

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

JUN 01 2009

JOHN F. CORCORAN, CLERK
BY: *J. Moore*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

DaVON BELL,)
)
Plaintiff)

v.)

C.A. 7:09 CV 0214

CITY OF ROANOKE SHERIFF'S OFFICE,)
)
Serve: Octavia L. Johnson, Sheriff)
340 Campbell Ave., SW)
Roanoke, VA 24016)

JURY TRIAL DEMANDED

OCTAVIA L. JOHNSON, individually and)
in her official capacity as Roanoke City)
Sheriff;)

BRANDON YOUNG, individually and)
in his official capacity as Roanoke City)
Sheriff's Office Deputy;)

and)

DEPUTIES JOHN DOE, individually and)
in their official capacity as Roanoke City)
Sheriff's Office Deputies,)

Defendants.)

COMPLAINT

1. This is an action for deprivation of civil rights under the Civil Rights Act, pursuant to 42 U.S.C. Secs. 1983, and under state law for assault and battery. Plaintiff brings this civil rights action to redress the deprivation under color of state law of the rights, privileges and immunities secured to him by the Constitution of the United States and the laws of the United States and the Commonwealth of Virginia. Plaintiff brings claims for violation of his right to be free from the

unreasonable and excessive use of force upon his person during arrest and detention in violation of the Fourth and Fourteenth Amendments, for civil conspiracy pursuant to 42 U.S.C. Sec. 1983, and state law claims for assault and battery. Plaintiff brings this action against the deputies responsible for his injuries and the cover up of their actions, against the sheriff as the supervisory officer responsible for the conduct of the deputies and final policymaker for the City of Roanoke Sheriff's Office, and against the Sheriff's Office, which is sued as a person under 42 U.S.C. Sec. 1983, as the entity responsible for the promulgation of a policy or custom regarding the use of excessive force. Plaintiff seeks compensatory and punitive damages, as well as attorney's fees and costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sections 1331, 1343, and 1367.

3. Venue is proper in this District under 28 U.S.C. Sec. 1391(b), as a substantial part of the unconstitutional acts and omissions complained of occurred in the Roanoke Division of the Western District of Virginia.

PARTIES

4. Plaintiff DaVon Bell is a citizen of the United States of America and resides at 1514 Rorer Ave., S.W., Roanoke, Virginia 24016.

5. Defendant, City of Roanoke Sheriff's Office, is a political entity or subdivision organized to provide, among other things, the orderly operation and management of the Roanoke City Jail and the transportation of prisoners. The Roanoke City Sheriff's Office, along with Sheriff Johnson, was responsible for the operation of the city jail, as well as the training,

supervision, and conduct of the deputies employed by the Sheriff's Office, and was responsible for promulgating policies and customs regarding the training and supervision of deputies and the use of force during arrest and detention. The City of Roanoke Sheriff's Office is sued as a person under 42 U.S.C. Sec. 1983.

6. At all relevant times, Defendant Sheriff Johnson was the duly elected Sheriff of the City of Roanoke. As such she was the commanding officer of the deputy Defendants and was responsible for their training, supervision and conduct. She was also responsible by law for enforcing the regulations of the Roanoke City Sheriff's Office and for ensuring that personnel obey the laws of the Commonwealth of Virginia and the United States. Sheriff Johnson served as the final policymaker for the Roanoke City Sheriff's Office, and was vested with the responsibility and authority to hire, train, supervise, set and enforce policies and procedures, and to provide protection to the citizens of the City of Roanoke, including the Plaintiff. At all times, Sheriff Johnson was acting as the agent, servant and employee of the Roanoke City Sheriff's Office. Defendant Sheriff is sued in her individual and official capacities.

7. At all times relevant hereto, Defendant deputy Brandon Young was a citizen of the Commonwealth of Virginia and a sheriff's office deputy employed by the Roanoke City Sheriff's Office. Defendant Young participated in the assault on Mr. Bell which occurred in the Roanoke City Jail on September 14, 2008. At all times, Defendant Young was acting as the agent, servant and employee of the Defendant City of Roanoke Sheriff's Office. Defendant Young is sued in his official and individual capacities.

8. At all times relevant hereto, Defendants John Does were officers of the Roanoke City Sheriff's Office. Upon information and belief, Defendant Does participated in the attack and

cover up of the assault upon Mr. Bell which occurred at the Roanoke City Jail on September 14, 2008. The true name and capacity of each Defendant Doe are presently unknown to the Plaintiff. Plaintiff alleges on information and belief, that Defendant Does are responsible for the injuries alleged herein by their actions in brutally injuring Plaintiff. Plaintiff sues Defendant Does by such fictitious name and will move for leave to amend this Complaint to add his or her true names when the same has been ascertained. At all times, Defendant Does were acting as the agents, servants and employees of the Defendant City of Roanoke Sheriff's Office. Each Defendant Doe is sued in his or her official and individual capacities.

