

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13213

Non-Argument Calendar

JERRY L. HOFFMAN, JR.,

Plaintiff-Appellant,

versus

JOSE DELGADO,
in his individual capacity,
CITY OF PUNTA GORDA,

Defendants-Appellees,

CITY OF PUNTA GORDA POLICE DEPARTMENT,

Appendix A

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cv-00130-SPC-NPM

Before JORDAN, GRANT, and LAGOA, Circuit Judges.

PER CURIAM:

Jerry Hoffman was arrested while violating a local ordinance prohibiting audio and video recording in municipal buildings. He argues that the ordinance violates the First Amendment and that his arrest involved excessive force and false arrest under the Fourth Amendment. The district court dismissed Hoffman's complaint with prejudice for failure to state a claim. Because Hoffman fails to adequately allege that the ordinance violated his constitutional rights, that the arresting officer lacked probable cause, and that excessive force was used, we affirm the dismissal.

I.

Hoffman is a self-described photojournalist. According to his complaint, in July 2022, he and three associates entered the lobby of the police headquarters for the City of Punta Gorda, Florida. They intended to inquire about the police department's failure to respond to their Freedom of Information Act requests.

23-13213

Opinion of the Court

3

Hoffman carried a camera, with which he planned to record his interactions at the headquarters. But doing so violated an ordinance prohibiting filming on city property—except during public meetings—without the consent of those who are filmed and without approval from the city manager. Punta Gorda, Fla., Code of Ordinances ch. 15, § 15-48(e), (h)(15) (2024).

According to Hoffman's complaint—the factual allegations of which we must credit at this stage, three officers approached Hoffman and asked whether he was recording. They informed Hoffman that recording violated a city ordinance and asked him to step outside. Believing that this request violated his First Amendment rights, Hoffman refused to leave. One of the officers again asked Hoffman to "please step outside." In response to a question by Hoffman about the consequences of violating the ordinance, another officer responded that the penalty would be a fine because "it's not arrestable." According to Hoffman's complaint, which must be credited at this stage, the officer told Hoffman that he was "being fine" and was "willing to step outside." Without complying with the repeated requests to leave, Hoffman asked to speak to a police information officer.

At this point, a fourth officer—Jose Delgado—walked into the lobby and reiterated that Hoffman should exit the building. Hoffman asked Delgado not to touch him, but Delgado allegedly approached and began to arrest him. Hoffman alleges that Delgado "forcefully shoved" Hoffman into a wall, grabbed his wrist, tried to pull him towards the exit, and grabbed him several

more times. Hoffman swore at and verbally berated Delgado before attempting to exit the building during the arrest. Delgado allegedly struck Hoffman with a blow that shut off his camera, twisted his wrists, and caused him pain while arresting him. Hoffman alleges that Delgado twice struck Hoffman in the back with his knee, twisted his wrist again, and pulled on his handcuffed arms. An examination at a hospital revealed that Hoffman suffered no broken bones.

Hoffman sued both Delgado and the City of Punta Gorda under 42 U.S.C. § 1983. In his amended complaint, which is operative for this appeal, he claimed that the anti-filming ordinance violated his First Amendment rights, Delgado's actions constituted First Amendment retaliation, and that the arrest violated the Fourth Amendment as excessive force and false arrest.¹ The district court dismissed Hoffman's complaint with prejudice for failure to state a claim. Hoffman now appeals.

II.

We review de novo a district court's dismissal of a complaint for failure to state a claim. *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019). At this stage, we accept the complaint's factual allegations as true and

¹ Additionally, Hoffman sought a writ of quo warranto and "the revocation of the City's charter," and he alleged violations of his Eighth Amendment and due process rights. Because Hoffman abandoned these issues by not raising them on appeal, we do not address them further. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004).

23-13213

Opinion of the Court

5

view them in the light most favorable to the plaintiff. *Id.* To survive, these factual allegations must allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III.

On appeal, Hoffman argues that he properly pleaded violations of his First and Fourth Amendment rights. We disagree on both counts and therefore affirm the dismissal of his complaint.

A.

Hoffman contends that the ordinance, which prohibits recording in city-owned buildings in most circumstances, violates the First Amendment’s freedom of speech guarantee. The ordinance has two relevant provisions. The first prohibits recording “within City-owned, controlled, and leased property” unless the videographer obtains “the consent of all persons whose voice or image is being recorded.” Punta Gorda, Fla., Code of Ordinances ch. 15, § 15-48(e) (2024). The second bars audio or video recording “anywhere inside of City buildings,” except “as otherwise approved by the City Manager” or a designee. *Id.* § 15-48(h)(15). Neither provision applies to official public meetings. *Id.* § 15-48(e), (h)(15).

Hoffman is correct that this Circuit has long recognized that the “First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. City of*

Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000).² Recording falls within the ambit of First Amendment guarantees. *Id.* Like all First Amendment rights, however, the right to record is not absolute. *Elrod v. Burns*, 427 U.S. 347, 360 (1976). Indeed, “the Constitution does not require the government to ‘grant access to all who wish to exercise their right to free speech,’ no matter the setting, ‘without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.’” *McDonough v. Garcia*, 116 F.4th 1319, 1322 (11th Cir. 2024) (en banc) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799–800 (1985)). Instead, the validity of a regulation depends on the forum in which it applies. *Id.* Our cases recognize four types of forums: the traditional public forum, the designated public forum, the limited public forum, and the nonpublic forum. *Id.*

The District Court treated the police department’s lobby as a limited public forum. Because Hoffman joins in this

² Hoffman abandoned any argument based on the Florida Constitution’s protection for the freedom of speech by failing to raise it in his initial brief on appeal. *Sapuppo v. Allstate Floridian Ins.*, 739 F.3d 678, 680–81 (11th Cir. 2014). Moreover, both counts in his complaint are raised under 42 U.S.C. § 1983, which can vindicate only rights arising from the federal Constitution or federal statutes—not state constitutions. *Club Madonna, Inc. v. City of Miami Beach*, 924 F.3d 1370, 1378 (11th Cir. 2019). In any event, the Florida Supreme Court has stated that the “scope of the protection accorded to freedom of expression” under the Florida Constitution “is the same as is required under the First Amendment” to the federal Constitution. *Dep’t of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982); see also *Florida Ass’n of Pro. Lobbyists, Inc. v. Div. of Legis. Info. Servs. of the Florida. Off. of Legis. Servs.*, 525 F.3d 1073, 1076 (11th Cir. 2008).

23-13213

Opinion of the Court

7

characterization and the defendants do not contest it, we will consider it under the standard for limited public forums. There are, however, good arguments that the lobby is really a nonpublic forum. Like a military base or a federal building, police headquarters are not “open to the public at large for discussion of any and all topics.” *M.N.C. of Hinesville, Inc. v. United States Dep’t of Defense*, 791 F.2d 1466, 1473 (11th Cir. 1986); *United States v. Gilbert*, 920 F.2d 878, 884 (11th Cir. 1991); *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1224 (11th Cir. 2017). Lobbies of police departments generally exist to permit “certain groups” to discuss specific topics—namely, permitting those with legitimate public business to discuss public safety needs. *McDonough*, 116 F.4th at 1328 (quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001)). In any event, the standard we apply when reviewing speech regulations in limited public forums is the same standard we apply for nonpublic forums. *Id.* at 1324. For limited public forums, restrictions “on speech must be viewpoint neutral and ‘reasonable in light of the purpose served by the forum.’” *Id.* at 1328 (quoting *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995)).

