

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL ASSENG,

Docket No: 14-CV-5275
(JS)(AYS)

Plaintiff,

-against-

**AMENDED
COMPLAINT**

NASSAU COUNTY POLICE OFFICER
JOHN BEISEL Serial No. 7586,

JURY TRIAL DEMANDED

Defendant.
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Plaintiff MICHAEL ASSENG (hereinafter, referred to as “ASSENG” or “Plaintiff”), by his attorneys, The Russell Friedman Law Group LLP, as and for his Amended Complaint (“Complaint”) against Defendant, NASSAU COUNTY POLICE OFFICER JOHN BEISEL Serial No. 7586, respectfully sets forth:

PRELIMINARY STATEMENT

1. Plaintiff brings this civil rights action for monetary damages pursuant to, *inter alia*, 42 U.S.C. §§ 1983 and 1988, for violations of Plaintiff’s civil rights, committed by Defendant while acting in concert and under color of state law, of Plaintiff’s rights, liberties, and immunities as guaranteed to him under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under 28 U.S.C §§ 1331 and 1342 in that Defendant’s conduct violated rights guaranteed to Plaintiff under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

3. Venue in the Eastern District of New York is proper under 28 U.S.C § 1391(b) since all of the events and omissions giving rise to Plaintiff’s claims occurred within Nassau

County. Additionally, Plaintiff resides within the County of Suffolk in the Eastern District of New York.

PARTIES

4. Plaintiff ASSENG is a citizen of the State of New York and resident of Suffolk County who resides at 45 Madison Avenue, Deer Park, New York 11729.

5. Upon information and belief, at all times pertinent hereto, Defendant NASSAU COUNTY POLICE OFFICER JOHN BEISEL, Serial No. 7586 (hereinafter, referred to as “P.O. BEISEL”), is an employee of Nassau County and works under the supervision, direction, and/or control of his supervisors in the Nassau County Police Department.

BACKGROUND

6. On or about January 18, 2013, Plaintiff was operating a bus for ACME Bus Corporation on Midwood Avenue in Farmingdale, New York.

7. While operating the ACME Bus on Midwood Avenue, Farmingdale, New York, Plaintiff was involved in a motor vehicle accident with a stationary vehicle.

8. After being involved in the vehicular accident on Midwood Avenue, Farmingdale, New York, Plaintiff called the Nassau County Police Department Emergency Dispatch Unit by dialing 9-1-1 on his cellular phone.

9. After calling the Nassau County Police Department Emergency Dispatch Unit by dialing 9-1-1 on his cellular phone, Plaintiff contacted ACME Bus Company for assistance.

10. In response to his telephone call to ACME Bus Company, Incident Investigator Lee Bernstein responded to the accident scene on Midwood Avenue, Farmingdale, New York.

11. In response to his telephone call to Nassau County Police Department Emergency Dispatch, P.O. BEISEL responded to the accident scene on Midwood Avenue, Farmingdale, New

York.

12. In response to his telephone call to Nassau County Police Department Emergency Dispatch, Nassau County dispatched an ambulance to the accident scene on Midwood Avenue, Farmingdale, New York.

13. In response to his telephone call to Nassau County Police Department Emergency Dispatch, AMT personnel responded to the accident scene on Midwood Avenue, Farmingdale, New York.

14. In response to his telephone call to Nassau County Police Department Emergency Dispatch, EMT personnel responded to the accident scene on Midwood Avenue, Farmingdale, New York.

15. Upon arriving at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL questioned Plaintiff.

16. While at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL questioned Plaintiff as to whether Plaintiff had consumed alcoholic beverages within a twenty-four hour period of the accident.

17. In response to P.O. BEISEL's inquiry regarding the consumption of alcohol, Plaintiff responded in the negative.

18. In spite of the negative response from Plaintiff regarding the consumption of alcohol, P.O. BEISEL conducted a series of sobriety tests on Plaintiff.

