

58 20

FILED 08 SEP '11 12:54 USDC-ORP

Leonard R. Berman
4711 SW Huber St., Suite E-3
Portland, OR 97219
(503) 473-8787
OSB # 96040
Easyrabbi@yahoo.com

ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DANNY HOLCOMBE, JON
HOLCOMBE, JANE MCWILLIAMS,

Plaintiffs,

v.

BENTON COUNTY,
CITY OF PHILOMATH,
DEP. AARON GEVATOSKY, Personally,
DEP. JAMES HARDISON, Personally,
DEP. D. IVERSON, Personally,
DEP. ED NOWAK, Personally,
OFCR. M. MOSER, Personally,
OFCR. JOHN DOE, Personally,

Defendants.

Case No **CV '11 1079 ST**

COMPLAINT

(Fourth Amendment
Violations, 42 USC Sec. 1983,
Negligence, Battery, Malicious
Prosecution)

JURY TRIAL DEMANDED

42580

I. INTRODUCTION

1. This is an action brought to redress the deprivation by Defendants of rights secured to the Plaintiffs Danny Holcombe , Jon Holcombe and Jane McWilliams.
2. Plaintiffs seek awards of economic damages, non-economic damages, and attorney fees and litigation expenses/costs against Defendants.
3. Plaintiffs also seek an award of punitive damages against individual Defendants.

II. JURISDICTION

4. This Court has jurisdiction over Plaintiff's claims by virtue of 28 USC §§1331, 1343, and 1367.

III. PARTIES

5. At all material times herein, Plaintiffs were residents of Benton County in the State of Oregon.
6. At all material times herein, Defendants were Benton County and City of Philomath employees acting within the course and scope of their employment and they are sued in their individual capacities as well. Deputies Aaron Gevatosky, Ed Nowak, James Hardison, D. Iverson are employees of Benton County. Officers John Doe and M. Moser are employees of City of Philomath.
7. At all material times herein, Defendant City of Philomath ("City") and Benton County were public bodies responsible under state law for the acts and omissions of its law enforcement officers and other employees, including those whose conduct is at issue

herein.

IV. FACTS

8. As applicable, Plaintiffs incorporate the above.

9. At all times material herein, Defendant officers acted under color of state law.

10. On or about September 12, 2009, Benton deputies visited the Holcombe residence at 24577 Ervin Rd. in Philomath due to a noise disturbance. Deputies found Danny Holcombe and Jane McWilliams naked in their hot tub. They compelled them to exit the hot tub and invaded their privacy watching them leave naked. Benton officers pointed tasers at Mr. Danny Holcombe and Jane McWilliams while they were naked in their hot tub. Deputies also pointed a weapon at the unarmed 20 –year-old son Jon Holcombe. Deputy Gavatosky and Officer Doe wrongfully detained, arrested and charged Jane McWilliams, who never committed any crime and was trying to hold her robe closed. In the course of arrest, they exposed her nakedness and laughed about it, expounding how that is how they do it in Philomath. She spent a night in a filthy jail cell, subjected to verbal abuse. All charges were dropped. Jon Holcombe sustained no charges. Deputy A Hardison tasered a half naked unarmed Danny Holcombe, with hands in his pockets, and dropped him to the ground, kicking his knee out from under him, hit him in the head with a solid object, resulting in bleeding, resulting in facial lacerations and skull a laceration and an aggravation of his former work-related injuries to his shoulders, right hand, left wrist ,back and neck . Danny Holcomb sustained Taser wounds to the chest and torso. He later treated at the hospital for left wrist subluxation, right shoulder and arm radial nerve damage, issues his right hand and thumb were crushed in the fall.

11. As a direct result of the above conduct by Defendants, plaintiffs have suffered pain and suffering, and endured emotional distress, embarrassment, and social ostracism.

12. Deputies and officers acted with a conscious disregard for plaintiffs' constitutional rights.

13. In addition, deputies and officer's conduct was wanton, reckless and in disregard for Plaintiffs well-established constitutional rights.

