



MINUTES OF THE CITY COUNCIL REGULAR MEETING
CITY OF NEW PORT RICHEY

NEW PORT RICHEY CITY HALL COUNCIL CHAMBERS
5919 MAIN STREET, NEW PORT RICHEY, FLORIDA

November 1, 2022

7:00 PM

ORDER OF
BUSINESS

1. Call to Order – Roll Call

The meeting was called to order by Mayor Rob Marlowe at 7:00 p.m. Those in attendance were Deputy Mayor Mike Peters, Councilman Peter Altman, Councilman Matt Murphy and Councilwoman Kelly Mothershead.

Also in attendance were City Manager Debbie L. Manns, City Attorney Timothy Driscoll, City Clerk Judy Meyers, Police Chief Kim Bogart, Interim Finance Director Crystal Dunn, Fire Chief Chris Fitch, Assistant Public Works Director Barret Doe, Community and Development Director Dale Hall, Economic Development Director Barbara Carr, Library Director Andi Figart, Technology and Innovations Director Robert Greene, and Parks and Recreation Director Terri Moore.

2. Pledge of Allegiance

3. Moment of Silence

4. Approval of October 18, 2022 Regular Meeting Minutes

Motion was made to approve the minutes as presented.

Motion made by Mike Peters and seconded by Pete Altman. The Motion Passed. 5-0. Ayes: Altman, Marlowe, Mothershead, Murphy, Peters

5. Citizens Academy Graduation

City Manager Manns highlighted the Citizens Academy program before City Clerk Meyers distributed the certificates to the graduates. The Fall 2022 Class graduates were: Dale Baptie, Brian Brenhoch, Sandra Farnan, Jeanette & Michael Gordon, Daniel Holback, Michelle House, Denise Houston, William Labbanz, Jean LeFebvre, James Manser, Mario Marotta, Bonnie Martin, Julia McCutcheon, Liz Misemer, Kenleh Ridenour, Patty Robinson and Bob Schmidt.

6. Presentation by Stroud Engineering Consultants, Inc. RE: River Road Neighborhood Improvements Preliminary Drawings

Assistant Public Works Director Barret Doe gave a brief overview of the project. Brent Heath and Matthew Herman from Stroud Engineering then presented the North River Rd. preliminary drawings to Council.

7 Vox Pop for Items Not Listed on the Agenda or Listed on Consent Agenda

Mayor Marlowe passed the gavel to Deputy Mayor Peters. Upon opening the floor for public comment the following people came forward to speak:

- Kathleen Simington, 5409 Main Street, NPR came forward to ask about the status of the loan paperwork she submitted regarding the build-out for her building.
- Pastor Victor McClesky, 6449 Pueblo Avenue, NPR came forward to speak about religious freedom.
- Kimberly Cox, 7336 Ashmore Drive, NPR, came forward to speak regarding Bobby Lubrido and the creation of a police review board.
- Shinikki Whiting, 5755 Indiana Ave., NPR, came forward to speak regarding unsafe conditions.
- Bertell Butler, 5335 Bellview Ave., NPR came forward to speak regarding the agendas online, a typo on an invoice, the DART, missing funds and public records requests.
- Angela Napolitano, 6013 Adams St., NPR came forward to speak regarding the street improvement task order that was tabled at the last meeting. She also spoke about drainage issues and requesting a stop sign on Adams.
- Marlowe Jones, 6141 Pine Hill Rd., PR, came forward to speak regarding conducting an outside investigation for the police department.
- Denise Houston 5619 Virginia Ave., NPR came forward to speak regarding mulch piles. She stated that debris could find its way into the river. She suggested a twice a year pickup. She also spoke regarding trash collection.

With no one else coming forward for public comment, Deputy Mayor Peters closed Vox Pop. Councilman Altman stated there is a strategy for single trash collection and the possibility of using water bills for payment. He stated the right to exercise your religion is a sacred right. He stated that there have been serious issues that have been brought to us over the last few years. Councilman Altman stated that we cannot be a free society unless we give the minority their due. He suggested getting back into the golf cart and walkability life. He stated we have a good city with good people in it. Mayor Marlowe suggested a direct link to the agendas on the homepage of the website.

