

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KIMBERLY BOCK,

Plaintiff,

v.

CITY OF SATELLITE BEACH,
a Florida Municipal Corporation,
and BERT BERRIOS,

Defendants.

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Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Kimberly Bock, sues Defendants, The City Of Satellite Beach and Bert Berrios, and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for money damages to redress the deprivation of Plaintiff's rights secured to her by the laws and Constitution of the United States and of the State of Florida.
2. Plaintiff was arrested for engaging in constitutionally protected speech, for which she was also charged and prosecuted. The state court in which she was prosecuted dismissed the charge against her, finding that "[m]ere words without more is constitutionally protected speech." The arrest, ensuing incarceration, and defense of the invalid charge caused economic and emotional damages for which Plaintiff is entitled to be compensated.

PARTIES

3. Plaintiff was at all times material hereto an adult resident of Satellite Beach, Florida. At the time of the events relevant to the allegations in this Complaint, Plaintiff's name was Kimberly Lynn Rosier.

4. Defendant, City Of Satellite Beach (“CSB”), is a political subdivision of Florida, and a municipal corporation.

5. Defendant, Bert Berrios, is, or was at the time he arrested Plaintiff, a police officer employed by defendant CSB, and is sued in his individual capacity.

6. At all times material to this complaint, Defendant Berrios was acting under color of state law and pursuant to the policies, practices, and customs of defendant CSB.

JURISDICTION

7. This Court has jurisdiction of the federal claims pursuant to 28 U.S.C. §§1331 and 1343, and 42 U.S.C. §1983. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. The state and federal claims arise out of a common nucleus of operative facts, and the same evidence that will prove the federal claims also will prove the state claims.

VENUE

8. Venue is proper in the United States District Court for the Middle District of Florida, Orlando Division, as all acts that form the basis of this Complaint occurred in Brevard County, Florida. 28 U.S.C. §§ 89(b) and 1391(b)(2); Local Rule 1.02(b)(3).

FACTS

9. On or about September 17, 2006, Plaintiff’s then-fiancé, now husband, Clifford J. Bock, accidentally hit the side of the Ocean Spray Car Wash building located at Sunrise Avenue and A1A, Satellite Beach, Florida, while driving his Dodge Durango.

10. Clifford Bock informed Plaintiff and Christopher J. Weaver, their mutual friend, by telephone of his accident. Plaintiff and Weaver were not with Clifford Bock when the

accident occurred, but went to the scene upon receiving a telephone call from him.

11. Clifford Bock had recently removed from the Durango his insurance and automobile club documentation, which the three of them went to retrieve from their home, six blocks away, leaving the Durango at the car wash.

12. When they returned soon thereafter, William Heinz and Bert Berrios, both officers with the Satellite Beach Police Department, had arrived at the scene.

13. Clifford Bock and Plaintiff had been arguing about the collision as the former had a history of careless accidents. At the scene, Plaintiff made a profane remark directed to Clifford Bock, who was in her vicinity. Specifically, she said "I can't believe you did this shit."

14. Heinz informed Plaintiff that he was offended by her speech and that he would arrest her if she continued to use it.

15. Defendant Berrios then took Plaintiff to the north side of the car wash to question her separately.

16. At a certain point during the interview, Plaintiff used profanity in describing her frustration with Clifford Bock. Berrios told Plaintiff to stop using profanity or he would arrest her for obstructing justice.

17. Plaintiff asked Berrios how she could be obstructing justice when she was giving honest answers to his questions and fully cooperating with his investigation.

18. Berrios then concluded his questioning and escorted Plaintiff to the south side of the car wash, where Weaver informed her that Clifford Bock was being arrested for driving under the influence of alcohol.

19. Plaintiff, overcome with emotion, asked, "why the fuck are you arresting him? I

told you we only had two drinks over the course of four hours.” Berrios again threatened to arrest her for using foul language.

20. Plaintiff finally asked Berrios to stop threatening to arrest her for swearing, whereupon Berrios immediately handcuffed Plaintiff and placed her under arrest.

21. The law is clearly established that a valid arrest must be based upon probable cause. Berrios had neither probable cause to arrest Plaintiff nor did he have a warrant to do so.

22. No reasonable police officer, given the circumstances that preceded Plaintiff’s arrest, could have concluded that there was probable cause to arrest her.

23. At no time during her interactions with officers Berrios and Heinz did Plaintiff act violently. She also did not threaten anyone verbally or physically or interfere in any way with the officers’ investigation.

24. At no time during her interactions with officers Berrios and Heinz did Plaintiff use words that by their very utterance inflict injury.

25. At no time during her interactions with officers Berrios and Heinz did Plaintiff use words that by their very utterance tend to incite an immediate breach of the peace.

26. At no time during her interactions with officers Berrios or Heinz did Plaintiff otherwise behave in a disorderly manner, except to the extent that the officers believed her use of profane language to be disorderly.

27. Plaintiff was initially charged with violating Florida Statute § 856.011 (disorderly intoxication), a second-degree misdemeanor, in case 05-2006-MM-027473, filed in Brevard County, Florida. The charge was later amended to a violation of Florida Statute § 877.03 (breach of peace/disorderly conduct).

28. Plaintiff's name was published in the Florida Today newspaper and its online website in connection with her arrest.

29. Plaintiff retained the services of an attorney to represent her in her criminal case, to whom she paid a reasonable fee for legal services.

