

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DREWERY HAYES	:
	:
Plaintiff	:
	:
and	:
	:
SHIRLEENA BARNES	:
	:
Plaintiff	:
	:
v.	:
	:
CITY OF ATLANTIC CITY	:
	:
Defendant	:
	:
and	:
	:
SCOTT FENTON	:
	:
Defendant	:
	:
and	:
	:
RODNEY RUARK	:
	:
Defendant	:
	:
and	:
	:
JOHN SLOTA	:
	:
Defendant	:
	:
and	:
	:
John Does 1 through 4	:

CIVIL ACTION – COMPLAINT

Plaintiffs, Drewery Hayes (hereinafter known as "Hayes") and Shirleena Barnes by and through their attorney, Demetrius J. Parrish, Jr., Esquire hereby sue Defendants, The City of Atlantic City and Scott Fenton, Rodney Ruark, John Slota and John Does 1 through 4 and for their cause of action say:

PARTIES

1. Plaintiff, Drewery Hayes is an adult individual who resides in Mays Landing, New Jersey.

2. Plaintiff, Shirleena Barnes is an adult individual who resides in Mays Landing New Jersey.

3. The Defendant City of Atlantic City is a municipal entity formed and organized under the laws of the State of New Jersey.

4. Scott Fenton is an individual and a police officer for the City of Atlantic City Police Department. At all times relevant hereto, Defendant, Fenton acted or failed to act under color of state law, in the course and scope of his employment with Defendant Police, in furtherance of the business interests of, and on behalf of Defendant, City of Atlantic City and under its direction, control and supervision. Defendant Fenton is being sued in his official capacity as an Atlantic City Police Officer.

5. Rodney Ruark is an individual and a police officer for the City of Atlantic City Police Department. At all times relevant hereto, Defendant, Ruark was a sergeant and superior officer to the other police officers named as defendants herein and acted or failed to act under color of state law, in the course and scope of his employment with Defendant City of Atlantic City, in furtherance of the business interests of, and on behalf of

Defendant, City of Atlantic City and under its direction, control and supervision.

Defendant Ruark is being sued in his official capacity as an Atlantic City Police Officer.

6. John Slota is an individual and a police officer for the City of Atlantic City Police Department. At all times relevant hereto, Defendant, Slota acted or failed to act under color of state law, in the course and scope of his employment with Defendant City of Atlantic City, in furtherance of the business interests of, and on behalf of Defendant, City of Atlantic City and under its direction, control and supervision. Defendant Slota is being sued in his official capacity as an Atlantic City Police Officer.

7. John Does 1 through 4 are individuals and police officers for the City of Atlantic City Police Department. At all times relevant hereto, Defendants, Does 1 through 4 acted or failed to act under color of state law, in the course and scope of their employment with Defendant City of Atlantic City, in furtherance of the business interests of, and on behalf of Defendant, City of Atlantic City and under its direction, control and supervision. Defendants Does 1 through 4 are being sued in their official capacity as an Atlantic City Police Officers.

JURISDICTION

8. Plaintiffs bring this action under 42 U.S.C. § 1983, §1985 and § 1988.

9. This court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction). This Court's pendent question over state related claims is proper pursuant to 28 U.S.C. § 1367.

10. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) where the Plaintiff's cause of action arose and, upon information and belief, all parties reside and are found in the District of New Jersey.

11. The amount in controversy for the individual Plaintiff exceeds \$100,000.00

FACTS

12. On or about June 13, 2006, at approximately 7:00 p.m., Plaintiff Drew Hayes and Plaintiff Shirleena Barnes, employees at the A.W. Young Detective Agency drove to police officer Scott Fenton's home in Atlantic City, New Jersey to serve a complaint in civil action.

13. As the Plaintiffs vehicle approached Defendant's house, Plaintiffs saw Defendant in his front yard, Hayes then called out "Scott" and Defendant Fenton answered "Yeah".

14. Plaintiff Hayes stopped his vehicle, exited and identified himself stating that he had some papers to give to Fenton.

