

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2015 OCT 30 PM 2:14

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

KENNETH R. HOCHSTEIN,

Plaintiff,

Case No.: 6:15-cv-1845-Orl-41-GJK

-against-

JERRY L. DEMINGS,
AMANDA BRUNCHEEN,
AND PHILIP GRAVES

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiff seeks relief for the violation of his rights secured by 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws of the State of Florida. Plaintiff's claims arise from a series of incidents on August 8, 2011, October 28, 2011, October 29, 2011, October 30, 2011, and October 31, 2011, in which the Defendants subjected Plaintiff to false arrest and malicious prosecution. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

JURISDICTION & VENUE

2. Jurisdiction is conferred upon this Court by Article III, § 1 of the United States Constitution, 42 U.S.C. § 1983, 28 U.S.C. §§ 1331, 1332 and 1343.

3. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide any additional claims arising under state law.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the acts in question occurred within Orange County, State of Florida, which is situated in the Middle District of Florida, and because Plaintiff and Defendants are subject to personal jurisdiction in the Middle District of Florida.

PARTIES

5. At all times mentioned herein, Plaintiff KENNETH R. HOCHSTEIN was and still is a resident of the City of Clermont, Lake County, State of Florida, and is a person entitled to bring such action, pursuant 42 U.S.C. § 1983.

6. At all times mentioned herein, Defendant AMANDA BRUNCHEEN was a citizen of the State of Florida, and acted pursuant to her employment as an Officer of Casselberry Police Department, Lake County, State of Florida and agent of Orange County Sheriff's Office. She is now employed by the Orange County Sheriff's Office.

7. At all times mentioned herein, Defendant PHILIP GRAVES was and still is a citizen of the State of Florida, and acted pursuant to his employment as an Orange County Sheriff's Office, Orange County, State of Florida.

8. At all times mentioned herein, Defendant JERRY L. DEMINGS was and still is a citizen of the State of Florida, duly appointed and acting in his official capacity as Sheriff of Orange County.

STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION

A. Defendant JERRY L. DEMINGS's Supervision, Policies, and Procedures

9. Prior to October 31, 2011, Defendant JERRY L. DEMINGS was the employer of Defendant PHILIP GRAVES.

10. On October 31, 2011, Defendant JERRY L. DEMINGS was the employer of Defendant PHILIP GRAVES.

11. Subsequent to October 31, 2011, Defendant JERRY L. DEMINGS was the employer of Defendant PHILIP GRAVES.

12. On October 31, 2011, Defendant AMANDA BRUNCHEEN, was acting as an agent of Defendant JERRY L. DEMINGS and the Orange County Sheriff's Office.

13. The Defendant, JERRY L. DEMINGS is the elected or appointed local government entity and/or agency under whose jurisdiction and authority the acts complained of herein occurred, and the official with final decision-making authority.

14. The Defendant, JERRY L. DEMINGS had a duty to ensure that the Orange County Sheriff's Office and it employees subordinates complied with Florida and Federal Law.

15. The Defendant, JERRY L. DEMINGS was at all times mentioned herein, and still is, responsible for developing, implementing, promulgating, and enforcing customs, usages, practices, procedures, policies, and rules of officers employed by the Orange County Sheriff's Office.

16. The Defendant, JERRY L. DEMINGS was at all times mentioned herein, and still is, responsible for developing, implementing, promulgating, and enforcing customs, usages, practices, procedures, policies, and rules of Defendant PHILIP GRAVES.

17. The Defendant, JERRY L. DEMINGS was at all times mentioned herein, and still is, responsible for the training and supervision of Defendant PHILIP GRAVES.

18. Prior to October 31, 2011, Defendant, JERRY L. DEMINGS, permitted, encouraged, tolerated, and ratified a pattern of practice or custom of the use of force in an unjustified and unreasonable manner, as well as allowing officers to make arrests without probable cause, by:

- a. Failing to properly train and supervise officers in the conditions under which an arrest can be made.
- b. Failing to properly train and supervise officers involved in "Operation Spider Web."

19. Defendant, JERRY L. DEMINGS, was deliberately indifferent as to the level of training, supervision, and discipline maintained by Orange County Sheriff's Office to its officers.

20. As of the date of this Complaint, Defendant, JERRY L. DEMINGS, has failed or refused to initiate any disciplinary action or otherwise take any remedial measures against Defendant PHILIP GRAVES.

21. As of the date of this Complaint, Defendant, JERRY L. DEMINGS has failed or refused to initiate any disciplinary action or otherwise take any remedial measures

against Defendant PHILIP GRAVES for the misconduct perpetrated against Plaintiff complained of herein.

