

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHESTER) IN THE SIXTH CIRCUIT

Tracy Mobley,)
) Case No. 2019-CP-_____

Plaintiff,)

vs.)

SUMMONS
(Jury Trial Demanded)

George Alexander Underwood, a/k/a)
"Big A"; Matthew Faile; David Ford;)
Terry Brian Sanders; Burley McDaniel;)
Chris Skidmore; John Joas; and an)
Unknown Number of John Does; Each in)
Their Individual and Official Capacities,)
)
Defendants.)

TO: THE DEFENDANTS NAMED ABOVE

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at Post Office Box 1390, Columbia, South Carolina, 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

CALLISON TIGHE & ROBINSON, LLC

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MOBLEY**

October 4, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
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COUNTY OF CHESTER) IN THE SIXTH CIRCUIT

Tracy Mobley,)
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Plaintiff,) Case No. 2019-CP-_____
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vs.)
) **COMPLAINT**
) (Jury Trial Demanded)
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George Alexander Underwood, a/k/a)
"Big A"; Matthew Faile; David Ford;)
Terry Brian Sanders; Burley McDaniel;)
Chris Skidmore; John Joas; and an)
Unknown Number of John Does; Each in)
Their Individual and Official Capacities,)
)
Defendants.)

The Plaintiff, Tracy Mobley, complaining of the above-named Defendants, alleges and would show as follows:

PRELIMINARY STATEMENT

As alleged herein, this is a civil action for relief brought for violations of the common law, Fifth and Fourteenth Amendments to the United States Constitution; Article I, §3 and § 10 of the South Carolina Constitution, 42 USC § 1983, and 42 USC § 1985.

PARTIES

1. Plaintiff Tracy Mobley ("Plaintiff" or "Mr. Mobley") is a citizen and resident of Chester County, South Carolina.

2. Defendant George Alexander Underwood, also known as "Big A," ("Defendant Underwood") formerly held the elected Constitutional office of Sheriff of Chester County, South Carolina. He was elected to this position in or around November 2012. As part of his governmental functions, Defendant Underwood was charged with operating the law enforcement agencies

known as the Chester County Sheriff's Office and Chester Detention Center. He was removed from office by action of the Governor of South Carolina on or about May 7, 2019, after he and several other law enforcement officers under his command were indicted on federal charges generally alleging a conspiracy to cover up an unlawful arrest; the use of excessive force in carrying out an arrest; and lying to federal law enforcement agents. *See* D.S.C. Criminal Action Number 0:19-420. Defendant Underwood is, upon information and belief, a resident of Chester County, South Carolina.

3. Defendants Sanders, Ford, Faile, Skidmore, Joas, McDaniel, and the John Doe Defendants¹ were, at all times relevant to this Complaint, deputies, constables (as that term is defined by S.C. Code Ann. §15-3-540) or law enforcement agents of the Chester County Sheriff or the City of Chester, South Carolina, Police Department. Upon information and belief, these Defendants are citizens and residents of Chester County, South Carolina.

4. Jurisdiction and venue before this Court are proper.

FACTUAL BACKGROUND

5. On the evening of October 5, 2016, at approximately 9:00 PM, after a day of work, Mr. Mobley returned to the residence he shares with his wife, Lenoir "Lana" Carter Mobley. Their home is located in Chester County at 1038 Ridgeview Road, Chester, South Carolina, which includes their house, out-buildings, and approximately fifty acres of mostly wooded land.

6. When he arrived home, Mr. Mobley called his wife to inform her that he intended to get in the hot tub on their back porch. Mrs. Mobley asked Mr. Mobley to wait a few minutes to do so—she was on her way back from work as well.

¹ Whose true names are unknown. *See* SCRCF Rule 10(a)(1).

7. When Mrs. Mobley arrived home a short time later, the Mobleys went onto their back porch and got into the hot tub. Their dogs were also outside on the back porch, within a separate, fenced area. Mr. Mobley was wearing swim trunks, and Mrs. Mobley was wearing a shirt and panties. No one else was present with them at the home.

8. The hot tub on the Mobleys' back porch overlooks the back yard of the home and a wooded area beyond the backyard. To the rear of their home, the Mobleys have several out-buildings, including a workshop building where Mr. Mobley stores valuable tools and other equipment that he uses in his occupation and for general upkeep of his property, along with recreational equipment.

9. While in their hot tub, Mr. Mobley faced in the direction of the home. Mrs. Mobley looked the other direction towards the back yard. Mr. Mobley brought from the house 2–3 cans of Keystone Light beer for the Mobleys to drink while in the hot tub. When the Mobleys were in their hot tub, a number of lights on the back porch provided substantial illumination.

