

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 16 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

DANNY COSTELLO
1002 12th Street, S.E. # 305
Washington, D.C. 20003

and

GAI NGUYEN
1002 12th Street, S.E. # 305
Washington, D.C. 20003

Plaintiffs

v.

DISTRICT OF COLUMBIA
Serve: Tabatha Braxton
John A. Wilson Bldg.
1350 Pennsylvania Ave. N.W. # 419
Washington, D.C. 20001

Serve: Office of the Attorney General
Serve: Darlene Fields
441 4th St. N.W. 6th Fl. South
Washington, D.C. 20001

Defendant

Case: 1:11-cv-00389
Assigned To : Walton, Reggie B.
Assign. Date : 2/16/2011
Description: General Civil

**JURY
ACTION**

COMPLAINT FOR VIOLATION OF CIVIL AND CONSTITUTIONAL RIGHTS.

Come now Danny Costello and Gai Nguyen, Plaintiffs, by and through undersigned counsel, and
sues the District of Columbia, District, stating:

JURISDICTION

1. This court has jurisdiction pursuant to: 28 U.S.C. §§ 1331, 42 U.S.C. § 1983, 18 U.S.C. § 3109,
and the Fourth Amendment to the United States Constitution.

PARTIES

2. The Plaintiffs are husband and wife, elderly, and law-abiding resident citizens of the District of Columbia. There were residents, at all times relevant to this cause of action.

3. District is a sovereign government operating as the District of Columbia Government. It was operating in that capacity at all times relevant to this cause of action. District's Metropolitan Police Department employs individuals, as police officers, to enforce the District's laws and laws of the United States. The police department is under the direction and supervision of District's chief executive, Vincent Gray, it's duly elected Mayor. District's police officers are employees of District; and all acts alleged herein, were done by them while working within the scope of their employment as District's agents, servants, and/or employees.

FACTS

4. On or about April 9, 2010, the Plaintiffs were in their home, apartment number 305, located at: 1000 12th Street, SE, Washington, D.C. 20003. Mr. Costello was working on his air conditioner window unit and his wife, Ms. Nguyen, was in the bed taking a nap, when Mr. Costello heard a loud noise. Before he knew what has happening, approximately ten (10) members of the District's metropolitan police department, without first knocking to announce their authority and purpose, broke down the door, to the Plaintiffs' apartment, and forcibly entered it with guns drawn, to execute a search warrant. Exh # 1. As the police officers barged into the Plaintiffs' apartment, Mr. Costello asked what was going on. A white male police officer put a gun to his head, told him to shut-up, forcefully twisted his arm, handcuffed him, and restricted him to the couch, in the Plaintiffs' apartment. Ms. Nguyen came out of the bedroom and asked, "What's wrong?" A white female police officer told her to "shut up", pushed Ms. Nguyen, against the wall, and forcibly pushed her outside of the apartment. The white female police officer restrained Ms. Nguyen outside

for about 45 minutes to 1 hour before she was allowed to return to her apartment. When Ms. Nguyen was taken back into her apartment, she was allowed to sit next to her husband, Mr. Costello, who she noticed was handcuffed. Ms. Nguyen was so scared that she was experiencing severe heart pains. She thought she was having a heart attack. She complained to the police officers and pointed to her heart but her complaints fell on death ears.

5. The search warrant authorized the search of apartment # 305, only. The affidavit in support of it, alleged that there was certain property being concealed in it namely:

“Money derived from the sale of illegal Drugs, paperwork showing dominion control of narcotics, US currency, scales, bank records, mailboxes, safes, similar storage cabinets, photographs, tally sheets, proof of occupancy, receipts, packaging, boxes, indicia of sale of weapons which is A Violation of D.C. Code Section 7-2502.01....”