19. While at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL requested permission from Plaintiff to conduct a Preliminary Breath Test (hereinafter referred to as "PBT"), to which Plaintiff consented.

20. P.O. BEISEL administered a PBT to Plaintiff at the accident scene on Midwood

Avenue, Farmingdale, New York.

21. After administering the PBT to Plaintiff at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL observed the reading given by the device utilized to conduct same. According to the reading observed by P.O. BEISEL no alcohol was detected by the PBT device.

22. After reviewing the results of the PBT, P.O. BEISEL requested permission from Plaintiff to conduct a second PBT, to which Plaintiff consented.

23. P.O. BEISEL administered a second PBT to Plaintiff at the accident scene on Midwood Avenue, Farmingdale, New York.

24. After administering the second PBT to Plaintiff at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL observed the reading given by the device utilized to conduct same. According to the reading, no alcohol was detected by the PBT device.

25. After reviewing the results of the PBT, P.O. BEISEL requested permission from Plaintiff to conduct a third PBT, to which Plaintiff consented.

26. P.O. BEISEL administered a third PBT to Plaintiff at the accident scene on Midwood Avenue, Farmingdale, New York.

27. After administering the third PBT to Plaintiff at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL observed the reading given by the device utilized to conduct same. According to the reading observed by P.O. BEISEL no alcohol was detected by the PBT device.

28. While at the accident scene on Midwood Avenue, Farmingdale, New York, Plaintiff indicated he had a kidney condition and requested medical attention from P.O. BEISEL.

29. While at the accident scene on Midwood Avenue, Farmingdale, New York,

Plaintiff indicated he had diabetes and requested medical attention from P.O. BEISEL.

30. While at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL spoke with EMT personnel.

31. During his conversation with EMT personnel, P.O. BEISEL was informed that Plaintiff required medical attention.

32. During his conversation with EMT personnel, P.O. BEISEL was directed to take Plaintiff to the hospital.

33. P.O. BEISEL disregarded the medical direction of EMT personnel and arrested Plaintiff.

34. While at the accident scene on Midwood Avenue, Farmingdale, New York, P.O. BEISEL spoke with AMT personnel.

35. During his conversation with AMT personnel, P.O. BEISEL was informed that Plaintiff required medical attention.

36. During his conversation with AMT personnel, P.O. BEISEL was directed to take Plaintiff to the hospital.

37. P.O. BEISEL disregarded the medical direction of AMT personnel and arrested Plaintiff.

38. Rather than take Plaintiff to the hospital and effectuating the arrest after medical attention was offered, P.O. BEISEL brought Plaintiff to NCPD Headquarters in Mineola to the Central Testing Station (CTS).

39. At no time while at the accident scene on Midwood Avenue, Farmingdale, New York did P.O. BEISEL request and/or use the services of a Drug Recognition Expert (DRE).

40. While at the NCPD headquarters, P.O. BEISEL requested that Plaintiff submit to a

urinalysis test. Plaintiff consented to same.

41. Plaintiff was taken to a bathroom to conduct the urinalysis but was unable to urinate at that time.

42. Interpreting Plaintiff's inability to urinate as insubordination, P.O. BEISEL used foul, threatening language to Plaintiff. Specifically, P.O. BEISEL taunted Plaintiff about endangering the lives of children and that he was a filthy drunk.

43. After Plaintiff was unable to urinate, P.O. BEISEL became visibly angry and then shackled the already handcuffed Plaintiff to the bench, declaring if Plaintiff did not wish to "pee in the cup than he could pee on himself." When Plaintiff could not urinate, Defendant handcuffed Plaintiff's wrists very tightly. When Plaintiff indicated that the handcuffs were uncomfortably tight, Defendant simply tightened them further, indicating if Plaintiff wanted the handcuffs loosened, he should pee in the cup.

44. Throughout his time in the NCPD headquarters, Plaintiff requested medical attention. These requests were summarily denied.