10. A short time after getting into the hot tub, the Mobleys' dogs began to bark in an agitated and unusual manner toward their backyard. When Mrs. Mobley looked to see what the dogs were barking at, she saw several flashlights in the woods near their home. Mrs. Mobley immediately told Mr. Mobley what she saw.

11. The Mobleys were concerned—in the weeks and months leading up to that evening, they had been made generally aware of reports of individuals stealing tools and other equipment from homes in their area of Chester County. The reports they heard were that drug addicts were often stealing such tools in order to pay for more drugs. And, it appeared to the Mobleys that the individuals holding the flashlight were walking in the general vicinity of the building where Mr. Mobley stored his valuable tools.

12. From the hot tub on their back porch, Mr. Mobley called out in a very loud manner several times toward the individuals holding the flashlights asking whoever was there to identify themselves and to leave his property. He received no response.

13. Alarmed and concerned that both him and his wife were in serious and imminent danger, Mr. Mobley went into his home. He retrieved an old double-barrel shotgun (given to him by his grandfather), loaded with buckshot. Barefoot and clothed only in his swim trunks, he exited his home and proceeded slowly toward the wooded area at the rear of his property. He continued to yell in a very loud manner as he slowly walked toward his workshop. Yet, while the individuals appeared very plainly within earshot, and no doubt could see the lights emanating from his home, he received no response.

14. At this point, Mr. Mobley, on his own property and near his workshop, tremendously concerned for the safety of himself, his wife, and his personal property, fired a warning shot from his shotgun into the air. Before doing so, he pointed the muzzle of the shotgun up and away from the unknown individuals on his property. Mr. Mobley did so because he had no intention of harming the unknown individuals on his property or any neighbors.

15. After firing the shot, Mr. Mobley paused, hopeful that the trespassers left. He continued down a path in the wooded area on his property. Only then could he see these individuals with flashlights running toward him. Before he could hear them, he could see the badges they wore on their chests identifying them as “law enforcement” officers—individuals he would later learn were members of the Chester County Sheriff’s Department, including Defendant Underwood, also known as “Big A,” himself.

16. Upon seeing the individuals’ badges and then hearing the shouts from the defendants, Mr. Mobley immediately turned around so that his back was facing the Defendants –

his hands stretched out to the side. He held the extreme tip of the butt of his shotgun with the barrel facing down, as generally depicted at **Figure 1**.



Fig. 1. General location and position of Plaintiff Tracy Mobley just before being attacked by the Defendants on the Mobleys' property.

17. The individual Defendants sprang upon Mr. Mobley. At no time did Mr. Mobley attempt to resist the officers. Nevertheless, with extreme and unnecessary force, the Defendants knocked him to the ground. Landing on a pile of junked aluminum and other scrap that lay on Mr. Mobley's property, the Defendants beat and kicked Mr. Mobley while he lay on the scrap metal and the ground—not for any valid law enforcement purpose or other good reason.

18. Mr. Mobley was ultimately placed in the back seat of the car, his hands cuffed behind his back. Then, Defendant Underwood aka "Big A," the chief law enforcement officer for

Chester County, South Carolina, approached the car, placed his hand around Mr. Mobley's neck, strangled Mr. Mobley as he sat in the back of the police car, and said, "you little bitch, this is what you get for shooting at me and my boys" or words to that effect.

19. Meanwhile, Mrs. Mobley hearing her husband being attacked, came to the area where the police were. Upon seeing the officers and her husband restrained, Mrs. Mobley asked what they were doing and one of them responded, "shut up or you'll be going to jail next" or words to that effect.

20. Mr. Mobley was transferred to the Chester Detention Center. On the way, he asked what he was being charged with and was told by one of the defendants that "we'll figure that out later."

21. When Tracy arrived at the jail, Defendant Skidmore asked Tracy to take a breathalyzer test. While under observation prior to the breathalyzer test, Mr. Mobley sat shirtless in his swim trunks at the police station. At the end of the observation period, Mr. Mobley refused the breathalyzer test. Mr. Mobley was detained that night in the Chester Detention Center and released the next day on a \$32,500.00 bond. The Defendants initiated criminal charges against him, specifically three counts of pointing and presenting a firearm at a person; 3 counts of Assault/Assault & Battery, 1st Degree; and one count of using a firearm while under the influence of alcohol or drugs.

22. The Defendants conspired together, with the imprimatur of Defendant Underwood, to author police reports and other statements related to this incident containing misleading and false information about Mr. Mobley's actions on the evening of October 6, 2016.

