

a peaceful protest, and then stopped and arrested for failing to turn over a piece of paper on which they had written the tag number of the Homeland Security officer who was spying on them.

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 Caitlin Childs (“Ms. Childs”) resides in Atlanta, Georgia and is a citizen of Fulton County.

3.

Plaintiff Christopher Freeman (“Mr. Freeman”) resides in Atlanta, Georgia and is a citizen of Fulton County.

4.

Defendant Dekalb County, Georgia, is a body corporate and politic and a political subdivision of the State of Georgia, duly established under its laws and Constitution. The Dekalb County Police Department is a division of Dekalb County.

5.

Defendant Detective D.A. Gorman is a detective with the Dekalb County Police Department’s Homeland Security Division. He is sued in his individual capacity and in his official capacity as a Dekalb County detective. Defendant was at all times pertinent hereto a detective acting under color of state law.

6.

Defendant Officer K.A. Moffit is an officer of the Dekalb County Police Department. He is sued individually and in his official capacity as a Dekalb County police officer. Defendant was at all times pertinent hereto an officer acting under color of state law.

FACTUAL ALLEGATIONS

7.

Ms. Childs and Mr. Freeman are vegans and are members of Viva! USA and the Animal Defense League, both of which are non-profit organizations advocating the humane treatment of animals. Ms. Childs and Mr. Freeman have been involved in numerous peaceful protests on behalf of these organizations.

8.

On December 20, 2003, Ms. Childs and Mr. Freeman participated in an animal cruelty protest on public property outside of a Honey Baked Ham Store located on Buford Highway in Dekalb County. Approximately ten people attended the protest.

9.

At least one officer from the Dekalb County Police Department was present at all times during the protest. The protestors were instructed by the police not to speak with any customers, even if they were spoken to first, chilling and restricting their speech.

10.

After the protest ended, two protestors (other than Plaintiffs) walked toward their car parked in a lot across the street. Those protestors were stopped by a police officer and cited for jaywalking. Ms. Childs and Mr. Freeman traveled across the street to observe the events, and Plaintiffs then noticed a man in an unmarked car taking their pictures. See Photographs by Officer, Exhibit A.

11.

Ms. Childs and Mr. Freeman walked over to the unmarked car and wrote down the make, model, color, and license plate number.

12.

The man in the unmarked car was Detective Gorman, an undercover detective with the Dekalb County Police Department's Homeland Security Division who had been ordered and assigned to monitor the peaceful protest.

13.

Ms. Childs and Mr. Freeman left the protest in a car with another protester, Misty Brown ("Ms. Brown"). Homeland Security Detective Gorman followed their car. Having noticed that they were being followed, Ms. Brown pulled into a restaurant parking lot. Immediately, and without probable cause or reasonable suspicion, a uniformed policeman, later identified as Officer Moffit, pulled in behind them and blocked them into a space. Homeland Security Detective Gorman pulled up behind them in his unmarked vehicle.

14.

Officer Moffit approached the car and asked Ms. Brown for her driver's license and registration. Ms. Brown, Ms. Childs, and Mr. Freeman repeatedly asked the officer why they were being pulled over and the officer refused to answer, stating that "it was the law" and asking them "do you want to make this easy or do you want to go to jail?"

15.

Homeland Security Detective Gorman approached the car and attempted to open the door where Ms. Childs was sitting. He did not identify himself as a detective. He instructed Ms. Childs and Mr. Freeman to get out of the car and stand by the trunk.

16.

Homeland Security Detective Gorman asked for Ms. Childs' identification, which she gave to him. He then demanded the piece of paper on which Ms. Childs had copied the license tag number. Homeland Security Detective Gorman had not identified himself as a detective. Ms. Childs refused to hand the note over to Gorman, because she had no legal obligation to do so.

17.

Mr. Freeman asked to see Homeland Security Detective Gorman's identification. Instead of identifying himself, Homeland Security Detective Gorman asked Mr. Freeman for his identification. Mr. Freeman told Homeland Security Detective Gorman his ID was in his back pocket, but when he reached for it, Homeland Security Detective Gorman and the uniformed officer grabbed both of his arms and slammed him down on the trunk of the car. They handcuffed him and led him to the curb. The stop, search, seizure, arrest, and force applied were grossly excessive and without probable cause or reasonable suspicion.

18.

Homeland Security Detective Gorman walked over to Ms. Childs and again demanded that she give him the paper. Ms. Childs refused and was handcuffed. She asked not to be searched by male officer, but was told that there were no female officers available. The stop, search, seizure, arrest, and force applied were grossly excessive and without probable cause or reasonable suspicion.

19.

Ms. Childs and Mr. Freeman were arrested on charges of disorderly conduct. When Ms. Childs was being booked, an officer confiscated the piece of paper and told the booking officer that "this is what she got arrested for."

20.

Upon Ms. Childs' release, the piece of paper and her house keys were not returned to her and they were not in the Dekalb County Police Department's property division.

21.

As of the time of this Complaint, the criminal case against Ms. Childs and Mr. Freeman has not been pursued and is "dead-docketed."

22.

Homeland Security Detective Gorman has provided a report of the events. In his report, Homeland Security Detective Gorman states that his assignment was to secretly surveil a peaceful protest and that the reason why he had Ms. Childs and Mr. Freeman followed and stopped was because he wanted to seize the note with his tag number on it. The following is an excerpt from his statement:

"Detective Gorman was located in the CVS parking lot taking pictures of the protestors. Subsequently, two individuals later identified as Christopher Freeman and Caitlin Childs walked behind Detective Gorman's assigned police vehicle and wrote down the tag number. Subsequently, Detective Gorman requested a uniform police officer to meet with him at the CVS parking lot. As the police officer was on his way, Freeman and Childs left the parking lot in a vehicle. Officer Moffit from the TAC unit observed the vehicle and followed the vehicle to a Mexican restaurant located at (need street number and name of restaurant) Buford Highway. Detective Gorman also followed the vehicle. The vehicle stopped subsequently, Officer Moffit activated his emergency equipment and walked up to the vehicle. Officer Moffit

introduced Detective Gorman to the occupants of the vehicle.

