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Civil Action No. CA-89-06 VAL, January 11, 1989

Houseal, Willie, H.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MICHAEL DAVID APPERSON, :

Plaintiff, :

vs :

CIVIL ACTION NO. CA-89-06-VAL.

CITY OF VALDOSTA, VALDOSTA :
POLICE DEPARTMENT, MIKE :
CASON, IN HIS CAPACITY AS :
CITY MANAGER FOR THE CITY OF :
VALDOSTA, JOHNNY BROWNING, :
INDIVIDUALLY, AND IN HIS :
CAPACITY AS SERGEANT WITH :
THE VALDOSTA POLICE DEPARTMENT, :
CHARLIE SPRAY, INDIVIDUALLY, :
AND IN HIS CAPACITY AS CHIEF :
OF POLICE FOR THE CITY OF :
VALDOSTA, AND CLYDE BARDEN, :
INDIVIDUALLY, AND IN HIS :
CAPACITY AS LIEUTENANT OF :
THE VALDOSTA POLICE DEPARTMENT, :

Defendants. :

Filed at 11:00 P. M

JAN 11 1989

J. Louis Keith
Deputy Clerk, U.S. District Court

Served

COMPLAINT

COMES NOW the Plaintiff in the above-styled matter and shows this Honorable Court the following:

COUNT ONE

1.

The Plaintiff, formerly a resident of Valdosta, Lowndes County, Georgia, is now a resident of the State of Florida.

2.

All Defendants are residents of Lowndes County, Georgia and may be personally served with this Complaint pursuant to the Rules of Civil Procedure.

3.

The Plaintiff maintains this action for violation of the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and for violations governed and controlled by 42 U.S.C. §1983, 1985, 1986 and 1988 and pendant state claims.

4.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1331, 1332, 1343 and pendant jurisdiction of his state claim.

5.

The amount in controversy greatly exceeds \$10,000.00, excluding interest and costs.

6.

The Plaintiff was hired by the Defendant City of Valdosta as a police officer on or about July 22, 1985.

7.

The Plaintiff worked for the Valdosta Police Department until his forced resignation which occurred on January 13, 1987.

8.

Defendant City of Valdosta is a political subdivision of the State of Georgia with authority to run the Valdosta Police Department.

9.

Defendant Mike Cason is the city manager for the City of Valdosta.

10.

Defendant Sergeant Johnny Browning is a member of the Valdosta Police Department and was Plaintiff's immediate supervisor.

11.

Defendant Lieutenant Barden is a member of the Valdosta Police Department and was Plaintiff's superior officer.

12.

Defendant Charlie Spray is the chief of the Valdosta Police Department.

13.

As further described below, in January 1987 the Defendants named above conceived a plan to drive the Plaintiff out of police service in deliberate circumvention of the Plaintiff's constitutional rights and in abrogation of state law and local policy.

14.

Plaintiff's claim arises out of an incident which allegedly occurred on December 27, 1986 while Plaintiff was on duty with the Valdosta Police Department. On said date, at approximately 1:00 a.m., the Plaintiff and Patrolman Rodney Gordon responded to a "robbery in progress" call on the police radio.

15.

The call reported that the Suwannee Swifty store at 305 St. Augustine Road in Valdosta, Lowndes County, Georgia was in the process of being robbed by an armed robber.

16.

The alleged armed robber, Wilbur Sanders, eluded police until a resident on Holloway Street found him hiding under his vehicle parked under the carport.

17.

Plaintiff arrived at the scene just as Remerton Police Officer Donald Fender had apprehended the suspect.

18.

Plaintiff participated in the arrest of the suspect and in no way violated the suspect's civil rights.

19.

After Plaintiff returned to the police station, he filed a six page incident report, covering the robbery and arrest, and was told by Defendant Browning that his report was too long, was inaccurate and was asked to rewrite the report.

20.

Defendant Browning accused Plaintiff of falsifying the police report and told him if he did not revise the report that he must turn in his badge and gun.

21.

Defendant Browning subsequently told Plaintiff that Officer Gordon would write the report and that his report was not needed.

22.

Later, the armed robber, Wilbur Sanders, lodged a complaint of police brutality against several officers at the scene of the arrest.

23.

On December 28, 1986, Defendants Barden and Browning called Plaintiff into Defendant Charlie Spray's office to discuss the allegation of Wilbur Sanders. Plaintiff was told to stop lying on several occasions during the meeting although he continually told his superiors that he did not act with undue force.

24.

Defendant Spray initiated an investigation into the matter and, on December 30, 1986, Plaintiff was again called into the chief's office and was told by Defendants Browning and Barden to stop "covering up" and to tell the truth.

25.

On January 1, 1987, Plaintiff was called at home and told to report to the Police Department. He again reported to the chief's office and incessantly denied any wrongdoing. However, Defendant Spray informed Plaintiff that he was suspended at this time.

