



2.

Defendant City of Flowery Branch, Georgia, is a municipal corporation within the State of Georgia. It may be served by service upon the Mayor Diane Hirling, at City Hall, 5517 Main Street, Flowery Branch, Georgia 30542.

3.

Defendant Flowery Branch Police Department is a duly created police department established by the City of Flowery Branch. It may be served by service upon the Chief of Police, Gerald Lanich at 5519 Main Street, Flowery Branch, Georgia 30542 and by service upon Mayor Diane Hirling as Chief Executive Officer of the Flowery Branch Police Department and the City of Flowery Branch.

4.

Defendant Chief Gerald Lanich is a resident of Hall County Georgia, and was at all times mentioned herein the Chief of Police for the Flowery Branch Police Department and the City of Flowery Branch. He is being named in his official capacity. He may be served at the Police Department at 5519 Main Street, Flowery Branch, Georgia 30542.

5.

Defendant Marcello Bump is a resident of Hall County Georgia, and was at all

times mentioned herein a police officer with the Flowery Branch Police Department and the City of Flowery Branch. He is being named in his individual and official capacities. He may be served at his current place of employment, the Oakwood Police Department, 4009 Railroad Street, Oakwood, Georgia, 30566.

6.

Defendant Officer Scotty Smith is a resident of Hall County, Georgia and is now and was at all times mentioned herein a police officer with the Flowery Branch Police Department and the City of Flowery Branch, Georgia. He is being named in his individual and official capacities. He may be served at his place of employment, the Flowery Branch Police Department, 5519 Main Street, Flowery Branch, Georgia 30542.

7.

Defendant Lt. Anthony Sullo is a resident of Jackson County Georgia, and was at all times mentioned herein a Lieutenant with the Flowery Branch Police Department and the City of Flowery Branch. He is being named in his individual and official capacities. He may be served at his home address.

**Jurisdiction and Venue**

8.

This action is brought for damages and other appropriate relief under 42 USCA

Section 1983 for violation of Plaintiffs' civil rights under color of state law.

The jurisdiction of this Court is invoked under the provisions of 28 USC Sections 1331 and 1343.

10.

Venue is placed in this district, pursuant to 28 USC Section 1391 , because it is where all the parties reside and where the events complained of occurred.

Facts

11.

On December 9, 2006, Plaintiff Clayton Bingham (hereinafter referred to as "Clayton") and his girlfriend were visiting in his mother's home at 5632 Mulberry Street in Hall County, Georgia. Clayton called his mother, Plaintiff Sandra Bingham, and learned that she was on her way home to supervise visitation between Martha Gravitt and Martha's minor children scheduled for 7:00 p.m.

Martha Gravitt and her boyfriend, Darrell Eubanks, arrived at Ms. Bingham's home at about 6:40 for the 7:00 supervised visit. Clayton advised Martha that Ms. Bingham was on her way, and also confirmed by telephone that the third child was being transported to Mulberry Street by the child's father who was delayed by car trouble. Because the minor children were not present, the Darrell Eubanks became irate

and apparently called 911 shortly after 7:00 p.m..

12.

There was no written court order concerning the visitation.

13.

5632 Mulberry Street is not within the corporate limits of the City of Flowery Branch. It is in unincorporated Hall County.

14.

Nevertheless, Flowery Branch police officers and Defendants herein, Marcello Bump and Scotty Smith, responded to the call. They arrived and were admitted to the home by Darrell Eubanks, an uninvited visitor. Officers Bump and Smith identified themselves as police officers and were wearing police uniforms and badges and carrying guns. Officers Bump and Smith spoke with Martha and her boyfriend and were advised that there was no written court order requiring the visitation.

15.

Plaintiff Sandra Bingham (hereinafter referred to as "Sandra") arrived at her home to find Defendant Officers Bump and Smith in her living room and asked what was going on. Officer Bump's response to Sandra was loud and rude.

16.

Clayton stood up from his seat on the sofa, and objected to Bump's rudeness to his mother. Officer Bump walked away from Sandra and over to Clayton on the other side of the room where, without provocation, Bump punched Clayton in the chest with both fists and pushed him onto the sofa. When Clayton stood back up, Bump pulled out his handcuffs and struck Clayton on the face with the handcuffs, knocking Clayton back onto the sofa and on top of his girlfriend who had been sitting beside him. Officer Smith joined in the assault on Clayton by holding Clayton face down on the sofa by his shoulder while holding Clayton's hands and jerking Clayton's arm while Clayton was being handcuffed. During the assault Clayton repeatedly told the officers they were hurting him, that he was not fighting, and asked them to get off of him.

17.

During the assault, Ms. Bingham told the officers specifically that they were outside of their jurisdiction.

18.

As a result of the actions of Officers Bump and Smith during this altercation, Clayton's back and shoulder were severely injured.

19.

During the physical altercation between Officers Bump and Smith, Lt. Sullo arrived on the scene.

