

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TONY SMITH,

Plaintiff,

vs.

CITY OF ATLANTA, GEORGIA,
ATLANTA POLICE DEPARTMENT,
POLICE CHIEF GEORGE TURNER,
Individually and in his official capacity as
the Police Chief of the City of Atlanta
Department of Police, OFFICER CHARLES:
BROWN Individually and in his official
capacity, OFFICE LARRY BENNETT
Individually and in his official capacity,
Atlanta Independent School System
Superintendent BEVERLY HALL,officially,
Individual members of the CITY OF
ATLANTA BOARD OF EDUCATION,
Officially, ROOSEVELT FOREMAN,
Individually and in his official Capacity

Defendants.

Civil Action
File No.:

Jury Trial Demanded

COMPLAINT

COMES NOW Tony Smith (“Mr. Smith”) the Plaintiff, and brings this
Complaint seeking damages for the violations of his Fourth Amendment rights
under the United States Constitution and corollary rights under the Georgia

Constitution, and for false imprisonment and harassment by the City of Atlanta police during a painful and unnecessary post-interrogation detention. Mr. Smith, a student at Grady High School, was handcuffed to a school filing cabinet for over seven hours prior to being arrested and detained for a school yard skirmish.

JURISDICTION AND VENUE

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343 (a)(3), the First, Fourth and Fourteenth Amendments of the United States Constitution, and pendent jurisdiction pursuant to 28 U.S.C. § 1367 under Article I, § 1, ¶¶ V, VIII of the Georgia Constitution. The actions of defendants were under color of law. Venue is proper in this Court.

PARTIES

2.

Plaintiff Tony Smith (“Mr. Smith”) resides in and is a citizen of Fulton County, Georgia. At all times relevant to this complaint, Mr. Smith was a minor student at Grady High School. Mr. Smith is a student with a disability receiving individualized educational instruction.

3.

Defendant City of Atlanta is a municipality established under the laws Georgia and a local charter. The City of Atlanta Police Department is a municipal service provided by the City of Atlanta.

4.

Defendant Officer Larry Bennett (“Officer Bennett”) was, at the time of this incident, a law enforcement officer with the City of Atlanta Police Department. He is sued in his individual capacity as a law enforcement officer. Defendant was at all times pertinent hereto an officer acting under color of state law.

5.

Defendant Investigator Charles Brown (“Investigator Brown”) was at the time of this incident, and currently is, an investigator with the City of Atlanta Police Department. He is sued in his individual capacity as a law enforcement officer. Defendant was at all times pertinent hereto an officer acting under color of state law.

6.

Defendant Police Chief George N. Turner is the head of the City of Atlanta Police Department. He is sued in his individual capacity for deliberate indifference on monitoring, training and policies developed (or not developed) and in his official capacity as the head of all law enforcement for the City of Atlanta.

Defendant was at all times pertinent hereto an officer acting under color of state law.

7.

Defendant Beverly Hall (“Dr. Hall”) was at the time of this incident, and currently is, the superintendent of the Atlanta Independent School System. Dr. Hall is responsible for all operations of the AISS, including the implementation of AISS policies and procedures. Dr. Hall is sued in her official capacity as the chief executive officer of the AISS.

8.

Defendant Roosevelt Foreman, was at the time of this incident an Assistant Principal at Grady High School. He is sued in his individual capacity as an administrator at Grady High School, a school within the Atlanta Independent School System.

FACTUAL ALLEGATIONS

9.

On October 6, 2009, Mr. Smith was a witness to an incident near the school bus at Grady High School where another student had taken a wallet from a student, removed the contents of the wallet (two dollars) and passed the money to another student on the bus.

10.

Mr. Smith was neither the student that took the wallet nor did he remove the money from the wallet. When a fight ensued on the bus he did not participate in that fight.

11.

The next day, October 7, 2009 at 9:00 a.m. Mr. Smith was handcuffed and forcibly removed from his first period class by Defendant Bennett, Defendant Brown, Defendant Foreman and other school administrators. He was escorted out of class and to a small office near the principal's office.

