

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

KEVIN LOGAN	]	Case No. 20CV1323
PLAINTIFF	]	
	]	
V.	]	
EVANSTON POLICE DEPARTMENT,	]	
CITY OF EVANSTON, and	]	
EVANSTON POLICE CHIEF	]	
DEMITROUS COOK, IN HIS PERSONAL	]	
AND OFFICIAL CAPACITY.	]	
	]	
DEFENDANTS	]	
	]	

**COMPLAINT FOR RELIEF**

Pursuant to Fed. R. Civ. P. 3 Kevin Logan [Plaintiff] commences this action against Defendant City of Evanston Police Department [Police], Defendant City of Evanston [City], and Defendant Evanston Police Chief Demitrous Cook [Cook], in his personal and official capacity. [Collectively referred to as Defendants]

A. INTRODUCTION

This is an action for deprivation of civil rights under color of law relating to the Defendant Chief of Police Cook posting an electronic document containing the picture, name, dob and address of Plaintiff on Cook’s personal snapshot with a note next it that the Plaintiff was HIV positive to the public whom viewed and shared Cook’s publication on the internet, via text messages, and other social media platforms. The statement of HIV was false in that Plaintiff has never been diagnosed with HIV and was tested for HIV on 2/22/2020 with a negative result.

## B. JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202, 42 U.S.C. § 1983, 28 U.S. Code § 1367, U.S. Const. amend. XIV, and U.S. Const. amend. IV.
2. This Court has personal jurisdiction over each of the Defendants because, inter alia, they acted under the color of laws, policies, customs, and/or practices of the City, Police, and executive discretion and/or within the geographic confines of the State of Illinois.
3. Venue is proper pursuant to 28 U.S.C. § 1391 because the Defendants may be found in this district, and because the events and omissions giving rise to this action all occurred in the County of Cook State of Illinois.

## C. PARTIES

4. Plaintiff Kevin Logan is a natural person residing in the County of Cook.
5. Defendant City of Evanston is a municipality located in the State of Illinois County of Cook.
6. Defendant Evanston Police Department is a law enforcement entity located in the State of Illinois County of Cook.
7. Defendant Demitrous Cook in his official capacity is the Chief of Police of the Evanston Police Department.
8. Defendant Demitrous Cook in his personal capacity is a natural person and upon information and belief, resides in the County of Cook.

## D. CLAIM FOR RELIEF

### COUNT 1: VIOLATION OF 42 U.S.C. § 1983 4<sup>TH</sup> AMENDMENT BY ALL DEFENDANTS

9. In January or February of 2020 Defendant Cook was employed by the Evanston Police Department as its chief of Police.

10. The Evanston Police had the following policies in place in the year 2020 which prohibited:
  - a. Recording media for personal use. (Evanston Police Policy manual 423. 7.)
  - b. Making personal copies of recordings created while on duty or while acting in their official capacity. (Evanston Police Policy manual 423. 7.)
  - c. Retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. (Evanston Police Policy manual 423. 7.)
  - d. Duplicating or distributing such recordings, except for authorized legitimate department business purposes. Evanston Police Policy manual 423. 7.
  - e. Recordings being retained outside the Department.
  - f. Using personally owned recording devices while on-duty
  - g. Using such recording by any member for the purpose of embarrassment, intimidation or ridicule. Evanston Police Policy manual 423. 7.
  - h. The sharing of this information on Social media. See 340.5 PROHIBITED CONTENT
  - i. The release of this information. See 805.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION
  - j. The use of such records. See 423.11 REVIEW OF RECORDED MEDIA FILES
  - k. The use of cellular phones in such fashion. See 701.5 PERSONALLY OWNED PCD and 701.6 USE OF PCD.
11. In January or February of 2020 Cook created and recorded electronic document 1 with a cellular phone.