- a Speakers must identify themselves prior to speaking by stating their name and full address for the record. Speakers shall address the City Council as a whole and refrain from addressing individual members of the City Council or the City staff. Speakers shall afford the utmost courtesy to the City Council, to City employees, and to the public, and shall refrain at all times, from rude and derogatory remarks, reflections as to integrity, abusive comments, and statements as to motives and personalities.

8 Consent Agenda

Motion was made to accept the Consent Agenda.

Motion made by Matt Murphy and seconded by Kelly Mothershead. The Motion Passed. 5-0. Ayes: Altman, Marlowe, Mothershead, Murphy, Peters

- a Purchases/Payments for City Council Approval

9 Business Items

- a Board Appointments: Kimberly Brust and Beth Fregger, Cultural Affairs Committee

City Manager Manns introduced the item to Council. She stated that the purpose of this agenda item

was to approve the appointments of Kimberly Brust and Beth Fregger to the Cultural Affairs Committee. If approved by City Council, Ms. Brust and Ms. Fregger's terms will be for two years and will be up for renewal on November 1, 2024. Upon opening the floor to public comment, no one came forward therefore Mayor Marlowe returned the floor to Council. Motion was made to approve the item as presented.

Motion made by Pete Altman and seconded by Mike Peters. The Motion Passed. 5-0. Ayes: Altman, Marlowe, Mothershead, Murphy, Peters

b Approval of Conceptual Design for the 2023 Grand Blvd. "Road Diet" Striping Design Project

City Manager Manns introduced the item to Council. She stated that the purpose of this agenda item was to review the design concept created by Florida Design Consultants, Inc. showing the proposed "Road Diet" and striping for Grand Blvd. She then introduced Asst. Public Works Director Barret Doe who then presented the design concept to Council. Mr. Doe stated City Council recently approved an engineering task order for the Multi-Use Path and Pasco County is currently working on the design to raise the bridge. He stated that the project will prepare motorists and bicyclists for the Multi-Use Path in addition to traffic calming measures. Upon opening the floor to public comment, no one came forward therefore Mayor Marlowe returned the floor to Council. Mayor Marlowe asked if Grand Blvd. will go to three lanes and Mr. Doe stated yes. He asked about the turning lane and Mr. Doe stated it would be valuable. Councilman Altman asked if we sent out notice of this proposal and Mr. Doe stated no. Deputy Mayor Peters stated we have talked for some time about this being an entryway into the city. This would be a way for us to advance that. He stated this will also address speeding and make space available for bicyclists. Mayor Marlowe suggested looking at the storm drains on Grand Blvd. Motion was made to approve the item as presented.

Motion made by Pete Altman and seconded by Mike Peters. The Motion Passed. 5-0. Ayes: Altman, Marlowe, Mothershead, Murphy, Peters

10 Communications

Chief Bogart came forward to speak regarding the police department. He spoke regarding how the department handles complaints, the Officer's Bill of Rights, internal investigations and the different findings. He stated that over the last 10 years there have been approximately 51 internal affairs investigations. Chief Bogart then spoke regarding complaints about specific officers including Sgt. Williams, Officer Gee, Cpl. Norris, Code Enforcement Officer Morgan, Officer Toldo, Sgt. Jay, Officer Patsch, former Officers Lubrido, Case, Dennison, Oliver, Valente and Rickus, and the officers present at the Wing House the night members of the Proud Boys were there. Chief Bogart also spoke regarding training certifications and de-escalation training.

Chief Fitch then spoke regarding the activities of the recent Fire Prevention Week. Activities included public messaging on social media, tours of both fire stations, and visiting local schools to teach children fire safety.

