

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. _____

VALERIE RODRIGUEZ,

Plaintiff,

v.

TIMOTHY SCUDDER, a police officer with the Denver Police Department, in his individual capacity,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Valerie Rodriguez, by and through her attorneys, Elisa Moran, and Mark Silverstein and Taylor Pendergrass of the American Civil Liberties Union Foundation of Colorado, files this Complaint and Jury Demand against the Defendant and states as follows:

INTRODUCTION

1. Plaintiff Valerie Rodriguez files this suit to seek compensation from Denver Police Officer Timothy Scudder, whose recklessly sloppy police work –including false statements and critical omissions in an affidavit he submitted to a judge -- caused her to be falsely arrested and jailed for an incident with which she had no connection whatsoever.

2. In September, 2005, Ms. Rodriguez had been working for a nationally-known financial company in Denver for six years. She had no criminal record and had never been arrested. Indeed, because her work requires that she deal with confidential financial information,

her employer required that she provide her fingerprints and be screened annually to confirm that she had no criminal history.

3. When Ms. Rodriguez applied to the United States Postal Service for a temporary seasonal job, however, she was rejected because a background check purportedly revealed that she had a criminal record.

4. Ms. Rodriguez immediately began to investigate so that she could clear up what she knew was a terrible mistake.

5. Ms. Rodriguez learned that the background check had turned up an outstanding warrant for her arrest for “assault” and “disturbing the peace.” When Ms. Rodriguez appeared at the Denver Police Department to clear up the matter, she was arrested, fingerprinted, photographed, and locked in a cell for hours until she could be bonded out.

6. Ms. Rodriguez was completely innocent. She did not know and had never met the victim of the alleged assault. Eventually, the criminal charges were dismissed, and Ms. Rodriguez was able to get the record sealed.

7. In this action, Ms. Rodriguez seeks to hold accountable the police officer who obtained the wholly unjustified warrant for her arrest, without legal grounds, and thereby caused her to endure this extremely distressing and humiliating ordeal.

JURISDICTION AND VENUE

8. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

9. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

10. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

11. Plaintiff Valerie Rodriguez, is a United States citizen and a resident of Colorado.

12. At all times relevant to this Complaint, Defendant Timothy Scudder was a police officer employed by the City and County of Denver. Plaintiff sues Defendant Scudder in his individual capacity.

13. At all times relevant to this Complaint, the Defendant acted or failed to act under color of state law

FACTUAL BACKGROUND

14. The incident that prompted the warrant for Plaintiff's arrest took place nine months earlier, in the Five Points neighborhood of Denver. It was an assault perpetrated by an alleged prostitute and drug user against a young woman who herself had a long record of arrests for drugs and prostitution.

15. Police learned of the incident on December 20, 2004, shortly after 7 p.m., when Defendant Scudder was on patrol. The victim of the assault, Heather E. Goodman, flagged him down. Her nose was bleeding. He spoke with her at a gas station at 3550 Downing Street in Denver.

16. Ms. Goodman told Officer Scudder that she had been standing at that location with an acquaintance she knew as "Big Val." A man approached Goodman and asked if "Big Val" was a prostitute. Goodman replied affirmatively. "Big Val" heard what Goodman said, pushed Goodman against a wall, and then punched Goodman in the nose. Defendant Scudder

obtained Ms. Goodman's address and took her written statement. He also interviewed a young eyewitness, Darren Young, who stated that a "Mexican girl" had hit Ms. Goodman.

17. Ms. Goodman told Officer Scudder that "Big Val" was Valerie Rodriguez, whom Goodman said was a prostitute and a "known" drug user. Goodman described "Big Val" as heavy, and she provided an approximate age and height. She further stated that "Big Val" lived in the 2600 block of Humboldt Street, a location about three blocks away. Ms. Goodman stated that she did not know Big Val's date of birth.

18. Defendant Scudder then searched a computer database for the name "Valerie Rodriguez." He came across the Plaintiff's name and obtained the Plaintiff's date of birth, her social security number, and the number of her driver's license.

