

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALPHONSO MARTIN

Plaintiff,

v.

THE CITY OF NEW YORK,
NEW YORK CITY POLICE OFFICER
JASON SMITH. Shield # 16576,
73rd Precinct,

Defendants.

COMPLAINT

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PRELIMINARY STATEMENT

1. This is a Civil Rights Action in which Plaintiff, ALPHONSO MARTIN, seeks redress for the Defendant's violations of rights secured by the Civil Rights Act of 1866 and 1871, 42 U.S.C 1983 and of the rights secured by the Fourth Amendment, and by the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and/or rights secured under the laws and Constitution of the State of New York.

JURISDICTION

2. Jurisdiction is conferred upon this Court by 28 U.S.C. Sections 1331, 1343(3), this being an action seeking redress for the violation of Plaintiffs' Constitutional and Civil Rights. The amount of damages in controversy exceeds One Hundred and Fifty Thousand (\$150,000.00) Dollars, exclusive of interest and costs.
3. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.
4. The Plaintiff further invokes this Court's pendant jurisdiction, pursuant to 28 U.S.C. Section 1367(a), over any and all State claims as and against all parties that are so related to claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy.
5. The Plaintiff demands a jury trial on each and every one of the claims pleaded herein.

VENUE

6. Venue is proper for the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. Sections 1391(a), (b) and (c).

PARTIES

7. The Plaintiff, ALPHONSO MARTIN, is a United States Citizen, and is, and at all times relevant herein, a resident of the State of Alabama.
8. Defendant, NEW YORK CITY POLICE OFFICER JASON SMITH, of the 73rd Precinct, upon information and belief of the 73rd Precinct, is at all times relevant, an Officer and employee/agent of THE NEW YORK CITY POLICE DEPARTMENT, a municipal agent of Defendant CITY OF NEW YORK. Defendant, NEW YORK CITY POLICE OFFICER SMITH is sued individually and in his official capacity. At all times relevant, Defendant NEW YORK CITY POLICE OFFICER JASON SMITH was acting under the color of State Law in the course and scope of his duties and functions as agent, servant, employee and Officer of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK and otherwise performed and engaged in conduct incidental to the performance of his lawful duties. Defendant, NEW YORK CITY POLICE OFFICER JASON SMITH was acting for and on behalf of THE NEW YORK CITY POLICE DEPARTMENT at all times relevant herein with the power and authority vested in him as a Police Officer, agent and employee of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK, and incidental to the lawful pursuit of his duties as an Officer, employee and agent of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK.
9. Defendant CITY OF NEW YORK is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a Police Department which acts as its agent in the area of Law Enforcement and for which it is ultimately responsible. Defendant CITY OF NEW YORK assumes the risk incidental to the maintenance of a Police

Department and the employment of Police Officers as said risk attaches to the public consumers of the services provided by THE NEW YORK CITY POLICE DEPARTMENT.

10. THE NEW YORK CITY POLICE DEPARTMENT, while not a named Defendant, is nevertheless a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to carry out all police functions for Defendant CITY OF NEW YORK, and assumes the risks incidental to the maintenance of a police force and the employment of Police Officers, including the named Defendant New York City Police Officer.

STATEMENT OF FACTS

11. On October 28, 2015 at approximately 11:30 p.m. the Plaintiff, ALPHONSO MARTIN, was inside of his motor vehicle, lawfully parked in the vicinity of East New York Avenue and East 98th Street in Kings County when members of the NEW YORK CITY POLICE DEPARTMENT, including named Defendant NEW YORK CITY POLICE OFFICER JASON SMITH knocked on the Plaintiff's car window and ordered the Plaintiff to exit the vehicle. Defendant NEW YORK CITY POLICE OFFICER JASON SMITH then handcuffed and searched the Plaintiff, then entered the Plaintiff's vehicle and began to search the Plaintiff's vehicle without permission or consent of the Plaintiff. The Plaintiff was subsequently transported to the 73rd Precinct where he was subjected to another search of his person by Defendant OFFICER SMITH. Defendant NEW YORK CITY POLICE OFFICER JASON SMITH subsequently accused the Plaintiff of unlawful possession of Marijuana and unlawful Possession of a Firearm by means of a Felony Complaint filed against the Plaintiff by the KINGS COUNTY DISTRICT ATTORNEY'S OFFICE. Based upon the felony complaint filed by Defendant NEW YORK CITY POLICE OFFICER JASON SMITH, the Plaintiff spent three days in the custody of the NEW YORK CITY POLICE DEPARTMENT, before posting bail and was required to retain counsel to defend himself against the false allegations alleged by Defendant NEW YORK CITY POLICE OFFICER JASON SMITH. The Plaintiff's

property was held in the custody of THE NEW YORK CITY POLICE DEPARTMENT for civil forfeiture until the Plaintiff agreed to settle the forfeiture action with THE NEW YORK CITY POLICE DEPARTMENT. The Plaintiff missed time from work to make Court appearances and to attend a suppression hearing, where Defendant NEW YORK CITY POLICE OFFICER JASON SMITH testified, prior to the criminal case being dismissed by the KINGS COUNTY DISTRICT ATTORNEY'S OFFICE on May 4, 2017.

