

**UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF GEORGIA
ATLANTA DIVISION**

ERYK RADICAL,)

Plaintiff,)

v.)

ATLANTA POLICE)

DEPARTMENT;)

FULTON COUNTY SHERIFF’S)

OFFICE; MARTA POLICE)

DEPARTMENT; OFFICER D.)

FAMBRO;)

OFFICER J. PETTAWAY;)

OFFICER T. EDWARDS;)

LIEUTENANT #4822; AND)

JOHN DOE POLICE OFFICERS 1)

THROUGH 25.)

Defendants.)

CIVIL ACTION NO.: _____

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff Eryk Radical (“Plaintiff”), formerly known as Eryk McDaniel, Jr., by and through his attorneys, brings this action for damages and other legal and equitable relief from Defendants the Atlanta Police Department (“APD”), the Fulton County Sheriff’s Office, the MARTA Police Department, Officer D. Fambro, Officer J. Pettaway, Officer T. Edwards, Lieutenant #4822 and John Does 1 through 25 (collectively “Defendants”), for violations of the U.S. Constitution Amendment IV, 42 U.S.C.A. § 1983, the Constitution of the State of Georgia, and Georgia state

law, specifically Georgia Code § 51–7–1, *et seq*, and Georgia Code § 51–7–20, *et seq*. as hereinafter more fully appears, and any other cause(s) of action that can be inferred from the facts set forth herein.

INTRODUCTION

2. This is an action brought by Eryk Radical seeking to recover for acts of excessive force, unlawful detentions, arrests and harassment committed by the Defendants, each of whom is a member of the Fulton County law enforcement community. Mr. Radical’s difficulties are ongoing; therefore, this lawsuit is also being filed as a means of ending his harassment by police officers.

3. Mr. Radical is a trombonist who performs in and around the Atlanta area. As a music student at Georgia State University, who is legally blind, performing is his main source of income. Sometimes he is hired to give private performances, and sometimes he plays in public. In Atlanta and its surrounding counties, street musicians are explicitly allowed to perform in public under local municipal and county codes. However, in the five years that he has been performing, Mr. Radical has frequently been harassed by members of the Fulton County law enforcement community—both while playing in public and even when hired to give private performances.

4. As a result of Defendant's unlawful actions, Plaintiff is entitled to recover for damages pursuant to: violations of his rights under the United States Constitution, including protections against unreasonable searches and seizures under the Fourth Amendment; deprivation of rights under 42 U.S.C.A. § 1983; unlawful police policies or customs that gave officers carte blanche to routinely unlawfully detain, arrest and harass Mr. Radical under 42 U.S.C.A. § 1983; failure on the part of police agencies to train police officers on the laws permitting Mr. Radical to provide entertainment in public under 42 U.S.C.A. § 1983; protection against malicious treatment by police officers under Article One Section Two Paragraph Nine of the Constitution of the State of Georgia; false arrest under Georgia Code § 51-7-1, *et seq.*; and false imprisonment under Georgia Code § 51-7-20, *et seq.*

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; and (iii) 42 U.S.C.A. § 1983.

6. The Court's supplemental jurisdiction is invoked by 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

PARTIES

8. Eryk Radical is a person who has been, and continues to be, unlawfully detained, arrested and harassed by Defendants, all of whom are members of various law enforcement communities located in Fulton County. He is and has been, at all relevant times, a citizen of the United States of America and is a resident of Fulton County, Georgia.

9. The Atlanta Police Department is located within the State of Georgia and within the Northern District of Georgia.

10. The Fulton County Sheriff's Office is located within the State of Georgia and within the Northern District of Georgia.

11. The MARTA Police Department is located within the State of Georgia and within the Northern District of Georgia.

12. Officer D. Fambro, Officer J. Pettaway, Officer T. Edwards, Lieutenant #4822 and John Does 1 through 25 were each, at all times pertinent to this complaint, employed by the Atlanta Police Department or another law enforcement agency as certified peace officers working in Fulton County, Georgia and acting under color of state law.

STATEMENT OF FACTS

13. Eryk Radical is a musician who performs in and around the Atlanta area. As a music student at Georgia State University, who is also legally blind, performing is his main source of income. Sometimes he is hired to give private performances, and sometimes he plays in public.

14. In 2013, Mr. Radical was arrested by APD for playing his trombone outside of Turner Field after a Braves game. In response to Atlanta local press coverage of Mr. Radical's unreasonable arrest, Atlanta City Council members changed the city's panhandling ordinance to more explicitly allow street musicians to perform in public. Several surrounding cities and counties have adopted similar provisions in their municipal and county codes.