Here, the anti-recording ordinance is reasonable. The First Amendment does not require the government to “permit all forms of speech on property that it owns and controls.” *Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992). The city “has the right to exercise control over access to” the “workplace in order to avoid interruptions to the performance of the duties of its employees.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473

U.S. 788, 805–06 (1985). A prohibition on recording protects the police headquarters from distractions and guards sensitive documents from confidentiality threats. The ordinance thus secures the building for its intended purpose of facilitating assistance for those with public safety needs. See *Bloedorn v. Grube*, 631 F.3d 1218, 1231–32 (11th Cir. 2011).

Moreover, the ordinance does not facially “discriminate on the basis of viewpoint.” *McDonough*, 116 F.4th at 1324. The two ordinance provisions ban recording in city-owned buildings without consent and without the approval of the city manager, respectively. Those general prohibitions do not regulate speech based on “the specific motivating ideology or the opinion or perspective of the speaker.” *Rosenberger*, 515 U.S. at 829.

Hoffman fails to state a claim that the city violated his First Amendment rights by prohibiting him from recording in the police department lobby. That regulation as alleged is reasonable and viewpoint neutral, and thus valid in a limited public forum. See *McDonough*, 116 F.4th at 1328.³ Likewise, because the First Amendment did not protect Hoffman’s actions, he could not plead a claim against either Delgado or the city for retaliating against him

³ Hoffman attempts to raise an unbridled discretion claim premised on the city manager’s role in providing permission to record inside city buildings. His complaint, however, failed to raise this argument, and therefore he cannot state a claim based upon it. See *Roy v. Ivy*, 53 F.4th 1338, 1353 (11th Cir. 2022). The City did not understand him to be alleging an unbridled discretion claim. Nor did the district court, which did not address that supposed argument in its order dismissing the complaint.

23-13213

Opinion of the Court

9

for exercising his First Amendment rights. *Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016).

B.

Hoffman's Fourth Amendment claims fair no better. He alleges that Delgado and the city falsely arrested him and exerted excessive force. Hoffman fails to state a claim of false arrest for a straightforward reason—the arrest was not “false.” The “existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest.” *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010). A reasonable belief that “a criminal offense has been or is being committed” creates probable cause. *Id.*

Here, even according to Hoffman's allegations, Delgado had probable cause. Hoffman's own complaint admits that he was violating the city ordinance when he was recording in the police department lobby. Despite repeated instructions from the officers present, Hoffman refused to cease recording or leave the premises. When Delgado approached Hoffman as he persisted in recording within the building, Hoffman still failed to exit. As a result, Delgado had probable cause to believe that Hoffman was violating Florida law, which makes it a misdemeanor to “resist, obstruct, or oppose” an officer's “execution of any legal duty,” even without violence. Fla. Stat. § 843.02. And, as we held above, Hoffman fails to adequately allege that this arrest was invalid as a violation of the First Amendment.

For similar reasons, Hoffman's excessive force claim also fails. If an officer has probable cause to make an arrest, de minimis force cannot support a claim of excessive force. *Zivojinovich v. Barner*, 525 F.3d 1059, 1072 (11th Cir. 2008). Delgado, according to Hoffman's own complaint, had probable cause to arrest Hoffman. And the force that the complaint alleges was employed by Delgado was de minimis under our Circuit's precedents. Hoffman complains that Delgado allegedly pushed him against a wall, grabbed his wrists, pushed him towards an exit, struck his camera out of his hands, and caused him pain. We have said, however, that facts more serious than these allegations fell "well within the ambit of the de minimum force principle." *Nolin v. Isbell*, 207 F.3d 1253, 1258 n.4 (11th Cir. 2000). "Painful handcuffing," even with resulting bone fractures unlike the alleged facts here, and "twist[ing]" or "jerking" an arrestee's arms do not violate the Fourth Amendment. *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002). Likewise, this Court found that, when an officer "grabbed" the plaintiff "and shoved him a few feet against a vehicle," "pushed [his] knee into" the plaintiff's back and shoved the plaintiff's "head against the van," invasively searched the plaintiff "in an uncomfortable manner," handcuffed the plaintiff, and caused minor bruising, "the facts sound little different from the minimal amount of force and injury involved in a typical arrest." *Nolin*, 207 F.3d at 1258 n.4.

* * *

23-13213

Opinion of the Court

11

Because Hoffman failed to allege that Delgado and the City of Punta Gorda violated his First or Fourth Amendment rights, we **AFFIRM** the district court's order dismissing Hoffman's complaint.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 03, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-13213-AA
Case Style: Jerry Hoffman, Jr. v. Jose Dalgado, et al
District Court Docket No: 2:23-cv-00130-SPC-NPM

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons.** See 11th Cir. R. 40-3.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information: 404-335-6100

Case Administration: 404-335-6135

CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122

Capital Cases: 404-335-6200

Cases Set for Oral Argument: 404-335-6141

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MEYERS DIVISION

JERRY L. HOFFMAN, JR.,

Plaintiff,

v.

Case No. 2:23-cv-130-SPC-NPM

JOSE DELGADO and
CITY OF PUNTA GORDA,

Defendants.

OPINION AND ORDER

Before the Court are several Motions filed by Defendants Jose Delgado and City of Punta Gorda: (a) Motion to Dismiss and Motion to Strike (Doc. 20), and (b) Motion to Stay Proceedings (Doc. 27). Pro se Plaintiff Jerry L. Hoffman, Jr. has responded to all motions. (Docs. 25, 31). For the below reasons, the Court grants the Motion to Dismiss and Motion to Strike (Doc. 20) and denies as moot the Motion to Stay (Doc. 27).

BACKGROUND

As it must, the Court treats the factual allegations in the Amended Complaint (Doc. 5) as true and construes them in the light most favorable to Hoffman.¹ See *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008)

¹ Hoffman filed a Second Amended Complaint that the Court struck because it was filed with neither the Court's leave nor Defendants' consent. (Doc. 13). In so striking, the Court ordered

This civil rights action arises out of Hoffman's arrest in the lobby of the Punta Gorda Police Department. Hoffman considers himself a photojournalist. So, on July 28, 2022, he (and others) went to the Police Department "to question why no FOIA request had been responded to and to obtain complaint forms." (Doc. 5 at ¶ 8). To capture the interaction, Hoffman used "audio/video recording" from the moment he walked into the building. Hoffman requested service, and the officer at the "public's window" left without returning. About five minutes later, three officers—including Delgado—approached him with recording body cameras. Another officer confirmed that Hoffman was recording and told him to step outside the public lobby because it violated a City ordinance to video record inside any City building. Hoffman refused under the name of his constitutional right to free speech. A conflict ensued between Hoffman and Delgado. Hoffman was then arrested for assaulting a law enforcement officer, resisting arrest with violence, and trespass after warning.

Hoffman now sues the City and Delgado under 42 U.S.C. § 1983 for violating his First, Fourth, Eighth, and Fourteenth Amendment rights. (Docs. 1, 5). For their part, the City and Delgado move to dismiss the Amended

that the Amended Complaint (Doc. 5) was the operative pleading. (Doc. 13). Defendants then filed the Motions at issue.