The police officers did not enter apartment # 305, per the warrant, but they broke down the door and forcibly entered the Plaintiffs' apartment, that did not have a number on it. Once inside, the police officers searched the Plaintiffs, thoroughly searched and ransacked their apartment, but they did not find any of the items listed in their search warrant. Unable to find anything listed in the search warrant, one of the police officers asked Mr. Costello, “Lets save time, where is the stuff? Mr. Costello replied, “What is the stuff? The police officer said, “drugs”. Mr. Costello answered, in the drawer. The police officer went to the drawer, looked, and said, “not the prescription drugs.” The police officers continued searching, for about an hour and half, but they did not find any of the items listed in their search warrant. They decided to leave. As they were leaving, Ms. Nguyen heard a black police officer tell another black police officer, “maybe we got the wrong door”.

6. When the police officer(s) applied for the search warrant, the affidavit submitted in support of it, was restricted only to apartment #305, at: 1000 12th Street, S.E., Washington, D.C.

breaking down the door to the Plaintiffs' apartment, they noticed that there was an apartment across from apartment #304 that did not have a number on it and they did not know if that apartment was #305. The police officers had a duty, before attempting to execute their search warrant, to make sure that they were executing the warrant only for the apartment the warrant authorized entry. But the police officers negligently, intentionally, willfully, wantonly, and maliciously, forcibly entered the Plaintiffs' apartment without sufficient evidence that it was apartment #305.

7. When the police officer(s) executed the search warrant, it was done while they working within the scope of their employment as: District's agents, servants, and/or employees, and done in violation of the Plaintiffs' civil rights, their rights under the fourth amendment of the United States Constitution, caused them to suffer emotional distress, to be falsely imprisoned, caused them to be assaulted and battered, caused to suffer property damage, and their rights to their seclusion and privacy, were violated.

Count I
Violation of Civil And Constitutional Rights

8. The Plaintiffs incorporate, by reference, the allegations in paragraphs 1-7, into this Court as fully as if plead herein:

9. Title 42 U.S.C. § 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

10. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. It reads:

“...The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

11. On April 9, 2010, the Plaintiffs were in their home, when District’s police officers broke down the door, to their apartment, to execute a search warrant for apartment #305, located at: 1000 12th St. SE, Washington, D.C. The search warrant authorized the search of apartment # 305, only. The affidavit in support of it alleged that there was certain property being concealed in it namely:

“Money derived from the sale of illegal Drugs, paperwork showing dominion control of narcotics, US currency, scales, bank records, mailboxes, safes, similar storage cabinets, photographs, tally sheets, proof of occupancy, receipts, packaging, boxes, indicia of sale of weapons which is A Violation of D.C. Code Section 7-2502.01....”

When the police officer(s) arrived at: 1000 12th Street, S.E., Washington, D.C., to execute the search warrant, and before breaking down the door to the Plaintiffs’ apartment, they noticed that there was an apartment across from apartment #304 that did not have a number on it and they did not know if that apartment was # 305, before they broke into it.

12. Before attempting to execute the search warrant, the police officers had a duty to make sure that they were executing the warrant only for the apartment listed in the warrant. But the police officers did not do this. Without sufficient information to insure that they were entering the apartment, listed in their warrant, and without verifying that they were about to enter apartment # 305, the police officers negligently, intentionally, willfully, wantonly, and maliciously, forcibly entered the Plaintiffs’ apartment.

13. When the police officer(s) executed the search warrant, it violated the Plaintiffs’ civil rights and it violated the Fourth Amendment’s proscription against unreasonable searches and

seizures. The unconstitutional search and seizures, alleged here, were done while the police officers were working within the scope of their employment as: District's agents, servants, and/or employees.

14. As a direct result and proximate cause of the District's agents, servants, and/or employees, violation of the Plaintiffs' civil rights and violation of the Fourth Amendment's proscription against unreasonable searches and seizures, the Plaintiffs were caused to: suffer emotional distress, were falsely imprisoned, sustained property damage, their rights to seclusion and privacy were violated, they were subject to trespass, and they were the victims of an assault and battery.

Wherefore the premises considered, the Plaintiffs' demand judgment in the amount of: \$1,000,000,00, in compensatory damages, against the Defendant.