23. On October 7, 2016, the day of his release from the Chester Detention Center, Mr. Mobley was seen by a local physician for injuries he sustained at the hands of the Defendants.

Contusions were observed on his back, ankle, and groin. His throat was swollen as a direct and proximate result of the strangulation he suffered at the hands of Defendant Underwood. For approximately ten days following his attack, Mr. Mobley could only talk in a hoarse manner and doing so (or even breathing heavily) caused him severe pain.

24. The charges brought against Mr. Mobley were serious and of an inherently violent nature. Despite statutory and policy prohibitions against allowing allegedly violent offenders from entering into Chester County's Pretrial Intervention program ("PTI"), in their attempt to cover up their unlawful arrest and conspiracy, the Defendants allowed Mr. Mobley to enter into the PTI program. Mr. Mobley agreed to enter into PTI, not because he was guilty of any of the serious allegations he was charged with—but because he feared that the defendants in this case would further manipulate the justice system in an unfair manner at his expense. On or about April 15, 2019, he successfully completed the PTI program. Pursuant to S.C. Code 17-22-150(a) he has applied for an Order to restore him, "in the contemplation of the law, to the status he occupied before [his] arrest."²

² To the extent the Court believes that causes of action reliant upon this prospective relief the Plaintiff seeks are premature, Plaintiff anticipates respectfully requesting a stay of these proceedings pending outcome of his application for relief pursuant to S.C. Code Ann. 17-22-150(a). *See e.g. Wallace v. Kato*, 549 U.S. 384, 393-94, 127 S. Ct. 1091, 1098 (2007) ("If a plaintiff files a false-arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended.")

25. The terrorizing, intentional, and illegal actions taken by the Defendants, in addition to directly causing Mr. Mobley physical harm, also directly and proximately caused him severe emotional distress, traumatic stress, and mental anguish. He was humiliated and his reputation in the community harmed by the indignant abuse he suffered. He has suffered great feelings of anxiety, even in his own home and on his own property. He lost much of his faith and trust in law enforcement (a community of which he formerly had only the highest esteem). And for many months, he feared that because of the illegal and despicable actions of the Defendants, he could be sent to prison for the rest of his anticipated life.

FOR A FIRST CAUSE OF ACTION
(Against All Defendants—S.C. Common Law Battery)

26. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

27. The Defendants actions in tackling, beating, restraining, and in the case of Defendant Underwood, strangling Plaintiff, were unlawful, unauthorized, and intentional acts of violence against Mr. Mobley.

28. As a direct and proximate cause of Defendant's violent actions, Mr. Mobley suffered harm, including physical injuries and emotional distress.

FOR A SECOND CAUSE OF ACTION
(Against All Defendants —S.C. Common Law Malicious Prosecution)

29. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

30. By their acts and omissions, Defendants initiated and set the wheels in motion for criminal judicial proceedings against Plaintiff.

31. The Defendants initiation of these criminal proceedings against the Plaintiff was malicious and lacked probable cause.

32. Indeed, Plaintiff is informed and believed that the actual motivating factor behind Defendants' initiation of criminal proceedings against him was to cover up the Defendants' own inappropriate behavior.

33. The aforementioned criminal charges were later terminated in favor of Plaintiff.

34. As a direct and proximate cause of Defendants' actions, Plaintiff suffered harm.

FOR A THIRD CAUSE OF ACTION
(Against All Defendants—S.C. Common Law False Arrest)

35. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

36. Defendants intentionally detained Plaintiff without his authorization or consent and did so without a fair and reliable determination of probable cause.

37. Defendants had neither valid evidence for the arrest of Plaintiff, nor other legal cause or excuse to seize and detain him. No reasonable law enforcement officer under the foregoing circumstances could have concluded that Mr. Mobley was violating the law.

38. Instead of expeditiously investigating this matter and releasing Mr. Mobley immediately, Defendants subjected him to unfair, unjustifiable, and excessive detention on pretextual grounds, falsely memorialized by the Defendants in official police statements.

39. Defendants' acts and omissions, performed under the color of state law, in gross and wanton disregard of Plaintiff's rights, deprived Plaintiff of his liberty when they subjected Plaintiff to an unlawful, illegal, and excessive detention, in violation of his rights.

FOR A FOURTH CAUSE OF ACTION
(Against All Defendants—S.C. Common Law Trespass)

40. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

41. Plaintiff peaceably possessed his home and the land surrounding, including the shop, the backyard, and the wooded area.

42. Defendants intentionally entered onto Plaintiff's property without authorization, without probable cause, and in fact without any lawful cause to do so.