Complaint under Federal Rule of Civil Procedure 12(b)(6), and to strike the demand for punitive damages. They also move to stay this action.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion, a plaintiff must plead enough facts to state a claim that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A claim is plausible when a plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* A plaintiff must provide more than labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007). A formulaic recitation of the elements of a cause of action will not be enough. *Id.* “Factual allegations must be enough to raise a right above the speculative level[.]” *Id.* When considering a motion to dismiss, courts must accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678.

Relevant here, pro se complaints are construed liberally and held to less stringent standards than formal pleadings that lawyers draft. *See Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But the leniency has limits. Courts neither “serve as de facto counsel for a [pro se] party,” nor “rewrite an otherwise deficient pleading in order to sustain an action.” *Id.* at 1168-69 (citation omitted); *see also Moon v. Newsome*, 863 F.2d 835, 837 (11th

Cir. 1989) (*pro se* litigants are “subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure”).

DISCUSSION

To prove a claim under § 1983, Hoffman must prove (1) a violation of a constitutional right, and (2) that the alleged violation was committed by a person acting under the color of state law. *Brennan v. Thomas*, 780 F. App’x 813, 820 (11th Cir. 2019). The first element is at issue. As best the Court can tell, Hoffman brings these constitutional claims against the City and Delgado:²

- free speech and retaliation under the First Amendment
- false arrest and excessive force under the Fourth Amendment
- due process violations under the Fourteenth Amendment
- cruel and unusual punishment under the Eighth Amendment

(Doc. 5). The Court will address the plausibility of each claim as alleged in turn.

1. First Amendment

Hoffman generally argues that the prohibition on him recording in the Police Department is an impermissible restriction on his First Amendment rights. (Doc. 5). The prohibition comes from the City’s Ordinance Chapter 15 Sections 15-48(d)-(e) that prohibits recording video or audio in City-owned,

² Hoffman also makes a malicious prosecution claim and demand for writ of Quo Warranto. But he does not oppose their dismissal. (Doc. 25 at 8). The Court thus dismisses Hoffman’s malicious prosecution claim and denies him a writ of Quo Warranto.

controlled, and leased property without the consent of all people. Under the Ordinance, the Police Department is a limited public forum. *See City of Punta Gorda Ordinance Chapter 15, Section 15-48(e)*. The designation means the City may regulate the time, place, and manner of speech if it uses content-based regulations that are viewpoint neutral. *Crowder v. Housing Auth. Of City of Atlanta*, 990 F.2d 586, 591 (11th Cir. 1993). But, according to Hoffman, the Ordinance is “strictly content oriented” and “overbroad.” (Doc. 5 at ¶¶ 64, 65).

The Court need look no further than *Sheets v. City of Punta Gorda* to reject Hoffman’s argument. 415 F. Supp. 3d 1115, 1122, 1128 (M.D. Fla. 2019). In *Sheets*, the Court found the same Ordinance viewpoint neutral, as it made no distinction based on any viewpoint of the individual recording, and the Court held the Ordinance was constitutionally permissible under the First Amendment. *Sheets*, 415 F. Supp. 3d at 1124. Although *Sheets* addressed restrictions with audio/video recording in public facilities like City Hall, the reasoning equally applies to recording in the Police Department. So Hoffman’s recording in the Police Department was not activity protected under the First Amendment. The Court thus dismisses the free speech claims.

Hoffman also raises First Amendment retaliation claims. To state a claim for First Amendment retaliation under § 1983, a plaintiff generally must plead that: (1) the plaintiff engaged in constitutionally protected speech; (2)

the “defendant's retaliatory conduct adversely affected the protected speech”; and (3) the retaliatory action caused the adverse effect on plaintiff's speech. *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005). As discussed, Hoffman’s recording in the Police Department was not activity protected under the First Amendment.

To the extent Hoffman argues that his arrest was in retaliation for exercising his First Amendment rights, the Supreme Court, in *Nieves*, held, “The plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest.” *Nieves v. Bartlett*, 139 S. Ct. 1715, 1724 (2019). As will be analyzed in the next section, probable cause existed for Hoffman’s arrest.

Because Hoffman’s recording in the Police Department was not activity protected under the First Amendment, and because probable cause existed for Hoffman’s arrest, there can be no First Amendment Retaliation claim. *Bennett*, 423 F.3d at 1250; *Nieves*, 139 S. Ct. at 1724. The Court thus dismisses any retaliation claim.

2. Fourth Amendment

Hoffman claims that Delgado violated his Fourth Amendment rights when he confiscated Hoffman’s body worn camera without a warrant and when he battered, detained, and arrested Hoffman, “knowingly without justification and probable cause and based upon a false and fabricated justifications [*sic*] on

his official arrest report.” (Doc. 5 at ¶ 50). Hoffman further asserts that Delgado “effected an unreasonable seizure and arrest of Plaintiff, and used excessive force doing same that caused Plaintiff permanent personal injury, emotional suffering, and other manner of damages.” *Id.*

A person is seized under the Fourth Amendment when an officer, “by means of physical force or show of authority, terminates or restrains his freedom of movement through means intentionally applied.” *Brendlin v. California*, 551 U.S. 249, 254 (2007). A Fourth Amendment seizure requires an objective manifestation of “an intent to restrain.” *Torres v. Madrid*, 141 S. Ct. 989, 998 (2021).

Addressing first Hoffman’s false arrest claim, the existence of probable cause bars a § 1983 claim for false arrest. *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996). A law enforcement officer has probable cause to arrest a suspect when “a reasonable officer could conclude . . . that there was a substantial chance of criminal activity.” *District of Columbia v. Wesby*, 138 S.Ct. 577, 588 (2018); *see also Washington v. Howard*, 25 F.4th 891, 902 (11th Cir. 2022). In determining whether an officer had probable cause for an arrest, the Court looks to the events preceding the arrest “from the standpoint of an objectively reasonable police officer.” *Wesby*, 138 S.Ct. at 586. Probable cause requires only “a probability” or “substantial chance of criminal activity, not an actual showing of such activity.” *Id.*

The starting point here is the Ordinance being constitutional. *Sheets*, 415 F. Supp. 3d at 1124. From there, Hoffman makes several key admissions. He admits that he was recording inside the Police Department lobby. (Doc. 5 at ¶¶ 10-11). Hoffman also says that an officer directed him outside because he was illegally recording under the Ordinance. He then maintains he asked officers what would happen if he did not leave and if he would be arrested if he did not follow the officer's direction. (*Id.* at ¶¶ 14-19). Hoffman acknowledges that he was still recording in the lobby when he asked to speak with the Police Information Officer, and when Delgado entered the lobby. (*Id.* at ¶¶ 21-24). So, by Hoffman's own account, he violated the Ordinance and failed to comply with the Officers' commands.

During Delgado's attempt to arrest Hoffman, Hoffman admits saying, "Get off me cop!," "You're a piece of shit. You're a piece of garbage buddy" and admits, "while saying, 'Get off me man' . . . [he] quickly moves [his] own left elbow, with left hand still holding the camera phone, straight down and away from Defendant Delgado towards Plaintiff breaking the pain compliant hold Defendant Delgado ha[d] on Plaintiff's person." (Doc. 5 at ¶ 34). Hoffman therefore acknowledges resisting arrest. So, by Hoffman's own allegations, probable cause existed to arrest him for violating the Ordinance and for resisting arrest, in violation of Fla. Stat. § 843.01, resisting an officer with violence to his or her person, and Fla. Stat. § 843.02, resisting an officer

without violence to his or her person. Hoffman's false arrest claim will therefore be dismissed.