12. Electronic Document number 1 included the handwritten notations of "HIV" beside the image of Plaintiff, included Plaintiff's address, Plaintiff's name, and other specific identifying information of Plaintiff. See Exhibit 1.
13. Such notations were made by an agent of the City, The Police, and or Cook Himself prior to the creation of electronic document 1 and 2.
14. There was no factual or medical basis or reasons for such notations to be made in that Plaintiff has never been diagnosed with HIV and all prior testing indicated a negative status.
15. The information used to create electronic document 1 was information which belonged to the Evanston Police Department and the City of Evanston and was posted on a wall in the form of paper documents containing writings and information. See Exhibit 2.
16. Persons passing by the area where the information was obtained from were able to view the information and otherwise had access to the information posted on the wall.
17. No steps were taken to secure this information as confidential.
18. The information used to create electronic document 1 was located on the premises belonging to a Police Department, the City of Evanston, and/or the Evanston Police Department.
19. In January or February of 2020 Cook then used Electronic Document 1 to create another electronic document in the form of a snap chat post. (electronic document 2).
20. In January or February of 2020, in the state of Illinois County of Cook, Defendant Cook then published electronic document number 2 to the public using channels of interstate commerce such as his snapchat account and his cellular device. See Exhibit 1.
21. Electronic Document number 2 included the handwritten notations of "HIV" beside the image of Plaintiff. See Exhibit 1.
22. In February of 2020 electronic document number 2 was shared numerous times by the public.

23. In February of 2020 Document number 2 was placed and otherwise saved on the servers of Snapchat, Facebook, and many other electronic databases, including but not limited to, cell phones, personal computers, iClouds, google docs and so forth.
24. Document number 2 will remain forever stored on such third party's servers, not limited to but including, members of Plaintiff's community the public using channels of interstate commerce such as his snapchat account and his cellular device. See Exhibit 2.
25. Cook admitted Electronic document 2 was actually posted publicly on the Snapchat app, where one or more people who knew of his account started distributing them more widely on social media.
26. U.S. Const. amend. IV provides "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
27. The constitutional right to privacy extends to the individual's interest in avoiding disclosure of personal matters.
28. The Plaintiff has a constitutional right to privacy in avoiding disclosure of personal matters.
29. The Defendants violated the Plaintiff's right to privacy in avoiding disclosure of his personal matters by creating the information with handwritten notes containing the name, image, and word HIV next to Defendants Image, publishing it on the wall for any and all persons whom pass by to see, and by republishing the materials to the public.
30. Defendant Cook violated the Plaintiff's right to privacy in avoiding disclosure of his personal matters by creating electronic document 1 and electronic document 2.

31. Defendant Cook violated the Plaintiff's right to privacy in avoiding disclosure of his personal matters by publishing electronic document 1 and electronic document 2 to the public.
32. Defendants violated all of the above-mentioned Evanston Police Policies in paragraph 10.
33. Electronic document number 1 and 2 become publicly known and it adversely affected the reputation of Plaintiff, caused embarrassment to Plaintiff, and Caused Embarrassment to his family unit. See Defendant's Exhibit 3.
34. Plaintiff is not married but is in a relationship with girlfriend and has two young children with her and she is currently pregnant with his third child. Plaintiff has a mother and other family members. Plaintiff also a constitutional right to live together as a family and this right is not limited to the nuclear family or some firm definition.
35. The information was published to the world including the community within which Plaintiff and his family belong to, participate in, and reside in.
36. Plaintiff and his family suffered embarrassment, ridicule, and cyber bullying as a result. See Exhibit 3.
37. When Plaintiff and his Girlfriend learned of this matter, both suffered emotional distress and took steps to take an HIV test.
38. Plaintiff was unable to sleep, was severely emotionally disturbed, anxious, embarrassed, and otherwise suffered severe emotional distress.
39. Plaintiff had to wait for the test results.
40. Plaintiff and his girlfriend both obtained the results of their test on 2/22/2020 and the results of both were negative for HIV/AIDS. See Exhibit 4.
41. The Plaintiff was deprived of his constitutional rights in violation of the Constitution

42. The Defendants intentionally caused this deprivation.
43. The Defendants acted under color of law.
44. The Plaintiff suffered harm, embarrassment, reputational harm, public ridicule, medical costs, and severe emotional distress.
45. The Plaintiff must now incur costs to clear his internet reputation
46. Defendants acted with willful malice.
47. The defendant acted intentionally and in gross disregard of the plaintiff's constitutional rights.
48. The Police and City failed to properly train employees on the use of social media and disclosure and recording of confidential information.
49. This failure amounts to "deliberate indifference" to rights of persons with whom employees come into contact, such as Plaintiff and others.
50. The conduct of high-level officials is implicated in this matter since Cook is the Chief of Police. Defendants acted with willful malice.
51. The Defendants acted intentionally and in gross disregard of the plaintiff's constitutional rights.
52. The Defendants engaged in conscience-shocking, egregious behavior
53. The Plaintiff rights were violated by abusive, irrational or malicious abuse of government power.
54. The conduct committed shocks the conscience by falling substantially below standards generally accepted in police and government community.
55. The City is liable directly or under vicarious liability