Mayor Marlowe congratulated Stonehaven and the organizers of the downtown trick-or-treat event on their events. He also congratulated the organizers of Monufest. He stated he is looking forward to the CRA work session next week. He stated he would like to see the grants accessible as possible and suggested having copies at the Library. He stated he spoke with the City Attorney on updating some old ordinances. He encouraged the rest of Council to think about nominating someone for an ordinance review committee. He would like a full vote of Council for each member of the committee. Mayor Marlowe spoke regarding the missing dinosaur from the upcoming MAPS exhibit. He stated that he drove down Adams and the intersection at Illinois is a blind intersection and a stop sign may be warranted.

Councilman Murphy stated we should take a look at the website to see what can be done to make it

user friendly. He thanked Chief Bogart for his presentation. He stated there are so many positive things going on in our city. He stated he will focus on the positive and work to better the city.

Councilman Altman stated he hopes we can fully embrace changes that will better our city. He also spoke about the collision center off of Lemon. He stated he still sees a parking lane on either side. He stated that the TBRPC created a shoreline model ordinance template. He also spoke regarding the vulnerability assessment. He stated we incorporate resiliency into our CRA Plan. Councilman Altman stated that the City made the TBRPC brochure for the 3D flood model. He stated resiliency and the lack of fruition was discussed at the FRA conference. He stated there is an incredible interest in our city.

Deputy Mayor Peters stated that the mobile app needs to be updated as well as the website. He thanked those who spoke at Vox Pop who followed the rules.

Councilwoman Mothershead agreed there is an issue at Adams and Illinois.

11 Adjournment

There being no further business to consider, upon proper motion, the meeting adjourned at 9:25 p.m.

(signed) _____
Judy Meyers, CMC, City Clerk

Approved: _____ (date)

Initialed: _____

Angela Napolitano

DRAINAGE

CONGRESS

ILLINOIS

2 PTS

DELAWARE

JEFFERSON

ADAMS

MADISON

WYOMING

JEFFERSON

ADAMS

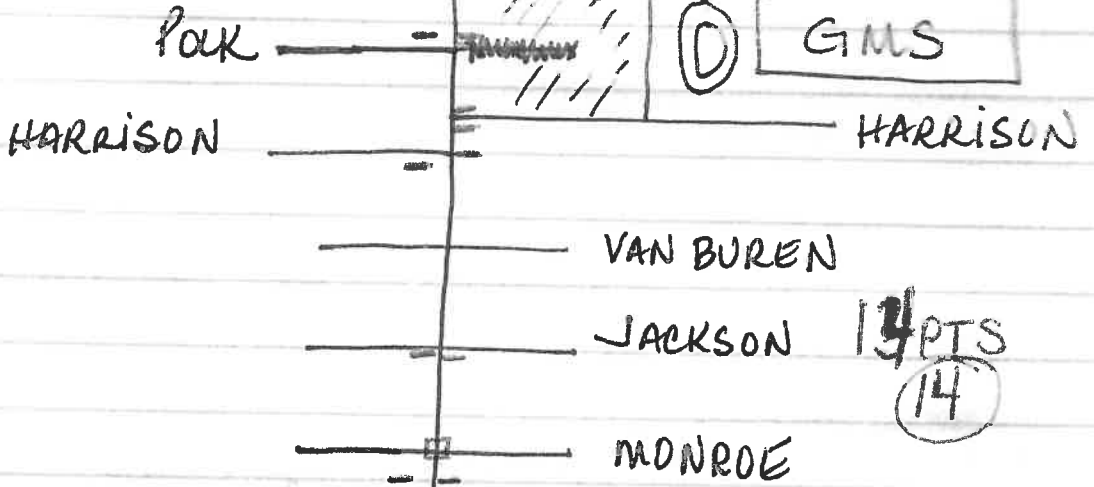
GRAND

FRANKLIN

11 PTS

LAFAYETTE

Rio



14 PTS
14

To whom this May concern:

City council of New Port Richey, City Manager, Mayor Marlowe.

11-2-22 Submitted to City Clerk Judy Myers for public record and a response from the city manager's office and each of the city Council members and mayor.

