schamerhorn was egregious and shocking to the conscience. As a direct result, Plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to engage in the physical contact as described herein, against her will, and were caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.
82. Such deprivations were in violation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by 42 U.S.C. § 1983.
83. As a result of defendant Sgt. Schamerhorn's deprivation of the Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.
84. That Plaintiff demands costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

SEVENTH CAUSE OF ACTION

DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANT MERRITT RAHN, INDIVIDUALLY

85. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth herein.
86. Defendant Merritt Rahn deprived Plaintiff of her civil rights pursuant to 42 U.S.C. § 1983 by failing to stop defendant Sgt. Schamerhorn from his pattern and practice of using excessive force, subjecting females to sexual assault, and allowing violations of citizen's constitutional rights. As the Chief of Police for defendant Town of Greece's police department, defendant Merritt Rahn was acting under the color of State law when he failed to respond to numerous complaints regarding defendant Sgt. Schamerhorn and allowing him to be hired and maintained on the police force despite the fact, upon information and belief, defendant Sgt. Schamerhorn had a history of improper conduct in his dealings with women on routine traffic stops.
87. That the aforementioned malfeasance and nonfeasance by defendant Merritt Rahn was egregious and shocking to the conscience. As a direct result, the Plaintiff was caused to undergo the humiliation and indignities of being assaulted, and battered, having her constitutional rights violated, and was caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

88. Such deprivations were in violation of the rights secured to the Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

89. As a result of defendant Merritt Rahn's deprivation of the Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION

DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST DEFENDANTS VISCONTE AND PHILLIPS, INDIVIDUALLY

90. Plaintiffs repeat and reallege each and every paragraph set forth above as if fully set forth herein.

91. Defendants Officers Visconte and Phillips deprived Plaintiff of her civil rights pursuant to 42 U.S.C. § 1983 by failing to stop defendant Sgt. Schamerhorn from his use of excessive force against Plaintiff and allowing the violation of her constitutional rights. Further, as police officers employed by defendant Town of Greece, defendants Visconte and Phillips were acting under the color of State law.

92. That the aforementioned misuse of authority and power by defendants Visconte and Phillips was egregious and shocking to the conscience. As a direct result, Plaintiff was caused to undergo the humiliation and indignities of being sexually assaulted against her will, and were caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

93. Such deprivations were in violation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

94. As a result of defendant Visconte and Phillip's deprivation of the Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.

95. That plaintiff demands costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiffs request the following relief:

1. That this Court grant final judgment against defendants, jointly and severally, as and for plaintiff in the sum to be determined to by a Jury for compensatory damages and the sum to be determined by a Jury for punitive damages.
2. That this Court grant final judgment in favor of plaintiffs for all costs and disbursements of this action, together with reasonable attorneys fees pursuant to by 42 U.S.C. § 1988.
3. For an Order declaring that the actions of the defendants complained of herein to be in violation of the Civil Rights Act, 42 U.S.C. §1983;
4. For an Order requiring defendant, their officers, employees, agents, and other persons in the law enforcement field acting in concert or participation with them to implement an affirmative action program and a training program to stop the deprivation of constitutional rights of individuals similarly situated to the Plaintiff;
5. That this Court grant such other and further relief as the Court deems just and proper.

Dated: April 30, 2009
Rochester, New York

Submitted by:

/s/ Christina A. Agola

Christina A. Agola

A handwritten signature in black ink, appearing to read 'CA Agola', is written over a horizontal line. The signature is stylized and cursive.

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