20.

Lt. Sullo was personally aware that the property was outside of the corporate limits of Flowery Branch.

21.

However, when Officers Bump and Smith escorted Clayton from Ms. Bingham's home, Lt. Sullo 'took custody' of him, and slammed him, face down, onto the hood of a car parked outside the home. Lt. Sullo held Clayton down and would not let him stand up, despite Clayton's pleas.

22.

Clayton was further injured by Lt. Sullo's actions.

23.

While Lt. Sullo held Clayton down on the car, Hall County Sheriff's Deputies then arrived on the scene and separated the Defendant officers from the Plaintiffs. The Hall County officers again advised the Flowery Branch personnel that Plaintiff's property was outside of the jurisdiction of the Flowery Branch Police Department.

24.

Nonetheless, the Defendant Officers requested that both Plaintiffs be arrested for obstruction. As a result, Ms. Bingham was also handcuffed, and both Plaintiff's were placed in the back of a Hall County Sheriff's vehicle. Plaintiffs were held in the vehicle for 45-60 minutes, and unreasonable, extended period of time.

25.

Eventually, Plaintiffs were released from custody, and no charges were filed against them.

26.

After Plaintiffs' release, Clayton was taken to the hospital for treatment of his arm, shoulder, back and head.

27.

As a result of his injuries, Clayton has incurred medical expenses and lost wages. He has also endured great physical pain and suffering.

28.

Sandra Bingham's home was damaged by the Defendant officers when they hit the wall of the living room while assaulting Clayton.

**COUNT 1**

29.

Plaintiffs hereby incorporate and allege the allegations contained in Paragraphs 1 through 28 above, as if expressly set forth herein.

30.

Defendants Bump and Smith unlawfully entered the home of Plaintiff Sandra Bingham and unlawfully seized Plaintiff Clayton Bingham. In the process of the unlawful seizure and arrest, Defendants Bump and Smith unlawfully struck Plaintiff Clayton Bingham in the face, chest and back, and wrenched his arm and shoulder, causing serious physical injury. In so doing, Defendants, under color of state law, deprived Plaintiff Clayton Bingham of his right to be secure in his person and to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments to the United States Constitution.

31.

Defendant Lt. Sullo also unlawfully seized Plaintiff Clayton Bingham and slammed him, face down, into the hood of a parked vehicle, and refused to allow him to stand up, causing him serious physical injury. In so doing, Defendant Sullo, under color of state law, deprived Plaintiff Clayton Bingham of his right to be secure in his

person and to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments to the United States Constitution.

32.

Defendants Bump, Smith and Sullo, unlawfully entered the home and property of Plaintiff Sandra Bingham and unlawfully seized her, and caused her to be unlawfully detained for an unreasonable amount of time. In so doing, Defendants, under color of state law, denied Plaintiff Sandra Bingham of her right to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments to the United States Constution.

33.

The actions of Defendants Bump, Smith and Sullo were in violation of clearly established statutory or constitutional rights of which a reasonable officer should have known.

34.

The City of Flowery Branch, the Flowery Branch Police Department, and Chief Gerald Lanich were the final decision makers for any policy, practice, custom or procedure which was a factor for the excessive force and constitutional violations inflicted upon Plaintiffs. This policy, practice, custom or procedure was developed

with negligent, gross and deliberate indifference to the excessive force and roughness, including the repeated failures to follow proper procedures for search, arrest, and detention, exhibited by police officers for the City of Flowery Branch, generally and those in the area of this incident particularly.

35.

The City of Flowery Branch, The City of Flowery Branch Police Department, and Chief Gerald Lanich were negligently, recklessly and deliberately indifferent in failing to instruct, supervise, discipline and/or control the Defendants, Officers Bump and Smith, and Lieutenant Sullo, and that failure was the moving force for the excessive force and constitutional violations inflicted upon Plaintiffs.

36.

As a direct and proximate result of the above-described illegal actions of Defendants, Plaintiffs sustained severe injuries, causing them great pain of body and anguish of mind, incurred substantial medical and other expenses and lost wages, suffered damages to their personal property . They are entitled to be compensated for these losses.

COUNT 2

37

Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 36 as if set forth fully herein.

38.

Defendants Officers Bump and Smith committed assault and battery against Plaintiff Clayton Bingham by striking him repeatedly, hitting him with handcuffs, pinning him down and wrenching his arms during his unlawful arrest.

39.

Defendant Lieutenant Sullo committed assault and battery against Plaintiff Clayton Bingham by slamming him into the hood of a parked car and refusing to let him stand up during his unlawful arrest.

40.

Said assaults and batteries by the named defendants were committed with malice or with intent to injure Plaintiff.

41.

Defendants Police Chief Lanich, The Flowery Branch Police Department and the City of Flowery Branch are liable to Plaintiff for the assaults and batteries committed

against him by Defendants Bump, Smith and Sullo as employees of the Flowery Branch Police Department.