9. Plaintiff has been, and continues to be adversely affected by the acts of Defendants and/or their agents.

10. The actions of Defendants complained of herein, individually and/or in conjunction with other employees of the City of Roanoke Sheriff's Office, constitute the official policy, practice or custom of the City of Roanoke Sheriff's Office. Defendants' conduct represents a reckless or callous indifference to Plaintiff's rights. The violation of Mr. Bell's constitutional rights resulted from the execution of a government policy, custom or official decision. The Roanoke City Sheriff's Office and Sheriff Johnson's tacit approval of the use of excessive force, and the failure of these Defendants to exercise proper care in the hiring, training, or supervising of their employees were proximate causes of the injuries suffered by the Plaintiff.

11. All of the actions, omissions and conduct complained of were undertaken by the Defendants under color of state law.

STATEMENT OF FACTS

12. On September 14, 2008, Mr. DaVon Bell was arrested and brought to the Roanoke City Jail Docket Area for booking. A number of deputies from the Roanoke City Sheriff's Office were present, including, among others, Defendant Young and Defendant Does.

13. An argument ensued between Mr. Bell and a deputy of the Roanoke City Sheriff's Office regarding the number of phone calls that Mr. Bell was allowed.

14. This deputy subdued Mr. Bell, and he was lying face down on the floor. In such position, Mr. Bell neither posed an immediate threat to the safety of the deputies or others, nor was he actively resisting arrest or attempting to evade arrest.

15. Deputies, including Defendant Deputy Young and Defendant Does observed Mr. Bell on the floor. Without warning or provocation, Defendants Young and Does maliciously began to hit and beat Mr. Bell in the lower back and kidney area. Mr. Bell's left arm was injured during this assault by Defendants. Deputy Young and Defendant Does inflicted unnecessary and wanton pain and suffering upon Mr. Bell which was not reasonable under the circumstances. The force was applied maliciously and sadistically for the very purpose of causing harm.

16. Mr. Bell was taken to this cell. Deputy Young and Defendant Does went to Mr. Bell's cell. Defendant deputies told Mr. Bell to put his arms up with his hands behind his head. Mr. Bell attempted to comply, but could not because of his injuries. At that time these Defendant deputies maliciously pushed Mr. Bell's arms into position, fracturing Mr. Bell's left elbow in the process. Mr. Bell heard a horrific pop sound when this occurred. Defendant Does and Defendant Young inflicted wanton pain and suffering upon Mr. Bell which was not necessary under the circumstances. The force was applied maliciously and sadistically for the very purpose

of causing harm.

17. Mr. Bell experienced significant pain in his back and elbow while he was incarcerated at the Roanoke City Jail. However, the Defendants refused to provide any medical treatment for Mr. Bell.

18. Mr. Bell was released from the Roanoke City Jail on September 16, 2008.

19. Mr. Bell went to the Roanoke Memorial Hospital emergency room on September 17, 2008 for treatment for arm, elbow and back pain. He was diagnosed with a closed fracture of internal epicondyle of humerus (a fractured elbow), and was instructed to follow up for surgery.

20. Mr. Bell was admitted to Carilion Clinic at Roanoke Memorial Hospital for surgery on October 1, 2008. The surgery was performed for left elbow dislocation with capitella fracture, and Mr. Bell's left elbow was put back in place with a screw going into the wrist for a bonegraft to the elbow.

21. As a proximate result of the Defendants' actions, Mr. Bell received these serious injuries, endured significant pain and suffering, was required to undergo surgery, incurred substantial medical expenses, lost wages, and suffered other injuries, including, but not limited to, humiliation, psychological pain, suffering and mental anguish.

22. On information and belief, the excessive force to which Plaintiff was subjected was an institutionalized practice of the Roanoke City Sheriff's Office which practice was known to and ratified by the Sheriff. The Sheriff was aware of the use of excessive force by its deputies, but took no effective action to prevent personnel from engaging in such misconduct.

23. Upon information and belief, the City of Roanoke Sheriff's Office, and Sheriff had prior notice of the deputy Defendants' vicious and malicious tendencies, but took no steps to

train them, correct their abuse of authority, or to discourage their unlawful use of authority.