Turning to Hoffman's excessive force claim, Hoffman alleges that Delgado used excessive force when he:

- "shoved Plaintiff directly into a protruding wall corner where Plaintiff fell"
- "grabb[ed] Plaintiff's left wrist and attempt[ed] to drag Plaintiff towards the exit"
- put a "pain compliant hold on Plaintiff's left, bent elbow with Plaintiff's video recording phone in Plaintiff's left hand and pushe[d] Plaintiff towards the exit less than two feet away"
- struck "Plaintiff so hard the blow immediately shuts off Plaintiff's recording camera phone and the damaged camera goes flying into the wall"
- grabbed "Plaintiff's left arm, again, swinging Plaintiff around and into a closed door and onto the floor"
- "cruelly and unnecessarily lands on Plaintiff's back with a knee strike causing Plaintiff considerable agony and bodily damage to that area"
- "grabb[ed] and twist[ed] Plaintiff's left wrist in a pain compliant hold"

- “switch[ed] knees and twist[ed] Plaintiff’s left wrist viciously and unnecessarily, deliberately land[ing] a second knee strike ... to the back of Plaintiff’s exposed neck, causing more bodily damage and severe pain”
- “pull[ed] viciously and forcefully on the handcuffs straight upwards and towards Plaintiff’s face down head in order to inflict more abuse and pain, very nearly separating Plaintiff’s shoulders out of the shoulder sockets.”

(Doc. 5 at ¶¶ 26-40). After his arrest, Hoffman “went to the hospital for scans to determine any bones broken [sic], but no broken bones were found.” (*Id.* at ¶ 45).

The Eleventh Circuit says “the application of *de minimis* force, without more, will not support a claim for excessive force in violation of the Fourth Amendment.” *Nolin v. Isbell*, 207 F.3d 1253, 1257 (11th Cir. 2000). After all, “the right to make an arrest necessarily carries with it the right to use some degree of physical coercion or threat thereof, and the typical arrest involves some force and injury.” *Sebastian v. Ortiz*, 918 F.3d 1301, 1308 (11th Cir. 2019). The key inquiry then is whether the officer’s use of force was “objectively reasonable” under the circumstances. *Graham v. Connor*, 490 U.S. 386, 388, 397 (1989). The “reasonableness of a particular use of force” is judged

from the perspective of a reasonable officer on the scene, and not by the “20/20 vision of hindsight.” *Id.* at 396.

Hoffman went to the hospital to get checked out and underwent “scans” to determine whether he had any broken bones. (Doc. 5. at ¶ 45). No broken bones were found. (*Id.*) The Eleventh Circuit has held in similar situations that the force of which Hoffman complains was *de minimis* or otherwise did not violate the Fourth Amendment. *See., e.g., Nolin*, 207 F.3d at 1255 (holding that an officer grabbing the suspect and shoving him a few feet against a vehicle, pushing his knee into the suspect’s back and the suspect’s head against the vehicle was *de minimis* force); *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) (holding that officer did not use excessive force when he “grabbed plaintiff’s arm, twisted it around plaintiff’s back, jerking it up high to the shoulder and then handcuffed plaintiff as plaintiff fell to his knees screaming that [the officer] was hurting him,” noting that “[p]ainful handcuffing, without more, is not excessive force in cases where the resulting injuries are minimal”); *Jones v. City of Dothan*, 121 F.3d 1456, 1460-61 (11th Cir. 1997) (*de minimis* force when police slammed the suspect against the wall, kicked his legs apart and required him to raise his arms above his head as officers carried out arrest). Hoffman’s Fourth Amendment excessive force claims will be dismissed.

3. Fourteenth Amendment Due Process Claims

Hoffman generally alleges that Delgado violated his Fourteenth Amendment Due Process rights through the violation of his Fourth Amendment rights when Delgado detained and arrested Hoffman and confiscated his body worn camera.³ (Doc. 5 at ¶ 50).

When, as here, a plaintiff's Fourteenth Amendment claim is brought because of the alleged violation of another constitutional provision, the claim is analyzed under the standard related to the constitutional provision at issue, not under the Fourteenth Amendment. *See Cnty. of Sacramento v. Lewis*, 523 U.S. 883, 841 n. 5 (1998); *Graham*, 490 U.S. at 394. Hoffman's other constitutional claims have been analyzed above.

It is unclear if Hoffman makes procedural and substantive due process claims. Still, he falls far short of plausibly pleading either. As much as Hoffman brings a procedural due process claim, he must allege "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Cantron v. City of St.*

³ In responding to the Motion to Dismiss, Hoffman asserts that the City violated his Fourteenth Amendment Due Process rights by violating his Fifth Amendment rights. (Doc. 25 at 22). But the Amended Complaint only says, "This is an action for violation of Plaintiff's rights under the First, Fourth, Eighth, and Fourteenth Amendments of the United States Constitution, to enjoy freedom of speech, to be secure in person and possessions, to be free from cruel and unusual punishment and excessive force." (Doc. 5 at ¶ 1). Because the Amended Complaint raises no Fifth Amendment claim, Hoffman cannot add it in his Response. Accordingly, a Fifth Amendment claim is not properly before the Court.

Petersburg, 658 F.3d 1260, 1266 (11th Cir. 2011). Here, he generally claims that Delgado committed “perjury in his official arrest report.” (Doc. 5 at 47). But he neither offers facts on the process given to him nor allegations that any such process was constitutionally insufficient. And, as much as Hoffman’s Due Process claim is based on his challenge of the Ordinance, this Court already held that the Ordinance is constitutionally permissible and does not deprive an individual of due process. *Sheets*, 415 F. Supp. 3d at 1122. The Court thus dismisses the Fourteenth Amendment claims.

4. Eighth Amendment Claims

Although Hoffman alleges that Delgado violated his right to be free from cruel and unusual punishment, the Eighth Amendment applies only after a prisoner is convicted. *See Graham v. Connor*, 490 U.S. 386, 398 (1989); *United States v. Myers*, 972 F.2d 1566, 1571 (11th Cir. 1992). Because Hoffman’s criminal case is still pending, he is not a convicted prisoner. Without that label, Delgado cannot have violated Hoffman’s Eighth Amendment rights. The Eighth Amendment claims will be dismissed.

5. Municipal Liability Claims

Finally, Hoffman seeks to impose § 1983 liability on the City for failing to supervise and discipline Delgado, “even after being so warned of repeated” complaints and concerns “as noticed by independent news source’s videos of [Delgado’s] improper action.” (Doc. 5 at ¶ 57). *Respondeat superior* is not a

basis for the imposition of municipal liability under § 1983. *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 692 (1978). For a municipality to face § 1983 liability, a plaintiff must allege facts showing: (1) his constitutional rights were violated; (2) the municipality had a custom, policy, or practice that constituted deliberate indifference to that constitutional right; and (3) the municipal custom, policy, or practice caused the constitutional violation. *Monell*, 436 U.S. at 691. The municipal custom, policy, or practice must be the “moving force” behind the constitutional violation. *City of Canton v. Harris*, 489 U.S. 378, 391 (1989). Isolated incidents do not create a custom, policy, or practice. *Depew v. City of St. Mary's*, 287 F.2d 1496, 1499 (11th Cir. 1986).

