

PARTIES

2. Ms. Carter is an African American adult residing in Allegheny County, Pennsylvania.

3. Kelly is an adult employed as a police officer with the NVPD who, at all relevant times, was engaged in secondary employment as a security officer by Phoenix Theatres at Phoenix Stadium 18 (defined *infra*). Kelly was acting under color of state law, and in accordance with the policies, customs and/or practices of the NVPD and/or Phoenix Theaters. Kelly is sued in his individual capacity.

4. Phoenix Theatres is a limited liability company registered under the laws of Tennessee. Phoenix Theatres owns and operates the entertainment complex known as “North Versailles Stadium 18” at 1701 Lincoln Highway, North Versailles, Allegheny County, Pennsylvania 15137 (“Phoenix Stadium 18). At all relevant times, Phoenix Theatres was acting by and through its duly authorized employees, agents and/or assigns, including Kelly, who were at all relevant times acting within the course and scope of their employment.

JURISDICTION

5. This action is brought under the First and Fourth Amendments to the United States Constitution pursuant to the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983. This Court has jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). This Court has supplemental jurisdiction over the pendent state law claims under 28 U.S.C. § 1367.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because each claim arose in Allegheny County, Pennsylvania in the Western District of Pennsylvania

FACTUAL BACKGROUND

7. On February 24, 2018, Ms. Carter went to Phoenix Stadium 18.

8. Phoenix Stadium 18 is an entertainment complex comprising a movie theatre, climbing gym, trampoline park and arcade.

9. While approaching Phoenix Stadium 18, Ms. Carter witnessed Kelly, who was attired in full police uniform, pushing African American children out of the Stadium.

10. After witnessing Kelly forcibly remove the young African American children from Phoenix Stadium 18, Ms. Carter witnessed Kelly reenter the Stadium to approach—in an aggressive manner—three other African American children by the entrance to the trampoline park.

11. In response, Carter went to the area where Kelly had detained the other three African American children because she was concerned for their well-being.

12. Carter then questioned why the children had been detained by Kelly, when she overheard the manager, Jason Bauer (“Bauer”), calling the children “animals.”

13. At all times, the three African American children were not engaged in conduct that was any different from that of other non-African American children at Phoenix Stadium 18.

14. Kelly subsequently told Ms. Carter that she had no business with the children and that she needed to leave the area, which she did.

15. Kelly also ordered the three African American children to exit Phoenix Stadium 18 and go stand in the cold rain.

16. Even though Ms. Carter had exited Phoenix Stadium 18, Kelly followed her, escalating the situation by arguing and confronting her.

17. Ms. Carter then began recording the incident on her cell phone.

18. As soon as Ms. Carter began recording the incident, Kelly became more aggressive, at one point getting in her face and sarcastically asking her for a lighter for his cigarette which he had dangling out of his mouth.

19. Bauer—unsolicited and for no legitimate purpose—then approached Ms. Carter and again told her that the children were acting like “animals;” meanwhile, Kelly had lit his cigarette and was blowing the smoke in the face of the children.

20. Kelly then aggressively approached Ms. Carter, who was not interfering with Kelly or Bauer, and who was standing about 10 feet away, and—without any legitimate reason or purpose—demanded that she leave the premises.

21. Before Ms. Carter had the opportunity to leave the area, Kelly pulled out his handcuffs and told her that she was under arrest.

22. Ms. Carter was still recording Kelly.

23. Kelly, who is physically much bigger than Ms. Carter, then grabbed her and forcibly threw her face first to the concrete.

24. Once on the concrete, Kelly thrust his knee and fully body weight on to the small of Ms. Carter’s back and handcuffed her.

25. As he handcuffed Ms. Carter, Kelly—without cause or any justification—pushed her face into the concrete multiple times while she complained.

26. Ms. Carter also complained to Kelly that she was having an asthma attack and could not breathe, while Kelly offered no assistance and ignored her complaints.

27. Ms. Carter was taken into custody and transported to the police station for the NVPD until she was subsequently transported to the Allegheny County Jail (“ACJ”).

28. The next day on February 25, 2018, Kelly filed a criminal complaint against Ms. Carter, falsely alleging criminal offenses for resisting arrest, failure to disperse, disorderly conduct (obscene language and gestures), disorderly conduct (hazardous and physically offensive conduct) and defiant trespass at Criminal Docket No. MJ-05211-CR-109-2018 (the “Criminal Complaint”).

29. Attached to the Criminal Complaint was an affidavit of probable cause, for which Kelly swore under oath to its factual content (the “Affidavit of Probable Cause”).