To the following questions below.

1- It's been 2+years since members of the Public and Marlowe Jones asked for a independent outside investigation into the New Port Richey Police department and its Code enforcement. Why has nothing been Done thus Far?

2-Why has the city Council not issued a statement on the slanderous and derogatory comments from former council-member Jeff Starkey? Or the Not happy Comments By the City manager on May 5-2022.

We are referring to the text messages that all of you know about? Do you agree with this slanderous and harmful rhetoric? Calling members of the public loons.

3-When will The chief of police or state attorney arrest former officer Bobby Labrido?Because I can tell you right now are citizens do not feel safe. There has been several police officers let go from this Police Department over the last two years. When will enough be enough the people deserve better.

Citizen's Complaints

CS/Case #	Complainant's Name	Date of Incident	Incident description	Arrest Made/Charges	Date of Complaint	Allegations	Officer(s) Involved	Disposition/Date
13-14505	JANIS E. WOHL	10/4/2013	SUSPICIOUS PERSON	893.13(1F), 856.02(1)(1), 316.19(3)(1), 843.02	4/2/2014	BATTERY (ON PERSON 65+)	B. GOLEMBESKI	UNSUSTAINED - 4/1/2014
(2014)25123	JOE MORRIS	9/1/2014	SUSPICIOUS PERSON	N/A	10/14/2014	POLICE MISCONDUCT/ INTIMIDATION	B. SCHAMBAUGH/A. PEDRERO	UNSUSTAINED - 10/14/2014
16-02980	MISTY FILLION	8/17/2016	BATTERY	784.03.1A1	8/18/2016	POLICE MISCONDUCT	E. DONOHUE	UNSUSTAINED - 8/19/2016
16-03495 A23V7P	HAROLD JOE	9/23/2016	TRAFFIC STOP	CITATION ISSUED	9/26/2016	DAMAGE DONE BY K-9	A. KASPERITIS	UNSUSTAINED - 10/12/2016
16-02731	HOLLY HALEY	7/29/2016	ASSIST OTHER AGENCY	N/A	10/24/2016	POLICE MISCONDUCT	W. MILANA	UNSUSTAINED - 12/20/2016
16-04429/ 16-04470	CRAIG FORTUNATO	12/7/2016	WELFARE CHECK	893.13(1), 893.13(2A), 893.13(6B), 790.01, 893.147	1/4/2017	POLICE MISCONDUCT	A. EXLINE	UNSUSTAINED - 6/6/2017
16-04001	JOSHUA BELL	11/1/2016	WELFARE CHECK/ WAVED DOWN	BAKER ACTED	3/31/2017	POLICE MISCONDUCT	K. NORRIS/D. CORBINO	UNSUSTAINED - 4/7/2017
15-02254	RICHARD L. CRAWFORD	7/15/2015	SHOOTING-IN PROGRESS	782.05(1), 782.04(1A1)	5/17/2017	POLICE MISCONDUCT	THE POLICE DEPARTMENT	UNSUSTAINED - 6/8/2017
(2016)101133	DONNIE WILLIAMS	9/30/2016	TRAFFIC STOP	N/A - VERBAL WARNING	5/23/2017	RACIAL PROFILING/ EXCESSIVE FORCE	D. CORBINO/J. PASCALI	UNSUSTAINED - 7/1/2017
17-01968	CHARLOTTE RIVERA	5/25/2017	MISSING JUVENILE RECOVERED	827.03(3C)	6/19/2017	POLICE MISCONDUCT	N. RICKUS/C. RAY	UNSUSTAINED - 8/15/2017
17-03157	JANICE RANDOLPH	8/22/2017	PETIT THEFT	N/A	8/22/2017	POLICE MISCONDUCT	A. EXLINE	UNSUSTAINED - 8/30/2017