Although Hoffman alleges that Delgado “violated the rights of many people before Plaintiff” (Doc. 5, ¶ 63), this allegation is conclusory. Hoffman also argues that “the City was aware or should have been aware of the need to train officers, such as Delgado” but “lacked any policy or process to train officers, or even supervisors . . . and the lack of such training policy, process or program was inadequate to protect the rights of citizens.” (Doc. 5 at ¶ 58, 59). These allegations are also unsupported and conclusory. Unsupported, conclusory allegations do not establish a custom, policy, or practice sufficient to support imposing municipal liability under *Monell* and cases applying it. Hoffman’s municipal liability claims will be dismissed.

6. Punitive Damages

The City and Delgado also move to strike Hoffman's demand for punitive damages from the City, arguing they are unavailable against government entities under either § 1983 or Florida law. (Doc. 20 at 17-18). Although punitive damages may be awarded against municipal employees in their individual capacities, such damages may not be awarded against the municipalities. *City of Newport v. Fact Concerts Inc.*, 453 U.S. 247, 271 (1981). That is generally because municipalities are open to suit for failure to follow constitutional rights and federal law; so allowing punitive damages could create a serious risk to the financial integrity of these governmental entities. *Id.* Because punitive damages are unavailable against government entities, Hoffman cannot receive punitive damages from the City. The Court thus strikes Hoffman's demand for punitive damages.

7. Qualified Immunity

Delgado also moves for qualified immunity. Qualified immunity is a defense that "shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). Plaintiff has not stated a constitutional claim for which relief can be granted. Because there are

no underlying constitutional violations, the Court need not explore qualified immunity.

8. Motion to Stay

The City and Delgado also move to stay this case because of Hoffman's pending criminal charges and their intersection with his malicious prosecution claim here. (Doc. 27). But Hoffman concedes the dismissal of his malicious prosecution claim. Because of his concession, there is no need to stay this case because of the criminal charges. (Doc. 25 at 8). The Court thus denies as moot the Motion to Stay.

Accordingly, it is now **ORDERED**:

1. The Motion to Dismiss and Motion to Strike (Doc. 20) is **GRANTED**.

a. The Amended Complaint (Doc. 5) is **DISMISSED** with **prejudice**.

2. The Motion to Stay Proceedings or, in the Alternative, Motion to Abstain and Dismiss Without Prejudice with Incorporated Memorandum of Law (Doc. 27) is **DENIED** as moot.

DONE and ORDERED in Fort Myers, Florida on September 21, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All parties of record

FILED

UNITED STATES DISTRICT COURT 2023 APR 12 AM 11:27
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JERRY L. HOFFMAN JR.
Plaintiffs,

v.

First Amended
No. 2:23-cv-00130-SPC-NPM

JOSE DELGADO,
CITY OF PUNTA GORDA
Defendants,

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, **JERRY L. HOFFMAN JR.**, by Pro Se litigation, sues Defendants, **CITY OF PUNTA GORDA FLORIDA**, in its official capacity, and **JOSE DELGADO**, a Detective employed by the City of Punta Gorda, in his official capacity and in his individual capacity, and hereby alleges as follows. This amended complaint is filed as a matter of right pursuant to the Federal Rules of Civil Procedures.

APPENDIX B
complaint

INTRODUCTION

1. This is an action for violation of Plaintiff's rights under the First, Fourth, Eighth and Fourteenth Amendments of the United States Constitution, to enjoy freedom of speech, to be secure in person and possessions, to be free from cruel and unusual punishment and excessive force. Plaintiff seeks damages as well as any fees and costs associated with this action.

2. This action is brought by Plaintiff, a citizen of the United States, who was the victim of retaliatory arrest, with cruel and unusual punishment, willful and purposeful unreasonable seizure his of person, without probable cause, justification or excuse and interference with and denial of Plaintiff's right to free speech by denial of and interference with Plaintiff's right to gather information about public officials in a form readily disseminated to others so as to promote free discussion of government affairs and which was made and done for malicious purposes only.

JURISDICTION AND VENUE

3. This action arises under 42 U.S.C. ^{ss} 1983 & ^{ss}1988. Jurisdiction is founded on 28 U.S.C. ^{ss}1331 & ^{ss}1343.

4. All incidents material to this action occurred in Charlotte County, Florida and the Defendants "reside" in Charlotte County. Venue is therefore proper in the Fort Myers Division of the Middle District of Florida pursuant to 28 U.S.C. §1319(b), and Local Rule 1.04(a).

PARTIES

5. Plaintiff, Jerry L. Hoffman Jr., is an adult citizen of the United States and is currently a resident of Williston, Levy County, Florida, and was a resident of Levy County, Florida, during all relevant times of this action.

6. Defendant, City of Punta Gorda (hereafter "City"), is an incorporated municipality of the State of Florida, and at all times relevant did, and still does, operate the City of Punta Gorda Police Department as a department of said municipality, and said City employs all police officers who work for its City of Punta Gorda Police Department.

7. At all times relevant, Defendant, Jose Delgado, was employed by the City of Punta Gorda in its City of Punta Gorda Police Department as Police Officer and was at all times applicable holding the rank of Detective and was at all times relevant, a supervisor in the City of Punta Gorda Police Department.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. On 28 July 2022, at or around 2:00pm, Plaintiff and three other photojournalists entered the City of Punt Gorda Police Department (hereafter, "City Police Department") to question why no FOIA request had been responded to and to obtain complaint forms.

9. Plaintiff planned to exercise Plaintiff's First Amendment Right of freedom of speech in the form of audio/video recording the interaction with the City Police Department, which is a well-established form by the Supreme Court, of freedom of speech.

10. Plaintiff was recording upon entering the public facility lobby and went to the public's window for service and requested service.

11. Very shortly after the officer behind the window was aware Plaintiff was recording, the City Police Department officer left the window without returning, denying service.

12. Five minutes after the denial of service, three officers, wearing body worn cameras (hereafter BWC) and recording, entered the public lobby of the City Police Department and started interacting with Plaintiff and the others with Plaintiff.

13. The three Officers were Watch Commander Jimenez, Officer Miller, and Officer Burga.

14. Watch Commander Jimenez greeted the group, and Plaintiff requested a complaint form and was asked by Watch Commander Jimenez if Plaintiff was recording and if so, then please step outside the public lobby due to City ordinance, Chapter 15, Section 15-48(d)-(e), making it illegal to video record inside any City controlled facility.

15. Plaintiff, knowing Davis v. Wechsler 236 U.S. 22at 24, The assertion of Federal Rights, when plainly and reasonably made, is not to be defeated under the name of local practices, immediately informed Watch Commander Jimenez that he would be violating plaintiff's Constitutional rights by enforcing the request.

16. Watch Commander Jimenez again asked, "Would you please step outside." due to Plaintiff recording.

17. Plaintiff, knowing this to be a request, asked what would occur if the request was denied by Plaintiff.

18. Plaintiff being threatened with trespass without due process by Watch Commander Jimenez, and Plaintiff having violated no laws outside or

inside the public government facility and knowing a law must be violated by Plaintiff, or a disturbance created by Plaintiff, to be trespassed from a public government facility, turned to question Officer Miller.