45. After approximately five hours of detention in the NCPD headquarters, Plaintiff was taken to the Nassau University Medical Center Emergency Room to have his blood tested for drugs and/or alcohol in furtherance of the arrest.

46. Plaintiff's blood was submitted to testing for Amphetamines, Methamphetamines, Barbiturates, Benzodiazepines, cannabinoids, cocaine, ethanol, methadone, and opiates at the Nassau University Medical Center at 18:14 on January 18, 2013, according to hospital documentation.

47. Plaintiff's blood tested negative for Amphetamines, Methamphetamines, Barbiturates, Benzodiazepines, cannabinoids, cocaine, ethanol, methadone, and opiates at the

Nassau University Medical Center at 18:14 on January 18, 2013, according to hospital documentation.

48. Upon examination of Plaintiff, a Nassau University Medical Center Emergency Room physician stated that he/she observed no slurred or impaired speech, no odor of alcohol and no unsteadiness of balance on the part of Plaintiff.

49. Dr. Angus repeatedly requested that the handcuffs be taken off of Plaintiff in light of his observances and educated medical opinion that Plaintiff was not under the influence of alcohol and/or illegal drugs.

50. The NCPD officers including, but not exclusively all Defendant, refused Dr. Angus's repeated requests, kept Plaintiff handcuffed and continued to insist Plaintiff was under the influence of alcohol despite Dr. Angus's observances, educated medical opinion, three (3) PBTs and blood tests all which contradicted the officers' opinion.

51. While at the Nassau University Medical Center, Plaintiff was diagnosed to be in Renal Failure.

52. Plaintiff was immediately admitted and taken to the Intensive Care Surgical Unit.

53. The doctors in the Nassau County University Medical Center struggled to keep Plaintiff alive long enough to operate.

54. Plaintiff's wife, Deneen Asseng, was contacted by staff of the Nassau County University Medical Center no less than three times and told to come immediately.

55. Plaintiff's wife raced to the Nassau County University Medical Center arriving between 2030 and 2100 on January 18, 2013.

56. Both Plaintiff and his wife were asked by staff of the Nassau County University Medical Center as to whether he was a Catholic and, specifically, whether Plaintiff wished to

receive “Last Rites.”

57. The doctors, under whose care Plaintiff was placed, informed the police that the dire condition of Plaintiff was caused by their failure to secure medical attention for Plaintiff earlier.

58. The doctors, under whose care Plaintiff was placed, informed both Plaintiff and his wife that Plaintiff would likely not survive the day.

59. Plaintiff survived the surgery.

60. Plaintiff was in a coma for approximately twenty (20) days.

61. While Plaintiff was under pre-operative care, he was served/charged with four Felony Counts of Driving While Intoxicated under Leandra’s Law.

62. Employees of Nassau County, from both the Nassau County Police Department and the Nassau County District Attorney’s Office, released statements to the press accusing Plaintiff of four Felony Counts of Driving While Intoxicated under Leandra’s Law and, further, released the ages of the children who were present in the bus he was driving on January 18, 2013.

63. Plaintiff received threatening communications from members of the public as a direct result of the actions and communications of Defendant.

64. Defendant, aware that Plaintiff was in a coma, requested that the presiding judge issue a warrant for Plaintiff’s arrest.

65. Defendant initiated the prosecution of Plaintiff for four Felony Counts of Driving While Intoxicated under Leandra’s Law without any evidence of alcohol in Plaintiff’s system at the time of the underlying accident.

66. Defendant initiated the prosecution of Plaintiff for four Felony Counts of Driving While Intoxicated under Leandra’s Law without any evidence of illegal drugs in Plaintiff’s system

at the time of the underlying accident.

67. At the time of Plaintiff's arrest, blood had been taken from Plaintiff at the Nassau County University Hospital. Said tests were negative for alcohol and/or illegal drugs.

