

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGEIA MORENO,)
GEORGIA MORENO on behalf of her minor)
son, TRENTINO MORENO, and her minor)
daughter, BRISEIS MORENO, DARLENE)
STAYMATES, and MARK STAYMATES,)

C. A. No. 12-615

Plaintiffs)

v.)

Jury Trial Demanded

CITY OF PITTSBURGH, CHIEF OF POLICE)
NATHAN HARPER, OFFICER MICHAEL)
REDDY, OFFICER BRIAN NICHOLAS,)
OFFICER WILLIAM FRIBURGER, OFFICER)
DOUGLAS EPLER, OFFICER DONALD P.)
GORHAM, OFFICER JOSEPH NOVAKOWSKI,)
OFFICER LISA KOLARAC, OFFICER GLENN)
HAIRSTON, OFFICER NEAL)
MARABELLO, LIEUTENANT JOSEPH TERSAK,)
OFFICER NATHANIEL)
BURTT, OFFICER ERIK ENGLEHARDT,)
OFFICER WADE SARVER, OFFICER CARL)
MOROSETTI)

Defendants.)

SECOND AMENDED COMPLAINT IN CIVIL ACTION

INTRODUCTION

1. This complaint alleges that the civil rights of plaintiffs, Georgeia Moreno and her family, were violated when approximately eleven (11) City of Pittsburgh Police Officers, wearing full "swat gear," violently and without notice, broke into the sanctity of their home, terrorized them at gun point and wantonly and willfully destroyed their property. The officers caused substantial physical and emotional injury to plaintiffs, who ranged in age from four (4) to fifty-nine (59) years old. Defendant officers terrorized, intimidated and harassed plaintiffs and destroyed their property for no lawful purpose.

This violent home invasion was purportedly done pursuant to a warrant for the arrest of William Moreno. However, Mr. Moreno was apprehended and secured immediately, while the victimization and terrorization of this family, as well as the destruction of their property, continued for another forty-five minutes. The officers threw some members of the family to the floor, kicking them, handcuffing them, holding guns to their faces and forcing at least one to lay face down in broken glass. After the family was handcuffed, the officers proceeded to roam their home destroying their property. The officers dragged Ms. Moreno's ten (10) year-old son Trentino violently from the bath tub, injuring both of his ankles. He was then made to stand naked at gunpoint with his four (4) year-old sister standing nearby. The plaintiffs in this case are law-abiding citizens of the United States with no record of criminal activity. The officers' actions were unnecessarily violent and punitive. This conduct violated the plaintiffs' constitutionally protected rights to be free from unreasonable searches, seizures, and excessive force by those acting under color of state law.

2. The violations of Plaintiffs' fourth and fourteenth amendment rights are made actionable against the defendants pursuant to the Civil Rights Act of 1871, as amended 42 U.S.C. §1983.

JURISDICTION

3. This court has jurisdiction over the plaintiffs' claims against the above-referenced defendants pursuant to 28 U.S.C. §1343 and/or 28 U.S.C. §1331.

PARTIES

PLAINTIFFS

4. Plaintiff Georgeia Moreno is an adult resident of the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania. Georgeia Moreno brings this lawsuit individually and also on behalf of her minor son, Trentino Moreno and minor daughter, Briseis Moreno.

5. Plaintiff Darlene Staymates is an adult individual residing in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania. She is the mother of Georgeia Moreno.

6. Plaintiff Mark Staymates is an adult individual residing within the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania. He is the husband of Darlene Staymates and stepfather of Georgeia Moreno.

DEFENDANTS

7. Defendant City of Pittsburgh is a municipality within the Commonwealth of Pennsylvania, with a principal place of business located at 414 Grant Street, Pittsburgh, Pennsylvania 15219, which at all times relevant hereto, was authorized to and did operate and maintain a police department. Defendant City of Pittsburgh was acting by and through its duly authorized agents, employees and/or assigns, who were then and there acting within the course and scope of their employment under the color of state law and in accordance with the custom, policies and practices of the City of Pittsburgh.