15. However, in the five years that he has been performing, Mr. Radical has frequently been harassed by the police—both while playing in public and even when hired to give private performances. Mr. Radical has also been unlawfully

detained and arrested on several occasions—both while playing in public and even when hired to give private performances. Most of the peace officers who unlawfully detained, arrested and harassed Mr. Radical refused to provide their names, badge numbers or other means of identifying them. Major C. Murphy of APD acknowledged investigating two of its officers in connection with the facts giving rise to this lawsuit: Officer D. Fambro and Officer J. Pettaway. However, APD has failed to identify other involved officers; therefore, at this time, Mr. Radical must refer to the additional officers who harmed him as “John Does” and, based on their uniforms, as APD officers, Fulton County Sheriff deputies, and MARTA Police Department officers.

16. On November 18, 2017, Mr. Radical was invited to perform in the central lobby area of the Georgia World Congress Center (“GWCC”) during a conference organized for the National Council of Teachers of English. The teachers invited him to play during a specific time slot and in a specific location for the event. After playing for thirty minutes during his assigned time, and in his assigned space, approximately seven police officers (John Does 1 to 7) approached Mr. Radical and questioned him about having permission to perform. The officers asked him to show them a permit. When Mr. Radical offered to show them the invitation the teachers emailed him that invited him to perform at the event, the officer agreed. As Mr.

Radical was locating the email, however, an additional officer (John Doe 8) interrupted the exchange, claiming that he knew Mr. Radical and had arrested him several times at a park, which was not true. This new officer pushed past the other officers, grabbed Mr. Radical, and forcibly removed him from the area where the teachers had invited him to entertain guests.

17. Throughout this encounter, officers described Mr. Radical solely as “black man” and “black male” while communicating with each other in person and over their radios. Additionally, choosing not to refer to Mr. Radical by his name made it difficult for the event organizers to become aware of what was happening, locate Mr. Radical, and inform the police that he was their guest. While the teachers were looking on, the officers took Mr. Radical’s trombone away from him so aggressively that they damaged it. The officers arrested Mr. Radical and placed him in a holding area in the basement of the GWCC. About thirty minutes after Mr. Radical was detained, the conference director told the police that the teachers hired Mr. Radical to perform at the conference. The police reluctantly released Mr. Radical while berating him for being “disobedient.”

18. Mr. Radical had another encounter with the police on Monday, January 15, 2018, while playing in a location that he often frequents. About five officers (John Does 9 to 13) approached Mr. Radical and started looking through his bag.

They asked him how much money he had made and what he was going to do with it. One officer looked in his case and said, “You don’t deserve all that money.” Plaintiff responded politely and the officers walked away.

19. Later, Mr. Radical and his brother went to cross the street and one of the same officers was directing traffic. The officer told Mr. Radical and his brother to wait until the light changed. The light changed and the cars stopped moving, so Mr. Radical stepped off the curb. The officer yelled at Mr. Radical, “Didn’t I tell you to stop?” The officer charged at Mr. Radical, grabbed him and said, “You’re disobeying me.” He told Mr. Radical that he could take him to jail as he pushed Mr. Radical to the ground. At that point, three other officers (John Does 14 to 16) came over and told Mr. Radical not to say anything and said that they would take care of the officer. Then, they handcuffed Mr. Radical, escorted him to a police car and took him to jail. Mr. Radical was detained for five to six hours and charged with failure to obey a traffic officer and physically obstructing an officer. The charges were dismissed on February 20, 2018.

20. Two days after this incident, on January 17, 2018, Mr. Radical was playing for about five minutes outside of State Farm Arena (f/k/a Philips Arena) when an officer grabbed his arm and told him, “Stop fucking up. I wasn’t going to

let you sit in jail, but next time I will, so stop fucking up.” Mr. Radical assumed that this threat was referring to the incident on January 15, 2018.

21. On January 27, 2018, two police officers (John Does 17-18) approached Mr. Radical, told him to move and told people to stop tipping him. Mr. Radical told the officers that he was on public property and could lawfully play there. The officers prevented people from tipping Mr. Radical, but left after some time.

22. On February 19, 2018, Plaintiff had been playing for fifteen minutes when a uniformed APD Officer (John Doe 19) approached him aggressively and demanded that he move against the wall. Mr. Radical asked why he had to move. The officer responded that Mr. Radical was being “funny and disobedient” and he would be happy to take him to jail.