Detective Gorman asked Freeman and Childs to exit the vehicle. Detective Gorman asked the two individuals why they wrote down his tag number. The two responded that they did not know who was taking pictures of them so they wanted to get the tag number. Detective Gorman advised the two that he was a police detective with Dekalb County police and that he was instructed to monitor and picture the protest. Detective Gorman then asked Childs for the piece of paper with the tag number written on it. Childs refused to hand over the piece of paper and advised that she was allowed to monitor the police and their actions. Childs questioned Detective Gorman as to why he needed the piece of paper back. Gorman advised Childs that the vehicle he was driving was an undercover vehicle and he did not want the tag number passed around. Childs again refused stating that it was her right to keep the tag number.”

Homeland Security Division Report, Exhibit B.

23.

The stop, search, seizure and arrest of Ms. Childs and Mr. Freeman and their property was without probable cause or reasonable suspicion of criminal activity, and was for the sole and exclusive purpose of chilling their speech and taking the information they had gathered about police surveillance.

24.

The surveillance and actions of defendants during the protest and the stop, search, seizure and arrest after the protest were pursuant to a policy, custom and

practice of Dekalb County and/or with the final approval or ratification of the final decision-maker for such issues. All actions were done under color of law, and with deliberate indifference to clearly established rights of the plaintiffs.

CLAIMS FOR RELIEF

25.

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

26.

By not allowing the protestors to speak to customers or passers-by, even if they were spoken to first, Defendants deprived Ms. Childs and Mr. Freeman of their right to freedom of speech as protected by the First and Fourteenth Amendments, as well as the Georgia Constitution Article I, Section I, Paragraphs V and IX.

27.

The Fourth Amendment prohibits the police from stopping an automobile and detaining the driver unless they have a reasonable, articulable suspicion that the driver is violating the law. By stopping and detaining Ms. Childs and Mr. Freeman for no legal reason and then refusing to tell them why they had been pulled over, Homeland Security Detective Gorman and the Dekalb County Police Department deprived Ms. Childs and Mr. Freeman of their right to be secure in their person and to be free from unreasonable searches and 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.

28.

Citizens have a First Amendment right to document police conduct occurring on public property. *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000). Thus, Ms. Childs and Mr. Freeman were within their rights to copy down the tag number of Homeland Security Detective Gorman's vehicle while he was parked in the public parking lot. By seizing the paper upon which the tag number had been lawfully copied down, Homeland Security Detective Gorman and the Dekalb County Police Department deprived Ms. Childs and Mr. Freeman of their right to be secure in their person and to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments of the United States Constitution, as well as the Georgia Constitution Article I, Section 1, Paragraphs I, VII, and XIII. In addition, the actions of Homeland Security Detective Gorman and the Dekalb County Police Department deprived Ms. Childs and Mr. Freeman of their right to freedom of speech as protected by the First and Fourteenth Amendments, as well as the Georgia Constitution Article I, Section I, Paragraphs V and IX.

29.

By unlawfully arresting Ms. Childs and Mr. Freeman in retaliation for not giving up their notes about the surveillance and in using excessive force during this arrest, Homeland Security Detective Gorman and the Dekalb County Police Department

deprived Ms. Childs and Mr. Freeman of their right to be secure in their person and to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments of the United States Constitution, as well as the Georgia Constitution Article I, Section 1, Paragraphs I, VII, XIII and XVII.

30.

By detaining Ms. Childs and Mr. Freeman without legal authority, Homeland Security Detective Gorman and the Dekalb County Police Department falsely imprisoned Ms. Childs and Mr. Freeman in violation of O.C.G.A. § 16-5-41.

31.

By unlawfully stopping and blocking in Ms. Brown's car, threatening Ms. Childs and Mr. Freeman with arrest if they refused to comply, and actually arresting them, Homeland Security Detective Gorman and the Dekalb County Police Department, with malice and oppression, falsely imprisoned Ms. Childs and Mr. Freeman under color of legal process in violation of O.C.G.A. § 16-5-42.

32.

By intentionally and with excessive force throwing Mr. Freeman onto the trunk of the car as he reached for his wallet, Homeland Security Detective Gorman and the Dekalb County Police Department 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 Ms. Childs and Mr. Freeman, Homeland Security Detective Gorman and the Dekalb County Police Department are liable for the intentional infliction of emotional distress to Ms. Childs and Mr. Freeman.

PRAYER FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiffs respectfully pray that this Court:

- (A) Assume jurisdiction over this action;
- (B) Award nominal and compensatory damages against each defendant to Ms. Childs and Mr. Freeman in an amount subject to proof;
- (C) Award punitive damages against each individual defendant to Ms. Childs and Mr. Freeman 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 ____ day of September, 2005.

Respectfully submitted,

Gerald Weber
Georgia Bar No. 744878
Elizabeth Littrell
Georgia Bar No. 454949
Margaret F. Garrett

Georgia Bar No. 255865

ACLU of Georgia Foundation
70 Fairlie Street, S.W., Suite 340
Atlanta, Georgia 30303
(404) 523-6201

Attorneys for Plaintiff