8. Defendant Nathan Harper, is the Chief of Police of the City of Pittsburgh Police Department. He is sued in his individual capacity. This defendant, at all times relevant hereto, had the day-to-day responsibility to ensure that City of Pittsburgh police officers were properly trained, supervised, and disciplined, and also, at all times relevant

hereto, had knowledge, and/or was on notice, that City of Pittsburgh police officers had been the subject of numerous civil rights complaints involving excessive force and/or unreasonable searches and seizures. This defendant was also aware that City of Pittsburgh police officers engage in a custom, policy and/or practice of engaging in excessive force and/or making unreasonable searches and seizures. Despite such knowledge, this defendant failed to take action to stop and/or otherwise acquiesced in such custom, practice or policy.

9. Defendant Officers Michael Reddy, Brian Nicholas, William Friburger, Douglas Epler, Donald P. Gorham, Joseph Novakowski, Lisa Kolarac, Glenn Hairston Neal Marabello, Joseph Tersak, Nathaniel Burtt, Erik Englehardt, Wade Sarver and Carl Morosetti are adult individuals residing in the City of Pittsburgh, who at all times relevant hereto, were employed as City of Pittsburgh police officers and who, with respect to the events alleged herein, were acting under the color of state law and in accordance with the custom, practices and/or policies of the City of Pittsburgh.

FACTS

10. On or about December 7, 2010, plaintiffs were lawful residents of 1503 Celtic Street, Pittsburgh, PA 15210.

11. The property in which the plaintiffs resided was jointly owned by plaintiff Georgeia Moreno and Joan Moreno, who is not a party to this action.

12. In the early morning hours of December 7, 2010, William Moreno, husband of plaintiff Georgeia Moreno, was involved in an altercation with an un-uniformed, off-duty police officer at a local veterans club. The off-duty officer was highly intoxicated. William Moreno was not arrested. He left the scene and returned home.

13. Defendant Morosetti obtained a warrant for the arrest of William Moreno and a warrant to search the plaintiff's residence for the purpose of locating William Moreno. Defendant Morosetti had been informed that Moreno would voluntarily turn himself in to the police. Nevertheless, Defendant Tersak approved the use of the SWAT team to carry out the warrants. Defendant Englehardt planned the SWAT operation, including determining the number of officers to use to invade Plaintiffs' home.

14. The request for SWAT assistance, the approval of the use of the SWAT team and the conduct SWAT operation were not carried out pursuant to City of Pittsburgh standard operating procedure.

15. On December 7, 2010, at approximately 7:00 p.m., William Moreno, plaintiff Georgeia Moreno, and her step-father plaintiff Mark Staymates were in the family's living room watching television. Plaintiff Darlene Staymates, who was ill, was asleep in an upstairs bedroom. Minor plaintiff Briseis Moreno was playing with her toys in another upstairs bedroom. Minor plaintiff Trentino Moreno was taking a shower in the upstairs bathroom. Georgeia Moreno's adult son was in the kitchen.

16. Suddenly and without warning, plaintiffs heard a loud explosion followed by a series of bright lights, "as if grenades were going off."

17. Twenty-three (23) officers dressed in full swat gear including helmets and facemasks broke in the front and back doors to Plaintiffs' residence. The officers stormed through the broken doors and entered the living area pointing assault rifles at plaintiffs and shouting obscenities.

18. Defendant officers did not announce themselves and plaintiffs were unaware that the men invading their house were police officers.

19. The defendant officers knew William Moreno by sight and Mr. Moreno produced his I.D. He was immediately apprehended, handcuffed and removed to the kitchen.

20. After Mr. Moreno was secured, plaintiffs Georgeia Moreno and Mark Staymates were thrown to the floor, and kicked repeatedly. The officers placed their assault rifles against these plaintiffs' faces and their feet on their backs shouting "put your hands behind your back." Although they complied with the officers' orders, both plaintiffs were forcibly handcuffed. Plaintiff Mark Staymates was handcuffed by Defendant Sarver. He sustained injury to his shoulder due to the handcuffing.