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendants finding Defendants liable for violating the Plaintiff's civil rights, requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

COUNT 2: VIOLATION OF 42 U.S.C. § 1983: VIOLATION OF 14<sup>th</sup> AMENDMENT BY ALL DEFENDANTS

56. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-55 of this pleading are adopted by reference and incorporated into this count.
57. U.S. Const. amend. XIV provides "nor shall any State deprive any person of life, liberty, or property, without due process of law"
58. The Plaintiff has a constitutional right to bodily integrity.
59. The Plaintiff has a constitutional right to substantive due process.
60. The Plaintiff has a constitutional right to bodily integrity.
61. The Plaintiff has a constitutional right to privacy in avoiding disclosure of personal matters.
62. The Defendants engaged in conduct that shocks the conscience.
63. The Defendants violated the Plaintiff's right to privacy in avoiding disclosure of his personal matters by creating the information with handwritten notes containing the word HIV next to Defendants Image, publishing it on the wall for any and all persons whom pass by to see, and by publishing, and republishing the materials to the public.
64. Defendant Cook violated the Plaintiff's rights in avoiding disclosure of his personal matters by creating electronic document 1 and electronic document 2.

65. Defendant Cook violated the Plaintiff's right to privacy in avoiding disclosure of his personal matters by publishing electronic document 1 and electronic document 2 to the public.
66. The Plaintiff was deprived of his constitutional rights in violation of the Constitution.
67. The Defendants intentionally caused this deprivation.
68. The Defendants acted under color of law when creating the electronic documents, posting the original posting on the wall, and during the publication of the information to the public.
69. The Plaintiff suffered harm, embarrassment, reputational harm, public ridicule, medical costs, and severe emotional distress.
70. The Plaintiff must now incur costs to clear his internet reputation
71. Defendants acted with willful malice.
72. The Defendants acted intentionally and in gross disregard of the plaintiff's constitutional rights.
73. The Defendants engaged in conscience-shocking, egregious behavior
74. The Plaintiff rights were violated by abusive, irrational or malicious abuse of government power.
75. The conduct committed shocks the conscience by falling substantially below standards generally accepted in police and government community.
76. The City is liable directly or under vicarious liability

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable for violating the Plaintiff's civil rights, requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

COUNT THREE: DEFAMATION PER SE BY ALL DEFENDANTS

77. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-76 of this pleading are adopted by reference and incorporated into this count.
78. Defendants published words that impute Plaintiff is infected with a loathsome communicable disease
79. Statements that impute HIV to a person are defamatory per se under the traditional "loathsome disease" category. *Nolan v. State*, 158 A.D.3d 186, 69 N.Y.S.3d 277 (N.Y. App. Div. 2018).
80. The statement published by Defendants was false. Plaintiff does not have HIV and never had HIV.
81. The publication is not reasonably capable of an innocent construction;
82. The publication is not an expression of opinion
83. The publication is not subject to a privilege.
84. Defendants acted with malice, acted knowingly, or with reckless disregard of the truth in making the false publications, or otherwise negligently in the alternative.
85. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, and other damages to be determined.

86. The City is liable directly or under vicarious liability

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable for Defaming Plaintiff, requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

#### COUNT FOUR: DEFAMATION

87. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-86 of this pleading are adopted by reference and incorporated into this count.

88. Defendants published words that impute Plaintiff is infected with a loathsome communicable disease

89. Statements that impute HIV to a person are defamatory per se under the traditional "loathsome disease" category.

90. The publication is not reasonably capable of an innocent construction;

91. The publication is not an expression of opinion

92. The publication is not subject to a privilege.

93. The publication was not justified.

94. The publication was false, Plaintiff does not have HIV.

95. Defendants acted with malice, acted knowingly, or with reckless disregard of the truth in making the false publications, or otherwise negligently in the alternative.

96. The Defendants acted with malice and bad faith in making the notation of HIV and the publishing such notations

97. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, and other damages to be determined.

98. The City is liable directly or under vicarious liability

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable for Defaming Plaintiff, requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

COUNT FIVE: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

99. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-98 of this pleading are adopted by reference and incorporated into this count.

100. Defendants owed a duty to Plaintiff to keep his personal information confidential and to operate with a standard of care like a reasonable prudent law enforcement agency would.