23. On February 20, 2018, four uniformed APD Officers (John Does 20-23) approached Mr. Radical while he was performing in a public location and told him to move. They told him he was in violation of the noise ordinance. Mr. Radical responded that he was familiar with the ordinance, but that he was not playing loudly enough to be in violation of it. The officers told Mr. Radical that if he continued playing, he would be arrested. Three of the officers left, but one stayed behind and started questioning him. The officer asked why he would not just walk away. Mr. Radical responded that he was not breaking any laws.

24. On October 30, 2018, Mr. Radical was performing near State Farm Arena. An APD officer, Officer T. Edwards, approached Mr. Radical and demanded that he move to another corner. Mr. Radical asked why he needed to move and Officer T. Edwards told Mr. Radical that he was trespassing. Mr. Radical responded that he was on public property and he was legally allowed to perform there. Officer T. Edwards left, but returned five minutes later. Officer T. Edwards aggressively handcuffed Mr. Radical and took him inside the arena to a holding room. Another officer (John Doe 24) and a lieutenant (Lieutenant #4822) came to the holding room and presented Mr. Radical with a trespass warning. The officers threatened to arrest Mr. Radical if he refused to sign the warning. Mr. Radical asked why he was being asked to sign the warning. The officers responded that Mr. Radical had been playing too loudly and blocking pedestrian traffic. Mr. Radical asked why he was being told he would be arrested for “trespassing” if the officers were concerned about the sound or about impeding traffic. Mr. Radical explained that he knew and understood the law and that he had been playing in and around the Atlanta area for over five years.

25. The officers released Mr. Radical; however, once he left the holding room the officers handcuffed him again and took him back into holding. The officers transferred Mr. Radical to the CNN Center and then to the Atlanta Detention Center. The officers told Mr. Radical that he was being charged with criminal trespassing.

While Mr. Radical was in holding, officers dropped his trombone repeatedly. Mr. Radical became aware of this when Officer T. Edwards approached him and asked him to break down his trombone. After Mr. Radical broke it down, the instrument was taken away from him.

26. The next day, Mr. Radical went to retrieve his instrument, but was told that the APD did not have it. After hours of waiting, APD finally produced the trombone, telling Mr. Radical that they forgot to log it. APD badly damaged Mr. Radical's trombone.

27. On February 3, 2019, Mr. Radical was performing near State Farm Arena. As he was setting up, a police officer (John Doe 25) told him that he would "take him to jail" if he didn't move. Mr. Radical explained that local city ordinances allowed him to play. The police officer aggressively handcuffed Mr. Radical, detained him for two hours, and gave him a ticket for "vending" without a license.

28. Mr. Radical's harassment by police officers is ongoing. He has encountered some police officers more than once. They continue to detain, arrest and harass him for performing in public despite the fact that it is lawful to do so.

29. On or around May 30, 2019, Mr. Radical received a letter from the APD's Office of Professional Standards, stating that Mr. Radical's allegation of misconduct had been investigated and "[t]he investigation did develop sufficient

information to prove the allegation stated in [his] complaint. Therefore, appropriate corrective actions have been taken against this officer and this file is closed.”

30. APD’s Office of Professional Standards concluded that Officer Pettaway and Officer Fambro violated Work Rule 4.2.33, Conformance to Directives.

31. As a result of Defendants’ actions, Mr. Radical experienced severe emotional distress. For example, Mr. Radical has experienced trouble sleeping, recurrent nightmares, stress, anxiety, and weight loss. Mr. Radical has also spoken to ministers about his emotional distress.

CAUSES OF ACTION

COUNT I

Civil Action For Deprivation of Rights, 42 U.S.C.A. § 1983 (Unlawful Arrest)

32. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

33. The conduct alleged herein deprived Mr. Radical of rights and privileges secured and protected by the United States Constitution and the laws of the United States, namely the Fourth Amendment right to be free from unreasonable searches and seizures, freedom from a deprivation of life and liberty without due process of law, and freedom from summary punishment.

34. Defendants subjected Mr. Radical to such deprivations by acting with malice or with actual intent to cause injury in the performance of their official functions.

35. Plaintiff's requests for relief are set forth below.

COUNT II
Civil Action For Deprivation of Rights, 42 U.S.C.A. § 1983
(Excessive Force)

36. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

37. The conduct alleged herein deprived Mr. Radical of rights and privileges secured and protected by the United States Constitution and the laws of the United States, namely the Fourth Amendment right to be free from excessive use of force against his person during the course of an arrest.

38. Defendants subjected Mr. Radical to such deprivations by acting with malice or with actual intent to cause injury in the performance of their official functions.

39. In the course of using excessive force to arrest and harass Mr. Radical, Defendants caused significant, irreversible damage to Mr. Radical's trombone, a 40-year-old family heirloom that Eryk inherited from his father.

