
**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LEONARD GARCIA,
Plaintiff,

No: 1:17-CV-00377

v.

**THE CITY OF BUDA, DEMERRIELL
YOUNG, KELLIE METZ**
Defendants.

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff, Leonard Miguel Garcia brings this action against the City of Buda, Texas for damages pursuant to 42 U.S.C. §1983 and §1988 and the Fourth Amendments to the United States Constitution. Plaintiff also brings this complaint against Officers Demerriell Young and Officer Kellie Metz, police officers of the City of Buda, in their individual capacities pursuant to 42 U.S.C. §1983 and §1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343, and under 28 U.S.C. §1367(a).

The individual police officer defendants violated Leonard Miguel Garcia's Fourth and Fourteenth Amendment Right to be free from excessive force. These violations were committed as a result of the policies and customs the City of Buda. Specifically, the municipal body had inadequate policies regarding use of force and has a history of acquiescence related to the use of force.

Plaintiff herein complies with the pleading requirements of FRCP Rule 8(a)(2) and the requirements of *Ashecroft v. Iqbal*, 556 U.S. 129 S.Ct. 1937, 1949 (2009) that “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

I. Parties

1.1 Leonard Garcia is an individual residing in Buda, Hays County, Texas.

1.2 The City of Buda, Texas (The City) is a municipal corporation located within the boundaries of the Austin Division of the Western District of Texas. This Defendant will be extended the opportunity to accept service of process pursuant to FRCP 4(d). If this Defendant fails or refuses to accept the service requested, then Plaintiff will request service of process pursuant to FRCP 4(j) upon the City Secretary.

1.3 Defendant Officers Demerriell Young and Officer Kellie Metz, were at all times relevant to this cause of action duly appointed and acting officers of the police department of the City of Buda, within the course and scope of their employment with the City. These Defendants will be extended the opportunity to accept service of process pursuant to FRCP 4(d). If these Defendants fail or refuse to accept service as requested, then the Plaintiff will request service of process pursuant to FRCP 4(e) upon them.

II. Jurisdiction and Venue

2.1 42 U.S.C. §1983 and 42 U.S.C. §1988 provide jurisdiction over Plaintiff’s constitutional claims for redress, which are conferred on this Court by 28 U.S.C. §1343(a)(3).

2.2 Federal question jurisdiction is conferred on this Court by 28 U.S.C. §1331, because this action arises under the Constitution and laws of the United States.

2.3 This Court also has pendant jurisdiction over all other claims asserted under the laws of the State of Texas, pursuant to 28 U.S.C. §1367(a).

2.4 Venue is proper in the Western District of Texas, Austin Division, as this is the district where the claim arose in accordance with 28 U.S.C. §1391(b).

III. Duty and Law Applicable

3.1 Plaintiff was subjected to excessive force violation of his rights guaranteed to him by the Fourth Amendment of the United States Constitution.

3.2 Plaintiff commences this action pursuant to 42 U.S.C. §1983, which provides in relevant part for redress for every person within the jurisdiction of the United States for the deprivation, under color of state law, of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

3.3 Officers Young and Metz were acting under the color of law and are individually liable under 42 U.S.C. §1983.

IV. Factual Allegations

4.1 On or about January 21, 2016, Garcia was at home with his family. Garcia is a 48 year old Hispanic man weighing approximately 140 pounds. He was expecting a visit from Child Protective Services. At some time later that evening Officer Metz, Officer Young, and another officer arrived at his home with a representative of CPS. Young asked for permission to enter the home. Garcia and his family gave consent to enter.

4.2 Garcia entered his home and sat down on his couch. Officer Young identified that he was there with CPS to enforce an order to remove two children from the

home. Garcia and his wife had been caring for the young girls (biological grandchildren of his wife) for several weeks while the girls' mother was under CPS investigation. The conversation was pleasant. Officer Young was speaking to another young woman in the home and was not addressing Garcia.

4.3 While Officer Young and others were speaking about the Court's order, Garcia stood up. He began to walk forward. He was not moving towards Young, Metz, or any other officer. He did not stand suddenly or move quickly but rather walked only a few steps at a casual pace as someone would do in their own home. Officer Young immediately shouted at Garcia to sit down. Garcia stopped moving. He did not take another step.

4.4 Garcia asked for the officer to leave or to present a search warrant. Officer Young refused to provide an order or warrant, but instead only told Garcia to sit back down. Officer Young continued to shout for Garcia to sit down and got louder and louder. Garcia did not yell back or raise his voice. Garcia then turned and started walking back towards the couch. Without notice, Officer Young pushed Garcia down to the couch. Officer Young pushed Garcia almost on top of one of the young children he was there to protect.

4.5 Garcia was completely pinned down by Officer Young who had his entire body on top of Garcia. Garcia was not kicking or punching anyone. Despite the fact that Garcia was not resisting, Officer Metz moved towards Garcia with her Taser drawn. She told Garcia to stop resisting. Garcia continued to be static while pinned under Officer Young. Officer Metz then tased Garcia. Garcia screamed in pain. Due to the actions of Officers Metz and Young, Plaintiff suffered severe injuries and damages.

V. The City's Policies, Customs and Practices

5.1 On information and belief, The City of Buda's policies, customs, and practices lead to the incident in question.

5.2 This is not the first time Officer Young used excessive force on a person who was neither resisting nor suspected of a crime. On October 3, 2014, Officer Young was called to Wal-Mart to investigate Guadalupe Martinez who was suspected of shoplifting. Guadalupe Martinez was being held by Wal-Mart security. Her husband Juan Martinez was with her.

