

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02335

OMAR KALIL HASSAN,

Plaintiff,

v.

MACHELLE WILLIBY, in her individual capacity; and
LISA CALCAMUGGIO, in her individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Omar Kalil Hassan, by and through his counsel, Mark Silverstein, Rebecca Wallace, and Arash Jahanian of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, respectfully alleges for his Complaint and Jury Demand as follows:

INTRODUCTION

On the morning of March 16, 2016, Aurora Police Officers Machelles Williby and Lisa Calcamuggio forcibly ejected Omar Kalil Hassan, a black Ethiopian man wearing a hooded sweatshirt, from a public coffee shop, explaining to him that his “kind of business” was “not welcome” there. Defendants, who had never before met or interacted with Mr. Hassan, closely followed him as he engaged in the benign behavior of walking up to the counter, buying a muffin, and sitting down at a table to eat it. When they arrived at Mr. Hassan’s table, they ordered him to leave the coffee shop and escorted him out, all while keeping their hands on their guns. There was no reason for the officers’ actions other than Mr. Hassan’s race and national

origin. Those actions constituted discrimination and an unreasonable seizure in violation of Mr. Hassan's clearly established constitutional and statutory rights under the Equal Protection Clause of the Fourteenth Amendment, the Fourth Amendment, and 42 U.S.C. § 1981.

JURISDICTION AND VENUE

1. This action is brought pursuant to the laws of the United States, specifically the Fourth and Fourteenth Amendments and 42 U.S.C. §§ 1981 and 1983.

2. This Court has jurisdiction under 28 U.S.C. §§ 1331(a) and 1343 because the case arises under the laws and Constitution of the United States.

3. The events or omissions giving rise to the claims herein occurred in the District of Colorado, and at all relevant times the parties lived in the District. Venue is therefore proper under 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Omar Kalil Hassan is a black man from Ethiopia, and he speaks with an Ethiopian accent. At all relevant times, he was a resident of, and domiciled in, the State of Colorado.

5. Defendant Machel Williby is, and at all relevant times was, an Aurora Police Department (APD) police officer. She is a resident of, and domiciled in, the State of Colorado. At all relevant times, she was acting under the color of state law as a law enforcement officer for Aurora, Colorado. She is sued in her individual capacity.

6. Defendant Lisa Calcamuggio is, and at all relevant times was, an APD police officer. She is a resident of, and domiciled in, the State of Colorado. At all relevant times, she

was acting under the color of state law as a law enforcement officer for Aurora, Colorado. She is sued in her individual capacity.

FACTUAL ALLEGATIONS

7. On the morning of March 16, 2016, Plaintiff Omar Kalil Hassan entered a Caribou Coffee Company shop located at 13700 E. Colfax Avenue, in Aurora, Colorado.

8. Mr. Hassan had just finished a night shift at work and was dressed in a hooded sweatshirt, sweatpants, and work boots.

9. Defendant Aurora Police Department Officers Machel Williby and Lisa Calcamuggio were seated in the coffee shop and looking at Mr. Hassan when he entered.

10. Mr. Hassan went to the counter to purchase a muffin.

11. Officer Calcamuggio followed Mr. Hassan to the counter, and she was joined moments later by Officer Williby.

12. Defendants stood closely behind Mr. Hassan as he ordered his food.

13. Defendants were not in line to make a purchase. They were merely surveying Mr. Hassan's actions.

14. Mr. Hassan speaks with a noticeable accent, which Defendants could hear given their close proximity to him in line.

15. Mr. Hassan ordered and paid for the muffin. He took his food to an open table and sat down.

16. Defendants immediately walked up to Mr. Hassan's table, stood directly in front of him, and both placed their hands on their guns.

17. Officer Williby stood very close to Mr. Hassan; Officer Calcamuggio stood directly behind Officer Williby.

18. Looking down upon Mr. Hassan, Officer Williby commanded him to leave the coffee shop.

19. Mr. Hassan asked why he was being asked to leave, to which Officer Williby responded, “Your kind of business is not welcome here.”

20. Mr. Hassan then asked, “Who says that?” Officer Williby motioned her head toward the coffee shop counter and said, “They do.”

21. Officer Williby then became more threatening. She got even closer to Mr. Hassan and, with her hand still on her gun, said, “I don’t care if you eat your muffin, but you have to leave here.”

22. Throughout this encounter, Officer Calcamuggio directed Officer Williby’s actions and provided backup by standing very close to Officer Williby, whispering in Officer Williby’s ear, and keeping her hand on her firearm.

23. The coffee shop was busy at that time, including with many white and non-Ethiopian customers who had engaged in similar conduct to Mr. Hassan, namely, purchasing items, sitting down at tables, and consuming those items.

24. Of all the customers engaged in similar conduct, Defendants approached only Mr. Hassan. He was the only one they instructed to leave the store.

