

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No.:

FERNANDO M. COIPEL and his
wife, IDA COIPEL,

Plaintiff,

v.

JOHN CARPENTER, HAROLD
JAMES, KENYA CROCKER,
ROSHAN MILLIGAN and ANGEL
MERCADO, individually, and THE
CITY OF MIAMI, a municipal
corporation,

Defendants.

COMPLAINT

Plaintiffs, FERNANDO M. COIPEL and IDA COIPEL, hereby sue Defendants, THE CITY OF MIAMI, SERGEANT JOHN CARPENTER, OFFICERS HAROLD JAMES, KENYA CROKER, ROSHAN MILLIGAN and ANGEL MERCADO, and allege as follows:

INTRODUCTION

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution, and under the laws of the State of Florida, against Defendants Sergeant John Carpenter and Officers Harold James, Kenya Crocker, Roshan Milligan and Angel Mercado, individually, and against the City of Miami.

2. Plaintiff Fernando M. Coipel alleges that Sergeant Carpenter made an

unreasonable search and seizure of his person and assaulted and battered him without legal justification or probable cause, and that Sergeant John Carpenter and Officers Harold James, Kenya Crocker, Roshan Milligan and Angel Mercado falsely arrested and imprisoned him without legal justification or probable cause. Mr. Coipel alleges that these constitutional violations were committed as a result of the policies and customs of the City of Miami, and that the City of Miami is liable under the theory of respondeat superior for the torts committed by all Defendants. Mr. Coipel suffered severe and permanent physical injuries as a result of the actions committed by all Defendants. Additionally, Mr. Coipel's wife, Ida Coipel, alleges that she suffered the loss of Mr. Coipel's consortium due to his injuries.

JURISDICTION AND VENUE

3. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiff's cause of action arising under the Constitution of the United States and 42 U.S.C. §§ 1983, 1988. This Court has supplemental jurisdiction over Plaintiff's causes of action arising under Florida state law pursuant to 28 U.S.C. § 1367.

4. Venue lies in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(2) because the events or omissions giving rise to Plaintiff's claims occurred in Miami-Dade County.

5. On or about October 21, 2014, Plaintiff provided notice of his claims to the City of Miami and the Chief of Police for the Miami Police Department pursuant to § 768.28, Florida Statutes.

6. All conditions precedent to the filing of this action have been performed or waived.

PARTIES

www.YourAttorneys.com

J.P.Gonzalez-Sirgo,P.A., 804 S. Douglas Road., Suite 373, Coral Gables, FL 33134

Phone (305) 461-1095

7. Plaintiff, Fernando M. Coipel, was and is a resident of Miami-Dade County, Florida and otherwise *sui juris*.

8. Plaintiff, Ida Coipel, was and is a resident of Miami-Dade County, Florida and otherwise *sui juris*.

9. At all times relevant hereto, the City of Miami was and is a municipal corporation and employed the Defendants Sergeant John Carpenter, Officer Harold James, Officer Kenya Crocker, Officer Roshan Milligan, and Officer Angel Mercado as police officers for the Miami Police Department.

10. At all times relevant hereto, Defendant John Carpenter was acting within his scope of employment as a sergeant with the Miami Police Department and was acting under the color of state law.

11. At all times relevant hereto, Defendant Kenya Crocker was acting within her scope of employment as an officer with the Miami Police Department and was acting under the color of state law.

12. At all times relevant hereto, Defendant Harold James was acting within his scope of employment as an officer with the Miami Police Department and was acting under the color of state law.

13. At all times relevant hereto, Defendant Roshan Milligan was acting within his scope of employment as an officer with the Miami Police Department and was acting under the color of state law.

14. At all times relevant hereto, Defendant Angel Mercado was acting within his scope of employment as an officer with the Miami Police Department and was acting under the color of state law.

15. The cause of action herein described accrued in Miami-Dade County.

BACKGROUND

16. Plaintiff, Mr. Coipel, is the landlord of 746 NW 61st St., Miami, FL 33127-1181.

17. On or about February 14, 2012 around 6pm, Mr. Coipel, a 70 year-old man wearing two protective eyeglasses and a white patch over his right eye, was standing on the stairwell of his apartment building while talking to a prospective tenant named Shalisha Christian.

18. Sergeant Carpenter approached Mr. Coipel from behind and without announcing himself as the police, yelled “Put your fucking hands against the wall.”

19. As Mr. Coipel began turning around to his right, Sergeant Carpenter grabbed Mr. Coipel from the back of his shirt, turned him around, and repeatedly slammed his face and body against the wall. Sergeant Carpenter then pulled Mr. Coipel’s hands behind his back.

20. Mr. Coipel asked “What’s going on? I am the owner of the building.” Sergeant Carpenter responded “Shut the fuck up. I don’t care who you are.”

21. Sergeant Carpenter proceeded to take Mr. Coipel to the police car outside the building while holding Mr. Coipel’s hands behind his back. Sergeant Carpenter was yelling at him that “I want to put your fucking ass in jail.”

22. With Mr. Coipel facing the police cruiser, Sergeant Carpenter repeatedly slammed him against the cruiser and then turned him around and slammed him several more times against the cruiser .