17143016	CLIFF LEPOER	10/28/2017	WELFARE CHECK	N/A	11/2/2017	POLICE MISCONDUCT/ HARASSMENT	J. VALENTE	UNSUSTAINED - 12/1/2017
17148769/ A2HC7E	KATHLEEN E. DALTON	12/20/2017	TRAFFIC STOP	CITATION (316.126)	1/16/2018	POLICE MISCONDUCT/ INTIMIDATION	A. ECK	UNSUSTAINED - 1/17/2018
17-03791	RICKY BALDRIDGE	10/7/2017	CLOTHING ASSIST	893.13(6A), 893.147(1)	1/19/2018	POLICE MISCONDUCT	T. SABO	UNSUSTAINED - 1/22/2018
CFS 18016035	HARRY HASLAM	5/19/2018	ILLNESS	N/A	5/31/2018	POLICE & FIRE MISCONDUCT	PD & FD	RESOLVED - 6/8/2018
18-01836/ 18-01838	EVAN DONNELLY	4/26/2018	VEHICLE CRASH	316.027(1A), 827.03(3C), 784.07(2B)	8/8/2018	EXCESSIVE FORCE/ POLICE BRUTALITY	A. HAZIME/A. ECK	UNSUSTAINED - 8/16/2018
17-02546	VASMIN A. MOORE	7/4/2017	SEXUAL BATTERY	794.01(1)(4)	10/4/2018	POLICE MISCONDUCT	A. KASPERITIS/B. FINCH/ E. CAMPBELL	UNSUSTAINED - 10/5/2018
18030774/ A2HEM9E	CANDACE GLOVER	10/18/2018	TRAFFIC STOP	CITATION (316.081)	10/19/2018	POLICE MISCONDUCT/ TRAFFIC STOP	THE POLICE DEPARTMENT	UNSUSTAINED - 10/23/2018
19014716	MICHAEL CARPENTER	5/29/2019	UNWANTED GUEST/ TRESPASSING	N/A	6/12/2019	POLICE MISCONDUCT	E. JAY	UNSUSTAINED - 6/19/2019
19-03443	MICHELLE HALL-GILMAN	8/28/2019	UNWANTED GUEST	810.08(2B)	10/5/2019	POLICE MISCONDUCT/ HARASSMENT	M. DEL VALLE	UNSUSTAINED - 10/2019
20000061	DEANNA TRAXEL	1/1/2020	TRAFFIC STOP	N/A - VERBAL WARNING	1/9/2020	POLICE MISCONDUCT/ HARASSMENT	A. HAZIME	UNSUSTAINED - 1/21/2020
20-3279	WALTER MICHELS	10/2/2020	RESISTING OFFICER	4/22/1902	11/20/2020	POLICE MISCONDUCT/ POLICE THEFT	R. WARNER	UNSUSTAINED - 12/09/2020
N/A	NICHOLAS MOFFETT	4/2/2021	DISTURBANCE VERBAL	N/A	4/2/2021	POLICE MISCONDUCT/ OBSTRUCTION	D. MITCHEM	UNSUSTAINED - 05/01/2021
21-01851	CARMELA MANIES	5/30/2021	UNWANTED GUEST	6/19/1902	6/10/2021	POLICE MISCONDUCT/ NEGLEGEANCE	N. RICKUS	UNSUSTAINED - 06/14/2021
N/A	RANDY RUDTCH	6/24/2021	DISPATCH OPERATOR	N/A	6/24/2021	DISPATCHER MISCONDUCT		UNFOUNDED - 06/30/2021
21-04023	MICHAEL WEBSTER	11/16/2021	TRESPASS WARNING	CITATION	11/24/2021	POLICE MISCONDUCT/ TRAFFIC STOP	D. HAND/B. MILANA	UNSUSTAINED - 11/30/2021
22-00955/ 22-00984	MICHELLE WOJCIECHOWSKI	3/16/2022	ORDNANCE VIOLATION	CODE INSPECTION	3/17/2022	HARASSMENT/ BREAKING & ENTERING	E. JAY/K. NORRIS/C. MORGAN/ A. REMESIEWICZ	UNSUSTAINED - 03/21/2022
2201216	MELISSA MOORE	4/23/2022	HARASSMENT	N/A	4/28/2022	FAILURE TO ASSIST	N. CAMPANA/J. FREDRICKSON	UNSUSTAINED - 05/03/2022
22-01869	JACQUELINE SCHMIDT	5/19/2022	BATTERY	784.03(1)(a)	5/20/2022	POLICE MISCONDUCT	G. GERENA	UNFOUNDED - 05/25/2022
N/A	MICHELLE WOJCIECHOWSKI	10/26/2021 - 04/21/2022	USE OF D.A.V.I.D.	N/A	8/19/2022	VIOLATION OF GENERAL ORDER C-61	K. BOGART / E. JAY / J. DODRILL / C. MORGAN / A. REMESIEWICZ / M. CANTU	UNFOUNDED - 09/14/2022