25. Mr. Hassan did not engage in any behavior to draw any reasonable suspicion from Defendants.

26. Defendants' conduct toward Mr. Hassan drew the attention of numerous other patrons.

27. Feeling that he had no choice but to follow Defendants' orders to leave, Mr. Hassan got up from the table and walked toward the door.

28. Defendants followed very closely behind Mr. Hassan, with their hands still on their guns, as they escorted him out of the coffee shop.

29. No reasonable person would have felt free to ignore Defendants' commands to leave the coffee shop. Mr. Hassan was reasonably fearful that if he tried to refuse the orders, Defendants would have escalated their show or use of force.

30. Once outside, Mr. Hassan, who was disgusted, threw his muffin in the trash, walked toward his car, and got in.

31. Defendants called for more officers, and within a few minutes, more police officers arrived.

32. Mr. Hassan sat in his car fearful, as two male officers now appeared to be searching the area for him. Mr. Hassan did not feel free to leave his car for fear of the potential actions of the officers, including Defendants.

33. Contrary to Officer Williby's statement, no Caribou employee made any complaints about Mr. Hassan or asked that he be removed.

34. In an affidavit provided to the Colorado Civil Rights Division, Andrew Thompson, the Manager on Duty at the time of the incident, stated, "Neither I nor anyone working at the store that morning reported anything about [Mr. Hassan] or asked that he be escorted from the property. I did not see him escorted out. The officer did not speak to me about

the customer before escorting him out. I only heard that he was escorted out from the officer after the fact.”

35. Mr. Hassan’s experience in discrimination is unique in its reflection of both historical and modern-day racism. His dress, including a hoodie,¹ made him a particular target as a black man in the current environment. Officer Williby then vocalized her prejudice by telling Mr. Hassan his “kind” was not welcome at the coffee shop, a statement steeped in historical racism.²

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 – *Fourth Amendment*
Unlawful Seizure

36. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

37. At all times relevant to this claim, Defendants were acting under color of state law in their capacity as Aurora law enforcement officers.

¹ See, e.g., Robin Givhan, *Trayvon, Hoodies and America’s Fears: How a garment became the complicated symbol for our country’s moral outrage and racial unease*, Daily Beast (Mar. 29, 2012), <http://www.thedailybeast.com/trayvon-hoodies-and-americas-fears> (“[I]t’s not really surprising that something as banal as a hoodie, which Martin was wearing when he was killed, has become symboli[c] of Zimmerman’s presumed prejudice, ignorance, and animus.”); Lynette Holloway, *What Hillary Clinton Really Said About Whites Who Fear Young Black Men In Hoodies*, News One (July 27, 2015), <https://newsone.com/3158640/hillary-clinton-white-fear-black-hoodies-speech/> (“I mean, if we’re honest, for a lot of well-meaning, open-minded White people the sight of a young Black man in a hoodie still evokes a twinge of fear. . . . We cannot hide from these hard truths about race and justice in America.”); Joshua Ostroff, *Marvel’s Luke Cage Is The Bulletproof Black Superhero We Need Right Now*, The Huffington Post (Sept. 26, 2016), http://www.huffingtonpost.ca/2016/09/29/marvel-luke-cage_n_12202516.html (“When you’re a black man in a hoodie all of a sudden you’re a criminal.”).

² See, e.g., Joseph William Singer, *We Don’t Serve Your Kind Here: Public Accommodations and the Mark of Sodom*, 95 B.U.L. Rev. 929 (2014); Tyler C. Schneiders & Jonathan S. Gore, *We Don’t Want Your Kind Here: When People High in Narcissism Show Prejudice Against Immigrants*, 5 J. of Soc., Evolutionary, and Cultural Psychol. 175 (2011); “*We Don’t Want Your Kind Here*” – *Racism In 1950’s America*, Past Daily Reference Room (Feb. 24, 2017), <http://pastdaily.com/2017/02/24/racism-1950s-america-past-daily/>; Stevie Wonder, *Cash in Your Face* (Motown Records 1980) (“Well I thought the Bill was passed that said you could not discriminate We don’t want your kind living in here”).

38. At the time of the complained-of events, Plaintiff had a clearly established constitutional right under the Fourth Amendment to be secure in his person against unreasonable seizures.

39. Any reasonable law enforcement officer knew or should have known of this clearly established right.

40. Defendants intentionally, knowingly, and recklessly seized Plaintiff without any reasonable suspicion or probable cause.

41. The conduct of Defendants, including their threatening presence, touching of weapons, repeated language and tone of voice, and escorting of Mr. Hassan in near proximity, communicated to Mr. Hassan that he was compelled to comply with their requests that he leave the store. No reasonable person would have felt free to decline Defendants' instructions or otherwise terminate the encounter.

42. Defendants did not at any time have probable cause, reasonable suspicion, or any other legally valid basis to believe that Plaintiff had committed or was committing any violation of the law prior to seizing his person.

