

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION #98-

10438 PBS

Michael Elbery

v

Attorney Bradford Louison
Robert Breen
a.k.a. Robert Breen
Lt. James Hurley
Chief Robert McGinley
Chief James Sampson
Sgt. Chester- Gus Johnson
Town of Shrewsbury
et al.

Introduction

This lawsuit results from the continued illegal activities of the Shrewsbury Police in conjunction with the Worcester Police, Worcester D.A.'s Office and the Worcester License Commission to "get" the plaintiff, Michael Elbery, for no matter what reason they have to fabricate, as he has repeatedly defied their abuse of authority.

The above groups have been responsible for a dozen false arrests, accusations and malicious prosecutions against Elbery, only one charge resulting in a conviction. This conviction stemmed from a 1992 incident involving an off-duty drunk cop in a barroom, whereby, the Worcester D.A.'s Office alleged Elbery was guilty of "attempted mayhem". The prosecution further alleged Elbery's thumb was the weapon.

The alleged victim of this conviction, off-duty Westboro police officer Tom King, incurred a red eye as a result of the barroom incident on 9-29-92 that resulted in Elbery being sentenced to state prison for 10 years. Alleged victim-witness Tom King lied to a jury of 12 at Worcester Superior Court and told them, with various members of the Worcester D.A.'s Office and Worcester Police Department having full

knowledge of his perjury, that his eye was leaking vitreous fluid, was bleeding , cut and lacerated, the eye was almost out of his head, that he was blind, that the eye required numbing and freezing.

Elbery is preparing a motion for new trial , of which a mere preview has triggered action by the Mass. Judicial Nominating Committee and Mass. Regional C Nominating Committee. These groups answer to the Mass. Govenor's Council. This action involved the elimination of the front- runner candidate from consideration as a Worcester District Judge appointment.

The plaintiff has filed suit in the Boston Federal Court regarding 2 of the more current illegal episodes involving the Shrewsbury Police, Elbery v. Sklut and Elbery v. Hester.

As a result of these 2 lawsuits and other related legal activity includig free speech by the plaintiff, the Shrewsbury Police having their backs up against the wall desperately framed Elbery for another crime. The Shrewsbury Police in conspiracy with the other named defendants in this instant action, in particular their attorney Bradford Louison , have retaliated against, and interferred with Elbery, via a frame-up for arson, for his petitioning the U.S. Federal Court to protect and exercise his constitutional rights as guaranteed by the U.S. Constitution, his birthrite. This arson frame-up of false arson accustions and incriminations, had it been successful, would have eliminated any chances Elbery would have had in the Federal Courts to attain justice through his s. 1983 lawsuits mentioned above. Elbery would have been put , again, in prison on phony charges via a Worcester Kangaroo Court.

However, this arson and most recent frame-up back-fired like most the rest. The Shrewsbury Police and the named defendants in this instant case arrogantly proceeded with this retaliation - interference via an arson frame-up against Elbery, who continues to defy them via the U.S. Constitution, and now the plaintiff files suit.

Jurisdiction

This action is brought pursuant to 42 U.S.C. S. 1983 and the Fourteenth and First Amendment of the U.S. Constitution, and state tort law. Jurisdiction is founded on 28 U.S.C. s. 1331 and s. 1342 and the aforementioned constitutional and common law

provisions . The plaintiff further invokes the pendant jurisdiction of this Court to hear and decide claims arising out of state law sounding in tort.

Parties

1. The plaintiff is Michael Elbery, born in the United States of America, who resides at 168 Fairfield St., Needham, Mass.
2. The defendants James Hurley, Robert McGuinley, Gus -Chester Johnson and James Sampson are police working for the Town of Shrewsbury. At all times relevant to this complaint they acted "under the color of law".
3. McGuinley was the chief of police in Shrewsbury until about February '98 , whereupon, Sampson succeeded him as chief. Both are being sued personally and in their supervisory (personal) and official capacity.
4. Defendants Robert Breen, who is unknown to this plaintiff, and Attorney Bradford Louison are conspirators with the Shrewsbury Police defendants and as such acted "under the color of law" relative to this complaint and all its activities and conduct enumerated.
5. The defendants in count 2 and 4 are being sued in their personal capacity.
6. The Town of Shrewsbury is a municipality in the Commonwealth of Mass. and is subject to suit via 42 U.S.C. s. 1983 as a Municipality.