21. Georgeia Moreno's adult son was handcuffed and forced to lie in broken glass on the kitchen floor.

22. Ms. Moreno pleaded with the officers repeatedly that she had young children in the house.

23. At least one of the officers stated, "You think you can get one of ours and we won't get one of yours?"

24. After William Moreno, Georgeia Moreno, Billy Moreno and Mark Staymates were handcuffed, some of the officers proceeded to the upstairs of the home while others roamed the first floor and basement, shouting obscenities, terrorizing plaintiffs and destroying the house and plaintiffs' personal property.

25. Ten-year-old Trentino Moreno was taking a shower. Defendant Burt dragged him forcibly from the bathtub causing significant injury to both ankles. He was then made to stand naked in the hallway with his sister. Eventually he was permitted to

put on a shirt and sit on a bed with his grandmother and young sister while the officers continued their raid.

26. After all of the individuals in the house had been secured and William Moreno had been identified, Defendants Reddy, Epler, Nicholas, Friburger, Gorham, Novakowski, Kolarac, Hairston and Marabello entered the residence, searched plaintiff's home and questioned plaintiffs.

27. Defendant Reddy told Ms. Moreno that she was lucky they found her husband at home because otherwise they would have killed him.

28. Trentino Moreno was held at gunpoint while defendant Reddy interrogated him about his personal life.

29. Defendant officers remained in the plaintiffs' residence for approximately forty-five minutes, intimidating, threatening and terrorizing plaintiffs and destroying plaintiffs' property.

30. Since the incident, City of Pittsburgh police officers have continued to harass and threaten plaintiffs' family on the streets of their neighborhood.

31. When plaintiffs and their family members have attempted to file complaints with the City of Pittsburgh regarding the incident and the continuing harassment, they have been told "that's how we do things here" and that they were lucky the officers hadn't done more damage. They were also told that they should move out of the city.

32. The City of Pittsburgh and Defendant Harper were aware of and approved and/or acquiesced in a policy and practice of conducting searches which clearly exceed the scope of any warrant and violate citizens' Fourth Amendment Rights. Specifically, in cases in which a search warrant for a third party residence has been issued in

connection with, and for the limited purpose of executing an arrest warrant, it is the policy and practice of the Bureau to send detectives into the residence to identify and question the residents after the subject of the warrant has been identified and placed into custody.

33. As a direct result of the defendants' conduct as hereinbefore described, plaintiffs have suffered severe emotional distress, embarrassment, humiliation, damage to their reputation, psychological trauma, and other emotional sequelae associated with the events of December 7, 2011.

34. As a direct result of the defendants' conduct as hereinbefore described, plaintiffs have suffered serious physical injuries, including but not limited to injuries to Trentino Moreno's ankles and to Mark Staymates' shoulder.

35. As a direct result of the defendants' conduct, plaintiffs suffered an invasion of privacy within the sanctity of their home, including a complete search of each and every one of the rooms located in their home subjecting their persons and personal belongings to the view and scrutiny of the defendants.

36. As a direct result of the defendants' conduct as hereinbefore described, plaintiffs suffered physical damage to their real and personal property.

37. As a direct result of the defendants' conduct as hereinbefore described, plaintiffs have suffered not only a violation of their privacy in the sanctity of their home as protected by the 4th amendment but also a violation of their rights under the 4th amendment to be free from unreasonable searches, seizures, and the use of unreasonable and/or excessive force.

38. As a direct result of the defendant Harper's and the defendant City of Pittsburgh's conduct as hereinbefore described, plaintiffs have suffered a violation of their fourteenth amendment rights which encompasses the freedom to be protected against arbitrary and capricious governmental action, including practice and/or policies which evidence deliberate indifference to the violation of citizens' constitutional rights, including rights protected under the 4th amendment to the United States Constitution.

WHEREFORE, plaintiffs request judgment in their favor in a sum in excess of \$50,000.00 including compensatory and/or punitive damages against the individually named defendants, compensatory damages against the defendant City of Pittsburgh and the award of costs and attorneys' fees against all defendants and such other relief as this court deems appropriate and/or equitable under the circumstances.

Respectfully submitted,

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