

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

HOUSTON DIVISION

TAMMY K. COOPER,
Plaintiff

vs.

**CITY OF LA PORTE POLICE DEPARTMENT,
ONE UNKNOWN OFFICER OF CITY OF LA
PORTE POLICE DEPARTMENT, and
SHELLEY FULLER**
Defendants

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C.A. NO. 4: 12-cv-2651

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Tammy K. Cooper, hereinafter referred to as Cooper, complaining of City of La Porte Police Department, One Unknown Officer of City of La Porte Police Department, hereinafter referred to as “Unknown Officer,” and Shelley Fuller, Defendants, and for cause of action would respectfully show unto the Court the following:

I. NATURE OF SUIT

1. This is an action brought pursuant to 42 USC §1983 for violations of constitutional rights secured by the Fifth and Fourteenth Amendments to the Constitution, namely violations of Cooper’s right to be free from unreasonable search or seizure without due process of law. Also included with this suit is a state law claim of defamation against Defendant Shelley Fuller.

2. Jurisdiction of this Court is invoked pursuant to 28 USC §§1331 and 1343. In addition, to the extent that this suit raises claims arising under the laws of the State of Texas, this

Court may exercise its pendent jurisdiction over such claims. The unlawful and defamatory acts were committed within the territorial jurisdiction of this Court.

II. PARTIES

3. Plaintiff in this action is Tammy K. Cooper, who is a citizen of the United States and resident of the City of La Porte, Harris County, Texas.

4. Defendant City of La Porte Police Department may be served with process through its Chief of Police, Kenith Adcox, at 3001 North 23rd St., La Porte, Texas 77571.

5. Defendant One Unknown Officer of City of La Porte Police Department may be served at his place of employment at 3001 North 23rd St., La Porte, Texas 77571. Plaintiff anticipates that she will learn the identity of this Defendant through discovery, and will amend this Complaint accordingly.

6. Defendant Shelley Fuller, an individual, is a resident of the City of La Porte, Harris County, Texas, and may be served with process at 10930 Thornwood Dr., La Porte, Texas 77571.

III. FACTS

7. On July 11, 2011, Ms. Cooper was arrested by Defendant Unknown Officer of the La Porte Police Department at her home, located at [REDACTED], ostensibly for the felony offenses of child endangerment and child abandonment. Cooper and her family live on a quiet, suburban cul de sac. She often allows her 6 and 9 year old children to ride their scooters on the street while she watches from a chair in the driveway or through the large windows on the front of her house.

8. On the day of her arrest, Cooper's children were playing on their scooters in the cul de sac when her neighbor, Defendant Shelley Fuller, called the City of La Porte Police Department to report that Cooper had "abandoned" her children. This resulted in a police officer

coming to Cooper's home to investigate, the officer being Defendant Unknown Officer. After a discussion with Cooper, during which Cooper told Unknown Officer she had been home the entire time, Unknown Officer went across the street to talk with Defendant Fuller. At was at this point that Fuller reported, for the first time, that she had struck one of Cooper's children with her vehicle as they played in the street. Unknown Officer returned to Cooper's home, and after another conversation with Unknown Officer, Cooper was placed under arrest for the felony offenses of child endangerment and child abandonment.

9. Never at any point were any of Cooper's children hit by a car as they played in the street. Moreover, Cooper was observing her children the entire time they were outside on the date of her arrest and thus could not plausibly have abandoned them. Despite the fact that Fuller alleged she had hit one of the children with her vehicle, no medical response was called for or needed as it was obvious that neither child had been hit by a car or was hurt in any way. Interestingly, Fuller was never confronted about her lie regarding striking the child with the car. Instead, Cooper, the victim of an angry neighbor, was arrested and charged with a crime in a public and embarrassing manner.

10. Cooper's children witnessed the arrest and pleaded with the officer that she had done nothing wrong and to not take her to jail. This traumatic experience for her children was made worse by the fact that their father, Cooper's husband, was in Austin on military duty and not at home at the time. Cooper agreed to cooperate with Unknown Officer and asked Unknown Officer if he could cuff her hands in the front, as she has a history of neck, back, and shoulder problems and her arms cannot be place behind her back without extreme pain. Unknown Officer ignored her request, and handcuffed her hands incredibly tightly behind her back, so tight in fact that the handcuffs cut into the skin on her wrists.