26.

On numerous occasions, between January 1 and January 11, 1987, there were front page, headline articles in The Valdosta Daily Times regarding the alleged incident and the fact that Chief Spray had given Plaintiff an opportunity to "resign or be

fired". All during this time Plaintiff insisted he was innocent of any wrongdoing.

27.

On January 11, 1987, Plaintiff received another call to report to Chief Spray's office. At this time Chief Spray demanded that he tender his resignation or be terminated. Plaintiff requested time to review the situation and discuss it with his attorney, however, Chief Spray demanded an immediate response as to whether Plaintiff would resign or be terminated. He was afforded almost no time with the attorney of the Valdosta Police Officers Union in the hallway outside of Chief Spray's office and was given absolutely no alternative but to resign.

28.

His resignation, on January 11, 1987, came as a direct result of the coercion, duress and undue influence occasioned by the aforementioned acts of the Defendants.

29.

Plaintiff and Officer Rodney Gordon were later charged with criminal civil rights violations of Wilbur Sanders in Federal Court in Valdosta, Georgia.

30.

As a result of his forced resignation, adverse publicity, pending trial and humiliation occasioned as a result of the acts of the Defendants, Plaintiff was forced to move his family to the State of Florida and out of the Valdosta-Lowndes County area.

31.

Officer Rodney Gordon pled guilty to the acts charged by Wilbur Sanders.

32.

On November 3, 1987, Plaintiff was found not guilty by a jury in Federal Court in Valdosta, Georgia.

33.

Since his vindication the Defendants, either by their prior acts or by affirmative action, have "blackballed" the Plaintiff, creating a situation where he cannot secure employment in the law enforcement field.

34.

Subsequent to his vindication by a jury, on April 19, 1988, Plaintiff (and Officer Rodney Gordon, who had previously confessed his guilt) lost his certification from the Peace Officers Standards and Training Council.

35.

In forcing the Plaintiff to resign from his livelihood, the Defendants, either collectively or individually, deprived Plaintiff of his liberty and further, under color of law, deprived him of his basic property rights and right to make a living.

36.

No grounds, other than the alleged incident as mentioned above, were ever set forth by the Defendants for their actions and the Plaintiff at all times performed all duties assigned to

him in a competent and satisfactory fashion.

37.

The Defendants, either collectively or individually, deprived Plaintiff of his opportunity for a hearing by coercing and forcing his resignation, said actions resulting in foreclosure of job opportunities for the Plaintiff.

38.

Plaintiff is and was, at all material times, fully able, ready and willing to perform all duties of the position of patrolman and considered it an honor being a member of the Valdosta Police Department.

COUNT TWO

39.

Plaintiff realleges all paragraphs of his Complaint and hereby incorporates them into Count Two of this action.

40.

O.C.G.A. §45-20, et seq. requires reasonable job security for the competent employee.

41.

By actually or constructively discharging Plaintiff without affording him the mandated procedural requirements under law, and local ordinance, the Defendants, either collectively or individually, have deprived Plaintiff of his property interests in his position without due process of law guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983.

WHEREFORE, it is respectfully requested that this Court assume jurisdiction of this matter and thereafter:

(a) Declare the conduct of the Defendants to be violative of rights guaranteed to the Plaintiff under appropriate federal and state law;

(b) Direct the Defendants to reinstate the Plaintiff to his previously held position, with back pay and all other benefits, increments and entitlements to which he is entitled;

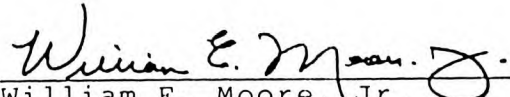
(c) Award the Plaintiff damages in an appropriate amount to correct the illegality and wrong which has been done to the Plaintiff and to consider the impairment of his reputation, personal humiliation and mental anguish and suffering in determining these damages;

(d) Award the Plaintiff costs and reasonable attorney's fees for the necessity of bringing this action; and

(e) For such other and further relief as to this Court may seem just and proper.

Plaintiff hereby demands a trial by jury of all triable issues.

Respectfully submitted,



William E. Moore, Jr.



Roy W. Copeland

Attorneys for Plaintiff

United States District Court

MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MICHAEL DAVID APPERSON

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: CA-89-06-VAL.

CITY OF VALDOSTA, ET AL

TO: (Name and Address of Defendant)

Lt. Clyde Barden
Valdosta Police Department
Valdosta, GA 31601

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

William E. Moore, Jr.
P.O. Box 1929
Valdosta, GA 31603

and

Roy W. Copeland
102 East Adair Street
Valdosta, GA 31601

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

GREGORY J. LEONARD

CLERK

1-11-89

DATE

BY DEPUTY CLERK

J. Lumbie Smith

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: _____
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- Returned unexecuted: _____
- Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date *Signature of Server*

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.