19. Defendant Scudder made no effort to determine whether the person whose name he located on the computer was the person the victim described as the assailant. Without undertaking any additional investigation, Defendant Scudder filled out a complaint and warrant application seeking the arrest of the Plaintiff for assault and disturbing the peace. At the top of the form, Defendant Scudder had the victim sign as a complainant. In that form, he identified the Plaintiff as the "Defendant," and he filled in the Plaintiff's date of birth, driver's license number, and social security number. He signed the complaint, stating that he had reasonable grounds to believe that the Plaintiff committed the offenses.

20. Defendant Scudder also filled out the middle portion of the warrant application, which is an affidavit made under oath asking a judge to issue an arrest warrant. In that affidavit, Defendant Scudder described the assault of Ms. Goodman. He stated that the assailant was the Plaintiff, whom he identified in the affidavit by her name and her date of birth.

21. When Scudder filled out the complaint and drafted the affidavit seeking a warrant to arrest the Plaintiff, he did not have probable cause to believe that she was the assailant. Nevertheless, because of material omissions and false statements in the affidavit, Judge Claudia Jordan was misled into signing a warrant authorizing the Plaintiff's arrest. Without the material omissions and false statements, the affidavit would not have provided grounds for the Plaintiff's arrest, and no judge would have approved a warrant.

22. The warrant was issued on December 22, 2004. It had been active for nine months before the Plaintiff learned of it, indirectly, because of the Postal Service's rejection of her application for temporary employment.

Scudder failed to investigate properly

23. Defendant Scudder failed to take obvious steps to identify the assailant that the victim described.

24. The victim characterized "Big Val" as a drug user and a prostitute who lived in the area of 26th and Humboldt. The Plaintiff, however, lived miles away, in Aurora, and she had never been arrested and had no criminal record whatsoever. Had Scudder checked a criminal-records database for "Valerie Rodriguez," he would have not have found any information about the Plaintiff. Instead, he would have found a different Valerie Rodriguez, one who was likely to be the acquaintance/suspect the victim described.

25. A printout of the criminal history of that other Valerie Rodriguez runs over eight pages. It reflects numerous arrests and convictions for multiple drug offenses; repeated charges of assault, including aggravated assault and assault on a police officer; as well as arrests for aggravated robbery, burglary, theft, providing false information, price switching, criminal

mischievous, destruction of private property, urinating in public, unlawful conduct on public property, disturbance, and failure to appear.

26. The eight-page printout also shows that the other Valerie Rodriguez had numerous addresses over the years that were close to 26th and Humboldt. On the other hand, the Plaintiff has never lived anywhere near 26th and Humboldt. Indeed, since 1999, the Plaintiff has been living in the home she purchased in Aurora. On information and belief, the computer database from which Officer Scudder obtained Plaintiff's date of birth reflected an address for the Plaintiff that was nowhere near 26th and Humboldt.

27. Officer Scudder had access to a mug shot photograph of the Valerie Rodriguez with the long criminal record. On information and belief, Officer Scudder also had access to the Plaintiff's driver's license photograph. Although Officer Scudder could have shown photographs to the victim and the witness, he did not do so. Had he shown either photograph to the victim or the witness, he would have known that the Plaintiff was not the assailant.

28. The Plaintiff's telephone number was listed. Officer Scudder could have obtained the Plaintiff's telephone number and interviewed her, but he did not do so. Had he done so, he would have known she was not the assailant.

29. Although the victim reported that the assailant had walked from the scene and lived only three blocks away, in the 2600 block of Humboldt Street, Defendant Scudder made no effort to determine the precise address and made no effort to locate the assailant.

Material omissions and false statements of fact in the affidavit for arrest warrant

30. Scudder's affidavit falsely stated that the Plaintiff, identified in the affidavit by her date of birth, was the person whom Ms. Goodman identified as the assailant.

