

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jonathan Corbett,
Plaintiff

v.

City of New York,
Officer Does 1 through 4
Defendants

11-CV-_____

**COMPLAINT FOR VIOLATIONS
OF 42 USC § 1983 AND THE
FOURTH AND FIFTH
AMENDMENTS TO THE UNITED
STATES CONSTITUTION**

JURY DEMANDED

SUMMARY

1. Plaintiff Jonathan Corbett (“CORBETT”) was detained by four New York Police Department officers (the “OFFICERS”) for no reason other than that the OFFICERS found it “suspicious” for a white male to be in a neighborhood primarily inhabited by black residents.
2. Upon exercising his constitutional right to decline to answer questions regarding from where he was coming and to where he was going, CORBETT was non-consensually and unlawfully searched by the OFFICERS in a manner that did not meet the criteria for a “Terry search” and exceeded the bounds of the same.

JURY TRIAL

3. CORBETT demands a jury trial.

PARTIES

4. CORBETT is an individual residing in the State of Florida.
5. DEFENDANT City of New York is a city incorporated under the laws of the State of New York which operates and employs all officers of the New York Police Department.
6. DEFENDANT Officer Doe 1 is an unnamed police officer with the New York Police Department named in his individual capacity, and for identification purposes occupied the driver’s seat of a police vehicle that approached CORBETT. Upon information and belief, this defendant does not reside within the State of Florida.

7. DEFENDANT Officer Doe 2 is an unnamed police officer with the New York Police Department named in his individual capacity, and for identification purposes is the officer who physically searched CORBETT. Upon information and belief, this defendant does not reside within the State of Florida.
8. DEFENDANT Officer Doe 3 is an unnamed police officer with the New York Police Department named in his individual capacity, and for identification purposes is the first of two officers who neither drove the police vehicle nor physically searched CORBETT. Upon information and belief, this defendant does not reside within the State of Florida.
9. DEFENDANT Officer Doe 4 is an unnamed police officer with the New York Police Department named in his individual capacity, and for identification purposes is the second of two officers who neither drove the police vehicle nor physically searched CORBETT. Upon information and belief, this defendant does not reside within the State of Florida.

JURISDICTION & VENUE

10. This Court has subject matter jurisdiction under 28 USC § 1331, on the basis of there being a federal question relating to the U.S. Constitution. See *Bivens v. Six Unknown Narcotics Agents*, 403 U.S. 388 (1971).
11. This Court also has subject matter jurisdiction under 28 USC § 1331, on the basis of there being a federal question relating to 42 USC § 1983.
12. This Court also has diversity jurisdiction, as the amount of the controversy exceeds US\$75,000.00 and the plaintiff, upon information and belief, resides in a state different from all defendants.
13. Venue is appropriate because Defendant City of New York is a city within the district boundaries for this Court, and because all of the remaining defendants, whose identities will be determined via discovery, are employed by the City of New York and there is therefore a high probability that all remaining defendants live in or near this Court's district.

ALLEGATIONS OF FACT

14. On or about June 17th, 2011, at or around 12:35 AM, at or around the northeast corner of Schenectady Ave. & Sterling Pl., Brooklyn, NY, CORBETT walked out of a deli after purchasing a bottle of water.

15. A group of four men (the OFFICERS) occupying an unmarked vehicle parked at the corner identified themselves to CORBETT as police officers of the New York Police Department.
16. Based on CORBETT's knowledge and belief that undercover officers with the New York Police Department often drive similar unmarked vehicles, often have exactly two or four men occupying said vehicles, based on the presence of electronic equipment between the occupants of the front seats, and based on the tone, demeanor, and appearance of the four men, CORBETT believed, and still believes, that these men correctly identified themselves.
17. There was nothing that stood out about CORBETT's appearance, clothing, behavior, or demeanor at the time he was confronted and at all times immediately prior.
18. Officer Doe 1 began by asking CORBETT, "What are you doing in this neighborhood?"
19. All four OFFICERS appeared to CORBETT to be medium to dark skinned individuals.
20. CORBETT is a light-skinned Caucasian.
21. The OFFICERS implied to CORBETT through their questioning and tone of voice that it was unusual for white people to be in that neighborhood, and that this was the reason for questioning CORBETT.
22. Other than the incident described herein, CORBETT has never felt that a police officer has taken any action relating to him based on his race.
23. Officer Doe 1 continued to ask CORBETT why he was where he was, including asking questions as to where he was coming from and where he was going.
24. CORBETT respectfully and calmly declined to describe his past and future whereabouts to Officer Doe 1.
25. Officer Doe 1 asked CORBETT to produce identification.
26. CORBETT respectfully and calmly declined to produce identification.
27. CORBETT asked Officer Doe 1 if he was being detained or if he was free to go.
28. Officer Doe 1 responded that he was being detained and was not free to go.