19. Plaintiff asked Officer Miller, "If we don't comply with the request are you going to arrest us?"

20. Officer Miller responded with "I mean you get a ticket, it's not arrestable." and further explained "It would be an ordinance violation, you would be paying a fine."

21. Plaintiff's explanation to Officer Miller that Plaintiff was not a threat and was willing to comply with the request because Plaintiff wanted no trouble with the City Police Department, was captured on several video recordings and by the lobby cameras.

22. Officer Miller said, "your (Plaintiff) being fine, your being fine. You're willing to step outside."

23. Plaintiff requested to speak with the Police Information Officer (hereafter PIO).

24. At that moment, Detective Jose Delgado entered the public lobby and stated, "Have them step outside" and went directly towards Plaintiff.

25. Plaintiff, being a disabled person and fearful due to the Defendant's angry demeanor, saw the Defendant was rapidly approaching and Plaintiff said, "Please don't touch me."

26. Defendant immediately and unlawfully, and with anger, forcefully shoved Plaintiff directly into a protruding wall corner where Plaintiff fell.

27. From the floor, Plaintiff exclaimed, "What the hell's the matter with you?" knowing, according to common law Tort (4th Ed. 1971), the intentional behavior to be unlawful, and Plaintiff's statement obviously angering Defendant Delgado.

28. Defendant Delgado then reached down and again assaulted Plaintiff a second time by grabbing Plaintiff's left wrist and attempting to drag Plaintiff towards the exit, causing severe pain in Plaintiff's left arm and shoulder.

29. As Defendant is dragging Plaintiff, making it impossible for Plaintiff to regain footing, Defendant forcefully says, "Get up."

30. Plaintiff says, "Get off me cop!" and Defendant ceases assaulting Plaintiff by attempting to drag Plaintiff and releases his hold on Plaintiff's left wrist but still standing over Plaintiff menacingly and allowing Plaintiff to slowly and painfully regain footing while Plaintiff is saying, "You're a piece of shit."

You're a piece of garbage buddy." and Defendant responds with "Then get up. Get that drama outa here. You don't tell me no." in obvious anger, and on the verge of rage.

31. At this point Plaintiff has not been informed of a citation, or of a detainment or of arrest but has been molested and battered unlawfully according to Tort law, by Defendant Delgado, due to Plaintiff lawfully recording in the public lobby of the City Police Department.

32. Immediately after Plaintiff regained footing and is attempting to leave and is facing the exit, and is still no threat and weaponless, Defendant Delgado assaults Plaintiff again, for a third time, with a pain compliant hold on Plaintiff's left, bent elbow with plaintiff's video recording phone in Plaintiff's left hand and pushes Plaintiff towards the exit less than two feet away.

34. Plaintiff, while saying "Get off me man", and still not detained or arrested, quickly moves plaintiff's own left elbow, with left hand still holding the camera phone, straight down and away from Defendant Delgado towards Plaintiff breaking the pain compliant hold Defendant Delgado has on Plaintiff's person and enraging Defendant Delgado even more.

35. A full second goes by and Defendant Delgado retaliates by striking Plaintiff so hard the blow immediately shuts off plaintiff's recording camera phone and the damaged camera phone goes flying into the wall as Defendant Delgado, now in a rage, falsely accuses Plaintiff by saying, "You can't strike me" loudly for the other officers in the room to hear and grabs Plaintiff's left arm again, swinging Plaintiff around and into a closed door and onto the floor while saying "Your under arrest."

37. Plaintiff hearing Defendant Delgado say the words "you're under arrest", lays unmoving, unresisting and in painful shock on the floor where thrown by Defendant, as Defendant Delgado cruelly and unnecessarily lands on Plaintiff's back with a knee strike causing plaintiff considerable agony and bodily damage to that area and grabbing and twisting Plaintiff's left wrist in a pain compliant hold.

38. Defendant orders Plaintiff to "put your hands behind your back" and switching knees and twisting Plaintiff's left wrist viciously and unnecessarily, deliberately lands a second knee strike, this time to the back of Plaintiff's exposed neck, causing more bodily damage and severe pain, all while Plaintiff

remains prone and unresisting on the floor in a state of shock and complying with, and answering Defendant Delgado's order with "Yes sir".

39. After the retaliatory arrest, wrist twisting, and two unnecessary and damaging knee strikes against Plaintiff, Defendant Delgado handcuffs the still unresisting Plaintiff while Watch Commander Jimenez, with BWC recording, is kneeling on the floor close beside Plaintiff's head to assist Defendant.

40. Immediately after Plaintiff is retaliatorily arrested and handcuffed, Defendant stands up and using more excessive force, pulls viciously and forcefully on the handcuffs straight upwards and towards Plaintiff's face down head in order to inflict more abuse and pain, very nearly separating Plaintiff's shoulders out of the shoulder sockets and demanding impossibly for Plaintiff to, "Get up".

41. Plaintiff screams in pain attempting to inform Defendant Delgado of Plaintiff's disabilities, to no avail due to Defendant Delgado's rage.

42. Defendant finally allowed Plaintiff to stand as ordered but Plaintiff required assistance from Watch Commander and Defendant to stand.

43. Plaintiff was moved to a back room of the City Police Department and questioned by still angry Defendant without Miranda warning.

44. Plaintiff was never searched in any way and was retaliatorily arrested and falsely charged with assaulting an Officer/EMT, resisting arrest with violence and trespass after warning on Defendant Delgado's perjured arrest report, and Plaintiff's BWC was stolen by the police, for exercising Plaintiff's First Amendment Right to video record in public.

45. After the excessive force retaliatory arrest, Plaintiff went to the hospital for scans to determine any bones broken, but no broken bones were found and Plaintiff was then kidnapped for 65 hours.

46. Had Defendant Delgado been using a BWC as required of him by the City Police Department policy, such video and audio would have confirmed that all the events set forth by Plaintiff are true and correct.

47. Plaintiff's own video, Officer's BWC videos, the City Police Department's public lobby's camera's videos and audio confirms that all the events set forth by Plaintiff are true and correct.

46. Prior to the events with Plaintiff on 28 July 2022, Defendant has been shown on independent news videos to deliberately violate citizens Civil Rights with violence and without regard for consequences.

47. Defendant Delgado committed perjury in his official arrest report.

48. Prior to the events on 28 July 2022 Defendant Delgado had received no de-escalation training.

COUNT 1 - 42 U.S.C. ^{ss} 1983 CLAIM AGAINST DEFENDANT DELGADO

49. Plaintiff realleges paragraphs 1 through 48, *supra*.

50. Defendant Delgado, by his actions alleged above, in confiscating Plaintiff's BWC without a warrant, and in battering, detaining and arresting Plaintiff, knowingly without justification and probable cause and based upon false and fabricated justifications on his official arrest report, effected an unreasonable seizure and arrest of Plaintiff, and used excessive force doing same that caused Plaintiff permanent personal injury, emotional suffering, and other manner of damages, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, and same is actionable under 42 U.S.C ^{ss} 1983.