Facts

7. The plaintiff was arrested and charged on 9-29-92 with mayhem, assault with a deadly weapon (a broken beer bottle), assault and battery. The mayhem charge was reduced at the probable cause hearing of 1-20-93 to "attempted mayhem" (no weapon involved).
8. Worcester District Judge Milton Raphelson found no probable cause on the charges and they were dismissed, 1-20-93.
9. The grand jury was presented with one witness, the alleged victim-witness, officer

Tom King. The other four witnesses, friends of King's, who testified at the probable cause hearing were prevented from testifying at the grand jury. The grand jury was impaired regarding the charges in items 7 and 8.

10. Members of the Worcester D.A.'s Office and Worcester Police Dept. in conjunction with the alleged victim-witness Tom King knowingly used continued and false perjured testimony and concealed all the plaintiff's exculpatory evidence from the grand jury and trial jury. At the trial of this instant case the witness-friends of King changed their testimonies , as at the probable cause hearing, in order to vindicate King and imprison the plaintiff.

11. King, as a result of his misconduct on 9-28/29-92, was demoted at his job at the Westboro Police Dept. from a detective to a patrolman. This after the Worcester T&G featured an article on this plaintiff's probable cause hearing .

12. On 7-2-93 the plaintiff was convicted of assault with "intent to maim ", assault and battery and disorderly person. There was a directed verdict of not guilty on the charge of assault with a deadly weapon.

13. Judge Dan Toomey sentenced the plaintiff to 10 years in state prison and allowed the plaintiff a stay of sentence pending appeal upon posting of a \$7,500.00 bond.

14. On 8-4/5-94 , while the plaintiff was still on a stay of sentence as in 13 above, there was a mysterious arson fire at the E-Z Mini Storage, Route 9, Shrewsbury, Mass., (hereinafter E-Z).

15. The plaintiff had, at the time of the fire, rented a "garage style" storage container at E-Z , in which he stored various personal items.

16. The Shrewsbury Police (hereinafter S.P.D.) illegally searched the plaintiff's unit at E-Z on 8-5-94 and falsely arrested him for 6 gun charges and remained in prison until 7-25-95. This was done, in part, in order that the plaintiff be in prison during the appeal of his mayhem conviction. The plaintiff was found not guilty on all gun charges on 3-16-95 at Worcester District Court. He had a license for his guns which was issued by the S.P.D.

17. The plaintiff filed suit in Federal Court in August of '97 relating to this illegal police conduct in item #16. See Elbery v. Sklut,

18. The plaintiff, via his right to free speech, has made continued claim as have others in the Worcester-Shrewsbury community that the only group with the means, motive, and opportunity to start the fire at E-Z were the Shrewsbury Police. Why would anyone saturate a steel and concrete storage facility with accelerate and light it on fire? None of the tenants at E-Z had fire insurance that incurred fire damage.

19. The evidence surrounding the fire at E-Z is that Sgt. Gus-Chester Johnson, the S.P.D. arson investigator, and accomplices were the arsonists who started the fire at E-Z. This in order to give the S.P.D. an excuse to get into the plaintiff's storage container.

20. This claim by the plaintiff and the evidence he points to regarding the E-Z arson has angered, caused great concern, and caused panic among the ranks of the S.P.D., in particular the police defendants of this instant case.

21. As a result of the publicity surrounding the E-Z arson and the many obvious unanswered questions about this \$2,000,000 fire and because many people in the greater Worcester community have agreed with the plaintiff and are crying out for justice and truth regarding the E-Z arson the S.P.D. have sought to silence the plaintiff, - free speech- 1st Amendment.

22. In addition the S.P.D. have sought to stop the plaintiff from further legal actions and procedures in the Federal Courts, i.e. his lawsuits against them (Sklut and Hester cases). Right to petition the courts - 1st Amendment.

23. Coincidentally, the S.P.D. were, (back in 94-95) trying to frame E-Z manager, Al Benoit, for the E-Z arson of 8-4/5-94. The plaintiff, upon learning this, publicly voiced objection to this attempted frame-up of another innocent man. Al Benoit and his wife were the last people to want to see E-Z burn as they both had outstanding arrest warrants for embezzlement and were embezzling, as it turns out, E-Z. The E-Z fire brought in the owners from Minnesota and the Benois were arrested and convicted of embezzlement on all counts past and present.

24. Out of the clear blue , circa 9-97, the S.P.D. fabricated a new story of E-Z arson. they fabricated that a psycho arsonist named Robert Breen burned E-Z and named Elbery as his co-defendant and partner in crime. There is other S.P.D. fabricated evidence .