30. According to the Affidavit of Probable Cause:

- a. Ms. Carter interfered with Kelly’s ability to remove the three African American children from Phoenix Stadium 18;
- b. Ms. Carter used profanity both inside and outside Phoenix Stadium 18;
- c. Ms. Carter yelled at Kelly and caused a disturbance;
- d. Ms. Carter violently pulled away from Kelly as he attempted to effectuate her arrest;
- e. Ms. Carter violently pulled away from Kelly a second time, swatted at him, and then began flailing her arms at him as he continued to attempt to effectuate her arrest;
- f. Ms. Carter swung her arms at Kelly;
- g. Ms. Carter attempted to roll around once on the ground to avoid arrest; and
- h. Ms. Carter was ultimately placed in handcuffs and transported to the ACJ.

31. The Affidavit of Probable Cause contains, but is not limited to, the following material falsehoods and omissions:

- a. Falsely stating that Ms. Carter interfered with Kelly at any time in the course and performance of his official police duties;
- b. Falsely stating that Ms. Carter used profanity at any time;
- c. Falsely stating that Ms. Carter was violent and combative toward Kelly during his attempt to arrest her (or at any other time);
- d. Falsely stating that Ms. Carter yelled at Kelly prior to her arrest;
- e. Omitting the material fact that Ms. Carter never interfered with Kelly in the course and performance of his official police duties;
- f. Omitting the material fact that Ms. Carter recorded Kelly’s conduct from a distance that did not interfere with the course and performance of his official police duties;

- g. Omitting the material fact that Kelly used his larger size and body weight to forcibly throw Ms. Carter to the concrete;
- h. Omitting the material fact that Kelly used his larger size and body weight to forcibly push Ms. Carter's face into the concrete multiple times;
- i. Omitting the material fact that Ms. Carter was never combative;
- j. Omitting the material fact that Ms. Carter was a business invitee at Phoenix Stadium 18;
- k. Omitting the material fact that Kelly never provided Ms. Carter with the opportunity to leave the premises when ordered to do so; and
- l. Omitting the material fact that Kelly (and Bauer) intimidated and demeaned Ms. Carter while she exercised her constitutional right to record Kelly in the course and performance of his official police duties.

32. The criminal charges for disorderly conduct (hazardous and physically offensive conduct) and failure to disperse were dismissed by the lower court at the preliminary hearing on the Criminal Complaint on May 24, 2108.

33. Although the charges for resisting arrest, disorderly conduct (obscene language and gestures) and defiant trespass were held for court, the trial court dismissed all remaining charges under the Criminal Complaint at Criminal Docket No. CP-02-CR-6793-2018 on January 10, 2019.

COUNT I

Violation of the Fourth Amendment for Malicious Prosecution Pursuant to 42 U.S.C. § 1983

(As to Kelly)

34. The foregoing paragraphs are incorporated herein by reference.

35. As a direct result of the conduct described herein, Kelly violated Ms. Carter's right to be free from malicious prosecution under the Fourth Amendment of the United States

Constitution by initiating a criminal proceeding at Criminal Docket Nos. MJ-05211-CR-109-2018 and CP-02-CR-6793-2018 without probable cause and that was terminated in Ms. Carter's favor.

COUNT II

Violation of the Fourth Amendment for False Arrest Pursuant to 42 U.S.C. § 1983

(As to Kelly)

36. The foregoing paragraphs are incorporated herein by reference.

37. As a direct result of the conduct described herein, Kelly violated Ms. Carter's right to be free from false arrest under the Fourth Amendment of the United States Constitution by seizing and detaining her without probable cause.

COUNT III

Violation of the Fourth Amendment for Use of Excessive Force Pursuant to 42 U.S.C. § 1983

(As to Kelly)

38. The foregoing paragraphs are incorporated herein by reference.

39. As a direct result of the conduct described herein, Kelly violated Ms. Carter's right to be free from the use of excessive force against her when Kelly purposely and knowingly used objectively unreasonable force to throw Ms. Carter onto concrete, push her face into the concrete multiple times, and place his full body weight into the small of her back through his knee, when he did not reasonably perceive Ms. Carter as a threat to his safety or the safety of others.

40. As a direct result of the conduct described herein, Kelly violated Ms. Carter's right to be free from the use of excessive force against her when he purposely and knowingly failed to make any effort to temper or limit the amount of force used against her.