101. Defendants owed a duty to Plaintiff pursuant to the policy's set forth in the manual for the Police department to not publish or otherwise record his information.

102. Defendant's owed a duty to Plaintiff to handle his information with due care.

103. Plaintiff was a direct victim of a defendant's negligence.

104. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, suffering in the body, and mental suffering.

105. The City is liable directly or under vicarious liability.

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable requiring the Defendants to pay damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

COUNT SIX: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

106. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-105 of this pleading are adopted by reference and incorporated into this count.

107. The Defendants engaged in conduct that was truly extreme and outrageous.

108. The Defendants intended to inflict severe emotional distress or knew that there was a high probability that his actions would cause severe emotional distress.

109. As a result of the defendant's conduct, plaintiff actually suffered severe emotional distress.

110. The distress inflicted is so severe that no reasonable person could be expected to endure it.

111. The Defendants conduct was extreme and outrageous.

112. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, suffering in the body, and mental suffering.

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

COUNT SEVEN: VIOLATION OF ILLINOIS STATE CONSTITUTIONAL RIGHTS TO PRIVACY, DUE PROCESS, AND INDIVIDUAL INTEGRITY

113. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-112 of this pleading are adopted by reference and incorporated into this count.

114. The Plaintiff has a constitutional right under section 2, 6, and 20 of the Illinois State Constitution.

115. The Plaintiff was deprived of the above-mentioned constitutional rights in violation of the State Constitution

116. The Defendants intentionally caused this deprivation.

117. The Defendants acted under color of law.

118. The Plaintiff suffered harm, embarrassment, reputational harm, public ridicule, medical costs, and severe emotional distress.

119. The Plaintiff must now incur costs to clear his internet reputation

120. Defendant's acted with willful malice.

121. The conduct shocks the conscience.

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable requiring the Defendants to pay damages, punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

#### COUNT EIGHT: NEGLIGENCE

122. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-121 of this pleading are adopted by reference and incorporated into this count.

123. Defendants owed a duty to Plaintiff to keep his personal information confidential and to operate with a standard of care like a reasonable prudent law enforcement agency would.

124. Defendants owed a duty to Plaintiff pursuant to the policy's set forth in the manual for the Police department to not publish or otherwise record his information.

125. Defendant's owed a duty to Plaintiff to handle his information with due care.

126. Defendant breached these duties by publishing Plaintiff's information which included a false statement of fact.

127. Defendants breached these duties by improperly posting the information on the wall, recording such information on the phone, and then publishing Plaintiff's information which included a false statement of fact.

128. Defendant city also breached its duty to supervise the Chief of Police or properly train him on the use of social media, recording, and otherwise the handling of records and information.

129. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, suffering in the body, and mental suffering.

130. The City is liable directly or under vicarious liability

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable requiring the Defendants to pay damages, , costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

#### COUNT EIGHT: GROSS NEGLIGENCE

131. Pursuant to Fed. R. Civ. P. 10 (c) the statements made in paragraphs 1-130 of this pleading are adopted by reference and incorporated into this count.

132. Defendants owed a duty to Plaintiff to keep his personal information confidential and to operate with a standard of care like a reasonable prudent law enforcement agency would.

133. Defendants owed a duty to Plaintiff pursuant to the policy's set forth in the manual for the Police department to not publish or otherwise record his information.

134. Defendants owed a duty to Plaintiff to handle his information with due care.

135. Defendants breached these duties by improperly posting the information on the wall, recording such information on the phone, and then publishing Plaintiff's information which included a false statement of fact.

136. Plaintiff suffered damages to his reputation, mental anguish, emotional distress, anxiety, embarrassment, suffering in the body, and mental suffering.

137. The City is liable directly or under vicarious liability.

138. The Defendants acted with a is a conscious and voluntary disregard of the need to use reasonable care, which was likely to and did cause cause foreseeable grave injury or harm to persons, property, or both.

139. The conduct of Defendants is extreme.

WHEREFORE, Plaintiffs prays this honorable court enter an order against the Defendant's finding Defendants liable requiring the Defendants to pay punitive damages, costs, and attorney's fees, in an amount not less than \$1,000,000.00, any other relief the court sees fit.

#### JURY DEMAND

Plaintiff demands a jury of 12 persons on any issue in this complaint triable of right by a jury

/S/ Ilia Usharovich  
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