Count I

CONSPIRACY TO - AND RETALIATION, HARRASSMENT AND INTERFERENCE WITH THE PLAINTIFF FOR EXERCISING HIS FIRST AMENDMENT RIGHT TO PETITION THE COURTS AND FREE SPEECH ALL UNDER 42 U.S.C. s.1983.

25. The defendants seeking to silence the plaintiff for exercising his right to free speech and petitioning the U.S. Federal Court conspired to frame the plaintiff for arson.

26. This activity in #25, via conspiracy, by the defendants resulted in retaliation, harrassment and interference with the plaintiff's right to free speech and right to petition the Court in violation of the U.S. Constitution's First Amendment all under 42 U.S.C. s. 1983.

27. In the alternative the defendants conspired to violate the plaintiff's "facilitative right to institute a suit without official impediment " .

Count II

Falsification of Evidence, Conspiracy to Maliciously Prosecute, Procurement of Perjury and Conspiracy To Accomplish These Illegalities.

28. The above paragraphs are fully set forth herein.

29. The activities and conduct by the defendants as described in this complaint surrounding these false arson charges/accusations constitute falsification of evidence, conspiracy to maliciously prosecute, procurement of perjury and conspiracy by the defendants to carry out these illegalities.

Count III

Violation of Due Process of the 14th Amendment Under 42 U.S.C. 1983.

31. The above paragraphs are herein incorporated.

32. The above illegal conduct enumerated in this complaint by Attorney Bradford Louison and the other defendants constitute a violation of the plaintiff's Due Process Right under the 14th Amendment of the U.S. Constitution , both procedural and substantive, this being arbitrary and outrageous activity that shocks the conscience.

33. These violations are all grounds for action under 42 U.S.C. s. 1983.

Count IV

Cover-Up Conspiracy To Impede the Plaintiff's Use Of The Courts In Violation Of The 14th Amendment, A Substantive Due Process Violation All Under 42 U.S.C. s. 1983.

34. Attorney Bradford Louison and all the defendant's conspired and acted to cover-up the facts surrounding the E-Z arson and frame the plaintiff in order to derail the plaintiff's suit in the Mass. court against E-Z for damages he sustained to his personal property due to the arson fire and in order to impede the plaintiff's use of the Courts regarding the Hester and Sklut cases.

35. In fact this arson frame-up would have a nullifying effect on any civil case this plaintiff had in any court including Elbery v Hester and Elbery v. Sklut and Elbery v. Sheketoff.

36. These constitutional violations are grounds for action under 42 U.S.C. s.1983.

Count V

Intentional Infliction of Emotional Distress

37. The plaintiff incorporates the above paragraphs as thoughtfully set forth herein.

38. As a direct result of the defendant's acts as itemized in this complaint, the plaintiff was caused to suffer severe emotional distress ,extreme pain and suffering,

and mental anguish and embarrassment of such severity and nature that no reasonable person could or should be expected to endure and the above defendants knew or should have known that their extreme and outrageous conduct would cause such severe suffering.

Count VI

Defamation - Slander- Libel

40. The plaintiff incorporates the above paragraphs as though fully set forth herein.

41. The above actions were communicated to people outside the parties to this lawsuit, that is it was known that Elbery was named codefendant for arson. This constitutes the above offenses under state tort law.

Count VII

Conspiracy to Cover-Up Violation of the Plaintiff's Constitutional Rights under 42 U.S.C. s. 1983.

42. The above paragraphs are incorporated herein.

43. The defendants falsified arson evidence against the plaintiff and named him as an arson co-defendant in order to cover-up their (Johnson , Hurley , Sampson, and McGuinley) violations of the plaintiff's Constitutional rights as enumerated in Elbery v Sklut, this being further conspiracy all under 42 U.S.C. s.1983.

Count VIII

Supervisory Liability - Defendants , Chief Sampson , Chief McGinley, Lt. Hurley
under 42 U.S.C. s. 1983.

In the alternative the Supervisory defendants were negligent.

44. These two Chiefs of Police at Shrewsbury , whose offices or regimes eclipsed the illegal conduct described in this complaint, are liable in their supervisory capacity as their lack of control and supervision of their subordinates , the named defendants, caused this illegal conduct as in this complaint.

45. James Hurley was promoted to lieutenant at the S.P.D. after it was clear that he had violated the plaintiff's rights concerning the false arrest on 8-5-94 of the

plaintiff. As lieutenant Hurley serves in a supervisory capacity at the S.P.D.