15. After Hayes handed Fenton the complaint Fenton asked Hayes to wait there for a minute and walked into his home.

16. While in his home, Defendant Fenton retrieved his gun, badge and police radio and radioed for police to come to his home.

17. When Fenton came out of his house he began questioning Hayes about how he knew Fenton's home address.

18. Hayes replied that he did not have to disclose that information to Fenton at which time Fenton pulled his gun slightly out of its holster and began yelling at Hayes.

19. At or about the same time, four (4) Atlantic City Police Officers arrived at Fenton's home.

20. The officers detained Hayes and began questioning him about what he was doing at a police officer's house to which he replied that he was an investigator hired to serve a complaint in civil action.

21. When Plaintiff, Barnes asked the police officers why they were questioning Hayes and attempted to report Fenton's conduct she was immediately threatened with arrest for interfering with a police investigation.

22. Defendant Slota then demanded that Plaintiff Barnes identify herself. In response she gave her name and social security number.

23. Defendant Slota then repeatedly demanded that Barnes spell her name to which Plaintiff repeatedly gave her name, spelling it and her social security number.

24. When Plaintiff noticed that Defendant Slota spelled her name incorrectly, Defendant arrested Plaintiff Barnes and handcuffed her after she told him of his error.

25. As Defendant Slota handcuffed Plaintiff he threw her on top of the trunk of the car with the handcuffs very tightly clasped on Plaintiff's wrists. Plaintiff, Barnes had not physically resisted or assaulted the defendants in any way, and the force used against him was unnecessary, unreasonable and excessive.

26. Plaintiff Barnes was taken into custody by the defendant police officers to the Atlantic City Police Department, where she was detained.

27. At no time during the events described herein was the Plaintiff Barnes intoxicated, incapacitated, a threat to the safety of herself or others, or disorderly.

28. The Defendant police officers had no warrant for Plaintiff's arrest, no probable cause for her arrest and no legal cause or excuse to seize the Plaintiff.

29. Plaintiff Barnes was left with bruises on her right arm and wrist and numbness in her left thumb.

30. At all times during the events described above, the defendant police officer were engaged in a joint venture. The individual officers assisted each other in performing the various actions described and let their physical presence and support and the authority of their office to each other during the said events.

31. As a direct and proximate result of the said acts of the defendant Officers, the plaintiff, Barnes suffered the following injuries and damages:

a. Violation of her constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure of her person.

b. Loss of her physical liberty;

c. Physical pain and suffering and emotional trauma and suffering, requiring the expenditure of money for treatment

32. The actions of the defendant Officers violated the following clearly established and well settled federal constitutional rights of Plaintiff, Barnes

a. Freedom from the unreasonable seizure of her person;

b. Freedom from the use of excessive, unreasonable and unjustified force against her person.

33. Afterwards she was charged with disorderly conduct and harassment.

34. Although Plaintiff Hayes was released at the scene he was later charged with Impersonating a Law Enforcement Officer, because he was wearing black pants, a white shirt; carrying a radio and driving a plain white Ford Crown Victoria and

harassment. Defendants had no probable cause and no legal cause or excuse to charge the Plaintiff.

35. Both Hayes and Barnes were found not guilty in a criminal trial in the Atlantic City Municipal Court.

36. Plaintiffs filed a tort claim notice with the City of Atlantic City pursuant to the New Jersey Tort Claims Notice Act N.J.S.A. 59:1-1, et. seq.

FEDERAL CLAIMS

COUNT I: VIOLATION OF 42 U.S.C. §1983

37. The allegations contained in paragraphs one (1) through thirty-seven (37) are incorporated herein as if the same were set forth in their entirety.

32. At the aforesaid time and date, Defendants Fenton, Ruark, Slota and Does 1 through 4 did deprive the Plaintiff Barnes of her right to be free from assault, battery and the use of excessive force and said conduct and deprivation motivated solely because the Plaintiff is a Black female and the officers were white males thus depriving her of her rights to equal protection of the law to be secure in her physical person as guaranteed under the Fourteenth Amendment to the United States Constitution.