24. Upon information and belief, the Roanoke City Sheriff's Office and Sheriff Johnson failed to take corrective action regarding the use of excessive force by the deputies, and failed to provide appropriate training and supervision regarding the proper use of force during the arrest and detention of individuals.

25. Upon information and belief, the City of Roanoke Sheriff's Office failed to instruct, supervise, control and train Defendants regarding the proper use of force during the arrest and detention of individuals. This failure was the result of official policy or custom and practice of the City of Roanoke Sheriff's Office. Defendant City of Roanoke Sheriff's Office had knowledge, or had it diligently exercised its duties to instruct, supervise, control, train, or discipline on a continuing basis, should have had knowledge, that the wrongs which were done were being committed. Defendant City of Roanoke Sheriff's Office had the power to prevent or aid in preventing the commission of these wrongs, and could have done so by reasonable diligence, but it intentionally, knowingly, or recklessly failed or refused to do so.

26. Upon information and belief, Defendants City of Roanoke Sheriff's Office and Defendant Does altered the videotape of the September 14, 2008 incident. In the accurate version of the video, Defendant Young's actions towards Mr. Bell are clearly displayed. However, in the version altered by Defendants, the actions of Deputy Young have been removed from the tape. Upon information and belief, the Defendants altered the tape to cover up the assault and unconstitutional actions taken by the Defendants towards DaVon Bell on September 14, 2008.

27. The Defendants' conduct was intentional and done with deliberate indifference to the

Plaintiff's rights.

28. The acts of Defendants as set forth above were wanton, malicious, and oppressive, thus entitling Plaintiff to an award of punitive damages.

COUNT I - USE OF EXCESSIVE FORCE

29. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

30. Defendant Young and Defendant Does intentionally and maliciously beat Mr. Bell without provocation or reason resulting in serious injuries, including, but not limited to, a fractured elbow, requiring medical treatment and surgery.

31. This use of excessive force was deliberate and intentional and was not objectively reasonable under the circumstances. The force was applied maliciously and sadistically for the very purpose of causing harm, and inflicted unnecessary and wanton pain and suffering.

32. Mr. Bell posed no immediate threat to the safety of the deputies or others.

33. By using excessive force on Mr. Bell, Defendant Young and Defendant Does deprived Mr. Bell of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of rights enforceable under 42 U.S.C. Sec. 1983, including, without limitation, rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

34. Defendant Johnson is responsible for the training, supervision and conduct of the deputies employed by her office. She is responsible for providing training regarding the use of appropriate force upon the arrest and detention of individuals, and further is responsible for assuring that the deputies employed by her office do not use excessive and unreasonable force in the arrest and detention of individuals. Defendant Johnson, with final policy-making authority

for the City of Roanoke and the City of Roanoke Sheriff's Office, was responsible for violation of Plaintiff's constitutional rights.

35. Defendant City of Roanoke Sheriff's Office was responsible for assuring that the Roanoke City Sheriff's Office did not violate the rights of pretrial detainees by using excessive force, and for assuring that individuals employed in the Roanoke City Sheriff's Office were properly trained and supervised regarding the use of excessive force.

36. Defendants Johnson and City of Roanoke Sheriff's Office were personally involved in and responsible for the excessive force used against Mr. Bell in that:

- a. They created a policy and custom, and they allowed the continuance of a policy and custom, under which pretrial detainees and individuals brought to the Roanoke City Jail Docket Area, would be subjected to the use of excessive and unreasonable force; and
- b. They were deliberately indifferent in supervising and training subordinates who committed the wrongful acts described herein.

37. The gross indifference by the Sheriff and the Sheriff's Office to the conduct of deputies which includes repeated failures to follow policy and procedures, unnecessary use of excessive force, roughness during arrest, and intimidation of suspects during arrests and booking procedures led to the violation of Mr. Bell's constitutionally protected rights. The failure of Sheriff Johnson and the Roanoke City Sheriff's Office to take corrective action after learning of instances of deputy misconduct, and the failure to properly train the deputies, led to these violations.

38. All Defendants acted pursuant to the policies, regulations and decisions officially

adopted or promulgated by those persons whose acts may fairly be said to represent official policy or were pursuant to a governmental custom, usage or practice of the Roanoke City Sheriff's Office and Sheriff Johnson.

39. These actions by Defendants Young, Does, Johnson and City of Roanoke Sheriff's Office were of a malicious and intentional nature and manifested a deliberate indifference to the constitutional rights of Mr. Bell.

40. Defendants acted under pretense and color of state law. Defendants acted willfully, knowingly, and with the specific intent to deprive Mr. Bell of his constitutional rights secured by 42 U.S.C. Sec. 1983 and by the Fourth and Fourteenth Amendments to the United States Constitution.