Gregory Williams – Cox alleged Williams broke her arm during a “peaceful” protest. There is video evidence to contradict this allegation and video was sent to the CM.

Todd Gee – alleged to have made anti-semitic statement during a code warrant inspection. He made a historically accurate statement. Was counseled and additional training provided.

Karen Norris - alleged to have made anti-semitic statement during a code warrant inspection. She laughed at Gee’s reference during the inspection. Was counseled and additional training provided.

Charles Morgan – Michelle alleged Chuck had personal knowledge of her and ran her DAVID 22 times. Chuck knows Michelle’s boyfriend Nick through his friend Lauren, whom they share a child in common. Chuck had no personal knowledge of Michelle in the beginning of this case. Chuck did not run Michelle 22 times in DAVID and only ran her for legitimate business.

Michael Toldo – alleged Kyle Rittenhouse sympathizer because he posted two news articles on Facebook during the trial. (See attached)

Erik Jay – retired from the department in 2021 and in 2022 started as Code Enforcement Supervisor.

Matthew Patsch – alleged that he failed to render aid and let a black man die. Patsch tasered a suspect climbing a fence, while he fled. The barbs from the taser fell off and the suspect crawled into a pond. The suspect could not be seen in the pond and subsequently drowned. Patsch could not locate the suspect until he was recovered later and found tangled in the weeds.

Bobby Lubrido – terminated for recent IA 22-05

Justin Case – Mac Williams sued Case and Brian Bernd in 2015 for violation of civil rights. The case was dismissed in the US District Court. (See attached)

Elizabeth Dennison – voluntarily resigned. She was on a friend’s boat that had a confederate flag in the background and took a picture. This was posted on her social media and neither the boat or the flag belonged to her. (See attached)

Corey Oliver –He posted a comment on a friend’s page in reference to the location of a possible protest. He was terminated due to this. (See attached)

Joseph Valente – resigned. Alleged excessive force against S. Whiting.

Nicholas Rickus – they allege he provided false testimony on the case of Marlowe Jones during his trial.

Officers were asked to pray with unknown citizens outside of the Winghouse during the protests downtown. Officers frequently did this with citizen’s that asked. BLM activists stated these were the Proud Boys. It was unknown who these citizens were at the time.



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Opinion Case details

From Casetext: Smarter Legal Research

Williams v. Case

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

Apr 30, 2015

Case No: 8:15-cv-288-T-30TGW (M.D. Fla. Apr. 30, 2015)

Copy Citation

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Treatment

CASE

Case No: 8:15-cv-288-T-30TGW

04-30-2015

ALLEN M. "MAC" WILLIAMS, Pro se Plaintiff, v. JUSTIN CASE, et al., Defendants.

JAMES S. MOODY, JR. UNITED STATES DISTRICT JUDGE

ORDER

THIS CAUSE comes before the Court upon Defendants' motions to dismiss (Dkts. 12 & 13) and *Pro Se* Plaintiff's responses thereto (Dkts. 25 & 29). Upon review and consideration, the Court grants in part and denies in part the motion to dismiss filed by Defendants Justin Case, Brian Bernd, and City of New Port Richey, and grants in its entirety the motion to dismiss filed by Defendants Chris Nocco and Corporal Derouin. As explained below, the Court also dismisses Defendant Bernie McCabe because State Attorney McCabe is entitled to absolute immunity.