42.

As a direct and proximate result of the above-described illegal actions of Defendants, Plaintiff Clayton Bingham sustained severe physical injury, causing him great pain of body and anguish of mind, incurred substantial medical and other expenses and lost wages, and he was prevented from transacting his usual business. He is entitled to be compensated for these losses.

**COUNT 3**

43.

Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 42 as if set forth fully herein.

44.

Defendant Officers Bump and Smith and Defendant Lieutenant Sullo falsely imprisoned Plaintiffs Clayton and Sandra Bingham by falsely detaining them, threatening them with obstruction charges, and causing Plaintiffs further detention by Deputies of the Hall County Sheriff's Department.

45.

Plaintiffs were wrongfully detained and deprived of their personal liberty.

46.

Defendants Bump, Smith and Sullo acted with malice and/ or intent to cause Plaintiffs harm when they falsely imprisoned Plaintiffs.

47.

Defendants The Flowery Branch Police Department, the City of Flowery Branch, and Chief Lanich are liable to Plaintiffs for the actions of Defendants Bump, Smith and Sullo as employees of the Flowery Branch Police Department.

48.

As a direct and proximate result of the wrongful acts of Defendants, Plaintiffs have suffered the loss of their personal liberty, great embarrassment and humiliation, physical injuries, medical expenses, lost wages and other damages. They are entitled to be compensated therefor.

**COUNT 4**

49.

Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 48 as if set forth fully herein.

50.

Defendant Officers Bump and Smith and Defendant Lieutenant Sullo falsely arrested Plaintiffs Clayton and Sandra Bingham by detaining them, placing them in handcuffs, and causing their wrongful detention in a Hall County Police car.

51.

Said arrest was warrantless and without probable cause, and the officers were outside of their jurisdiction.

52.

Defendants Bump, Smith and Sullo acted with malice and/ or intent to cause Plaintiffs harm when they falsely arrested Plaintiffs.

53.

Defendants The Flowery Branch Police Department, the City of Flowery Branch, and Chief Lanich are liable to Plaintiffs for the actions of Defendants Bump, Smith and Sullo as employees of the Flowery Branch Police Department.

54.

As a direct and proximate result of the wrongful acts of Defendants, Plaintiffs have suffered the loss of their personal liberty, great embarrassment and humiliation, physical injuries, medical expenses, lost wages, and other damages. They are entitled

to be compensated therefor.

**COUNT 5**

55.

Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 54 as if set forth fully herein.

56.

Defendants Bump, Smith and Sullo trespassed upon the property of Plaintiff Sandra Bingham located at 5632 Mulberry Street, by coming, uninvited, onto property they knew or should have known was outside of the corporate limits of the City of Flowery Branch and therefore outside of their jurisdiction and authority, refusing to leave when they were reminded that the property was outside of their jurisdiction and asked to leave, and causing damage to Plaintiff's property.

57.

Defendants Bump, Smith and Sullo acted with malice and/ or intent to cause Plaintiff harm when they trespassed upon Plaintiff's property.

58.

Defendants The Flowery Branch Police Department, the City of Flowery Branch, and Chief Lanich are liable to Plaintiff for the actions of Defendants Bump, Smith and

Sullo as employees of the Flowery Branch Police Department.

59.

As a direct and proximate result of the unlawful acts of Defendants, Plaintiff Sandra Bingham was deprived the use of her property, her property was damaged, and she incurred expenses making necessary repairs, in addition to suffering great mental anguish and other damages and she is entitled to be compensated therefor.

**COUNT 6**

60.

Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 59 as if set forth fully herein.

61.

This Cause of Action is brought by plaintiffs against Defendants City of Flowery Branch, Georgia and Flowery Branch Police Department for negligence.

62..

The above-described actions by Defendants Bump and Smith resulted from the carelessness and negligence of Defendants City of Flowery Branch, Georgia and Flowery Branch Police Department, its agents, servants, employees, or other representatives, in hiring and failing to properly train Defendants Bump, Smith, and

Sullo.

63.

As a direct and proximate result of the above-mentioned carelessness and negligence of Defendants City of Flowery Branch, Georgia and Flowery Branch Police Department, plaintiffs sustained severe physical injury, suffered great pain of body and anguish of mind, incurred substantial medical and other expenses, and were prevented from transacting their usual business. Plaintiffs are entitled to be compensated therefor.

WHEREFORE, Plaintiffs Pray:

- a. for a trial by jury;
- b. for judgment against defendants in an amount to be determined by the enlightened conscience of a jury sufficient to compensate them for their general and special damages;
- c. for an award of punitive damages in an amount to be determined by the enlightened conscience of the jury;
- d. for attorneys fees and expenses of litigation; and
- e. for such other and further relief as this Court deems just and proper.

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This \_\_\_ day of November, 2008.

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& MCKINNON, LLP**



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