33. All Defendants deprived Plaintiff of her right to be free from assault, battery and the use of excessive force as a direct and proximate result of the City of Atlantic City's deliberate failure to adequately train and instruct its Police Officers against conduct tantamount to racial and ethnic discrimination and intimidation, more specifically, against harboring and giving vent to animosity toward Black and other minority groups, which as

a custom and practice amounted to a deliberate indifference to the rights of Black and other individuals with whom the Police come into contact while pursuing their duties.

34. Said conduct by all Defendants individually and/or jointly in a conspiracy violated 42 U.S.C. § 1983 and §1985

WHEREFORE, the Plaintiff prays for Judgment against some or all of the Defendants, City of Atlantic City individually or jointly, for damages in excess One Hundred Thousand Dollars (\$100,000), and for reasonable attorney's fees pursuant to 42 U.S.C. §1988 (b).

COUNT II

VIOLATION OF 42 U.S.C. § 1983

35. The Allegations contained in paragraphs One (1) through thirty-four (34) are incorporated herein as if the same were set forth in their entirety.

36. At the aforesaid time and date, Defendants Fenton, Ruark, Slota and Does 1 through 4 did seize and arrest Plaintiff Barnes for the purpose of investigation and interrogation without a warrant or probable cause in violation of Plaintiff's Constitutional rights under Fourth and the Fourteenth Amendment of the Constitution of the United States and 42U.S.C. § 1983.

37. Defendants' conduct, which was the conduct of Defendant City of Atlantic City is equally and strictly liable, was intended to culminate and did in fact result in the apprehension of Plaintiff Barnes and the subsequent filing of false charges against Plaintiff Hayes forcing them to submit to and/or placed in fear of being placed in Defendant's custody and unreasonable interrogation, detention and harassment which caused Plaintiffs mental and emotional anxiety and violated Plaintiffs' constitutional and

civil rights. The deprivation of plaintiffs' liberties was a reckless disregard of and deliberate indifference to the Plaintiffs' constitutional and civil rights, freedoms, interest and liberties.

38. As a result of Defendants' conduct which was the conduct of the City of Atlantic City and for which Defendant City of Atlantic City is equally and strictly liable, the plaintiff has been injured and damaged as described herein.

WHEREFORE, Plaintiffs Shirleena Barnes and Drew Hayes demand judgment against all defendants, individually and jointly in excess of One Hundred Thousand Dollars (\$100,000) and for reasonable attorney's fees pursuant by 42 U.S.C. § 1988.

COUNT III
Assault and Battery against Individual Defendants

39. Paragraphs 1 through 38 are incorporated herein by references as if set forth herein at length.

40. Defendants, Slota assaulted and battered Plaintiff Barnes.

41. As a result of this assault and battery, Plaintiff Barnes suffered damages as aforesaid.

WHEREFORE, Plaintiff Shirleena Barnes demands judgment against defendant, in excess of One Hundred Thousand (\$100,000) and for reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

COUNT IV
VIOLATION OF 42 U.S.C. § 1983

42. Paragraphs 1 through 41 are incorporated herein by reference as if set forth herein at length.

43. Prior to June 13, 2006, the City of Atlantic City developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Atlantic City, which caused the violation of Plaintiff Barnes' and Plaintiff Hayes's rights.

44. It was the policy and/or custom of the City of Atlantic City to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Atlantic City.

45. It was the policy and/or custom of the City of Atlantic City to inadequately supervise and train its police officers, including the defendant officers, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City of Atlantic City did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

46. As a result of the above-describe policies and customs, police officers of the City of Atlantic City, including the defendant officers, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

47. The above described policies and customs demonstrated a deliberate indifference on the part of policymakers of the City of Atlantic City to the constitutional rights of persons within the City, and were the cause of the violations of plaintiff's rights alleged herein.

STATE LAW CLAIMS
COUNT V
(Unlawful Detention and Arrest)

48. The allegations contained in Paragraphs One (1) through Forty-eight (48) are incorporated here as if the same were set forth in their entirety.

49. At the aforesaid time and date, Defendant did seize and arrest plaintiff, Barnes and falsely charge Plaintiff, Hayes for the purpose of investigation and interrogation without a warrant or probable cause in violation of plaintiff's Constitutional rights under Article I, Section 7 of the Constitution of the State of New Jersey and the applicable statues of the state of New Jersey.