29. Officer Does 2 and 3 exited the vehicle; Officer Doe 2 approached CORBETT while Officer Doe 3 remained further away from CORBETT.
30. Officer Doe 2 informed CORBETT that the area is a “high drug trafficking area,” that the OFFICERS were conducting an investigation, and that CORBETT was the subject of their investigation.
31. Officer Doe 2 then informed CORBETT that he would be searching CORBETT.
32. CORBETT replied to Officer Doe 2, loudly enough that the other OFFICERS would be able to hear, that CORBETT did not consent to the search but would not physically resist the search.
33. One of the officers responded to CORBETT that his consent was not necessary.
34. CORBETT asked the OFFICERS if this was to constitute a “Terry search.”
35. Officer Doe 1 responded that this would not be a “cavity search.”
36. CORBETT clarified for Officer Doe 1 that he said “Terry” and not “cavity.”
37. The OFFICERS seemed confused at this question, and eventually one of them gave CORBETT an answer that was, substantially, “yeah, whatever.”
38. There was nothing regarding CORBETT’s appearance, clothing, behavior, or demeanor that would have suggested that he was armed or dangerous.
39. A reasonable individual would have had no reason to fear that CORBETT was armed or dangerous, or about to cause physical violence in any way.
40. Officer Doe 2 proceeded to search CORBETT using a “frisk” method of search whereby he moved his hands over the clothing of CORBETT.
41. Officer Doe 2 concentrated on the pockets of CORBETT’s jeans for approximately one full minute, carefully palpating soft objects he could feel inside of them.
42. There were no hard objects that could have even vaguely resembled a weapon in the areas on which Officer Doe 2 was concentrating.

43. The contents of the pockets on which Officer Doe 2 was concentrating consisted solely of cash and receipts.
44. At no point during this evening was CORBETT in possession of any weapons, drugs, or contraband of any kind.
45. Officer Doe 2 completed his search and instructed CORBETT to remove the contents of his pockets.
46. CORBETT declined to remove the contents of his pockets.
47. The OFFICERS continued their questioning and repeatedly threatened CORBETT with spending the night in jail if he did not answer their questions and produce identification.
48. CORBETT continued to decline to produce identification and to answer all questions, except for his name, date of birth, and place of residence.
49. After approximately 10 minutes, the OFFICERS, without explanation to CORBETT, decided to discontinue their questions and “investigation” and told CORBETT to “have a nice night.”
50. At no point during this encounter did CORBETT ever see any indication that any of the OFFICERS were uncomfortable with initiating or continuing the unlawful detention of CORBETT.
51. On or about June 20th, 2011, CORBETT served upon the City of New York a “Notice of Claim¹” that detailed this incident.

CLAIMS FOR RELIEF

Count I - Violations of 42 USC § 1983

52. The OFFICERS initiated contact with CORBETT because they found him to be suspicious solely based on his race.

¹ The service of a Notice of Claim is required prior to bringing state law claims against a New York government entity, such as the City of New York. No such service is required to bring the federal law and constitutional claims brought herein, however the Plaintiff mentions this Notice of Claim because he may seek leave to amend this complaint with additional claims based on New York law at a later time. The city assigned this claim #2011PI024362.

53. As CORBETT refused to answer any questions other than his name, date of birth, and place of residence, the OFFICERS gained no additional reasons to detain CORBETT between the time that they approached CORBETT and the time that they told him he was being detained².
54. CORBETT's detention constitutes a deprivation of "rights, privileges, or immunities."
55. Defendant City of New York is responsible for the training of all New York Police Department officers.
56. The fact that none of the four OFFICERS objected to the furtherance of this detention over the course of 10 minutes is *prima facie* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
57. The fact that the four OFFICERS seemed quite confused as to what a "Terry search" is, is *prima facie* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
58. This charge is levied against the New York Police Department, who is liable for their failure to train their employees, and against each of the four OFFICERS in their individual capacities³.

Count II – The Fourth Amendment to the United States Constitution

59. The OFFICERS approached CORBETT without any articulable reason permitted by the U.S. Constitution and/or federal law.
60. As CORBETT refused to answer any questions other than his name, date of birth, and place of residence, the OFFICERS gained no additional reasons to detain CORBETT

² CORBETT's refusal to answer questions as to his whereabouts and produce identification is protected by the U.S. Constitution, and exercise of a constitutional right can never justify detention and/or search.

³ While Officer Does 1 and 2 were most culpable as the individuals who informed CORBETT that he was being detained and physically conducted the illegal search of CORBETT, the group of four officers acted as a unit, and the mere presence of Officer Does 3 and 4 constitutes a contribution to the illegal search and detention. The elevated culpability of Officer Does 1 and 2 is reflected in the elevated damages sought from them in comparison to Officer Does 3 and 4.

between the time that they approached CORBETT and the time that they told him he was being detained.