11. The injuries to Cooper's wrists were mild when compared to the pain she endured as she rode to the police station with her hands behind her back. Cooper requested several times on the ride to the police station that Unknown Officer pull over and move the handcuffs to her front, or at a minimum loosen them to decrease her pain. Cooper's requests were ignored. Cooper's neck, back, and shoulder problems which had become manageable before the arrest are now re-aggravated and she may need back surgery in the near future.

12. Cooper spent 18 hours in custody. Cooper spent over \$7,000 in court and legal fees before the unsubstantiated felony charges against her were dismissed. The incident also led to an investigation by Child Protective Services, requiring Cooper to take her children to the CPS office in Houston. Her children were separated from her and interrogated by child abuse investigators. CPS found no cause for concern regarding the well being of Cooper's children and dropped the investigation.

13. Defendant Unknown Officer was acting in the course and scope of his employment with the City of La Porte Police Department at all times relevant to the subject matter of this suit.

IV. CAUSES OF ACTION

False Arrest

14. Cooper asserts a claim for damages under 42 U.S.C. §1983 against Defendants Unknown Officer and City of La Porte Police Department because Defendants, acting under color of state law subjected her to unlawful and false arrest in violation of her rights protected by the Fifth and Fourteenth Amendments to the Constitution. A false arrest claim requires a showing that the Plaintiff was arrested without probable cause and that no reasonable officer would have believed an arrest was warranted. The standard for endangering a child requires a

showing that the actor engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment. Given the circumstances, no reasonable officer could believe that Cooper had abandoned or endangered her children.

Defamation

15. Cooper asserts a state law claim for defamation against Defendant Shelley Fuller. The law of defamation embodies the public policy that an individual should be free to enjoy his or her reputation unimpaired by false and defamatory attacks, and an action for slander is based on a violation of this right.

16. Under Texas law, defamation involves:

- a false statement
- about a person
- communicated to third party
- that damages the person's reputation, or
- exposes her to public hatred, contempt, ridicule, or financial injury.

Defendant Fuller intentionally defamed Cooper when she falsely claimed to the police that she had struck one of Cooper's children with her vehicle, and that Cooper had abandoned and endangered her children. Fuller's defamatory statements ultimately led to Cooper being arrested and charged with two felonies. The defamatory statements damaged Cooper's reputation and exposed her to contempt, ridicule, and financial injury.

V. DAMAGES

17. As a result of Defendants' conduct and actions, Cooper has incurred or will incur the following damages:

- a) Reasonable and necessary legal expenses;

- b) emotional pain and suffering and distress in the past and future;
- c) physical pain and suffering and distress in the past and future and likely medical expenses in the future; and
- d) damage to reputation and financial injury.

18. If warranted to by the evidence at trial, Cooper reserves the right to assert punitive damages against Fuller, Unknown Officer, or both, as permitted by law.

VI. ATTORNEYS FEES

19. Pursuant to 42 U.S.C. §1988, Cooper is entitled to recovery of reasonable attorneys' fees, at the discretion of the Court, should she prevail in this action. Cooper respectfully prays for an award of attorneys' fees pursuant to 42 U.S.C. §1988.

VII. JURY DEMAND

20. Plaintiff requests trial by jury and submits the appropriate fee with this Complaint.

PRAYER

WHEREFORE, Plaintiff Tammy K. Cooper respectfully prays that Defendants be cited to appear and answer herein, and that upon final trial hereof, the Court award Plaintiff the following damages: actual damages; damages for emotional distress in the past and future; damages for pain and suffering in the past and future; exemplary damages as allowed by law; costs and reasonable attorneys' fees'; and all other relief which the Court deems just and proper.

Respectfully submitted,

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/s/ Ryan W. Gertz

By: _____

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Attorneys for Plaintiff Tammy K. Cooper