FIRST FEDERAL CLAIM

Violation of Rights Secured by Section 42 U.S.C. 1983 and the Fourth and Fourteenth Amendments to the United States Constitution, Unlawful Search and Arrest

12. The Plaintiffs incorporate by reference each of the allegations set forth in Paragraphs One (1) through eleven (11) as if fully set forth herein.
13. Upon information and belief, on October 28, 2015 the conduct of Defendant NEW YORK CITY POLICE OFFICER JASON SMITH, acting under color of State Law, violated Section 42 U.S.C. 1983 by unlawfully searching and arresting the Plaintiff without lawful reason or cause.
14. That the actions of Defendant NEW YORK CITY POLICE OFFICER JASON SMITH occurred in and during the course and scope of his duties and functions as a New York City Police Officer, and while acting as an agent and employee of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK, resulting in the aforementioned and hereinafter mentioned harm to Plaintiff.

SECOND FEDERAL CLAIM

Violation of Rights Secured by Section 42 U.S.C. 1983 and The Fourth and Fourteenth Amendments to the United States Constitution- False Arrest

15. The Plaintiffs incorporate by reference the allegations contained in Paragraphs One (1) through Fourteen (14) as if fully set forth herein.

16. Upon information and belief, on October 28, 2015 the conduct of Defendant NEW YORK CITY POLICE OFFICER JASON SMITH, acting under color of State Law, violated Section 42 U.S.C. 1983 by unlawfully placing the Plaintiff under arrest without lawful reason or cause.
17. That the actions of Defendant NEW YORK CITY POLICE OFFICER JASON SMITH, occurred in and during the scope of his duties and functions as a New York City Police Officer, and while acting as agent and employee of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK, resulting in the aforementioned and hereinafter mentioned harm to Plaintiff.

THIRD FEDERAL CLAIM

Violation of Rights Secured by Section 42 U.S.C. 1983 and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution- Malicious Prosecution

18. The Plaintiff incorporates by reference each of the allegations contained in Paragraphs One (1) through Seventeen (17) as if fully set forth herein.
19. Upon information and belief, on October 28, the conduct of named Defendant, NEW YORK CITY POLICE OFFICER JASON SMITH, acting under color of State law, violated Section 42 U.S.C 1983 by unlawfully and maliciously prosecuting the Plaintiff without lawful reason or cause, causing the aforementioned injury to Plaintiff.
20. That the actions of Defendants, NEW YORK CITY POLICE OFFICER JASON SMITH occurred in and during the scope of his duties and functions as a New York City Police Officer, and while acting as employees and agents of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK, resulting in the aforementioned and hereinafter mentioned harm to Plaintiff.

FOURTH FEDERAL CLAIM

Violation of Rights Secured by Section 42 U.S.C. 1983 and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution- Due Process Violations

21. The Plaintiff incorporates by reference each of the allegations contained in Paragraphs One (1) through Twenty (20) as if fully set forth herein.
22. Upon information and belief, on October 28, 2015, the conduct of named Defendant, NEW YORK CITY POLICE OFFICER JASON SMITH, acting under color of State Law, violated Section 42 U.S.C. 1983 by unlawfully causing the seizure of the personal property of Plaintiff and causing Plaintiff the loss of the use and enjoyment of his personal property, without lawful reason or cause.
23. That the actions of Defendant, NEW YORK CITY POLICE OFFICER JASON SMITH occurred in and during the scope of his duties and functions as a New York City Police Officer, and while acting as employee and agent of THE NEW YORK CITY POLICE DEPARTMENT and Defendant CITY OF NEW YORK, resulting in the aforementioned and hereinafter mentioned harm to Plaintiff.

WHEREFORE, the Plaintiff demand the following relief, jointly and severably, against all Defendants:

1. Compensatory Damages for Plaintiff.
2. Punitive Damages against Defendant NEW YORK CITY POLICE OFFICER JASON SMITH.
3. A Court Order pursuant to 42 U.S.C, 1998 that the Plaintiff is entitled to costs of the instant action, and attorney fees.
4. Such other and further relief as the Court may deem necessary and appropriate, including declaratory relief.

/S/

Dated: October 23, 2018
New York, NY

Via ECF

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