31. Scudder's affidavit falsely stated that the Plaintiff was known by the victim.

32. In addition to falsely stating that Plaintiff was the assailant, Defendant Scudder's affidavit failed to mention numerous facts that, had they been included, would have demonstrated that there was not probable cause to believe that Plaintiff was the assailant. Those material omissions include, but are not limited to, the following:

33. The victim told Defendant Scudder that the assailant lived in the 2600 block of Humboldt Street. Defendant Scudder omitted this fact from the affidavit, and he also failed to mention that he had made no effort to locate the assailant at the location the victim provided. Defendant Scudder also omitted the fact that he had no evidence that the Plaintiff had ever lived on the 2600 block of Humboldt Street. Indeed, Plaintiff had been living in her own home in Aurora since 1999, and she has never lived anywhere near the 2600 block of Humboldt Street. On information and belief, when Defendant Scudder located the computer record from which he obtained the Plaintiff's date of birth, he also found an address for the Plaintiff that was nowhere near the 2600 block of Humboldt Street. Scudder omitted from the affidavit the information he had about Plaintiff's address.

34. The victim told Defendant Scudder that the assailant was a known prostitute and drug user. Defendant Scudder omitted this fact from the affidavit. Defendant Scudder also omitted the fact that he had no information whatsoever to indicate that Plaintiff was a prostitute, a drug user, had a criminal record, or had ever been arrested.

35. Defendant Scudder failed to state in the affidavit that neither the victim nor the witness had identified the Plaintiff as the assailant. He failed to state that he did not show any photographs to either the victim or the witness. He failed to state that he had taken no steps to confirm that the Plaintiff was the person that assaulted the victim.

36. Defendant Scudder failed to explain how he obtained the Plaintiff's date of birth, and he failed to state that the victim had said that she did not know the assailant's date of birth.

Additional false statements in the warrant application

37. On the complaint form at the top of the warrant application, Defendant Scudder entered the Plaintiff's identifying information, including the Plaintiff's driver's license number and social security number. Defendant Scudder obtained this information from the computer database that he accessed. In the address box, however, Defendant Scudder wrote that the Plaintiff lived in the 2600 block of Humboldt, thus suggesting falsely that Plaintiff lived just three blocks from the location of the offense. The computer database from which Defendant Scudder obtained Plaintiff's identifying information did not list any address on Humboldt Street or anywhere near that location.

38. On the back of the warrant application is a form titled "Denver Police Department WANTED/MISSING PERSON." Defendant Scudder filled out this form with Plaintiff's name, date of birth, driver's license number, and social security number. He added the false statement that the Plaintiff is a "known prostitute/drug user," despite the fact that he had no information suggesting that the Plaintiff had ever been involved with drugs, prostitution, or any other criminal activity. He groundlessly listed Plaintiff's last known address as the 2600 block of Humboldt, and he falsely wrote that Plaintiff used the alias "Big Val."

Plaintiff's ordeal

39. In a letter from the United States Postal Service dated September 23, 2005, Ms. Rodriguez was told that she would not be hired because of her "criminal record." Ms. Rodriguez contacted the Human Resources officer at the Postal Service, who advised that it was not a mistake, that Ms. Rodriguez had a criminal record showing an assault and disturbing the peace.

40. Ms. Rodriguez asked the Human Resources officer to forward to her a copy of the information. The Postal Service sent Ms. Rodriguez a document titled Background Verification Report that had been prepared by TruDiligence, LLC, the company that did the background check for the Postal Service. The document stated that a “general warrant” had issued for her arrest on December 22, 2004, for assault and disturbing the peace. When she contacted TruDiligence, an employee confirmed that the information was not a mistake.

41. Ms. Rodriguez began calling different district police stations asking them what to do since this was on her record and she was completely innocent.

42. Ms. Rodriguez was told by a Denver police officer to just go down to the Denver Police Department.

43. On September 30, 2005, Ms. Rodriguez filed a Police Report on line advising that someone had unlawfully used her name and, as a result, a General Warrant had been issued for her arrest.

44. Ms. Rodriguez had to explain the situation to her supervisor at work and take time off work to go to the courthouse.

45. Ms. Rodriguez went to the Denver County Courthouse on September 30, 2005, and received a printout that showed an active warrant for her arrest for assault and disturbing the peace. When given that information, Ms. Rodriguez left the building, crying and in fear.

46. Ms. Rodriguez met with a bondswoman to seek advice and find out what to do. Ms. Rodriguez was told that she had to obtain the deed on her home to post with the bonding company to avoid having to go to jail on the active warrant for her arrest. In lieu of that, Ms. Rodriguez asked her cousin to come meet the bondswoman and co-sign the bond. Ms. Rodriguez then had to pay \$75.00 in cash to the bondswoman.