68. Defendant continued the prosecution of Plaintiff without any evidence of alcohol in Plaintiff's system at the time of the underlying accident.

69. Defendant continued the prosecution of Plaintiff without any evidence of illegal drugs in Plaintiff's system at the time of the underlying accident.

70. Defendant knew and/or should have known at the time Plaintiff's arrest was made that Plaintiff did not have alcohol in his system.

71. Defendant knew and/or should have known at the time Plaintiff's arrest was made that Plaintiff did not have illegal drugs in his system.

72. Defendant knew and/or should have known at the time prosecution was initiated that Plaintiff did not have alcohol in his system.

73. Defendant knew and/or should have known at the time prosecution was initiated that Plaintiff did not have illegal drugs in his system.

74. Defendant continued the prosecution after discovery of exonerating evidence, i.e. that Plaintiff did not have alcohol in his system.

75. Defendant continued the prosecution after discovery of exonerating evidence, i.e. that Plaintiff did not have illegal drugs in his system.

76. Defendant lacked probable cause to arrest Plaintiff.

77. Defendant initiated a criminal prosecution against Plaintiff.

78. Defendant initiated the criminal prosecution of Plaintiff without probable cause.

79. Defendant maliciously initiated and/or continued the prosecution of Plaintiff.

80. The prosecuting Assistant District Attorney was specifically made aware of the absence of any evidence of wrongdoing on the part of Plaintiff at the inception and throughout the prosecution of Plaintiff.

81. After maliciously prosecuting Plaintiff for six months, the Court summarily dismissed all charges against Plaintiff herein, terminating the prosecution in Plaintiff's favor.

82. Defendant, negligently and/or gross negligently and/or recklessly and/or with deliberate indifference and/or intentionally withheld medical attention from Plaintiff.

83. Defendant intentionally and/or recklessly published falsehoods about Plaintiff to third parties.

84. In their publications to third parties, Defendant stated that Plaintiff had committed heinous crimes.

85. At the time Defendant made their publications, Defendant knew or should have known their publications were untrue.

86. Said publications were maliciously made by Defendant.

87. Based on the unlawful arrest and prosecution of Plaintiff, his right to operate a motor vehicle was wrongfully suspended effective January 23, 2013, and again on March 17, 2013. This suspension was not removed until July of 2013.

88. Plaintiff was damaged as a direct result of: being falsely arrested; being maliciously prosecuted; Defendant's failure to provide medical attention; being defamed; being verbally accosted and abused; and/or the exertion of excessive force by Defendant.

89. Plaintiff's damages are permanent in nature.

90. Pursuant to the New York State General Municipal Law, Plaintiff served a Notice of Claim upon Nassau County.

91. Pursuant to Section 50-h of the New York State General Municipal Law, Plaintiff appeared for a hearing conducted by Nassau County.

92. Over thirty (30) days has since expired without Nassau County remedying, settling, or adjusting this claim.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION FOR FALSE ARREST
(§ 1983) AGAINST NASSAU COUNTY POLICE OFFICER JOHN BEISEL**

93. Plaintiff repeats, reiterates, and realleges each and every allegation contained in those paragraphs of the Complaint marked and numbered previously with the same force and effect as if more fully set forth at length herein.

94. Plaintiff's arrest and detention by Defendant was conducted under color of state law within the purview of 42 U.S.C § 1983 and Plaintiff has suffered damages therefrom.

95. At all times mentioned, Defendant was acting within the scope of his employment with Nassau County.

96. Plaintiff was arrested without probable cause that he had committed any crime.

97. Plaintiff's detention by Defendant was an abuse of power, constituted a seizure within the meaning of the Fourth Amendment, and deprived Plaintiff of his liberty.

98. Plaintiff was conscious of his confinement and did not consent to this confinement, nor was the confinement otherwise privileged.