5.3 Officer Young approached Juan Martinez and asked him to leave the office. Mr. Martinez wanted to see his wife. Officer Young escalated the situation, and used force excessive to the need. Specifically, Officer Young tackled the elderly and disabled Mr. Martinez, failing to control the descent of Mr. Martinez and slammed him hard onto the floor. As a result, Mr. Martinez broke several ribs, and sustained various other injuries and damages and continues to incur medical treatment and physical difficulty related to the injuries caused by Defendants.

5.4 The two civil rights abuses are strikingly similar. Both involve:

- persons not suspected of any crime;
- victims who did not threaten or attack Young;
- situations where verbal judo or verbal de-escalation should have been, but were not applied; and
- occasions when Young put his hands on smaller men who posed no threat.

5.5 The similar civil rights violations show The City of Buda failed to train Officer Young regarding use of force and verbal de-escalation. The City of Buda

was aware of Officer Young's prior uses of excessive force but it failed to retrain Officer Young or provide adequate supervision to prevent the incident in question.

VI. Causes of Action

City of Buda

6.1 The acts and failures of Defendants on the occasion in question were unreasonable and were the proximate and producing cause of the injuries and damages suffered by Leonard Miguel Garcia. The City of Buda, Texas is liable to Plaintiff under 42 U.S.C. §1983 for acting with deliberate indifference, to the repeat uses of excessive force by Officer Demerriell Young. By failing to provide Officer Young sufficient training to resolve his continued use of excessive force, the City breached its duty to provide Officer Young with adequate supervision and training regarding the reasonable use of force and violated Plaintiff's Fourth Amendment right to be free of excessive force.

Officers Young and Metz

6.2 Defendant Young used excessive force, including intentionally taking down the Plaintiff, which was a proximate cause of the Plaintiff's injuries, including the lasting effects Garcia continues to suffer from the incident. Defendant Young's actions were excessive in light of all the facts at hand. Mr. Garcia was not being charged with a crime at the time he was assaulted. He did not threaten Defendant Young. When asked to sit down Garcia stopped moving. He then started moving back towards the couch indicating he was going to sit down. A reasonable officer would determine Garcia was attempting to comply when Officer Young took him down. There is no objective evidence to show that Garcia was a threat to anyone. Garcia did not make any threatening actions towards Defendant Young or any other

person. Garcia did not say anything threatening towards Defendant Young or any other person. Garcia was not actively fleeing the scene at the time of the incident but rather moving towards the couch as directed by Defendant Young. Based on all of the objective facts, Defendant Young's actions were excessive and violated Garcia's Fourth Amendment right to be free from excessive force.

6.3 Officer Metz tased Garcia while Defendant Young was on top of him. At the time Metz tased Garcia, he was not a threat. Garcia was on the couch, as directed by Young. He was not suspected of any crime. Garcia was pinned down completely by Young. Garcia was not punching or kicking Young or anyone else. Garcia was not attempting to flee. Despite the fact that he was not resisting, Metz tased Garcia. Based on the facts on hand, no objective officer would have tased Garcia. Metz tasing of Garcia was therefore a violation of Garcia's Fourth Amendment right to be free from excessive force.

VII. Damages

7.1 As a direct and proximate result of the Defendants' conduct, Leonard Garcia suffered the following damages:

- a. Medical expenses reasonably incurred for his past care and treatment;
- b. Medical expenses to be reasonably incurred in the future for his care and treatment;
- c. Physical pain and suffering in the past and future;
- d. Mental anguish in the past and future; and
- e. Physical Impairment in the past.

7.3 Leonard Garcia seeks all damages to which he is entitled at law for personal, emotional, physical, and economic injuries sustained as a proximate result of the

Defendants' acts and omissions, as well those personal, emotional, physical, and economic damages which he will continue to sustain in the future as a result of the occurrence in question. Plaintiff has suffered severe physical and mental pain and suffering. Plaintiff will, in all reasonable medical probability, incur reasonable and necessary medical and counseling expenses in the future as a direct result of the severe burns and deprivation of rights. These damages are in excess of the minimal jurisdictional limits of this Court.

VIII. Attorney's Fees

8.1 The Plaintiff has been required to retain the services of attorneys to represent him in this complex and difficult proceeding and cause of action. The Plaintiff has retained the undersigned attorneys to represent him, and pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, he is entitled to recover for his reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim at the trial level, the Court of Appeals level if the case is appealed to that Court, and in the Supreme Court of the United States, if necessary.

IX. Jury Demand

9.1 Plaintiff respectfully demands a trial by jury.

PRAYER

For these reasons, Plaintiff asks for judgment against all Defendants for the following

- a. Trial by jury on all issues triable to a jury;
- b. Judgment against Defendants, jointly and severally, on behalf of the Plaintiff for actual damages pursuant to 42 U.S.C. §1983;

- c. Statutory and reasonable attorney fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, pre-judgment interest, post-judgment interest, and all of their costs herein expended;
- d. Any and all additional relief to which the Plaintiff may appear to be entitled.

Filed this 25th day of April, 2017.

Respectfully submitted,

The Carlson Law Firm
1717 N. Interstate 35
#305
Round Rock, Texas 78664

By: /s/ Robert L. Ranco
Robert L. Ranco
SBN: 24029785
Rranco@carlsonattorneys.com
Roberto Flores
SBN: 24074211
Rflores@carlsonattorneys.com