30. Plaintiff missed work and college classes on several occasions to attend court hearings and meetings with her attorney.

31. The charges against Plaintiff were ultimately dismissed by order of Judge John C. Murphy, County Court of the Eighteenth Judicial Circuit, Brevard County, Florida, dated February 22, 2007, a copy of which is attached as Exhibit "A."

32. Plaintiff has suffered damages as a result of Defendants' conduct set forth above, including legal fees and expenses, lost wages, physical pain and suffering, mental pain and suffering, and injury to reputation.

33. Plaintiff submitted her state tort claim to defendant CSB pursuant to Florida Statute § 768.28, which CSB rejected.

COUNT I
(Fourth Amendment/§ 1983 against Berrios)

34. Plaintiff incorporates the preceding paragraphs by reference.

35. By arresting Plaintiff under color of state law without probable cause, defendant Berrios violated the Fourth Amendment of the United States Constitution's prohibition against unreasonable searches and seizures, made applicable to the states under the Fourteenth Amendment, for which Congress has provided a remedy under 42 U.S.C. §1983.

COUNT II

(First Amendment/§ 1983 against Berrios)

36. Plaintiff incorporates the preceding paragraphs by reference.

37. Defendant Berrios arrested Plaintiff under color of state law for engaging in constitutionally protected speech in violation the First Amendment of the United States, made applicable to the states under the Fourteenth Amendment, for which Congress has provided a remedy under 42 U.S.C. § 1983.

COUNT III

(False Arrest/ False Imprisonment against Berrios and CSB)

38. Plaintiff incorporates the preceding paragraphs by reference.

39. Defendant Berrios, acting within the scope of his employment as a law enforcement officer for defendant CSB, along with other such law enforcement officers acting in concert, arrested Plaintiff without probable cause by handcuffing her, transporting her to jail, and placing her in a cell.

COUNT IV

(Malicious Prosecution against Berrios)

40. After arresting Plaintiff, Berrios caused a prosecution to be instituted against Plaintiff in case 05-2006-MM-027473 filed in Brevard County, Florida.

41. The prosecution was instituted by Berrios without probable cause, as the facts observed by him prior to arresting Plaintiff, and the matters known to him at the time he instituted the prosecution, would not have warranted a reasonable police officer to believe any criminal offense had been committed by Plaintiff.

42. Berrios acted with legal malice in instituting this prosecution which is implied by

the lack of probable cause or with express malice as shown by his reckless disregard for the rights of Plaintiff and a personal disdain towards her.

43. No prosecution of Plaintiff would have occurred but for the actions of Berrios.

44. The charges were resolved in favor of Plaintiff as reflected in the order attached as Exhibit "A."

45. The fact of Plaintiff's arrest became known to persons unknown to Plaintiff as a result of the prosecution being made part of the public records of Brevard County and appearing on court documents available to public scrutiny.

46. In defense of this prosecution Plaintiff had to hire an attorney and spend considerable time and money in order to defend herself.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands (1) trial by jury, (2) judgment against defendant Bert Berrios for compensatory damages, (3) judgment against defendant City of Satellite Beach for compensatory damages, (4) judgment against both Defendants for Plaintiff's reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and Florida Statute § 768.28, (5) costs of court, and (6) such additional relief in favor of Plaintiff as is just and proper.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

State of Florida

Case #: 2006-MM-27473

v.

KIMBERLY ROSSIER
_____ /

ORDER

THIS CAUSE came to be heard upon the Defendant's Motion for Judgment of Acquittal^{at} trial, after hearing testimony, argument of counsel and being otherwise advised in the premises and the Court finds as follows:

On September 17, 2006, Kimberly Rossier was charged with Disorderly Intoxication for yelling obscenities and being hostile towards Officer Berrios. He was in the process of arresting the Defendant's boyfriend. A number of local residents came out to watch the incident. The information was later amended to the lesser charge of Disorderly Conduct citing the yelling of obscenities as the violation of Section 877.03, Florida Statutes.

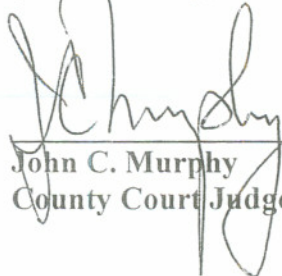
In State v. Saunders, 339 So. 2d 641 (Fla. 1976), the Florida Supreme Court promulgated a narrow construction of Section 877.03. Avoiding First Amendment issues, the Supreme Court limited Disorderly Conduct Speech cases, to those where the speech, by it's very utterance "inflicts injury or tends to incite an immediate breach of peace". (Id. at 644)

The Florida Appellate Courts have reversed disorderly conduct cases where the Defendant merely directs profane language at Law Enforcement Officers. Morris v. State, 335 So. 2d 1, (Fla. 1976) and D.C.E. v. State, 381 So 2d 1097, (Fla. 1st DCA 1979).

While the Defendant was hostile and her language profane, her speech and conduct falls within First Amendment protections. Mere words without more is constitutionally protected speech. Although, a bar of soap would be appropriate.

Accordingly, the Defendant's Motion for Judgment of Acquittal is Granted.

ORDERED and ADJUDGED, this 22nd day of February, 2007.


John C. Murphy
County Court Judge

cc: 2/22/07
State Attorney-Viera

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