51. Defendant Delgado, acting under color of law, see *Williams v United States* 341 U.S. at 101, 71 S. Ct.at 579, and by his actions alleged above, in

battering, dragging, knee kicking unresisting plaintiff, wrist twisting and violently pulling arms upwards toward the head on facedown handcuffed Plaintiff in order to punish without adjudication and cause undue pain, as in *Rochin*, this behavior "shocks the conscience" and violating section 20 (See *United States v. Classic*, 313 U. S. 299, 313 U. S. 326) and the due process of Plaintiff's Eighth and Fourteenth Amendment, and caused Plaintiff permanent personal injury, emotional suffering, and other manner of damages, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and same is actionable under 42 U.S.C. ^{ss} 1983.

52. Defendant Delgado, by his actions alleged above, in arresting, detaining, (see *California v Hodari* (1991) "the mere grasping") cruelly punishing and battering, because Plaintiff was video recording police in public, a recognized and protected form of freedom of speech under the First Amendment, (see *See Toole v. City of Atlanta*, 798 F. App'x 381, 387–88 (11th Cir. 2019); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000).) and in instigating his detention, punishment and battery of Plaintiff de facto in punishment for Plaintiff video recording in the City Police Department's public lobby and to

dissuade and discourage Plaintiff from making video recordings of Defendant or other police officers in the future, knowingly without justification or probable cause, and based upon false and fabricated justifications invalid under the law, effected an unreasonable seizure and arrest of Plaintiff, and used excessive force doing same that caused Plaintiff permanent personal injury, as well as mental pain and suffering, in violation of the First Amendment and Fourteenth Amendments to the United States Constitution, and same is actionable under 42 U.S.C. ^{§§} 1983.

53. As a result of Defendant Delgado's intentionally perjuring his sworn affidavit (*See, United States v. Debrow*, 346 U.S. 374, 377 (1953)) on 28 July 2023, at 17:59:59hrs, sworn to by means of physical presence before notary public Fernando Burga, who signed same at 28 July 2023, at 18:00:44hrs, the affidavit is vastly incongruent with police BWC videos, and Defendant Delgado's malicious conduct respecting Plaintiff, Plaintiff was kidnapped for sixty-five hours and is falsely charged with felonies and is defending same in court. Plaintiff has suffered and continues to suffer a complete lack of interest in photojournalism, lack of interest in friends and family, has suffered and continues to suffer serious physical injuries consisting of soft tissue damage to

neck and lower back confining Plaintiff mostly to bed, Plaintiff has suffered and continues to suffer psychological injuries consisting of mental pain, anguish, humiliation, shame, and public ridicule, as well as suffered inconvenience, discomfort, and financial expense.

Wherefore, Plaintiff demands judgement against Defendant Delgado for compensatory damages, property damages in the amount of \$840.00, punitive damages in the amount of \$5,000,000.00, court costs if any arise, attorneys' fees if any arise, and all other relief the Court finds just and proper.

COUNT TWO - 43 U.S.C. ^{ss} 1983 CLAIM

AGAINST DEFENDANT CITY OF PUNTA GORDA

54. Plaintiff realleges paragraphs 1 through 48, *supra*.

55. Defendant City instituted ordinance, Chapter 15, Section 15-48(d)-(e) and other practices which lead to the Constitutional violations outlined in this complaint, and caused Plaintiff's injuries, all in violation of the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, and same is actionable under the 42 U.S.C. ^{ss} 1983.

56. At all times relevant and with the failures above-stated, despite its notice regarding the propensity and history for Defendant Delgado to engage

in Constitutional rights deprivations, as well as his honesty problems, as seen in his report versus the police body worn cameras' videos of the encounter, the City had a policy or policies related to training Defendant Delgado and other officers generally which policy was that training, in fact, was simply not required, and therefore such policies were objectively deliberately indifferent to the likelihood that a particular Constitutional violation - violently detaining and battering a citizen with zero probable cause for either - would occur.

57. At all times relevant, the City failed to supervise and discipline Defendant Delgado by failing to supervise properly and discipline him properly so as to avoid violating the Constitutional rights of citizens, even after being so warned of repeated concerns in that regard respecting Defendant Delgado by complaints and as noticed by independent news source's videos of Defendant's improper actions, which notices were wholly sufficient to put the City on notice that supervision and discipline of Defendant Delgado - at least - was required.

58. At all times relevant, the City was aware or should have been aware of the need to train officers, such as Defendant Delgado, so that officers

followed a policy and process of making Constitutionally-sound detentions of and interactions with citizens, such as Plaintiff.

59. The City lacked any policy or process to train officers, or even supervisors, in this regard, and the lack of such training policy, process or program was inadequate to protect the rights of citizens by the officers who are intended to protect them.

60. As such, the actions of the City were sufficiently deliberately indifferent to the rights of citizens that its deliberate indifference was its official policy.

61. Had any of such proper training processes been done by the City prior to the detention of Plaintiff by Defendant Delgado, the violation of Plaintiff's Constitutional rights would not have occurred.

62. Even if the need to train and supervise officers generally was not so obvious as above pleaded, there was a sufficient pattern of Constitutional violations by Defendant Delgado that were given a "blind eye" by the City, thereby placing the City on constructive notice of the need to so train and supervise Defendant Delgado specifically.

63. Defendant Delgado violated the rights of many people before Plaintiff, and he only could accomplish that because the City never bothered to notice, care about, address or resolve his propensity to violate the rights of citizens and to be dishonest and violent in doing so.

64. At all times relevant, the City instituted ordinance, Chapter 15, section 15-48(d)-(e), which deliberately advocates for other than the Constitution of the United States, and violates the rights of its' citizens, (See *Toole v. City of Atlanta*, 798 F. App'x 381, 387–88 (11th Cir. 2019); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000), by not allowing video recording of police in public.

65. The video recording of public servants and government officials is strictly content orientated where the viewpoint is portrayed solely by the actions of the public servants and government officials recorded, weather they deem to portray themselves properly according to lawful, Constitutional activity or weather those public servants and government officials choose to portray themselves in an unlawful, Unconstitutional manner is wholly their choice, making the overbroad restrictions on video recording City police officers in public, which is

imposed by the City with Ordinance Chapter 15 Section 15-48(d)-(e) completely inverse to several Supreme Court rulings.

66. Had the City enacted proper Constitutional ordinances prior to the detention of Plaintiff by Defendant Delgado, the violation of Plaintiff's Constitutional rights would not have been violated and Plaintiff would have no need to seek Quo Warranto, to safeguard others.

66. As a result of Defendant City's improper ordinances such as Chapter 26, Section 11.5(z), Chapter 15, Section 15-48(d)-(e), and the City Council having full knowledge through discussions, emails and advice from attorneys, these ordinances are unconstitutional and enacting the ordinances regardless, and also failure to supervise and train and to properly discipline Officers in the City's employ, Plaintiff has suffered and continues to suffer physical injuries to Plaintiff's person that are permanent and continuing in nature, permanent psychological injuries consisting of mental pain and anguish, humiliation, shame, and public ridicule as well as suffered inconvenience, discomfort, and financial expense, all in violation of the First, Fourth, Eighth and Fourteenth

Amendments to the United States Constitution, and same is actionable under 42 U.S.C. ^{ss}1983.

Wherefore, Plaintiff demands judgement against Defendant City of Punta Gorda for Quo Warranto, revocation of the City's charter, compensatory punitive damages in the amount of \$5,000,000.00, plus court costs, any attorney's fees, and all other relief the Court finds just and proper.