23. During this ordeal, Mr. Coipel kept on yelling “I can’t see.” By this point, Mr. Coipel’s last pair of glasses had fallen to the ground and blood was coming from his right eye.

24. Mr. Coipel asked whether he was being arrested and Sergeant Carpenter stated

that “No not right now.”

25. While Sergeant Carpenter had Mr. Coipel against the police cruiser, Officer Crocker arrived at the scene in her police car, got out her car, and stood by as Sergeant Carpenter continued to batter Mr. Coipel.

26. Mr. Coipel’s pants were falling down when Sergeant Carpenter kned Mr. Coipel and threw him against the pavement. Sergeant Carpenter struck Mr. Coipel several more times on his middle of his back, head, and chest and placed his knee on his back. On or about that point, Sergeant Carpenter finally announced that Mr. Coipel was under arrest.

27. Sergeant Carpenter yelled at Officer Crocker to come and bring him the handcuffs.

28. Ms. Christian, who witnessed the entire incident, cried out for Sergeant to stop battering Mr. Coipel, and finally took a picture while Sergeant Carpenter was handcuffing Mr. Coipel. When Sergeant Carpenter saw what Ms. Christian was doing, he told her to “Shut the fuck up. Don’t take no pictures, or you’ll go to jail, too. Don’t say anything.” Ms. Christian stopped taking pictures.

29. After handcuffing Mr. Coipel on the pavement with his knee against Mr. Coipel’s back, Sergeant Carpenter stated that “You’re going to jail. I don’t give a fuck who you are.”

30. Sergeant Carpenter continued yelling that “Everybody’s going to jail” and “That bitch is gonna go to jail too.”

31. After placing Mr. Coipel, with his pants still down, in the police cruiser, the officers drove Mr. Coipel to some other location in the neighborhood, pointed to two male individuals, and asked him whether he knew them. Mr. Coipel replied “No.”

32. The officers then placed those two male individuals in the police cruiser with Mr. Coipel and took them to the police station.

33. The officers placed Mr. Coipel in a room with the other detained individuals.

34. While taking Mr. Coipel's information in completing the arrest affidavit and/or other documentation, Sergeant Carpenter said that he were going to "put [his] ass in jail."

35. Mr. Coipel asked him for water because his right eye was bleeding to which he replied "I'm not going to give you a fucking thing."

36. Sergeant Carpenter left the room and later returned advising Mr. Coipel that his daughter came to visit him and that he told her that Mr. Coipel was "okay." Sergeant Carpenter then threatened Mr. Coipel that if he said something else, he would take him to the back room and "kick his ass."

37. In a conversation with Mr. Coipel's daughter at the police station, Officer Mercado accused Mr. Coipel of turning a blind eye to people dealing drugs in his building. Officer Mercado also threatened that he could have Mr. Coipel's building taken from him.

38. Officer Mercado signed the arrest affidavit attesting that "I SWEAR THE ABOVE STATEMENT IS TRUE AND CORRECT" without having witnessed any of the events supporting the charges filed against Mr. Coipel.

39. Due to his injuries, doctors at the corrections facilities separated him from the general population and evaluated him.

40. Mr. Coipel was charged with 2 counts of Obstruction and 1 count of Battery on a Law Enforcement Officer, which were later dismissed.

41. Defendants continued to threaten and harass Mr. Coipel telling the new landlords of the building that if they saw Mr. Coipel there, they would arrest them or take their building

from them.

42. As a direct and proximate result of the acts of Defendants, Plaintiff, Mr. Coipel, suffered the following injuries and damages:

- a. Personal injury
- b. Disability;
- c. Medical Expenses;
- d. Emotional distress, pain and suffering;
- e. Loss of capacity to enjoy life;
- f. Loss of earning capacity;
- g. Loss in property value;
- h. Public humiliation and embarrassment;
- i. Sustained other general damages, including attorney's fees and costs associated with his arrest;
- j. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure of his person;
- k. Loss of his physical liberty;
- l. Intentional, offensive contact with his body; and
- m. Fear of imminent peril resulting from an offer or attempt to injure him.

43. The actions of Defendants violated the following clearly established and well settled federal constitutional rights of Plaintiff:

- a. Freedom from the unreasonable searches and seizure against his person.

44. At all relevant times, Defendants Sergeant John Carpenter and Officers Harold

James, Kenya Crocker, Roshan Milligan, and Angel Mercado were acting under color of law and under color of authority as police officers, employees, and agents or servants of the City of Miami, Florida and as agents of the State of Florida, pursuant to the policy and/or custom of the City of Miami.

COUNT I

***42 U.S.C. § 1983 Against Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado
(False Arrest and Imprisonment)***

45. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

46. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado for violation of his constitutional rights under color of law.

COUNT II

***42 U.S.C. § 1983 Against Defendants John Carpenter and Kenya Crocker
(Use of Excessive Force)***

47. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

48. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendants John Carpenter and Kenya Crocker for violation of his constitutional rights under color of law.

