

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

NOV 12 2013

JAMES BY: *A. James, Clerk*
HONORABLE CLERK

-RLV.

JEAN KALONJI, and)
ANGELICA KALONJI,)
Plaintiffs,)
v.)
SERGEANT KENNETH KENT, in his)
Individual Capacity,)
DEPUTY DARRELL ODOM, in his)
Individual Capacity,)
ROBERT CANOLES,)
and BRANDON CANOLES,)
Defendants.)

CIVIL ACTION CASE NO.

1:13-CV-3723

VERIFIED COMPLAINT FOR DAMAGES

Plaintiffs file this Verified Complaint in order to bring forth their claim for damages against Defendants for false arrest and false imprisonment pursuant to 42 U.S.C. § 1983 and Georgia law. In support of these allegations, Plaintiffs show the following:

I. THE PARTIES

1.

Plaintiffs are residents of Newton County, Georgia. They are the next door neighbors of Defendant Robert Canoles and reside at 1419 Lower River Road,

Covington, Georgia 30016. They have resided in Newton County since the date of their illegal arrest at their home by Defendants Kent and Odom on April 19, 2012.

2.

Defendant Sergeant Kenneth Kent is a sworn, P.O.S.T. certified law enforcement officer with the Newton County Sheriff's Office. At all times relevant to this Complaint, Defendant Kent was on duty and acting under color of law. He is being sued in his individual and official capacities, and may be served at 15151 Alcovy Road, Covington, Georgia 30014.

3.

Defendant Deputy Darrell Odom is a sworn, P.O.S.T. certified law enforcement officer with the Newton County Sheriff's Office. At all times relevant to this Complaint, Defendant Odom was on duty and acting under color of law. He is being sued in his individual and official capacities, and may be served at 15151 Alcovy Road, Covington, Georgia 30014.

4.

Defendant Robert Canoles is a resident of Newton County, Georgia. He is the father of Defendant Brandon Canoles. He may be served at 1399 Lower River Road, Covington, Georgia 30016.

5.

Defendant Brandon Canoles is a resident of Newton County, Georgia. He is the son of Defendant Robert Canoles. At all times relevant to this action, he was over the age of eighteen. He may be served at 1399 Lower River Road, Covington, Georgia 30016.

II. JURISDICTION AND VENUE

6.

Jurisdiction and venue are appropriate with this Court as the facts and circumstances surrounding this case occurred in Newton County, Georgia and this case raises a federal question of the violation of Plaintiffs' Constitutional Rights pursuant to 42 U.S.C. § 1983.

III. FACTS

7.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 6 as if fully set forth herein.

8.

On April 19, 2012 Plaintiffs' son, Bruno Kalonji, won a bid for and closed on the house located at 1419 Lower River Road, Covington, Georgia 30016 (hereinafter the "Property").

9.

Bruno Kalonji purchased the Property to be a new home for his parents.

10.

On the day of the closing, the real estate agent involved in the sale traveled to the Property and removed the “For Sale” sign from the grounds as well as the lockbox on the door of the house.

11.

At the closing, the real estate agent suggested that Plaintiffs change the locks on the house.

12.

At approximately 7:00 PM, Plaintiffs arrived at the Property to change the locks on the house. Plaintiffs parked their car outside the house in plain view of all passersby. At the time of their arrival, the door to the house was unlocked and there was no electricity coming to the Property. Plaintiffs began working to change the locks, but as night fell, they were forced to use flashlights to continue their work.

13.

At approximately 9:15 PM, Defendants Robert and Bradon Canoles saw the flashlights and heard noises emanating from the Property.

14.

Arming themselves with AR-15 assault rifles, and other weapons, the Canoles took it upon themselves to investigate what was occurring on the Property.

15.

At this time, the Canoles had no authority to enter the Property.

16.

At this time, there was no evidence that the Canoles were in any danger or that their home was threatened.

17.