Count II
Violation of Civil And Constitutional Rights

15. The Plaintiffs incorporate, by reference, the allegations in paragraphs 1-14, into this Court, as fully as if plead herein:

16. Title 42 U.S.C. § 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

17. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. It reads:

“...The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

18. When the police officers broke into the Plaintiffs’ apartment, their admission to it was not denied, after stating their authority and purpose, because the police officers failed to state their authority and purpose before forcibly breaking into the Plaintiffs’ apartment. Police officers are only justified in breaking down a door, to a dwelling place, if they’re refused admission to it after first stating their authority and purpose. In this case, there is no evidence that the police officers were denied admission, to the Plaintiffs’ apartment, after stating their authority and purpose, and there is also no evidence that there were exigent circumstances that waived the requirement that the police officers state their authority and purpose before breaking into the Plaintiffs’ apartment.

19. When the police officers broke into the Plaintiffs’ apartment, it was done in violation the Fourth Amendment to the Constitution’s prohibition against unreasonable search and seizures and in violation of: 18 U.S.C. § 3109. **(Breaking doors or windows for entry or exit)**. This Statute reads:

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

The requirements of this statute are also found in D.C. Superior Court Crim. Rule 41 (e) (3), which reads:

(3) Manner of Execution. An officer or agent executing a warrant directing a search of a dwelling house, other building, or vehicle may break and enter any of these premises pursuant to 18 U.S.C. § 3109. An officer or agent executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of the officer's or agent's identity and purpose to the person.

20. When the police officers broken into the Plaintiffs’ apartment, it was done in violation of the Fourth amendment of the United States Constitution’s proscription against unreasonable searches and seizures, and in violation of: 18 U.S.C. § 3109. The alleged violations were done while

the police officers were enforcing District's laws, rule(s), regulation(s) statute(s), ordinance(s), practice (s) and while acting within the scope of their employment as District's agents, servants, and employees.

21. As a direct result and proximate cause of the District's agents, servants, and/or employees, violation of the Plaintiffs' civil rights and violation of the Fourth Amendment's proscription against unreasonable searches and seizures, the Plaintiffs were caused to: suffer emotional distress, were falsely imprisoned, sustained property damage, their rights to seclusion and privacy were violated, they were subject to trespass, and they were victims of an assault and battery.

Wherefore the premises considered, the Plaintiffs' demand judgment in the amount of: \$1,000,000,00, in compensatory damages, against the Defendant.

JURY DEMAND

22. The Plaintiffs demand a trial by jury.

Respectfully submitted,

s/s Wendell C. Robinson
Wendell C. Robinson, 377091
4308 Georgia Ave. N.W.
Washington, D.C. 20011
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the police officers were enforcing District's laws, rule(s), regulation(s) statute(s), ordinance(s), practice (s) and while acting within the scope of their employment as District's agents, servants, and employees.

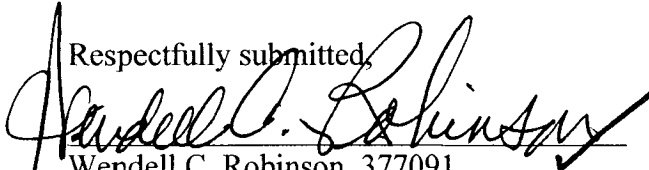
21. As a direct result and proximate cause of the District's agents, servants, and/or employees, violation of the Plaintiffs' civil rights and violation of the Fourth Amendment's proscription against unreasonable searches and seizures, the Plaintiffs were caused to: suffer emotional distress, were falsely imprisoned, sustained property damage, their rights to seclusion and privacy were violated, they were subject to trespass, and they were victims of an assault and battery.

Wherefore the premises considered, the Plaintiffs' demand judgment in the amount of: \$1,000,000,00, in compensatory damages, against the Defendant.

JURY DEMAND

22. The Plaintiffs demand a trial by jury.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wendell C. Robinson", is written over a horizontal line. The signature is cursive and includes a checkmark at the end.

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