46. Both chief's of police of S.P.D. subjected the plaintiff to the specified offenses in this complaint and additionally ratified for the last 8 years the continued objective by the S.P.D. to "get" Elbery. This objective to "get" Elbery was by continued unconstitutional and illegal means as is demonstrated in this complaint and in Elbery v Hester and Elbery v Sklut.

47. Further, these chief's of police at S.P.D. directed, encouraged, and acquiesced in this unlawful activity as per this instant complaint as did they in the other complaints and related unlawful activity.

48. As in items 44 - 47 these supervisory defendants werenot just deliberately indifferent to the plaintiff's rights they had full knowledge of this instant activity complained of and the hunt for Elbery over the last 8 years. These supervisors of the S.P.D. had full knowledged of the 8 year pattern of unconstitutional violations by the S.P.D. against the plaintiff including this action.

49. Instead of stopping this unconstitutional and unlawful conduct by the S.P.D. these supervisors at a minimum, chose to do nothing, therefore encouraging more S.P.D. agenda, illegal - unconstitutional violations against the plaintiff. Both Sampson and Hurley were promoted while the S.P.D. had knowledge of the above illegal activity.

50. These 2 chiefs are, by Mass. Law(strong chief statute), policymakers for the Town of Shrewsbury. Their decisions, acts, edicts etc., are policy, the official policy, for the S.P.D.

51. As in this count VIII these violations caused by the S.P.D. supervisors are grounds for action under 42 U.S.C. s. 1983.

52. In the alternative the above S.P.D. supervisors were negligent under state tort law.

Count IX

Liability - The Town of Shrewsbury under 42 U.S.C. s.1983.

Custom and Policy of S.P.D. against the Plaintiff

53. The Town of Shrewsbury is being sued by this plaintiff as the Chief of Police

in Shrewsbury represents official policy of the S.P.D. and Town of Shrewsbury. The chief's policies have been unconstitutional as complained above and the Town of Shrewsbury is liable. The chief's acts , decisions , and edicts are the policies of the Town of Shrewsbury, he is the policy making official at the S.P.D.

54. The activities complained of in this complaint also represent custom of the S.P.D. towards the plaintiff. It has been widespread practice by the entire S.P.D. and specifically the S.P.D. defendants named in this complaint to violate the plaintiff's rights. This plaintiff has been victimized by the continued and repeated "standard operating procedure" by the S.P.D. of subjecting the plaintiff to unlawful and unconstitutional treatment.

55. Not only has the Town of Shrewsbury tolerated this intolerable unconstitutional and illegal activity against the plaintiff it has encouraged this behavior by promoting individuals, namely Hurley and Sampson, to its highest positions on the S.P.D. These promotions were made after knowing the two individuals falsely arrested the plaintiff and others.

56. The Town of Shrewsbury has allowed the members of its police dept. to run wild without any accounting to the law and , as a result, this police dept. has lost all reality of the law , due to their numerous violations. This condition has been further corroborated and underwritten by the WorcesterCounty Court and its personel who can find no fault with these S.P.D. and simply turn their heads to any unlawful conduct of the S.P.D.

57. Lastly, although Johnson, Hurley and Sampson werenot chiefs of police during the entire pendency of this action but their collective ranks equate supervisory authority and policy and custom at the S.P.D. and their illegal conduct in this complaint also constitute official policy and hold the Town of Shrewsbury liable for the unlawfulness. These defendants have been guilty of repeated wrongdoing towards this targeted plaintiff, as is demonstrated in this complaint and others mentioned.

58. These violaations in items 53-57 constitute grounds for action under 42 U.S.C. s. 1983.

59. In the alternative the Town of Shrewsbury was negligent as in items 53-57.

Count X

Damages

60. The plaintiff was injured as complained of in the above counts and seeks damages for severe emotional distress and mental anguish, continued severe emotional distress and mental anguish, outrage, inability to plan for the future, humiliation, injury to character and reputation, indignity, personal insult, fear of harm that will result from being imprisoned at the S.P.D. on retaliation charges in order that they can silence this plaintiff for good, lawyers fees and related costs and expenses, cost of this action.

WHEREFORE,

the plaintiff , demands judgement against the defendants jointly and severally:

1. Compensatory damages of	\$1,000,000
2. Punitive damages	1,000,000
3. Out of pocket attorney's fees and legal expenses	1,000
4. Costs of this action	2,000
5. Interest from date of filing this instant action	
6. Other relief as the Court deem just and equitable	
7. Federal Order to stop the S.P.D. from this retaliatory activity against the plaintiff including trumped - up charges	

PLAINTIFF , ELBERY , DEMANDS A JURY TRIAL ON ALL ISSUES.

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