47. On October 2, 2005, at approximately 10:00 a.m., Ms. Rodriguez presented herself at the Downtown Denver Police Department to try to explain the matter. Instead, she was told that she couldn't explain it, couldn't just pay the bond, but instead, she had to go to jail.

48. Ms. Rodriguez was directed to come through the metal detectors, where she was then handcuffed and told to sit down. She was then escorted up to booking.

49. The officer arresting her stated that the paperwork, "Said you were a prostitute. Are you a prostitute?" Ms. Rodriguez said, "No". The officer asked her if she knew who "Heather Goodman" was. Again, Ms. Rodriguez said, "No".

50. Ms. Rodriguez was then fingerprinted and photographed. She was then subjected to a search of her person and clothing. The officer conducting the search stated, "This one smells good, let's put her in Cell 6".

51. Ms. Rodriguez was then put into a cell with two other women, one of whom was reeking of urine and other smells. The other cells in the cellblock contained only one woman per cell, yet she was placed in a cell already occupied by two women.

52. Ms. Rodriguez was imprisoned from approximately 10:00 a.m. until 5:00 p.m. when she was finally released on bond. During that time, she was humiliated, embarrassed, scared, she felt endangered, she was confused, and she was mortified at her situation.

53. During that time of imprisonment, she had to use the bathroom and was forced to do so in an open area, open to the others in cell and cell block, further humiliating and demeaning her.

54. During the time of her imprisonment, she didn't want to touch anything because of the filth of the cell and the cell mates. Other prisoners were screaming constantly. Placed in a cell with two other women, she felt she could barely move due to the crowded conditions.

55. During the time of her imprisonment, church people came in and services were conducted. When Ms. Rodriguez was taken out of the cell to attend, another inmate came up to Ms. Rodriguez, leered suggestively at her, pulled down her pants and displayed her underwear to Ms. Rodriguez.

56. When finally released from imprisonment, Ms. Rodriguez was advised that a court date was set for October 20, 2005. She attempted to find a lawyer to take her case, but was not able to connect with an attorney to represent her.

57. Ms. Rodriguez filled out papers to get a public defender to assist her. She appeared in court and explained to the City Attorney that it was mistaken identity and was not her. He advised that, "I guess you don't want to make a deal" and told her to set the case for trial.

58. The matter was then set for jury trial to be held on November 28, 2005. Ms. Rodriguez took more time off work to appear for trial. Neither the police officer nor any witnesses appeared for trial. The case was then dismissed.

59. Ms. Rodriguez then filed paperwork seeking to seal the records related to her arrest and the criminal charge. She spent \$136.00 to seal the matter.

60. Although the case was dismissed and her records were sealed, no one from the police department or the City administration apologized to Ms. Rodriguez for her ordeal. No representative of the police department or the City provided an explanation of how or why this had happened to her. No one offered to reimburse Ms. Rodriguez for her out of pocket expenses, the lost time from her job, or for the lost employment at the Postal Service.

61. Mortified that this could happen to her, wanting answers and needing to make sure this humiliating experience didn't happen to her again or to anyone else, Ms. Rodriguez

wrote a letter to Mayor Hickenlooper dated December 9, 2005. The only response she received was that she should address the matter to the police.

62. Ms. Rodriguez then attempted to contact the officer who had wrongfully obtained a warrant for her arrest. She did not succeed in reaching him. Another officer who answered the phone said, “Ma’am, just drop it and go on with your life.”

63. Ms. Rodriguez then contacted Tom Martino and John Ferrugia, who work for local television stations, to assist her in getting answers and to try to prevent this from recurring to herself or to others.

64. John Ferrugia, of Channel 7, responded. He arranged for Ms. Rodriguez to meet Darren Young, the young eyewitness who had seen the assault for which the warrant issued. Mr. Young said that he had never seen the Plaintiff before. He said that she was not the assailant.

65. In mid-January, 2006, Mr. Ferrugia contacted the Denver Police Department for comment on an investigative report he was preparing about what happened to Ms. Rodriguez and similar incidents in which totally innocent persons were wrongly arrested.