COUNT III

Assault Against Defendant the City of Miami

49. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

50. Defendant Sergeant John Carpenter assaulted Plaintiff by unlawfully offering or attempting to injure him with apparent present ability to effectuate the injury under the circumstances creating fear of imminent peril when he threatened to “kick [Plaintiff]’s ass.”

COUNT IV

Battery Against Defendant the City of Miami

51. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

52. Defendant Sergeant John Carpenter battered Plaintiff by intentionally and offensively contacting Plaintiff's body when Sergeant Carpenter grabbed him, repeatedly slammed him against the wall, then repeatedly slammed him against the police cruiser, threw him against pavement, and throughout this encounter, Sergeant Carpenter punched and kicked Plaintiff multiple times.

COUNT V

Use of Excessive Force Against Defendant the City of Miami

53. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

54. Plaintiff had been seized and restrained by Defendant Carpenter and was not resisting arrest. Without legal cause of justification, Defendant Carpenter used excessive, unnecessary, and disproportionate force to that was necessary to arrest or subdue Plaintiff, who was disabled and elderly.

55. Defendant Crocker was in a position to observe the actions of Sergeant Carpenter and did not prevent him from using the amount of force used.

COUNT VI

False Arrest Against Defendant the City of Miami

56. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

57. Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado falsely arrested Plaintiff against his will as Plaintiff did not consent to the arrest and deprivation of liberty.

58. The restraint and arrest of Plaintiff was unlawful and unreasonable as it was not based on probable cause or based upon lawfully issued process and was without warrant.

59. Defendants James, Croker, Milligan, and Mercado participated in the unlawful arrest.

COUNT VII
False Imprisonment Against Defendant Against the City of Miami

60. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

61. Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado falsely imprisoned Plaintiff by unlawfully detaining him against his will. Defendants had no reason to detain Plaintiff because they did not reasonably believe that Plaintiff had committed an offense.

62. Defendants James, Croker, Milligan, and Mercado participated in the unlawful detention.

COUNT VIII
42 U.S.C. §1983 Against the City of Miami
(Failure to Implement Appropriate Policies, Customs and Practices)

63. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

64. Prior to and on February 14, 2012, the City of Miami Police Department developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Miami, which caused the violation of Plaintiff's rights.

65. The City of Miami Police Department created and allowed a policy and/or custom of allowing its police officers to detain individuals without probable cause and use excessive force in detaining them.

66. It was the policy and/or custom of the City of Miami Police Department to fail to exercise reasonable care in hiring its police officers, including Defendants John Carpenter,

Harold James, Kenya Crocker, Roshan Milligan and Angel Mercado, thereby failing to adequately prevent constitutional violations on the part of its police officers.

67. It was the policy and/or custom of the City of Miami Police Department to inadequately supervise and train its police officers, including Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado, thereby failing to adequately discourage further constitutional violations on the part of its police officers.

68. As a result of the above described policies and customs, police officers of the City of Miami Police Department, including Defendants John Carpenter, Harold James, Kenya Crocker, Roshan Milligan, and Angel Mercado, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not significantly sanctioned, but would be tolerated.

69. The above described policies and customs demonstrate a deliberate indifference on the part of the City of Miami to the constitutional rights of persons within the City of Miami, and were the cause of the violations of Plaintiff's rights alleged herein.

COUNT IX

***Loss of Consortium Under State Tort Law and 42 U.S.C. §1983
Against Defendants John Carpenter, Harold James, Kenya
Crocker, Roshan Milligan, And Angel Mercado and Against the
City of Miami***

70. Plaintiff realleges and incorporates by reference ¶¶ 1-44.

71. As a direct and proximate result of the Defendant's actions, Plaintiff, Ida Coipel, has and will suffer the loss of her husband's services, consortium, and the care and comfort of his society.

PRAYER OF RELIEF AS TO ALL DEFENDANTS

WHEREFORE, Plaintiffs respectfully request this Court:

www.YourAttorneys.com

J.P.Gonzalez-Sirgo,P A., 804 S. Douglas Road., Suite 373, Coral Gables, FL 33134

Phone (305) 461-1095

- A. Enter judgement in favor of Plaintiffs and against Defendants;
- B. Enter an order declaring Defendants John Carpenter, Harold James, Kenya Croker, Roshan Milligan, and Angel Mercado's conduct unconstitutional;
- C. Award Plaintiffs compensatory damages against all Defendants and punitive damages against Defendants John Carpenter, Harold James, Kenya Croker, Roshan Milligan, and Angel Mercado.
- D. Award Plaintiffs special damages against Defendants;
- E. Award Plaintiffs' counsel reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law;
- F. Grant Plaintiffs such other and further relief as may be just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues triable as a matter of right by a jury as to all claims.

Dated: February 8, 2016.

Respectfully submitted,

J. P. Gonzalez-Sirgo,
P.A. Attorney at Law
Douglas Entrance
The Executive Tower Building
804 Douglas Road
Suite
373
Coral Gables, Florida 33134
Phone: (305) 461-1095
[Email: franchesca@yourattorneys.com](mailto:franchesca@yourattorneys.com)

/s/ Franchesca Marrero-Rodriguez, Esq.
F.B.N. 114106
Attorney for Plaintiff