61. Despite not having any articulable reason permitted by the U.S. Constitution and/or federal law to detain CORBETT, the OFFICERS did so anyway.
62. Defendant City of New York is responsible for the training of all New York Police Department officers.
63. The fact that none of the four OFFICERS objected to the furtherance of this detention over the course of 10 minutes is *prima facie* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
64. The fact that the four OFFICERS seemed quite confused as to what a “Terry search” is, is *prima facie* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
65. This charge is levied against the New York Police Department, who is liable for their failure to train their employees, and against each of the four OFFICERS in their individual capacities.

Count III – The Fourth Amendment to the United States Constitution

66. The OFFICERS approached CORBETT without any articulable reason permitted by the U.S. Constitution and/or federal law.
67. As CORBETT refused to answer any questions other than his name, date of birth, and place of residence, the OFFICERS gained no additional reasons to detain CORBETT between the time that they approached CORBETT and the time that they told him he was being detained.
68. The only type of non-consensual search permitted while both reasonable suspicion and a warrant are lacking is a “Terry search.”
69. A Terry search requires at least some articulable suspicion that the individual encountered by the police is armed and dangerous.
70. Absent from this encounter was any reason to think that CORBETT was armed, dangerous, or in any way about to cause any harm to anyone.

71. Despite the fact that CORBETT was being illegally detained and there was no reason for these officers to fear for their safety, these officers conducted a non-consensual search of CORBETT.
72. Defendant City of New York is responsible for the training of all New York Police Department officers.
73. The fact that none of the four OFFICERS objected to the this search is *prima facia* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
74. The fact that the four OFFICERS seemed quite confused as to what a “Terry search” is, is *prima facia* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
75. This charge is levied against the New York Police Department, who is liable for their failure to train their employees, and against each of the four OFFICERS in their individual capacities.

Count IV – The Fourth Amendment to the United States Constitution

76. The only type of non-consensual search permitted while both reasonable suspicion and a warrant are lacking is a “Terry search.”
77. The sole purpose of a Terry search is to find weapons which may be immediately used by the individual being searched to harm the officers but for the Terry search.
78. Any touching, looking, prodding, lifting, or any other variety of contact whatsoever beyond what is necessary to find a weapon is strictly prohibited of an officer conducting a Terry search.
79. Despite this fact, the officer searching CORBETT touched and manipulated soft objects within CORBETT’s pockets for an extended period of time.
80. Any manipulation of soft objects is beyond the bounds of a Terry search.

81. Any search that extends more than the amount of time reasonably necessary to determine the presence of weapons – somewhat large, hard objects – is beyond the bounds of a Terry search.
82. Defendant City of New York is responsible for the training of all New York Police Department officers.
83. The fact that none of the four OFFICERS objected to the this search is *prima facia* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
84. The fact that the four OFFICERS seemed quite confused as to what a “Terry search” is, is *prima facia* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
85. This charge is levied against the New York Police Department, who is liable for their failure to train their employees, and against each of the four OFFICERS in their individual capacities.

Count V – The Fifth Amendment to the United States Constitution

86. CORBETT invoked his right to remain silent as guaranteed to him by the Fifth Amendment to the US Constitution.
87. Without any reason other than CORBETT’s failure to answer questions that he is lawfully entitled to refuse to answer, the OFFICERS escalated their search and seizure of CORBETT.
88. Depriving a citizen of a right (in this case, his freedom to leave) in response to his invocation of another right (the right to remain silent) is a violation of that other right.
89. Defendant City of New York is responsible for the training of all New York Police Department officers.
90. The fact that none of the four OFFICERS objected to the this search is *prima facia* evidence that this was not simply a case of an officer failing to use good judgment, but rather four officers who were not properly trained as to the requirements of their duties.
91. The fact that the four OFFICERS seemed quite confused as to what a “Terry search” is, is *prima facia* evidence that this was not simply a case of an officer failing to use good

judgment, but rather four officers who were not properly trained as to the requirements of their duties.

92. This charge is levied against the New York Police Department, who is liable for their failure to train their employees, and against each of the four OFFICERS in their individual capacities.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for the following relief:

- a) Actual and punitive damages against the City of New York totaling US\$100,000.00.
- b) Actual and punitive damages against Officer Does 1 and 2 of \$5,000.00 each.
- c) Actual and punitive damages against Officer Does 3 and 4 of \$2,500.00 each.
- d) Cost of the action.
- e) Reasonable attorney's fees, should CORBETT retain an attorney⁴.
- f) Any other such relief as the court deems appropriate.

Dated: New York, NY

July 20th, 2011

Respectfully submitted,

Jonathan Corbett

Plaintiff, *Pro Se*

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⁴ CORBETT is presently representing himself in this action *pro se*, and is not seeking attorney's fees for any *pro se* work. CORBETT only seeks attorney's fees in the event that he retains an attorney at a later point, and only for the work completed by said attorney.