14. Plaintiffs sent a timely Notice of Tort Claim.

V. FIRST CLAIM FOR RELIEF

(§1983 – 4th Amendment Violation)

15. This claim applies to all plaintiffs.

16. As applicable, Plaintiffs incorporates the above.

17. As described above, officers/deputies violated Plaintiffs' right not to be subjected to excessive force, as guaranteed by the 4th Amendment of the United States Constitution.

Jane McWilliams also suffered wrongful search and seizure.

18. As a result of the above, Plaintiffs are entitled to an award of economic and noneconomic damages against the individual Defendants in amounts to be determined at trial.

19. As a result of the above, Plaintiffs are entitled to an award of punitive damages against the individual officers in an amount to be determined at trial.

20. Plaintiffs should be awarded their attorney fees and litigation expenses/costs against Defendants pursuant to 42 USC §1988.

VI. SECOND CLAIM FOR RELIEF

(State Law Claim – Negligence)

21. As applicable, Plaintiffs incorporate the above.

22. The City was negligent in one or more of the following particulars:

(a) Failing to hire, train and supervise employees regarding taser use and non-use;

(b) Failing to hire, train and supervise employees regarding arrests and probable cause;

(c) Failing to administer timely and appropriate hire, train and supervise employees regarding apprehending and handcuffing safely;

(d) Failing to hire, train and supervise employees regarding restraining citizens safely, without causing injuries.

23. As a direct result of the negligence of the City and County, and as a substantial factor and legal cause thereof, plaintiffs suffered economic and noneconomic damages against the City and county in amounts to be determined at trial.

24. Plaintiffs should be awarded their costs against the City.

VIII. THIRD CLAIM FOR RELIEF

(State Law Claim – Battery)

25. As applicable, Plaintiffs incorporate the above.

26. The County employees battered plaintiff Danny Holcombe when its employees caused injury to his face, hands, arms, shoulders, and chest.

27. As a direct result of the tortuous conduct of the employees of the County and City as a substantial factor and legal cause thereof, Plaintiffs have suffered economic and noneconomic damages in amounts to be determined at trial. Danny Holcomb suffered at least \$287.50 in medical bills.

28. Plaintiffs should be awarded their costs against the County.

VII. FOURTH CLAIM FOR RELIEF

(State Law Claim- Malicious Prosecution)

29. As applicable, Plaintiffs incorporate the above.

30. The county committed malicious prosecution of Jane McWilliams when:

- (1) They commenced prosecution against the plaintiff;
- (2) The termination of the proceeding was in the plaintiff's favor;
- (3) There was an absence of probable cause to prosecute the action;
- (4) Plaintiff suffered damages.

DEMAND FOR PUNITIVE DAMAGES

31. The actions of the Individual Defendants detailed herein are outrageous, in that they involved tasing a half-naked man in the chest and rough handcuffing procedure, and wrongful arrest and prosecution of Jane McWilliams and pointing weapons at all three unarmed citizens..

32. It is clear that the Policy Making Defendant, the City and the County Departments and all other named defendant counties have no respect for the civil rights of individual citizens or for the rule of law. Consequently, an award of punitive damages is necessary to punish the Policy Making Defendants, and to send a message to them that the requirements of the United States Constitution also apply to government officials everywhere..

DEMAND FOR TRIAL BY JURY

33. The Plaintiffs hereby demand trial by jury.

PRAYER FOR RELIEF

A. WHEREFORE, Plaintiffs request that this Honorable Court grants them the following relief:

B. A judgment against all Defendants, jointly and severally on Plaintiffs' First Cause of Action detailed herein, awarding Compensatory Damages to in an amount to be determined by a Jury and/or the Court on both an individual and a class wide basis.

C. A judgment against each individual Defendant on Plaintiffs' First Cause of Action for punitive damages for each.

D. A declaratory judgment against all Defendants declaring the aforementioned City and City Departments' policies, practices and customs of and/ or ratifying such practices as in that they involved tasing a half-naked man in the chest and rough handcuffing procedure, pointing weapons at unarmed civilians, and wrongful arrest of a half-naked woman.

E. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23

DATED this 8th day of September, 2011.

Respectfully submitted by:


Leonard R. Berman, OSB # 96040
ATTORNEY FOR PLAINTIFFS