22. The Defendant, JERRY L. DEMINGS's failure to effectively supervise and discipline deputies accused of arresting individuals without probable cause and maliciously initiating frivolous criminal proceedings evinces a deliberate indifference to the likelihood of ongoing constitutional violations which ultimately resulted in multiple violations of Florida State laws, Federal law, and Plaintiff's rights under the United States Constitution.

23. As a result of the foregoing failures and refusals, Defendant, JERRY L. DEMINGS has established a permanent and well-settled practice and custom of the Orange County Sheriff's Office to permit officers, including Defendant PHILIP GRAVES to engage in misconduct and violate the Constitutional rights of citizens.

B. The October 31, 2011 Subject Incident

24. On or about October 31, 2011, Plaintiff was arrested by Defendant PHILIP GRAVES pursuant to "Operation Spider Web."

25. "Operation Spider Web" was an undercover online sting operation executed by the Orange County Sheriff's Office

26. On August 8, 2011, Defendant PHILIP GRAVES, detective of the Orange County Sheriff's Office, placed an advertisement on Craigslist under the "Casual Encounters" section as part of "Operation Spider Web." This ad was titled "Your baby is back ... w4m..." and read "Your baby is back. You know what I mean. Be ready to help. If you don't know what I mean then, maybe this is not for you, and obviously we don't know you."

27. On the same day, Plaintiff answered the advertisement and engaged in explicit sexual conversations through e-mail and text messages with Defendant PHILIP GRAVES, who was posing as, “Karen Johnson” an adult woman. Throughout the course of these conversations, “Karen Johnson” revealed that she was seeking a man to “teach” her fourteen-year-old daughter “Amber.”

28. Plaintiff continued his attempts to make arrangements to meet "Karen Johnson," and advised that as long as “Amber” is eighteen-years old he would “teach” her. (emphasis added). Plaintiff and "Karen Johnson" never made arrangements to meet and their communications ended on August 9, 2011.

29. Over two months later on October 28, 2011, Defendant PHILIP GRAVES placed an advertisement on Craigslist's “Casual Encounters” section titled “Woman in need of help' . . . w4m (Orlando).” It read “Mom of a wonderful girl. Looking for a good man who can be there for her. Serious replz only.” At 12:16 p.m. on the same day, Plaintiff responded via e-mail, asking if he could see a picture. Defendant PHILIP GRAVES, posing as “Karen Johnson,” an adult woman, advised Plaintiff they “talked before.” Plaintiff asked for a second time to see a picture and gave his cell phone number for purposes of text messaging.

30. Over twenty-four hours later, on October 29, 2011, at 6:58 pm. “Karen Johnson,” sent Defendant a text message reading “hey it is Karen.” Defendant responded “???” , “from where.” “Karen Johnson” advised Defendant she was “done playing games it is Karen from CL.” Plaintiff again asked that she send a picture, and “Karen Johnson” wrote “you already saw them”, and “if you don't remember we should just forget it”

Plaintiff responded "I do remember Im just asking what you willing and not willing to do I wanna know and exactly what do I need to bring with me?" "Karen Johnson" then wrote "we are up for anything but you said you would not freak our when you see she is 14 rite." Plaintiff replied "where u at I get off at 11:30 need address for gas."

31. Five hours later at 11:57 p.m., Plaintiff left "Karen Johnson" the following voicemail, "Hey, guess you weren't serious at all man, give me your number, tell me to come through, but your' re not actually serious, I don't get it, alright?"

32. "Karen Johnson" and Plaintiff had no further communication until October 30, 2011, at 12:27 p.m., when Plaintiff received a phone call from Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," asking if he was coming over. Plaintiff told Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," he wanted to come over but needed the address. Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," told Plaintiff she would send him the address via text message and asked him to bring some drinks with him.

33. Before ending the conversation, Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," asked "do you have any special requests for us before you get here?", "do u have any special request, like do you want us to shave, or do you want us to shower, or do you want us to wear something special?" Plaintiff asked "how many of you are there?" to which Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," responded "it's just me and 'Amber.'" Plaintiff said "oh it's just the two of you?", and "Karen Johnson" asked him if that was "ok". Plaintiff said yes. Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," asked Plaintiff what type of car he was driving

and ended the conversation with the promise to text him the address. Shortly thereafter, Plaintiff texted "Karen Johnson" and asked that she send pictures of both her and "Amber."

34. The next day, October 31, 2011, at 12:22 a.m., Plaintiff called "Karen Johnson" and asked if he could see her that night. Defendant AMANDA BRUNCHEEN answered the phone and posed as "Karen Johnson" and asked where he was, and Plaintiff explained he was as on his way over. Defendant AMANDA BRUNCHEEN, posing as "Karen Johnson," said she would text Plaintiff her home address, and asked if he had condoms. Defendant AMANDA BRUNCHEEN then asked whether Plaintiff was "good with 'Amber'" and explained that she "just wanted to make sure, you're coming over for both of us." Plaintiff said "yeah" and asked again that "Karen Johnson" text her address.