50. Defendants' conduct, which was the conduct of Defendant, City of Atlantic City and for which Defendant, City of Atlantic City is equally and strictly liable, was intended to culminate and did in fact result in such seizure and apprehension of the plaintiff, Barnes' person, forcing her to submit to Defendants' and City of Atlantic City custody and unreasonable interrogation, detention, and harassment which caused the plaintiff mental and emotional anxiety and violated plaintiff's constitutional and civil rights.

51. Additionally charging Plaintiff Hayes with Impersonating a law officer and harassment was a deprivation of plaintiff's liberties was a reckless disregard of and deliberate indifference to plaintiff's state constitutional and civil rights, freedoms, interest and liberties. As a result of Defendants' conduct, which was the conduct of Defendant City of Atlantic City and for which Defendant City of Atlantic City is equally and strictly liable, the plaintiff has been injured and damaged as described herein.

WHEREFORE, the plaintiff requests that this Court:

a. Award compensatory damages to plaintiff against defendants, jointly and severally;

- b. Award costs of this action to the plaintiff
- c. Award reasonable attorney's fees and costs to the plaintiff
- d. Award such other relief as this Court may deem appropriate.

The plaintiff demands a jury trial

Date: June 13, 2008

/s/ Demetrius J. Parrish, Jr.
Demetrius J. Parrish, Jr., Esquire (DP7711)
Attorney for Plaintiffs, Shirleena Barnes and
Drewery Hayes
1616 Walnut Street, Ste. 700
Philadelphia, Pa. 19103
(215) 735-3377/(215) 735-1628 (fax)
email: djp711@aol.com

CITY OF ATLANTIC CITY
CITY OF ATLANTIC CITY
RELEASE
2009 JAN 21 PM 11:47

This Release, dated December 31, 2008, is given by the Releasor, Shirleena Barnes, referred to as "I", to the Releasee, City of Atlantic City Scott Fenton, Rodney Ruark, John Slota, and any other employee/representative of the City of Atlantic City collectively referred to as "You". If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights, which I may have against you. This document releases all claims, including those of which I am not aware and those not mentioned in this Release. I specifically release the following claims: Any and all claims of personal injury and the treatment thereof, as well as any and all claims for consequential damages, including any property damage, which were the subject matter of a lawsuit instituted in the Superior Court of New Jersey, Law Division, Atlantic County under Civil Action No. 08-cv-2952, said lawsuit captioned Haves/Barnes v. City of Atlantic City, et al. arising out of an incident, casualty or event, which is alleged to have occurred on or about June 13, 2006. This Release includes, but is not limited to all claims for bodily injury; pain and suffering, past, present and future, permanent disability; loss of income, past, present and future and for the entire work life expectancy of the Releasor and in payment of the entire pecuniary loss sustained by the Releasor, his or her estate, his or her heirs and those claims which could, or any time hereafter, be asserted as arising out of the aforesaid incident. Releasor also releases and discharges Releasee from any and all claims for consortium including but not limited to claims for loss of society, services and companionship.

Without limiting the general nature of this Release, I specifically release and waive any and all rights of claims of enhancement of risk of disease and/or enhancement or worsening of any and all medical conditions which might occur in the future, including but not limited to causes of action similar to those discussed in *Mauro v. Raymark Industries, Inc.*, 116 N.J. 126 (1989).

Further, and again without limiting the general nature of this Release, I specifically release and give up any and all rights to and claims of pecuniary loss, injury or damage as those terms are defined in the New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1, *et seq.* and is interpreted by the Courts of New Jersey, which might accrue to me and others by reason of my death, whether such claims are pursued directly by me or indirectly by some person or persons in a representative capacity, if such claims arise in any way from or are in any way connected or related to the incident that is the subject of the lawsuit described above. It is expressly understood and agreed by me that a substantial reason and consideration by you in settling the previously mentioned lawsuit and agreeing to pay the money set forth in this Release is the settlement, release and elimination at this time of any and all claims that I or others have now or in the future might have, absent this Release, for my death, and I further understand and agree that by executing this Release and accepting the money paid by you, I acknowledge that all of those entitled to make a claim have received fair, just and adequate consideration for any claims I may have had individually and others may have and I further understand and agree that by executing this Release and accepting the money paid by you I have forever remised, released, discharged and given up any and all claims that I or others might have against you. I further

