

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LYNDSAY CLEMENTS)
)
Plaintiff,)
)
v.) Cause No.: 1:07-cv-0625-LJM-WTL
)
JOHN "JACK" OSBOURNE, JR., as an)
Officer in his individual capacity,)
MICHAEL EDWARDS,)
as an Officer in his individual capacity,)
JOSEPH R. WINKLE,)
in his individual capacity and in his official)
capacity as Chief of Police of)
Muncie Police Department,)
DAN C. CANAN, in his official capacity)
as Mayor of the City of Muncie,)
CBS BROADCASTING INC., d/b/a 'CBS,')
Various Police Officers of The Muncie)
Police Department as yet unnamed,)
in their individual capacity, and)
GOOD, TV, INC.,)
)
Defendants.)

AMENDED COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL

I. PRELIMINARY STATEMENT

1. This is a complaint to redress the deprivation of rights, liberties, and immunities secured to the Plaintiff under the Constitution and laws of the United States of America and the State of Indiana. This complaint seeks compensation for the violation of the Plaintiff's rights as protected by the Fourth and Fourteenth Amendments of the United States Constitution, and as protected under Indiana state law. Ms. Lyndsay Clements was subjected to an

unlawful and unconstitutional search of her person and invasion of her residence on December 12, 2006, when members of the Muncie Police Department, including defendant officer Jack Osbourne, a celebrity being filmed for commercial broadcast, wrongfully raided Plaintiff's residence.

II. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1331 and §1343(3) and (4), this being a suit authorized by 42 U.S.C. §1983 to redress the deprivation of rights, privileges and immunities secured by the First and Fourteenth Amendments to the Constitution of the United States. Plaintiff further invokes the pendant jurisdiction of this Court to hear and decide claims arising under state law, pursuant to 28 U.S.C. § 1367.

III. VENUE

3. Venue is proper in this Court under 28 U.S.C. § 1391, which allows for an action to be brought in the district and the state where the defendants reside or where the cause of action arose. All events occurred in the Southern District of Indiana.

IV. PLAINTIFF

4. Plaintiff Lyndsay Clements is a resident of the City of Muncie, Delaware County, State of Indiana, and has resided in that county at all times relevant to this Complaint.

V. DEFENDANTS

5. Defendants Jack Osbourne and Michael Edwards were at all times relevant to this Complaint Police Officers employed by the City of Muncie. These

Defendant Officers are sued in their individual capacities under 42 U.S.C. § 1983, as well as for violations of State law. Defendant Officers were at all times relevant to this Complaint responsible for the enforcement of the United States Constitution and all laws and regulations of the United States and State of Indiana. Defendant Officers were at all times relevant to this Complaint acting within the scope of their employment and under color of state law.

6. Defendant Joseph R. Winkle was at all times relevant to this Complaint the Chief of Police of the Muncie Police Department, and employed by the City of Lawrence. Defendant Winkle is sued in his individual capacity under 42 U.S.C. § 1983, as well as for violations of State law. Defendant Winkle is additionally sued in his official capacity under 42 U.S.C. § 1983. Defendant Winkle was at all times relevant to this Complaint responsible for the enforcement of the United States Constitution and all laws and regulations of the United States and State of Indiana. Defendant Winkle was at all times relevant to this Complaint acting within the scope of his employment and under color of state law.
7. Defendant Dan C. Canan was at all times relevant to this Complaint the Mayor of the City of Muncie and employed thereby. Defendant Canan is sued in his official capacity under 42 U.S.C. § 1983.
8. Defendant CBS Broadcasting, Inc., doing business as CBS, is a corporation that at all relevant times employed Defendant Jack Osbourne. Defendant CBS is responsible under State law for the tortious conduct of its employees.

9. The Defendants listed as unnamed police officers of the Muncie Police Department were at all times relevant to this Complaint employed by the City of Muncie. These Defendant Unnamed Officers are sued in their individual capacities under 42 U.S.C. § 1983, as well as for violations of State law. Defendant Officers were at all times relevant to this Complaint responsible for the enforcement of the United States Constitution and all laws and regulations of the United States and State of Indiana. Defendant Officers were at all times relevant to this Complaint acting within the scope of their employment and under color of state law.
10. Defendant Good TV, Inc., is believed to be the production company which created and produced the show that aired on CBS and was titled “Armed & Famous”. Good TV, Inc., is responsible under State law for tortious conduct of its employees, and is contractually liable for any Constitutional violations resulting from its employees’ actions.

VI. FACTUAL ALLEGATIONS

11. On or about Tuesday, December 12, 2006, at approximately 12:30 a.m., Muncie Police Officers, including Defendants Osbourne and Edwards, began banging loudly on the door of the Plaintiff, Ms. Lyndsay Clements.
12. Ms. Clements was alone and was modestly attired in a nightgown, watching television at her apartment located at 826 ½ W. Main Street, Muncie, Indiana.
13. Ms. Clements was alarmed by the banging and yelling, although she could not discern what was being said by the persons outside.