COUNT IV

**Violation of the First Amendment for
Retaliation Pursuant to 42 U.S.C. § 1983**

(As to Kelly)

41. The foregoing paragraphs are incorporated herein by reference.

42. As a direct result of the conduct described herein, Kelly violated Ms. Carter's right to record public police activity when he arrested her and used excessive force against her in retaliation for recording such activity.

COUNT V

Negligent Hiring, Training and Supervision

(As to Phoenix Theatres)

43. The foregoing paragraphs are incorporated herein by reference.

44. At all relevant times, Ms. Carter was a business invitee at Phoenix Stadium 18.

45. At all relevant times, Phoenix Theatres owed a duty of care to Ms. Carter as its business invitee.

46. At all relevant times, Kelly was acting under the direction and control of Phoenix Theatres and pursuant to the rules, regulations, policies and procedures that it had put in place.

47. At all relevant times, Phoenix Theatres hired Kelly to perform security functions when it knew or reasonably should have known that Kelly had been terminated from his prior security position for his use of excessive force.

48. Phoenix Theatres breached its duty of care to Ms. Carter by negligently, carelessly and recklessly failing to properly hire, train, supervise, control, direct and monitor Kelly in carrying out the duties and responsibilities in attempting to maintain order at Phoenix Stadium 18, as follows:

- a. in failing to train its employees not to use physical force on business invitees absent a threat of harm to others, when Phoenix Theatres knew or should have known that such failure was likely to result in its employees using unnecessary and/or excessive physical force on its business invitees causing physical harm and/or injury to such invitees;
- b. in failing to train its employees on the circumstances under which the use of physical force could be used against a business invitee, when Phoenix Theatres knew or should have known that such failure was likely to result in its employees using unnecessary and/or excessive physical force on its business invitees causing physical harm and/or injury to such invitees;
- c. in failing to properly monitor, record or review the use of physical force by its employees on business invitees when Phoenix Theatres knew or should have known that such failure was likely to result in its employees using unnecessary and/or excessive physical force on its business invitees causing physical harm and/or injury to such invitees;
- d. in failing to properly train its employees on practices, procedures or methods for removing business invitees from the business premises without resort to the use of physical force when Phoenix Theatres knew or should have known that such failure was likely to result in its employees using unnecessary and/or excessive physical force on its business invitees causing physical harm and/or injury to such invitees;
- e. in failing to train its employees on practices, procedures or methods for removing business invitees from the business premises without using any and/or the least amount of physical force necessary when Phoenix Theatres knew or should have known that such failure was likely to result in its employees using unnecessary and/or excessive physical force on its business invitees causing physical harm and/or injury to such invitees;
- f. in failing to discipline, admonish, retrain or take other appropriate action against employees who had used unnecessary and/or excessive physical force against business invitees, when Phoenix Theatres knew or should have known that such failure was likely to result in its employees continuing to use such force causing physical harm and/or injury to such invitees; and/or
- g. in hiring Kelly to perform security functions on behalf of Phoenix Theatres at Phoenix Stadium 18 when it knew or reasonably should have known that he had a propensity for using objectively unreasonable force.

49. As a direct and proximate result of Phoenix Theatres failure to properly hire, train and supervise its security, Ms. Carter was assaulted without justification and suffered significant physical and emotional injuries.

COUNT VI

Common Law Assault

(As to Phoenix Theatres)

50. The foregoing paragraphs are incorporated herein by reference.

51. Phoenix Theatres, by and through its employees, agents and/or assigns, assaulted Ms. Carter intending to cause harmful and offensive contact with her, or an imminent apprehension of such contact, and thus put Ms. Carter in such imminent apprehension.

COUNT VII

Common Law Battery

(As to Phoenix Theatres)

52. The foregoing paragraphs are incorporated herein by reference.

53. Phoenix Theatres, by and through its employees, agents and/or assigns, directly or indirectly intended to cause harmful and offensive contact with Ms. Carter, or an imminent apprehension of such contact, and did harmfully and offensively contact Ms. Carter.

PRAYER FOR RELIEF

WHEREFORE, Ms. Carter requests that this Court grant the following relief:

- i. Actual damages;
- ii. Compensatory damages:
 - a. Emotional and mental harm including fear, humiliation and mental anguish, as well as future emotional and mental harm for the same;
 - b. Lost wages and income, as well as loss of future wages and income;
 - c. The value of the legal services expended on defending the Criminal Charges and clearing her name;
- iii. Punitive damages in an amount to be determined at trial;

- iv. Attorney's fees and costs; and
- v. All other relief this Court deems just and proper.

Respectfully submitted,

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