At this time, the Canoles had no evidence had any criminal act under Georgia law had been or was about to be committed.

18.

The Canoles entered Plaintiffs' home and confronted them at gunpoint, demanding to know why Plaintiffs were on the Property.

19.

Plaintiffs, who were in fear of receiving an imminent violent injury or death, attempted to explain that they were the lawful owners of the Property and that they were changing the locks. However, the Canoles did not believe them and ordered Plaintiffs to exit their house at gunpoint. Once outside the house, the Canoles ordered Plaintiffs to turn around and place their hands against the wall.

20.

Once outside, Robert Canoles' wife, Kelly, called 911 while Defendants Robert and Brandon Canoles continued to hold Plaintiffs at gunpoint. Defendant Odom was the first officer to arrive.

21.

Upon arrival, Defendant Odom saw the Canoles holding Plaintiffs at gunpoint. Defendant Odom disarmed the Canoles and then placed Plaintiffs in handcuffs.

22.

At the time Defendant Odom placed Plaintiffs in handcuffs, they were unarmed and presented no danger to Defendant Odom or the Canoles. Accordingly, there was no justification for Defendant Odom to handcuff Plaintiffs.

23.

As other deputies, including Defendant Kent, arrived at the Property, Plaintiffs explained to Defendant Odom that they had just bought the Property and were changing the locks on the house. Defendant Odom asked for paperwork showing proof of ownership or keys to the old lock for the house. Plaintiffs could not provide either, but asked to call their son and have him deliver the paperwork. Plaintiffs informed Defendant Odom that their son could be at the Property in forty-

five minutes. However, Defendants Odom and Kent stated they could not wait that long.

24.

Defendants Odom and Kent then conferred with Newton County Sheriff's Investigator Mark Joyner regarding whether they should arrest Plaintiffs. Investigator Joyner was the on-call investigator for the Sheriff's Office on the night in question. Investigator Joyner informed Defendants that Plaintiffs should not be arrested and that there did not seem to be any criminal activity taking place. Despite this recommendation, Defendants elected to charge Plaintiffs for the offense of Loitering and Prowling (O.C.G.A. § 16-11-36). Plaintiffs were then transported to the Newton County jail.

25.

At approximately 2:00 AM, Plaintiffs' son, Bruno Kalonji, arrived at the County jail with paperwork proving definitively that Plaintiffs were the lawful owners of the Property.

26.

Bruno Kalonji presented this paperwork to Defendants Odom and Kent. This paperwork was photocopied and placed in the case file. However, Defendant Kent refused to dismiss the charges against Plaintiffs, and instead permitted Plaintiffs to bond out of jail and continue the investigation in the morning.

27.

Subsequently, all charges against Plaintiffs were dropped.

28.

An internal investigation was opened to determine whether Defendants Kent and Odom violated any internal policies of the Newton County Sheriff's Office.

29.

In disciplining Defendants Odom and Kent, the Sheriff's Office found that there was no probable cause to charge Plaintiffs with Loitering and Prowling. Specifically, the Sheriff's Office Investigation noted that Plaintiffs made no attempt to conceal themselves or any object; that they had parked their car in front of their house and that the car had a valid license plate and registration; that there was no evidence Plaintiffs had stolen anything, and in fact were installing new locks on the house; that Plaintiffs offered to provide proof of ownership within an hour; and that Plaintiffs had valid identification on their person. The Investigation also noted that there were no exigent circumstances present to justify immediate action, and that the Canoles had no legal authority to enter the Property and detain Plaintiffs at gunpoint. Accordingly, Defendants Kent and Odom were disciplined by the Newton County Sheriff's Office.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION: TRESPASS AGAINST DEFENDANTS ROBERT AND BRANDON CANOLES

30.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 29 as if fully set forth herein.

31.

On April 19, 2012, Plaintiffs were the lawful owners of the Property and were entitled under Georgia law to the absolute right of enjoyment of their Property.

32.