14. Fearful for her safety, she telephoned her mother and older brother to alert them that she was alarmed and frightened because of the yelling and people trying to enter her apartment.
15. Her father, Minister Rusty Clements, and her brother, Ryan Clements, immediately proceeded to Ms. Clements' apartment.
16. While still on the phone with her mother, she heard the individuals, who were banging on the door, enter her apartment.
17. Soon after she hung up the phone she heard dogs and lots of commotion, and looked downstairs and saw that approximately five (5) to eight (8) police officers were coming up the stairs in SWAT-type uniforms, carrying large guns, and dressed in what she thought to be combat attire.
18. The police officers involved in this unlawful police action of entering her apartment, had obtained a key from Ms. Clements' landlord and gained entry using the key.
19. Accompanying the Muncie Police Officers and celebrity police officer Osbourne into the apartment were television cameras along with bright klieg lights.
20. The incident was being filmed by persons who Plaintiff now believes to be employees of Defendant CBS and/or employees of Defendant Good TV, Inc.
21. The officers in charge commanded Ms. Clements to get on her knees, whereupon the officers then placed her in handcuffs.
22. Other officers searched her apartment extensively and in the process threw her clothes out of the closet onto the floor and stained them.

23. The officers yelled at Ms. Clements about individuals of whom she had never heard, and she continually and consistently told the officers that she did not know what they were talking about.
24. A female officer and another officer pulled Ms. Clements outside of her apartment while still dressed only in her nightgown.
25. A female Muncie Police Officer searched Ms. Clements' person, and Ms. Clements was kept on her front porch in her nightgown, restrained in handcuffs for approximately 20-30 minutes.
26. From that position Ms. Clements was able to observe approximately 20-30 additional police officers (no doubt themselves wanting to be television stars), further television camera crewpersons, and other filming equipment.
27. When Ms. Clements' father and brother arrived at the scene, an unknown Muncie Police Officer told them that two fugitives had been seen in her apartment earlier that day. This statement was untrue.
28. Ms. Clements repeatedly told the officers that she did not know the suspects for whom the officers were searching nor did she know anything about them.
29. Celebrity officer with the Muncie Police Department, Jack Osbourne, played a celebrity role in questioning Ms. Clements.
30. At some point, the police determined that they were at the wrong address and without explanation or apology immediately left the vicinity.
31. In an effort to save money, footage of the incident was nonetheless used on the television program showing the front of Ms. Clements' apartment and some of the activity of the officers gaining entry into her apartment.

32. Defendant CBS and Defendant Good TV, Inc., through its agent producers, actors, technical directors and other individuals associated with the show “Armed & Famous,” spliced the footage depicting Ms. Clements’ residence onto the footage of their later apprehension of the actual suspects of the search, without any attempt to inform the viewing public of the mistake regarding Ms. Clements and her residence.
33. Ms. Clements was emotionally shaken and troubled by the unlawful invasion into her home, and the unlawful detention and arrest to which she was subjected.
34. Afterwards, feeling very distressed, she then went to her mother’s home where she spent three nights in her parents’ company afraid to go back to her apartment.
35. She has since moved from the apartment.
36. The City of Muncie agreed to work with Defendant Good TV, Inc., and Defendant CBS in the filming of the show ‘Armed and Famous’ and condoned a course of action that included giving full police authority to television actors such as Defendant Osbourne.
37. The ‘Armed and Famous’ television show employed and advertised such celebrities as Henry Enrique Estrada (a.k.a. “Erik Estrada”), LaToya Jackson, Jason Acuña (a.k.a. “wee man”), and Patricia Anne Stratigias (a.k.a. “Trish Stratus”), as well as Defendant Osbourne.
38. Defendant CBS and Defendant Good TV, Inc., additionally employed executive producers Tom Forman and Jeff Krask, field producers Benny

Rueven, Cheryl Black, and John Slaughter, supervising producer Russ Ward, producer Todd Hurvitz, supervising story producer Rob Worsoff, story producer Sabrina Mar, and camera operator Yavir Ramawtar, among other individuals. It is currently unknown what roles these individuals had in the events underlying the present Complaint.

39. The City of Muncie willfully engaged in a course of action that would foreseeably lead to violations of the rights of private citizens, and is liable as a municipality for its failures.

VII. FEDERAL CAUSES OF ACTION

COUNT I: Claims Against Individual Officers Under § 1983

Comes now Plaintiff and respectfully complains against each of those defendant officers sued in their individual capacities, incorporating by reference as if fully set forth all the previous allegations contained in rhetorical paragraph 1 through 39 and further alleging as follows:

40. As a result of the actions of all the defendants, Ms. Clements suffered a violation of her constitutional rights when her home was entered and searched without probable cause and without a valid warrant.

41. Ms. Clements was handcuffed and detained without probable cause or a reasonable belief that she was the object of a manhunt or a search for a suspect wanted by the local police.

42. Defendant individual officers also used excessive force, or allowed excessive force to be used, on Ms. Clements.

43. The defendants, all of them, in a narcissistic fashion sought celebrity status by indifferently violating Ms. Clements' rights and ignoring standard police procedures (which would have ensured that the proper home was searched based upon on reasonable suspicions). During this same incident, the same individual officers had mistakenly stopped a wrong car during their search, further illustrating their indifference and willful conduct.