35. "Karen Johnson" then sent Plaintiff her home address via text message. Plaintiff texted "ok never did 3sum before ... will you come out and give me a hug and kisses then escort me in to break the ice?" "Karen Johnson" agreed, and asked Plaintiff where he was because she needed to "get her in the shower." Plaintiff said he would be there in about ten minutes.

36. Approximately twenty minutes later at 12:42 a.m., Defendant AMANDA BRUNCHEEN or "Karen Johnson" called Plaintiff to ask him where he was. At 12:50 a.m. "Karen Johnson" texted Plaintiff "she is about out of the shower. Plaintiff responded "long as no guys ... what?" "Karen Johnson" replied "no baby trust me no guys here that is what we are waiting on you for." Plaintiff responded "hey you gonna come out and speak to me in my car help recall wat we lookin for ... to be honest with you I don't recall exactly. I'm our here".

37. At 12:57 a.m. the Plaintiff called “Karen Johnson” and spoke with Defendant AMANDA BRUNCHEEN, again posing as “Karen Johnson” an adult woman. During the conversation, “Karen Johnson” mentioned that she wanted to do a threesome to which Plaintiff replied “Oh I didn't know that. oh I thought it was you by yourself. I mean I'm fine with that.” “Karen Johnson” then told Plaintiff that she was with “Amber” and Plaintiff asked if “Amber” was her roommate. Karen Johnson then replied “No she's my daughter, look I told you all this.” Plaintiff then stated that he did not recall.

38. Plaintiff arrived at the house at approximately 1:02 a.m. on October 31, 2011 and Defendant AMANDA BRUNCHEEN went outside to meet Plaintiff. When Plaintiff walked inside the house, he was placed under arrest by Defendants PHILIP GRAVES and AMANDA BRUNCHEEN acting on behalf of the Orange County Sheriff's Office.

39. The arrest resulted in the initiation of a criminal prosecution against Plaintiff in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, Case Number 2011-CF-014732. He was ultimately charged in an Amended Information with Traveling to Meet a Minor for Unlawful Sexual Act in violation of Florida Statute § 847.0135(4)(a) (Count 1); Solicitation of a Minor via a Computer in violation of Florida Statute § 847.0135(3) (Count 2); and Attempted Lewd or Lascivious Battery in violation of Florida Statutes §§ 800.04(4)(a) and 777.04 (Count 3).

40. On November 14, 2012, the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida granted Plaintiff's motion to dismiss and dismissed the Amended Information that was filed against Plaintiff pursuant to Florida Rule of Criminal Procedure 3.190(c)(4).

41. In dismissing all charges against Plaintiff, the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida ruled that there were no material disputed facts and viewing the undisputed facts in the light most favorable to the State, the State failed to establish a prima facie case of guilt against Plaintiff.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS
FALSE ARREST UNDER 42 U.S.C. § 1983**

42. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs #1-41 with the same force and effect as if fully set forth herein.

43. On October 31, 2011, Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, acted under the color of law as law enforcement officers with the authority of the Orange County Sheriff's Office.

44. Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, falsely and without probable cause, placed Plaintiff under arrest without any probable cause that Plaintiff had committed a criminal offense.

45. Defendants PHILIP GRAVES and AMANDA BRUNCHEEN knew that they did not have authority to arrest Plaintiff for Traveling to Meet a Minor for Unlawful Sexual Act in violation of Florida Statute § 847.0135(4)(a) (Count 1); Solicitation of a Minor via a Computer in violation of Florida Statute § 847.0135(3) (Count 2); and Attempted Lewd or Lascivious Battery in violation of Florida Statutes §§ 800.04(4)(a) and 777.04 (Count 3), as Plaintiff was in contact with and pursuing "Karen Johnson" an adult woman and specifically stated that he would only "teach" "Amber" if she was eighteen (18) years of age.

46. Despite their lack of probable cause, Defendants PHILIP GRAVES and AMANDA BRUNCHEEN falsely and maliciously arrested Plaintiff for violating Florida Statute § 847.0135(4)(a) (Count 1); Solicitation of a Minor via a Computer in violation of Florida Statute § 847.0135(3) (Count 2); and Attempted Lewd or Lascivious Battery in violation of Florida Statutes §§ 800.04(4)(a) and 777.04 (Count 3), and unlawfully transported Plaintiff to the Orange County jail.