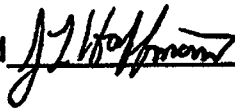
JURY DEMAND

Plaintiff demands a trial by jury on all matters so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of the Court on this 11 day of April 2023, which will send copies to all counsel of record.

There are 3526 words in this document.

Signed 

JERRY L. HOFFMAN JR.
Pro Se Litigant
18470 SE 18th LANE
Williston Florida, 32696
Phone (352)-339-4682
e-mail ImCatchULater@gmail.com

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13213

JERRY L. HOFFMAN, JR.,

Plaintiff-Appellant,

versus

JOSE DELGADO,

Detective (#718) City Police Department in his Individual Capacity,

CITY OF PUNTA GORDA,
Official Capacity,

Defendants-Appellees,

CITY OF PUNTA GORDA POLICE DEPARTMENT,
City Police Department - Official Capacity,

Appendix C

2

Order of the Court

23-13213

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cv-00130-SPC-NPM

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before JORDAN, GRANT, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 13, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-13213-AA
Case Style: Jerry Hoffman, Jr. v. Jose Dalgado, et al
District Court Docket No: 2:23-cv-00130-SPC-NPM

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

COURT ORDER/NOTICE/MINUTES
Charlotte County, Florida

FAILURE TO APPEAR MAY RESULT IN A FORFEITURE OF A BOND AND/OR BENCH WARRANT

Judge: LISA S PORTER Type of Court: CRIMINAL SENTENCING 17:03
Seq#: 1 Case#: 22001209F Date: 12/28/2023 Time: 12:00 pm
Name JERRY LAMAR HOFFMAN Def. Present Y/N: Y Bondsman: _____ Amt. \$ 0.00
Cnt: Lvl: Deg: Ticket#: Agency: Statute
1 F T BATTERY ON OFFICER OR FIREFIGHTER, ETC 2573
2 F T RESIST/OBSTRUCT/OPPOSE OFFICER WITH VIOLENCE 3142
3 M F TRESPASS IN AN OCCUPIED STRUCTURE OR CONVEYANCE 2771
Attorney: RICHARD ALLEN RUHL Present Y/N: _____ ASA: NOLAN M DEMING ✓
Clarks: marisela / Bailiff: JOE NEWTON Court Reporter: Court Smart

Bond Hearing:	Motions:	Granted:	Denied:	Reserve Ruling:
<input type="checkbox"/> Bond Revoked	<input type="checkbox"/> Payment Plan	<input type="checkbox"/>	<input type="checkbox"/> Motion to Suppress	
<input type="checkbox"/> ROR	<input type="checkbox"/> Buyout of CSH	<input type="checkbox"/>	<input type="checkbox"/> Motion to Limine	
<input type="checkbox"/> Reduced to \$ _____	<input type="checkbox"/> Convert \$ to CSH	<input type="checkbox"/>	<input type="checkbox"/> Withdraw	
<input type="checkbox"/> Denied	<input type="checkbox"/> Terminate Probation	<input type="checkbox"/>		

Arraignments:	Docket Sounding:	Plea:	State Action:
<input type="checkbox"/> Cont-Stip	<input type="checkbox"/> Cont-Stip	<input type="checkbox"/> Guilty	<input type="checkbox"/> Nolle Prosequi
<input type="checkbox"/> Cont-ASA	<input type="checkbox"/> Cont-ASA	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Dismissed
<input type="checkbox"/> Cont-PV	<input type="checkbox"/> Cont-PV	<input type="checkbox"/> Nolo Contendere	<input type="checkbox"/> No Information
<input type="checkbox"/> Cont-CRT	<input type="checkbox"/> Cont-CRT	<input type="checkbox"/> Orig Withdrawn	<input type="checkbox"/> Oral
<input type="checkbox"/> Cont-DEF	<input type="checkbox"/> Cont-DEF	<input type="checkbox"/> Oral _____ Written	<input type="checkbox"/> Written
<input type="checkbox"/> Cont-PD	<input type="checkbox"/> Cont-PD	<input type="checkbox"/> Court Accepts Plea	<input type="checkbox"/> Upgrade to Felony
<input type="checkbox"/> Plea Not Guilty	<input type="checkbox"/> Set for Trial	<input type="checkbox"/> PSI Ordered	<input type="checkbox"/> Reduced to Misdemeanor
<input type="checkbox"/> Granted 10 days	<input type="checkbox"/> Set for Plea		

Court Ordered:	Verdict:	Oaths To:
<input type="checkbox"/> Court Rm & Hall Sounded	<input type="checkbox"/> By Jury:	
<input type="checkbox"/> No Response	<input type="checkbox"/> Guilty	
<input type="checkbox"/> Bench Warrant \$ _____	<input type="checkbox"/> Not Guilty	
<input type="checkbox"/> Bond Estreated	<input type="checkbox"/> By Judge:	
<input type="checkbox"/> BW Set Aside/Recall	<input type="checkbox"/> Guilty	
<input type="checkbox"/> Bond Estr Set Aside	<input type="checkbox"/> Not Guilty	
<input type="checkbox"/> Order to Show Cause	<input type="checkbox"/> Judgment Of Acquittal	Exhibits:
<input type="checkbox"/> Remanded To Sheriff	<input type="checkbox"/> Dismissed	

Next Court Appearance:	Date:	Time:	AM / PM
<input type="checkbox"/> Arraignment Continued			
<input type="checkbox"/> Case Management Conference			
<input type="checkbox"/> Hearing			
<input type="checkbox"/> Plea & Sentencing			
<input type="checkbox"/> Jury Trial			
<input type="checkbox"/> Non Jury Trial			
<input type="checkbox"/> Calendar/Trial Call			
<input type="checkbox"/> Pre Trial Conference			
<input type="checkbox"/> VOP Hearing			
<input type="checkbox"/> Drug Court/MHC			

Comments: Plev. found guilty Court 1- by
July on 12/20/2023
Defendant sentenced

Acknowledged By: _____ Defendant's Signature

Done and ordered this Thursday, December 28, 2023 in Punta Gorda, Florida
Clerk of the Circuit Court

Presiding Judge

M. Hugo
Deputy Clerk

APPENDIX D

MANDATE

from

**DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
SIXTH DISTRICT**

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY NOTICE OF APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE, IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE DAN TRAVER, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SIXTH DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: February 17, 2025

SIXTH DCA CASE NO. 6D2024-0247

COUNTY OF ORIGIN: Charlotte County


LOWER TRIBUNAL CASE NO. 22-1209-F

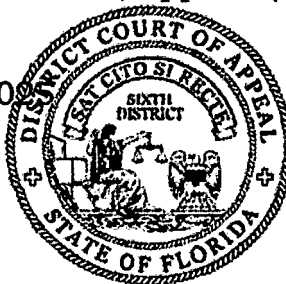
CASE STYLE: JERRY HOFFMAN, Appellant(s)

v.

STATE OF FLORIDA, Appellee(s).

6D2024-0247 February 17, 2025


Stacey Pectol
Clerk



cc:

ROGER EATON, CLERK
ATTORNEY GENERAL, TAMPA
CLARK E GREEN

HON. LISA PORTER
HELENE S. PARNES
10TH CIRCUIT PUBLIC DEFENDER

Appendix E