43. Defendants did not at any time have a warrant authorizing any such seizure of Plaintiff.

44. No legally recognizable exigent circumstances existed that would have justified or permitted Defendants' conduct.

45. Defendants' actions were objectively unreasonable in light of the circumstances confronting them.

46. Defendants are also liable for their failure to intervene to prevent the constitutional violations of which they were aware.

47. Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

48. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

49. As a direct result of Defendants' unlawful seizure, Plaintiff suffered damages and continues to be damaged.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourteenth Amendment

Equal Protection – Race and National Origin Discrimination

50. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

51. At all times relevant to this claim, Defendants were acting under color of state law in their capacity as Aurora law enforcement officers.

52. At the time of the complained-of events, Plaintiff had the clearly established constitutional right to enjoy the equal protection of the laws and to be free from police officers' discrimination based on his race and national origin.

53. Any reasonable law enforcement officer knew or should have known of this clearly established right.

54. Plaintiff's race and national origin were motivating factors in Defendants' decisions to target Plaintiff.

55. Defendants' conduct was undertaken with the purpose of, and had the effect of, depriving Plaintiff of the equal protection and benefits of the law and equal privileges and immunities under the law.

56. Defendants treated Plaintiff less favorably than his similarly situated non-black and non-Ethiopian counterparts.

57. Defendants' actions were objectively unreasonable in light of the facts and circumstances confronting them.

58. There was no rational basis for Defendants' discriminatory actions, let alone a purpose narrowly tailored to serve a compelling governmental interest.

59. Defendants are also liable for their failure to intervene to prevent the constitutional violations of which they were aware.

60. Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

61. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

62. As a direct result of Defendants' violation of Plaintiff's equal protection rights, Plaintiff suffered damages and continues to be damaged.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment
Equal Protection – Class of One

63. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

64. At all times relevant to this claim, Defendants were acting under color of state law in their capacity as Aurora law enforcement officers.

65. At the time of the complained-of events, Plaintiff had the clearly established constitutional right to enjoy the equal protection of the laws and to be free from intentional discrimination in the form of arbitrary and irrational treatment that differs from the treatment of similarly situated individuals.

66. Any reasonable law enforcement officer knew or should have known of this clearly established right.

67. Defendants intentionally, willfully, and wantonly targeted Plaintiff, as described herein, because of his identity, and they treated him less favorably than individuals who were similarly situated in every material respect.

68. Defendants' differential treatment was wholly arbitrary and irrational, and it was motivated by malice or ill-will toward Plaintiff.

69. Defendants' actions were objectively unreasonable in light of the facts and circumstances confronting them.

70. Defendants are also liable for their failure to intervene to prevent the constitutional violations of which they were aware.

71. Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

72. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

73. As a direct result of Defendants' violation of Plaintiff's equal protection rights, Plaintiff suffered damages and continues to be damaged.

FOURTH CLAIM FOR RELIEF

*42 U.S.C. § 1981
Race Discrimination*

74. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

75. At the time of the complained-of events, Plaintiff had the clearly established right to be free from race discrimination in making and enforcing contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property.

76. Any reasonable law enforcement officer knew or should have known of this clearly established right.

77. Plaintiff is black and Ethiopian and thus a member of classes protected by 42 U.S.C. § 1981.

78. Defendants discriminated against Plaintiff based on his race, in violation of 42 U.S.C. § 1981.

79. Plaintiff was entitled to remain in the Caribou Coffee shop as a benefit or privilege of his purchase.

80. Defendants intentionally interfered with Plaintiff's right to enjoy the benefits and privileges of that purchase.

81. Defendants intentionally, willfully, and wantonly seized Plaintiff, as described herein, wholly or in part due to his race.

82. Plaintiff's race was a motivating factor in Defendants' conduct.

83. Defendants treated Plaintiff less favorably than his similarly situated non-black and non-Ethiopian counterparts.

84. Defendants' actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

85. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

86. As a direct result of Defendants' race discrimination in violation of 42 U.S.C. § 1981, Plaintiff suffered damages and continues to be damaged.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants, and grant:

- (a) Compensatory and consequential damages on all claims allowed by law in an amount to be determined at trial;
- (b) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (c) Attorneys' fees and the costs associated with this action on all claims allowed by law;
- (d) Pre- and post-judgment interest at the lawful rate; and
- (e) Any further relief that this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 27th day of September 2017.

/s/ Mark Silverstein

Mark Silverstein
Rebecca Wallace
Arash Jahanian
ACLU Foundation of Colorado
303 E. Seventeenth Ave., Suite 350
Denver, Colorado 80203
Phone: 303.777.5482
Fax: 303.777.1773
Email: msilverstein@aclu-co.org
rtwallace@aclu-co.org
ajahanian@aclu-co.org