12.

Upon information and belief, the room was no larger than a small closet and contained a chair, a small desk and several filing cabinets.

13.

When he first entered the room, Defendants questioned Mr. Smith about the bus incident. Mr. Smith recounted the facts as they occurred and cooperated fully with the Defendants. Mr. Smith was not informed about the reason for his detention at this time nor was he told he was being arrested.

14.

After hearing Mr. Smith's response to Defendants questions about the bus incident, Defendants kept Mr. Smith in handcuffs. Mr. Smith was not informed of

any charges being brought against him based upon his responses to the Defendants initial investigation. Defendants failed to inform Mr. Smith of his *Miranda* rights prior to his detention and subsequent interrogation.

15.

Mr. Smith asked why he was being detained. Defendants responded by stating, “You know why you’re cuffed.” Mr. Smith understood this to mean he was being disciplined for some school related conduct.

16.

Mr. Smith notified Defendants that the cuffs were hurting him and they were too tight. In response, Defendants affixed Mr. Smith’s handcuffs to a filing cabinet. Defendants then ordered Mr. Smith to remain seated and be quiet.

17.

Mr. Smith was detained and handcuffed to a file cabinet in the same small room for the rest of the school day.

18.

During the morning, Mr. Smith was forced to give a written statement of the events without counsel being provided or his parents notified. Later in the day, after complaining of extreme pain in his wrists, Defendant Bennett finally loosened the handcuffs. Mr. Smith’s wrists had been injured by the handcuffs because they were too tight. Pictures of Mr. Smith’s wrists taken during the detention show Mr.

Smith being detained to a file cabinet with his arm at or above his heart and red welts developing where the handcuffs were affixed. Ex. 1 (Pictures taken by Mr. Smith during the detention).

19.

Mr. Smith complained about his wrists to Defendants, however, Defendants never sought medical attention for Mr. Smith's injured wrists. They did not call Mr. Smith's mother or remove Mr. Smith to another location. Mr. Smith was made to sit, handcuffed to a file cabinet with his wrists at or above his head for five to seven hours. Mr. Smith was allowed to eat lunch in the small room while being handcuffed to a chair. Mr. Smith complied with all Defendants instructions and provided no basis for any continuing detention, however, once given the opportunity to eat his lunch, Mr. Smith was again handcuffed to the file cabinet until the end of school.

20.

In total, Mr. Smith was detained, handcuffed to a file cabinet and chair for approximately seven hours.

21.

Defendant Foreman contacted Mr. Smith's mother, Ms. Brenda Evans, after Mr. Smith was taken to Metro Regional Youth Detention. Defendant Foreman stated to Ms. Evans, "Your son messed with the wrong guy." Defendant Foreman

explained to Ms. Evans that the alleged victim of the bus incident was the child of Defendant Brown's supervisor and Defendant Brown and Bennett were "out to get him."

22.

Upon return to school, over two weeks later, Grady administration immediately sought to remove Mr. Smith by creating an *ad hoc* "Notice of Disciplinary Action" form with the blanks handwritten in and backdated for October 7, 2009. The form, delivered to Mr. Smith's mother as she stood on school property on October 16, 2009 stated that Tony had been suspended from October 7 to October 9, and that an informal hearing had been scheduled for October 14, 2009 --- three days before Mr. Smith's mother ever received notice of any such hearing. The form described the disciplinary violations as, "strong armed robbery on school bus and disruption on school bus." See Ex. 2 (Notice of Disciplinary Action from Grady High School).

23.

Mr. Smith left school understanding that school administrators would not allow Mr. Smith to return to school. Subsequently, on October 26, 2009, two weeks later, Mr. Smith's mother, Ms. Evans, received a notice in the mail for a student tribunal hearing for that same day. Mr. Smith did not have an opportunity to defend himself against the school related disciplinary action.

24.

Mr. Smith filed a complaint with the Atlanta Citizens Review Board (“ACRB”) regarding Defendants’ conduct. Mr. Smith requested an investigation be conducted by AISS into the conduct of Defendant Foreman.