41. As a direct and proximate result of the Defendants' actions, Mr Bell has suffered and will continue to suffer physical pain and suffering, physical injury, medical expenses, hospitalization, surgery, humiliation, psychological pain, suffering and mental anguish, lost wages, and other damages.

COUNT II - CONSPIRACY TO VIOLATE CIVIL RIGHTS

42. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

43. Defendants acted jointly and in concert to violate Mr. Bell's civil rights.

44. All Defendants took some overt act in furtherance of the conspiracy. Namely, each Defendant either actually participated in the use of excessive force, or witnessed the excessive force but failed to intervene, or acquiesced in the actions taken or attempted to cover up the actions taken, which actions includes but are not limited to, altering the September 14, 2008

videotape depicting the actions of Defendant Young with regard to Mr. Bell.

45. The acts and omissions of the Defendants proximately caused DaVon Bell's suffering, pain and injuries.

46. The Defendants knowingly participated in a conspiracy to violate DaVon Bell's civil rights, thus subjecting him to pain, physical and mental injury in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

COUNT III - ASSAULT AND BATTERY

47. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

48. Deputy Young and Defendant Does repeatedly touched Mr. Bell in a vicious, rude, insulting, brutal, unwanted and offensive manner. Deputy Young and Defendant Does without provocation or excuse fractured Plaintiff's elbow which required surgery. Mr. Bell was unable to lift his arm during his stay at the Roanoke City Jail as a result of his arm being fractured. Furthermore, Deputy Young and Defendant Does, again without provocation or excuse, severely beat Mr. Bell by delivering at least 10 blows to Mr. Bell's back when Mr. Bell was subdued and lying face down on the floor of the Roanoke City Jail. These touchings were unsolicited by Mr. Bell, unwarranted, and inappropriate. The unwanted touchings were not consented to, excused or justified. Furthermore, Deputy Young and Defendant Does engaged in acts intending to cause harmful or offensive contact with Mr. Bell or to create a reasonable apprehension of an immediate, unwanted touching for Mr. Bell. These actions constitute assault and battery.

49. At the time the tortious conduct that injured Plaintiff was committed, Deputy Young and Defendant Does were acting within the scope of his employment duties and his tortious conduct was therefore imputable to Defendants Roanoke City Sheriff's Office, and Sheriff

Johnson.

50. Sheriff's Johnson's failure to properly train and supervise Deputy Young and Defendant Does proximately caused Mr. Bell's injuries.

51. The tortious conduct that was committed by Deputy Young and Defendant Does which injured Plaintiff as described above, was subsequently ratified by the Roanoke City Sheriff's Office, and Sheriff Johnson and thus, such tortious conduct is imputable to Defendants City of Roanoke Sheriff's Office and Sheriff Johnson.

52. The actions of the Defendants were malicious, intentional and amounted to extreme and outrageous conduct, causing Plaintiff to suffer emotional distress necessitating medical treatment and consequent medical expenses.

53. Notice of this claim has been provided to the City of Roanoke pursuant to Va. Code Sec. 15.2-209.

54. As a proximate result of the Defendants' actions as set forth above, Plaintiff has suffered and will continue to suffer, physical pain and suffering, physical injury, medical expenses, hospitalization, surgery, humiliation, psychological pain, suffering and mental anguish, lost wages, and other damages.

WHEREFORE, Plaintiff requests damages as follows:

A. For Count I, for each named Defendant compensatory damages in the amount of one million dollars (\$1,000,000.00) and punitive damages in the amount of one million dollars (\$1,000,000.00);

B. For Count II, for each Defendant named compensatory damages in the amount of one million dollars (\$1,000,000.00) and punitive damages in the amount of one million dollars

(\$1,000,000.00);

C. For Count III, for each Defendant named compensatory damages in the amount of one million dollars (\$1,000,000.00) and punitive damages in the amount of one million dollars (\$1,000,000.00);

D. For costs and reasonable attorneys' fees pursuant to 42 U.S.C. Sec. 1988; and

E. For such further relief as the Court deems just and proper.

F. Plaintiff demands a jury trial.

Respectfully submitted,

DaVON BELL

/s/ John P. Fishwick, Jr.

Counsel

John P. Fishwick, Jr., Esquire
Va. State Bar I.D. #23285
Monica L. Mroz, Esquire
Va. State Bar I.D. #65766
LICHTENSTEIN, FISHWICK & JOHNSON, P.L.C.
101 South Jefferson Street
Suite 400
Roanoke, Virginia 24011
(540) 345-5890 Telephone
(540) 345-5789 Facsimile