66. As a result of Mr. Ferrugia’s inquiry, the Denver Police Department eventually opened an Internal Affairs investigation into Defendant Scudder’s actions. Ms. Rodriguez assisted the investigation by providing information and documents.

67. Ms. Rodriguez later received a letter from the Denver Police Department stating the complaint against Defendant Scudder has been sustained for “improper completion of a General Sessions Warrant.” The letter further stated that the Denver Police Department was “taking appropriate disciplinary actions concerning this matter.”

68. Ms. Rodriguez was not informed of the nature of the disciplinary action.

69. In response to a formal request under the Colorado open records laws, the Denver Police Department later released documents indicating that Defendant Scudder received only a written reprimand. Defendant Scudder was reprimanded for “Improper Procedure—Other.”

CLAIM FOR RELIEF

(42 U.S.C. § 1983, Fourth Amendment)

70. Plaintiff incorporates the preceding allegations as if fully set out herein.

71. The Fourth Amendment prohibits unreasonable searches and seizures. An arrest is a seizure that must comply with the Fourth Amendment. An arrest is unreasonable when it is not supported by probable cause. Defendant Scudder caused Plaintiff to be subjected to an unreasonable arrest and seizure, unsupported by probable cause to believe that she had committed an offense. In doing so, Defendant Scudder violated Plaintiff’s Fourth Amendment rights.

72. Defendant Scudder did not have probable cause to believe that the Plaintiff was the person who assaulted the victim. Applying clearly-established law, a reasonable officer in Defendant Scudder’s position would have known that the facts did not amount to probable cause.

73. A reasonable officer in Defendant Scudder’s position, applying clearly-established law, would have known that he did not have sufficient grounds to seek an arrest warrant. Nevertheless, acting without probable cause, Defendant Scudder procured a warrant for Plaintiff’s arrest. He did so on the basis of an affidavit that was deficient because it was dishonest.

74. In the affidavit submitted to procure the warrant for the Plaintiff’s arrest, Defendant Scudder intentionally or recklessly included false statements that were material to the

determination of probable cause. In addition, he intentionally or recklessly omitted facts that were material to the determination of probable cause.

75. The false statements and material omissions misled the judge into issuing a warrant for the Plaintiff's arrest. Without the false material statements and without the material omissions, the affidavit would not have demonstrated probable cause to arrest the Plaintiff.

76. Thus, Defendant Scudder deliberately or recklessly made material false statements and material omissions in the affidavit, resulting in Plaintiff's arrest and imprisonment, without probable cause, for an offense Plaintiff did not commit and with which she had no connection.

77. In procuring an arrest warrant under these circumstances, Defendant Scudder violated clearly-established law. A reasonable officer in Defendant Scudder's position would have known that his actions violated the Plaintiff's Fourth Amendment rights.

78. Defendant Scudder's actions caused injury to the Plaintiff and to her clearly-established rights under the Fourth Amendment.

PRAYER FOR RELIEF

79. Wherefore, Plaintiff prays for relief as follows:

a. Damages as may be proven at trial for all lost employment caused to Plaintiff by the arrest warrant issued against her.

b. Damages as may be proven at trial for all time lost to Plaintiff in her employment caused by the arrest warrant issued against her, the time lost recovering from her jail ordeal, the time lost appearing in court, the time lost trying to find and talking to attorneys, the time lost sealing her records, and for all other time spent trying to resolve the unconstitutionally-issued warrant against her.

c. All compensatory and punitive damages as may be proven at trial.

d. Reimbursement of all costs and expenses incurred by Plaintiff in responding to this unconstitutional warrant, including but not limited to: parking fees, money spent on bonds, money spent on postage, copies, filing fees, court fees and other costs incurred in moving to seal the records, costs for a public defender, jury fee, discovery costs, and all other costs incurred by Plaintiff.

e. Interest on all sums awarded to Plaintiff from the date of the events and/or losses.

f. An award of Plaintiff's reasonable attorney's fees and costs of this action, pursuant to 42 U.S.C § 1988 and any other applicable law.

h. Any further or other relief the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury in this matter.

Dated: February 12, 2007.

Respectfully submitted,

/s/ Elisa Moran

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