99. Because Defendant lacked reasonable suspicion, probable cause, a valid arrest warrant, or any other valid legal reason to effectuate the arrest of Plaintiff, this arrest and Defendant's actions amounted to unlawful arrest and imprisonment.

100. Plaintiff's seizure and deprivation of liberty was unreasonable, without due process of law and in violation of the Fourth, Fifth, and Fourteenth Amendments of the United States

Constitution.

101. Defendant's actions were intentional and/or reckless and/or negligently done to intimidate and did cause physical damage, emotional distress, financial harm, loss of business opportunity and other damages to Plaintiff.

102. As a proximate result of Plaintiff's false arrest by Defendant, Plaintiff was greatly physically injured, humiliated, injured in his reputation, caused to incur attorneys' fees, associated legal expenses and other special damages, lost wages and business opportunities, and has suffered great mental anguish, all to Plaintiff's damage in an amount to be provided at trial but no less than ONE MILLION DOLLARS (\$1,000,000.00), plus punitive damages.

AS AND FOR PLAINTIFF'S
SECOND CAUSE OF ACTION FOR MALICIOUS PROSECUTION (§ 1983)
AGAINST NASSAU COUNTY POLICE OFFICER JOHN BEISEL

103. Plaintiff repeats, reiterates, and realleges each and every allegation contained in those paragraphs of the Complaint marked and numbered previously with the same force and effect as if more fully set forth at length herein.

104. Defendant filed an accusatory instrument against Plaintiff, ASSENG, on or about January 19, 2014.

105. Defendant drafted the accusatory instrument against Plaintiff with full knowledge that Plaintiff's actions set forth in the accusatory instrument were entirely legal.

106. Defendant swore to and filed the aforementioned Felony Complaint with full knowledge that Plaintiff's actions set forth in this Felony Complaint were entirely legal.

107. Defendant was aware Plaintiff was not under the influence of alcohol or any illegal substances during the times described in the accusatory instrument.

108. Upon information and belief, Plaintiff was arrested on January 18, 2013, by

Defendant without probable cause.

109. Plaintiff's prosecution was initiated and/or continued by Defendant with malice and without any legal basis.

110. Defendant had knowledge that the conduct allegedly engaged in by Plaintiff was entirely lawful.

111. Defendant lacked probable cause to prosecute Plaintiff.

112. Plaintiff's prosecution by Defendant was conducted under color of state law within the purview of 42 U.S.C. § 1983.

113. Defendant knowingly, willfully, and intentionally continued to prosecute the charges against Plaintiff based on false evidence and false testimony.

114. Plaintiff's prosecution was initiated and/or continued with malice and without any legal basis based on fabricated evidence and false testimony.

115. Plaintiff's prosecution terminated in favor of Plaintiff by an order of the Court on June 14, 2013 and/or dismissal by other means.

116. As a proximate result of the malicious prosecution of Plaintiff by Defendant, Plaintiff was greatly physically injured, humiliated, injured in his reputation, caused to incur attorneys' fees, associated legal expenses and other special damages, lost wages and business opportunities, and has suffered great mental anguish, all to Plaintiff's damage in an amount to be provided at trial but no less than ONE MILLION DOLLARS (\$1,000,000.00), plus punitive damages.

AS AND FOR PLAINTIFF'S
THIRD CAUSE OF ACTION FOR DENIAL OF MEDICAL TREATMENT (§ 1983)
AGAINST NASSAU COUNTY POLICE OFFICER JOHN BEISEL

117. Plaintiff repeats, reiterates, and realleges each and every allegation contained in

those paragraphs of the Complaint marked and numbered previously with the same force and effect as if more fully set forth at length herein.

118. Before, during, and after the arrest referenced herein, Plaintiff needed medical attention to address a serious medical condition.

119. Before, during, and after the arrest, Plaintiff stated to Defendant that he was in need of medical assistance due to his medical condition.

120. Before, during, and after the arrest of Plaintiff, Defendant failed to provide the necessary medical treatment to Plaintiff due to their deliberate indifference.