On April 19, 2012, the Canoles had no legal authority to enter the Property for any reason.

33.

By entering the Property and holding Plaintiffs at gunpoint, the Canoles prevented Plaintiffs from exercising their absolute right of enjoyment of the Property.

34.

Accordingly, the Canoles are jointly and severally liable to Plaintiffs for trespass against Plaintiffs pursuant to O.C.G.A. §§ 51-9-1, *et seq.*

**SECOND CAUSE OF ACTION: FALSE IMPRISONMENT AGAINST
DEFENDANTS ROBERT AND BRANDON CANOLES**

35.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 34 as if fully set forth herein.

36.

When the Canoles entered the Property and detained Plaintiffs at gunpoint, they deprived Plaintiffs of their personal liberty.

37.

The Canoles had no authority to enter the Property and no justification to hold Plaintiffs at gunpoint.

38.

As there was no legitimate basis for Plaintiffs' detention, the Canoles' actions in depriving Plaintiffs' of their personal liberty was unlawful.

39.

Accordingly, the Canoles are jointly and severally liable to Plaintiffs for false imprisonment pursuant to O.C.G.A. §§ 51-7-20, and 51-7-22.

**THIRD CAUSE OF ACTION: ASSAULT AGAINST DEFENDANTS
ROBERT AND BRANDON CANOLES**

40.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 39 as if fully set forth herein.

41.

By holding Plaintiff at gunpoint, the Canoles placed Plaintiffs in reasonable fear of receiving an imminent violent injury or death.

42.

The Canoles' actions lacked any justification under Georgia law, and were therefore illegal.

43.

Accordingly, the Canoles' actions constitute the intentional tort of assault pursuant to O.C.G.A. § 51-1-14 for which they are liable to Plaintiffs.

**THIRD CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' FOURTH
AMENDMENT RIGHTS BY DEFENDANTS ODOM AND KENT**

44.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 43 as if fully set forth herein.

45.

Upon their arrival at the Property, Defendant Odom witnessed the Canoles holding Plaintiffs at gunpoint with AR-15 assault rifles and other weapons.

46.

Despite witnessing behavior suggesting that the Canoles had committed the felony offense of Aggravated Assault, Defendant Odom elected to merely disarm the Canoles and placed Plaintiffs in handcuffs.

47.

At this time, Plaintiffs were not armed, had committed no crime, and posed no danger to any of the Defendants. Accordingly, Defendant Odom had no legitimate basis to justify placing Plaintiffs in handcuffs.

48.

By placing Plaintiffs in handcuffs without any legitimate basis, and without probable cause that they had committed or were about to commit a criminal offense, Defendant Odom violated Plaintiff's Constitutional rights under the Fourth Amendment.

49.

The violation of Plaintiffs' Fourth Amendment rights continued after the arrival of Defendant Kent. Specifically, Defendants Odom and Kent learned of evidence that could exonerate Plaintiffs from any suspicion of wrongdoing.

However, after evaluating this evidence, and consulting with a Sheriff's Investigator who stated Plaintiffs should not be arrested, Defendants Odom and Kent further violated Plaintiffs' Fourth Amendment rights by charging Plaintiffs with Loitering and Prowling and transporting them to the Newton County jail.

50.

Subsequently, Defendants Kent and Odom received further proof that Plaintiffs were the lawful owners of the Property. However, instead of immediately releasing Plaintiffs from custody and dismissing all charges, Defendants Odom and Kent continued to violate Plaintiffs' Fourth Amendment rights.

51.

At the time of their arrest, there was insufficient evidence to establish probable cause that Plaintiffs committed the offense of Loitering and Prowling.

52.

Furthermore, there was no evidence to establish probable cause that Plaintiffs had committed any other criminal offense under State or Federal law.

53.

Finally, O.C.G.A. § 16-11-36(a) and (b) provides clear guidelines for law enforcement officers to follow when making an arrest for Loitering and Prowling. Defendants Odom and Kent failed to abide by these guidelines.