25.

AISS did not conduct any investigation into Defendant Foreman’s conduct and intentionally ignored Mr. Smith’s request.

26.

On August 16, 2010, the ACRB specifically noted that Defendants Brown and Bennett had violated Atlanta Police Department Standard Operating Procedures by a) detaining Mr. Smith for an unreasonable amount of time, b) failing to ensure the arresting officers transport the Mr. Smith, who is a juvenile to the detention facility, and c) by using an object not intended to secure a person (the filing cabinet) when handcuffing Mr. Smith during the unreasonably long detention. See attached Ex. 3 (Decision of the Atlanta Citizen Review Board).

27.

On December 2, 2010, Defendant Turner responded to the ACRB letter in writing and confirmed that Defendants Bennett and Brown violated Atlanta Police Department policies. Specifically, Defendant Turner stated, “Investigator Brown

and Officer Bennett violated Conformance to Directives (Work Rule 4.2.33) by allowing the juvenile to remain in their custody for an unreasonable time (between five and seven hours) before transporting to the juvenile detention facility...Additionally, a second charge of Conformance to Directives (Work Rule 4.2.33) was sustained against Officer Bennett for the handcuffing of Tony Smith to a file cabinet, in violation of APD.SOP.3030, §4.14.1(4). See attached Ex. 4 (Letter from Chief Turner to the ACRB).

CLAIMS FOR RELIEF

28.

The allegations set forth in Paragraphs one through twenty-four are incorporated by reference herein.

29.

The Fourth Amendment prohibits the police from detaining citizens without reasonable, articulable suspicion that a law is being violated. For students in school, the Fourth Amendment requires that the detention be “reasonably related to the scope of the circumstances which justified the interference in the first place.” *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1984). “[A seizure] will be permissible in its scope when the measures adopted are reasonably related to the objectives of the [seizure] and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” *Gray v. Bostic*, 458 F. 3d. 1295, 1306 (11th Cir. 2006)

(*quoting* T.L.O., 469 U.S. at 342). By detaining Mr. Smith, interrogating him, and then leaving him shackled to a file cabinet for an entire school day, Defendants sought to punish Mr. Smith and deprived Mr. Smith of his right to be secure in his person and to be free from unreasonable seizures as protected by the Fourth and Fourteenth Amendments of the United States Constitution, as well as the Georgia Constitution Article I, Section 1, Paragraph I, VII, and XIII.

30.

By continuing to detain Mr. Smith without legal authority, Defendant Bennett and Defendant Brown falsely imprisoned Mr. Smith in violation of O.C.G.A. § 16-5-41.

31.

By attempting to punish Mr. Smith through his prolonged detention and by shackling him to a file cabinet, Defendant Bennett and Defendant Brown, with malice and oppression, falsely imprisoned Mr. Smith under color of legal process in violation of O.C.G.A. § 16-5-42.

32.

By intentionally and with excessive force shackling Mr. Smith to a file cabinet without any legal justification for such detention, Defendant Bennett and Defendant Brown committed battery against Mr. Freeman in violation of O.C.G.A. § 16-5-23.

33.

By intentionally engaging in outrageous and unlawful conduct, which caused severe emotional distress to Mr. Smith, Defendants liable for the intentional infliction of emotional distress to Mr. Smith.

PRAYER FOR RELIEF

WHEREFORE, on the basis of the foregoing, Mr. Smith respectfully prays that this Court:

- (A) Assume jurisdiction over this action;
- (B) Award nominal and compensatory damages against each defendant to Mr. Smith in an amount subject to proof;
- (C) Award punitive damages against each individual defendant to Mr. Smith according to federal and state law;
- (D) Award reasonable attorneys fees, expenses, and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable laws;
- (E) Award such other and further relief as this Court deems just and proper.

A JURY TRIAL IS REQUESTED.

DATED: This the 11th day of March, 2011.

Respectfully submitted,

/s/ Craig Goodmark

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