understand and agree that if any claims are made at any time in the future by me directly, or by others claiming to be beneficiaries of the Estate of Releasor, for pecuniary losses, injury or damages arising from my death against you, that you shall be entitled to be indemnified by me, my Estate and/or my heirs, executors, administrators or personal representatives of any sums expended in defending against said claims including, but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement or otherwise on account of these claims.

2. **No Admission of Liability.** This release is not meant to be construed as an admission of liability as to any party, as liability is disputed and denied. I acknowledge and understand that you do not make any admissions of any liability by making payment pursuant to this Release.

3. **Payment.** I have been paid a total of Fifteen Thousand and no/100 Dollars (\$15,000.00) in full payment for making this Release. I agree that I will not seek anything further, including any other payment, from you.

4. **Agreement to Satisfy, and Indemnify With Respect to, Liens.** I agreed to satisfy any and all liens, including but not limited to, liens asserted by any workers' compensation insurance carrier, health insurer, and/or governmental agency or program (such as Medicaid and Medicare), which has paid any benefits to or on behalf of the Releasor, out of the monies that you are paying pursuant to this Release. In recognition of the Releasor's obligation to satisfy all such liens out of the monies being paid pursuant to this Release, I further agree to indemnify and defend you, your attorneys, and your liability insurance carriers from and against any and all claims made or actions filed against you, your attorneys or your liability insurance carriers for payment of any such liens. I further acknowledge that I have specifically discussed this provision of this Release with my attorneys.

5. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

6. **Warranty Of Capacity To Execute Agreement.** I represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Release except as otherwise set forth herein and that I have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that I have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

7. **Representation Of Comprehension Of Document.** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice and that the terms of this Release have been completely read and explained to me by my attorney, and I fully understand and voluntarily accept the terms of this Release. I represent

CITY OF ATLANTIC CITY
2009 JAN 21 PM 1:47

RELEASE

This Release, dated December 31, 2008, is given by the Releasor, Drewery Hayes, referred to as "I", to the Releasee, City of Atlantic City, Scott Fenton, Rodney Ruark, John Slota, and any other employee/representative of the City of Atlantic City collectively referred to as "You". If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights, which I may have against you. This document releases all claims, including those of which I am not aware and those not mentioned in this Release. I specifically release the following claims: Any and all claims of personal injury and the treatment thereof, alleged violations of Constitutional rights, as well as any and all claims for punitive or consequential damages, including any property damage, which were the subject matter of a lawsuit instituted in the United States District Court of New Jersey under Civil Action No. 08-cv-2952, said lawsuit captioned Hayes/Barnes v. City of Atlantic City, et al. arising out of an incident, casualty or event, which is alleged to have occurred on or about June 13, 2006. This Release includes, but is not limited to all claims for bodily injury; pain and suffering, past, present and future, permanent disability; loss of income, past, present and future and for the entire work life expectancy of the Releasor and in payment of the entire pecuniary loss sustained by the Releasor, his or her estate, his or her heirs and those claims which could, or any time hereafter, be asserted as arising out of the aforesaid incident. Releasor also releases and discharges Releasee from any and all claims for consortium including but not limited to claims for loss of society, services and companionship.

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understand and agree that if any claims are made at any time in the future by me directly, or by others claiming to be beneficiaries of the Estate of Releasor, for pecuniary losses, injury or damages arising from my death against you, that you shall be entitled to be indemnified by me, my Estate and/or my heirs, executors, administrators or personal representatives of any sums expended in defending against said claims including, but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement or otherwise on account of these claims.

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7. **Representation Of Comprehension Of Document.** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice and that the terms of this Release have been completely read and explained to me by my attorney, and I fully understand and voluntarily accept the terms of this Release. I represent