44. As a result of the Defendants' conduct, Plaintiff suffered damages and expenses.

WHEREFORE, Plaintiff requests the following relief:

- (a) To declare the Defendants' conduct unlawful;
- (b) To award compensatory damages in the amount of \$1,000,00.00;
- (c) To award punitive damages to deter the Defendants from committing similar conduct in the future;
- (d) To award attorneys fees and costs; and
- (e) To grant such other relief as the Court deems proper.

COUNT II: Official Capacity Claim Under § 1983

Comes now Plaintiff and respectfully complains against each of those defendants sued in their official capacities, incorporating by reference as if fully set forth all the previous allegations contained in rhetorical paragraph 1 through 44 and further alleging as follows:

45. The City of Muncie, by and through the Official Capacity Defendants, willfully failed to adequately train individual celebrity officers such as Defendant Osbourne, opting instead to allow superficial training for the

benefit of Defendant CBS, Defendant Good TV, Inc., and/or the individual officers.

46. The City of Muncie, by and through the Official Capacity Defendants, failed to train its regular police officers in working under the direction and/or with the participation of television film crews in a way that would avoid foreseeable and obvious violations of private citizens' rights, such as Plaintiff's.

47. As a result of Defendants' conduct, Plaintiff suffered damages and expenses.

WHEREFORE, Plaintiff requests the following relief:

- (a) To declare the Defendants' conduct unlawful;
- (b) To award compensatory damages in the amount of \$1,000,00.00;
- (c) To award attorneys fees and costs; and
- (d) To grant such other relief as the Court deems proper.

COUNT III: Official Capacity Claim Under § 1983

Comes now Plaintiff and respectfully complains against each of those defendants sued in their official capacities, incorporating by reference as if fully set forth all the previous allegations contained in rhetorical paragraph 1 through 47 and further alleging as follows:

48. In their official capacities, Defendants Chief Winkle and Mayor Canan, one or both, are the final policymakers with regards to the decision to grant police powers to Defendant Osbourne, along with the other celebrity officers involved in the show 'Armed and Famous.'

49. Under the auspices of *Pembaur v. City of Cincinnati*, the decisions of the Official Capacity Defendants in this case are decisions of the municipality of the City of Muncie.

50. In Defendants' decision to utilize untrained or poorly trained officers such as Defendant Osbourne and other celebrity officers, Defendants knowingly or with reckless indifference put private citizens, including Plaintiff, at much greater risk of having their constitutional rights violated. Plaintiff's rights here were violated because of this decision.

51. As a result of Defendants' conduct, Plaintiff suffered damages and expenses.

WHEREFORE, Plaintiff requests the following relief:

- (a) To declare the Defendants' conduct unlawful;
- (b) To award compensatory damages in the amount of \$1,000,00.00;
- (c) To award attorneys fees and costs; and
- (d) To grant such other relief as the Court deems proper.

VIII. STATE LAW CAUSES OF ACTION

COUNT IV. NEGLIGENT HIRING, TRAINING, AND SUPERVISION

Comes now Plaintiff and respectfully complains against Defendants Mayor Canon, Chief of Police Winkle, CBS, and Good TV, Inc. and incorporates by reference as if fully set forth all the previous allegations contained in rhetorical paragraph 1 through 51 and further alleges as follows:

52. Defendant Mayor Dan C. Canon and Defendant Joseph R. Winkle made the decision to approve the filming and presentation of CBS's 'Armed and

Famous' television show by negotiating a contract with Good TV, Inc., and allowing its various celebrity cops including Defendant Osbourne to become a Muncie Police Officers without following standard procedures.

53. Defendant Jack Osbourne was not properly trained as a law enforcement officer, and as a result violated the constitutional rights and states law rights of the Plaintiff, Lyndsay Clements.

54. The conduct in failing to train, in the very public nature of the filming during the unlawful incident, and in the broadcasting of images of Plaintiff's residence directly caused Plaintiff's injuries and harm, and she continues to feel humiliation and embarrassment and anxiety because of her experience with the Muncie Police Department and the celebrity police officers.

WHEREFORE, Plaintiff requests the following relief:

- (a) To declare the Defendants' conduct unlawful;
- (b) To award compensatory damages;
- (c) To award punitive damages to deter the Defendants from committing similar conduct in the future;
- (d) To grant such other relief as the Court deems proper.

Respectfully submitted,

s/[Michael K. Sutherlin]
Michael K. Sutherlin
Attorney for Plaintiff

VIII. REQUEST FOR TRIAL BY JURY

Plaintiff Lyndsay Clements, by counsel, hereby requests a trial by jury.

Respectfully Submitted,

s/[Michael K. Sutherlin]
Michael K. Sutherlin
Attorney for Plaintiff
Atty. No. 508-49

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system or by certified U.S. Mail. Parties may access this filing through the Court's system:

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John 'Jack' Osbourne, Jr.
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Chief Joseph R. Winkle
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Muncie, IN 47308-1648

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c/o Corporation Service Co.
251 E. Ohio St., Suite 500
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s/[Michael K. Sutherlin]
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