121. Defendant recklessly disregarded Plaintiff's symptomology.

122. Defendant recklessly disregarded the direction of health care providers on the scene prior, during, and after the arrest of Plaintiff who directed and/or advised that Plaintiff be given immediate medical attention.

123. Defendant was aware that Plaintiff was in need of medical assistance for a serious medical condition before, during, and after his arrest.

124. Upon assuming custody of Plaintiff, Defendant exercised absolute discretion in refusing to provide Plaintiff medical aid.

125. It was Defendant's personal decision(s) that led to Plaintiff's denial of medical attention.

126. Defendant violated Plaintiff's rights by refusing to allow Plaintiff to go to the hospital and/or receive medical treatment.

127. Defendant's aforementioned acts and omissions were made and/or omitted with reckless disregard to the health and welfare of Plaintiff.

128. As a proximate result of Defendant's denial of medical attention, Plaintiff was

greatly physically injured, humiliated, injured in his reputation, caused to incur attorneys' fees, associated legal expenses and other special damages, lost wages and business opportunities, and has suffered great mental anguish, all to Plaintiff's damage in an amount to be provided at trial but no less than ONE MILLION DOLLARS (\$1,000,000.00), plus punitive damages.

AS AND FOR PLAINTIFF'S
FOURTH CAUSE OF ACTION FOR VIOLATIONS OF ASSENG'S FOURTH
AMENDMENT AND PROCEDURAL DUE PROCESS RIGHTS AGAINST NASSAU
COUNTY POLICE OFFICER JOHN BEISEL

129. Plaintiff repeats, reiterates, and realleges each and every allegation contained in those paragraphs of the Complaint marked and numbered previously with the same force and effect as if more fully set forth at length herein.

130. Upon information and belief, Defendant provided the Court with false and/or exaggerated information in order initiate the prosecution of Plaintiff.

131. Upon information and belief, Defendant intentionally misrepresented the content of the accusatory instrument.

132. Upon information and belief, Defendant performed these acts intentionally and/or in utter disregard for the rights of Plaintiff.

133. Upon information and belief, Defendant intentionally denied Plaintiff necessary medical attention for the sole reason that they wished to pursue an illegal arrest and prosecution.

134. As a proximate result of Defendant's intentional and malicious actions, Plaintiff was greatly physically injured, humiliated, injured in his reputation, caused to incur attorneys' fees, associated legal expenses and other special damages, lost wages and business opportunities, and has suffered great mental anguish, all to Plaintiff's damage in an amount to be provided at trial but no less than ONE MILLION DOLLARS (\$1,000,000.00), plus punitive damages.

AS AND FOR PLAINTIFF'S
FIFTH CAUSE OF ACTION FOR LEGAL FEES PURSUANT TO
TITLE 42 § 1988 AGAINST NASSAU COUNTY POLICE OFFICER JOHN BEISEL

135. Plaintiff repeats, reiterates, and realleges each and every allegation contained in those paragraphs of the Complaint marked and numbered previously with the same force and effect as if more fully set forth at length herein as against all Defendant.

136. Due to Defendant's unlawful arrest, detention, and prosecution of Plaintiff, Plaintiff has incurred legal fees in order to obtain relief for the violations of his constitutional rights.

137. By reason of the foregoing, Plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 1988(b) in an amount this Court deems proper and appropriate.

PRAYER FOR RELIEF

Plaintiff requests that he receive judgment as follows:

- a. First Cause of Action in excess of \$1,000,000.00 in damages;
- b. Second Cause of Action in excess of \$1,000,000.00 in damages;
- c. Third Cause of Action in excess of \$1,000,000.00 in damages;
- d. Fourth Cause of Action in excess of \$1,000,000.00 in damages;
- e. Fifth Cause of Action in excess of \$1,000,000.00 in damages.

Dated: Garden City, New York
January 14, 2022

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