40. Plaintiff's requests for relief are set forth below.

COUNT III
Civil Action For Deprivation of Rights, 42 U.S.C.A. § 1983
(Official Policy or Custom)

41. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

42. The APD, the Fulton County Sheriff's Office, and the MARTA Police Department are liable under 42 U.S.C.A. § 1983 because the deprivation of Mr. Radical's constitutional rights was inflicted pursuant to their official policies or customs. Such policies or customs were a direct cause-in-fact of the deprivation of Mr. Radical's constitutional rights. The policies or customs were the proximate cause of the injuries sustained. The policies or customs reflect a deliberate indifference to the risk that a violation of a particular constitutional or statutory right will result from following the policies or customs. These allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

43. The APD, the Fulton County Sheriff's Office, and the MARTA Police Department subjected Mr. Radical to such deprivations by acting with malice or with actual intent to cause injury in the performance of their official functions.

44. Plaintiff's requests for relief are set forth below.

COUNT IV
Civil Action For Deprivation of Rights, 42 U.S.C.A. § 1983
(Inadequate Training)

45. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

46. The APD, the Fulton County Sheriff's Office, and the MARTA Police Department are also liable under 42 U.S.C.A. § 1983 because (1) their training procedures relating to arrests and local laws that permit artists, like Mr. Radical, to perform in public places, are inadequate; (2) the APD, the Fulton County Sheriff's Office, and the MARTA Police Department were deliberately indifferent to the constitutional rights of the public in adopting the training policies; and (3) the inadequate training has directly caused Mr. Radical's damages—he has been unlawfully arrested and continually harassed by Defendants. These allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

47. The APD, the Fulton County Sheriff's Office, and the MARTA Police Department refusal to properly train police officers was made with malice or with actual intent to cause injury in the performance of their official functions.

48. Plaintiff's requests for relief are set forth below.

COUNT V
False Arrest, Ga. Code § 51-7-1, *et seq.*

49. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

50. The conduct alleged herein violates the laws of the state of Georgia, specifically Georgia Code § 51-7-1 because under process of law Defendants arrested Mr. Radical without probable cause; furthermore, Defendants acted with malice or with actual intent to cause injury in the performance of their official functions.

51. Plaintiff's requests for relief are set forth below.

COUNT VI
False Imprisonment, Ga. Code § 51-7-20, *et seq.*

52. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

53. The conduct alleged herein violates the laws of the state of Georgia, specifically Georgia Code § 51-7-20 because Defendants unlawfully detained Mr. Radical and deprived him of his personal liberty.

54. Plaintiff's requests for relief are set forth below.

COUNT VII
Negligent Hiring, Retention, and Supervision

55. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

56. Defendants had a duty to protect Mr. Radical from harm resulting from their employment of officers that committed unlawful acts against Mr. Radical. Defendants breached that duty by hiring, retaining, failing to train, supervise, or discipline these officers. The conduct of Defendants proximately caused Mr. Radical significant damages.

57. Plaintiff's requests for relief are set forth below.

COUNT VIII
Intentional Infliction of Emotional Distress

58. Mr. Radical repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

59. Defendants' conduct was intentional or reckless, extreme, and outrageous. As a result of Defendants' actions, Mr. Radical experienced severe emotional distress.

60. Plaintiff's requests for relief are set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. Trial by jury as to all issues so triable;
- b. That the practices of the Defendants complained of herein be determined and adjudged to be in violation of the rights of the Plaintiff under U.S. Const. Amend. IV, 42 U.S.C.A. § 1983, Ga. Code § 51-7-1, et seq, and Ga. Code § 51-7-20, et seq.;
- c. All damages which Plaintiff has sustained as a result of Defendants' conduct;
- d. That Plaintiff be awarded pre and post judgment interest;
- e. Exemplary and punitive damages in an amount commensurate with Defendants' ability and so as to deter future malicious, oppressive, and/or malicious conduct;
- f. Pursuant to 42 U.S.C.A. § 1988, Plaintiff requests that this court award Plaintiff reasonable and necessary attorneys' fees and expenses which Plaintiff has incurred and will continue to incur during all trial and appellate court proceedings.
- g. That the Court retain jurisdiction over Defendants until such time as it is satisfied that Defendants have remedied the practices complained of and are determined to be in full compliance with the law;
- h. Granting Plaintiff other and further relief as this Court finds necessary and proper.

i. Plaintiff further demands that he be awarded such other and further legal and equitable relief as may be found appropriate and as the Court may deem just or equitable.

Dated: October 9, 2019

Respectfully submitted,

/s/ Beth A. Moeller

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