47. As a result of the aforesaid conduct by Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, each acting in concert with and aiding each other as agents of Orange County Sheriff's Office, Plaintiff was subjected to an illegal, improper and false arrest by the aforementioned Defendants and taken into custody and caused to be falsely imprisoned, detained, and confined without any probable cause, privilege or consent.

48. As a result of the foregoing, Plaintiff's liberty was restricted for an extended period of time, was put in fear for his safety, and he was humiliated, without probable cause

**SECOND CAUSE OF ACTION AGAINST DEFENDANT JERRY L. DEMINGS
FALSE ARREST UNDER 42 U.S.C. § 1983**

49. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs # 1-41 with the same force and effect as if fully set forth herein.

50. Due to the ratifications of misconduct and failures of Defendant JERRY L. DEMINGS, Plaintiff was taken into custody and caused to be falsely imprisoned, detained, and confined, without any probable cause, privilege or consent at the hands of Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, each acting in concert with and aiding each other pursuant to the practices and customs of the Orange County Sheriff's Office under "Operation Spider Web."

51. As a direct and proximate result of the practices and customs of Defendant JERRY L. DEMINGS, Plaintiff suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation, loss of liberty and freedom.

**THIRD CAUSE OF ACTION AGAINST DEFENDANTS PHILIP GRAVES AND
AMANDA BRUNCHEEN
MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983**

52. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs # 1-41 with the same force and effect as if fully set forth herein.

53. At all times mentioned herein, Defendants PHILIP GRAVES and AMANDA BRUNCHEEN were state actors as officers and acted under color of law as agents of Orange County Sheriff's Office.

54. Defendants PHILIP GRAVES and AMANDA BRUNCHEEN were not executing their lawful duties when they placed Plaintiff under arrest, and transported him to the Orange County jail.

55. Plaintiff had not committed a criminal violation and Defendants PHILIP GRAVES and AMANDA BRUNCHEEN lacked probable cause to arrest Plaintiff.

56. At the time Defendants PHILIP GRAVES and AMANDA BRUNCHEEN arrested Plaintiff, Defendants failed to clearly communicate "Amber's" age to Plaintiff and it was clear that he intended to meet with "Karen Johnson" an adult woman and not "Amber."

57. Defendants PHILIP GRAVES and AMANDA BRUNCHEEN maliciously initiated the criminal proceedings against Plaintiff in order to justify the arrest of Plaintiff and bolster the effectiveness of "Operation Spider Web."

58. All criminal proceedings against Plaintiff were terminated in his favor when the state court granted Plaintiff's motion to dismiss in case number 2011-CF-014732.

59. As a direct and proximate result of the Defendants' PHILIP GRAVES and AMANDA BRUNCHEEN malicious initiation of the criminal proceedings, Plaintiff was arrested and taken to the Orange County jail where he remained until he was released on bond, suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation, and loss of liberty and freedom.

60. Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, collectively and individually, while acting under color of state law, were directly and actively involved in violating Plaintiff's constitutional rights.

61. As a result of the foregoing, Plaintiff is entitled to compensatory damages in a sum to be determined at trial and is further entitled to punitive damages against the individual Defendants in a sum to be determined at trial.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANT JERRY L. DEMINGS
MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983**

62. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs # 1-41 with the same force and effect as if fully set forth herein.

63. Due to the ratifications of misconduct and failures of Defendant JERRY L. DEMINGS, Plaintiff was subjected to the malicious initiation of the criminal proceedings in case number 2011-CF-014732 at the hands of Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, each acting in concert with and aiding each other pursuant to the practices and customs of the Orange County Sheriff's Office under "Operation Spider Web."

64. As a direct and proximate result of the practices and customs of Defendant JERRY L. DEMINGS, Plaintiff suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation, loss of liberty and freedom.

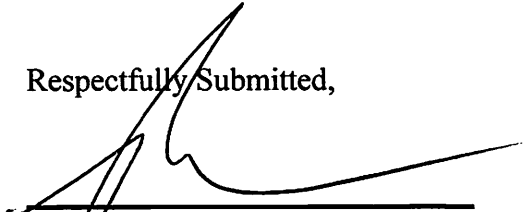
DEMAND FOR JURY TRIAL

65. Plaintiff hereby requests a trial by jury on all issues triable by jury.

WHEREFORE, Plaintiff demands judgment on each cause of action for a sum to be determined at a jury trial in compensatory damages, a sum to be determined at a jury trial in punitive damages against Defendants PHILIP GRAVES and AMANDA BRUNCHEEN, plus reasonable attorney's fees, costs, and disbursements of this action.

Dated: Orlando, Florida
October 30, 2015

Respectfully Submitted,



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