54.

The absence of probable cause or even arguable probable cause to arrest and imprison Plaintiffs in conjunction with Defendant Odom and Kent's inability to abide by the clear language of O.C.G.A. § 16-11-36 strips them of their entitlement to the defense of qualified immunity.

55.

Accordingly, Defendants Odom and Kent are liable to Plaintiffs for the violation of their Fourth Amendment rights for the false arrest and imprisonment of Plaintiffs and is actionable pursuant to 42 U.S.C. § 1983.

**FOURTH CAUSE OF ACTION: VIOLATION OF PLAINTIFFS'
FOURTEENTH AMENDMENT RIGHTS BY DEFENDANTS ODOM AND
KENT**

56.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 55 as if fully set forth herein.

57.

The arrest of Plaintiffs by Defendants Odom and Kent lacked any probable cause or arguable probable cause.

58.

Throughout their entire arrest and imprisonment, Plaintiffs and their son, repeatedly proclaimed their innocence and presented evidence that conclusively proved that Plaintiffs had not violated any provision of Georgia law.

59.

Despite the receipt and review of exculpatory evidence, Defendants Odom and Kent refused to dismiss the charges against Plaintiffs.

60.

As a result the imprisonment of Plaintiffs at the Newton County Detention Center by Defendants Odom and Kent not only deprived Plaintiffs of their Fourth Amendment rights but also deprived them of their liberty without due process of law under the Fourteenth Amendment.

61.

Accordingly, Defendants Odom and Kent are liable to Plaintiffs for the violation of their Fourteenth Amendment rights for the false imprisonment of Plaintiffs and is actionable pursuant to 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION: PUNITIVE DAMAGES

62.

Plaintiffs reallege and incorporate by reference all allegations set forth in Paragraphs 1 through 61 as if fully set forth herein.

63.

The actions of all Defendants, separately and collectively, demonstrate a want of care so severe that punitive damages are authorized not only to punish Defendants' past conduct but to deter future misconduct as well.

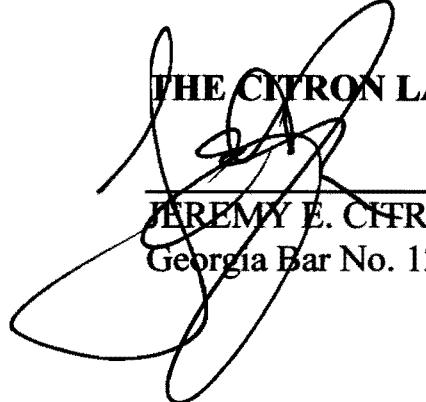
64.

Accordingly, Plaintiffs are entitled to punitive damages against Defendants in an amount to be determined by the enlightened conscience of the jury.

WHEREFORE, having set forth all facts and causes of action against Defendant, Plaintiff prays the Court to grant relief as follows:

- a. That this matter be heard by a Jury;
- b. That Plaintiffs be awarded actual damages in the amount of no less than \$500,000.00;
- c. That Plaintiffs be awarded punitive damages in an amount to be determined by the enlightened conscience of the Jury; and
- d. Any other relief that this Court deems just and proper.

Respectfully submitted this 10th day of November, 2013.


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Defendants.)
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VERIFICATION

Personally appeared JEAN KALONJI and ANGELICA KALONJI before the undersigned officer, duly authorized to administer oaths in the State of Georgia, who after being duly sworn, deposes and states that the facts contained in the within and foregoing **VERIFIED COMPLAINT** are true and correct to the best of their information, knowledge, and belief.

This 6th day of November, 2013.

(signatures on next page)

JEAN KALONJI

ANGELICA KALONJI

Sworn to and subscribed
before me this 6th day
of November, 2013.

Notary Public

My Commission Expires:

**DEKALB COUNTY, GEORGIA
MY COMMISSION EXPIRES
FEBRUARY 21, 2017**