43. Defendants knew they did not have authorization from Plaintiff or any lawful cause to enter Plaintiff's property but did so anyway.

44. Defendants' unlawful invasion of Plaintiff's property harmed Plaintiff and interrupted his peaceable enjoyment of the premises.

FOR A FIFTH CAUSE OF ACTION

(Against All Defendants—Violation of 42 U.S.C. § 1983—False Arrest)

45. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

46. Defendants intentionally detained Plaintiff without his authorization or consent. In doing so, without a fair and reliable determination of probable cause, Defendants abused their power and authority as law enforcement officers under the color of state law.

47. Defendants had neither valid evidence for the arrest of Plaintiff, nor other legal cause or excuse to seize and detain him. No reasonable law enforcement officer under the foregoing circumstances could have concluded that Mr. Mobley was violating the law.

48. Instead of expeditiously investigating this matter and releasing Mr. Mobley immediately, Defendants subjected him to unfair, unjustifiable, and excessive detention on pretextual grounds, falsely memorialized by the Defendants in official police statements.

49. Defendants' acts and omissions, performed under the color of state law, in gross and wanton disregard of Plaintiff's rights, deprived Plaintiff of his liberty when they subjected Plaintiff to an unlawful, illegal, and excessive detention, in violation of his rights pursuant to the Fourth and Fourteenth Amendments to the Constitution and the laws of the United States Constitution and Article I, § 3 and §10 of the Constitution and the laws of South Carolina.

FOR A SIXTH CAUSE OF ACTION

(Against All Defendants—Violation of 42 U.S.C. § 1983—Use of Excessive Force)

50. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

51. The Fourth Amendment to the United States Constitution and Art. I, §10 of the South Carolina Constitution prohibit law enforcement officers from effecting unreasonable seizures of individuals.

52. The right to be free from unreasonable seizures includes the right to be free from seizures carried out with excessive force.

53. At no time on the evening of October 6, 2016, did Plaintiff resist arrest. His actions in protecting the safety of his wife, himself, and his property were reasonable. The actions of the Defendants, however, were grossly disproportionate to the need for action. Plaintiff, who had reported his presence numerous times within earshot, upon recognizing the Defendants as law enforcement officers, turned his back to the armed Defendants, with his arms to his side. Put simply, under these circumstances, he did not pose a reasonable threat to the safety of the numerous armed Defendants.

54. No reasonable officer in the Defendants' position would have concluded that force utilized by the Defendants was justified in apprehending Plaintiff.

55. Defendants had the opportunity to intervene and prevent these violations of Plaintiff's civil rights, yet failed and or refused to do so.

56. Through their acts and omissions, Defendants, acting under color of state law, in gross and wanton disregard of Plaintiff's rights, subjected Plaintiff to excessive force while effectuating his arrest, in violation of the Constitution and laws of the State of South Carolina and the Constitution and laws of the United States.

57. As a direct and proximate result of Defendants use of excessive force. Plaintiff has suffered damages.

FOR A SEVENTH CAUSE OF ACTION

(Against All Defendants—Violation of 42 U.S.C. § 1985—Conspiracy to Violate the Civil Rights of Plaintiff)

58. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

59. The Defendants, acting under color of state law, agreed to act in concert to cause an unconstitutional injury to the Plaintiff, by *inter alia*, causing his false arrest, utilizing excessive and unreasonable force, and to later, cover their tracks by falsifying police reports and statements at least on the evening of October 6, 2016, and on October 7, 2016, to create pretextual support for their actions and improperly influence further official action. These actions were done with the explicit or at least implicit approval of the chief law enforcement officer of Chester County, South Carolina, Defendant Underwood.

60. As a direct and proximate result of the Defendants' acts and omissions, Plaintiff's rights guaranteed by the laws and Constitution of the United States and State of South Carolina were violated and Plaintiff suffered harm.

FOR AN EIGHTH CAUSE OF ACTION

(Against All Defendants—Violation of 42 U.S.C. § 1988—Attorneys' Fees and Costs)

61. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

62. As stated above, Defendants have violated 42 U.S.C. §§ 1983 & 1985 and accordingly are liable for the costs and attorneys' fees associated with this action.

WHEREFORE, Plaintiff prays that this Court award the following relief:

1. Award Plaintiff actual damages in an amount to be determined by a jury;
2. Award Plaintiff punitive damages in an amount to be determined by a jury;
3. Award Plaintiff the costs and reasonable attorneys' fees associated with this action;

and

4. Such other relief as the Court deems just and proper.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/Ian T. Duggan

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**ATTORNEYS FOR PLAINTIFF TRACY
MOBLEY**

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