BACKGROUND

Search all cases and statutes...

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Opinion **Case details**

On the night of August 25, 2014, at approximately 9:30 p.m., Plaintiff was outside his home, standing on his driveway and patio area, having a "not uncommon" argument with several neighbors across the street. During the argument, Plaintiff observed two City of New Port Richey Police Department (NPRPD) vehicles park on the street along Plaintiff's fence. Officer Bernd exited one of the vehicles and walked across the street to the neighbor's home. Officer Case exited the other vehicle and stood about 35 feet from Plaintiff. Plaintiff, who has poor eye sight, asked Case who he was; Case replied "You know who I am." Plaintiff responded that he could not see Case because Plaintiff's eyes were "bad" and asked Case: "What is your name, dude?" Plaintiff alleges that calling Case "dude" angered Case because Case immediately charged at Plaintiff, yelling that he was not Plaintiff's "dude." Case then ordered Plaintiff to put his hands behind his back and forced Plaintiff on his knees and stomach on the cement patio. Plaintiff was wearing only knit shorts. Plaintiff's knee was injured. His glasses fell off and were broken.

After "manhandling" Plaintiff to the ground, Case forced Plaintiff's hands together behind his back and handcuffed him in a "hog-tie" style. Case did not tell Plaintiff that he was under arrest. At no time did Plaintiff resist Case or act in a violent manner. Bernd then came over and escorted Plaintiff into the back of his squad car and drove Plaintiff to the NPRPD holding cell.

3 Bernd did not inform Plaintiff that he was under arrest. *3

Plaintiff alleges that later that night, Case prepared a false Probable Cause Affidavit. Case and Bernd also conspired and prepared a false Incident Detail Report. The Probable Cause Affidavit and Incident Report were forwarded to the State Attorney's office for the Sixth Judicial Circuit.¹ Plaintiff alleges that on or about September 22, 2014, the State Attorney's office concluded that Plaintiff's arrest was "unlawful." The charges against Plaintiff were subsequently dropped.



Search all cases and statutes...

JX

Opinion **Case details**

custom, and pattern of employing officers that committed false arrests, utilized excessive and unnecessary force, and provided false or misleading statements in their incident reports. Plaintiff includes in his amended complaint examples of false arrests and arrests involving excessive force against other citizens by various officers from the NPRPD.

With respect to Defendant Corporal Derouin, Plaintiff alleges that, while at the Pasco Jail, Plaintiff was placed under Corporal Derouin's custody. Corporal Derouin never put Plaintiff in communication with a public defender. Corporal Derouin did not inform Plaintiff of the nature and cause of the accusations against him. Plaintiff also alleges that he was not permitted to use the booking desk phone. Instead, Plaintiff was referred to
4 phones that required a PIN, which he had trouble reading. *4

Plaintiff's amended complaint, although not a model of clarity, alleges section 1983 claims against each Defendant. Plaintiff also alleges various state-law claims. Defendants Case and Bernd argue that they are entitled to qualified immunity. Defendant City of New Port Richey argues that the claims against it are insufficiently pled. Defendants Corporal Derouin and Sheriff Chris Nocco argue that Plaintiff's claims against them do not amount to constitutional violations.

As explained below, the Court concludes that Plaintiff's amended complaint is sufficient to state a claim against Case, in his individual capacity, Bernd, in his individual capacity, and City of New Port Richey. Case and Bernd's qualified immunity argument fails at this stage. The remaining Defendants will be dismissed.

LEGAL STANDARDS

I. Motion to Dismiss Standard

Search all cases and statutes...

JX

Opinion Case details

factual allegations, conclusions in a pleading "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). On the contrary, legal conclusions "must be supported by factual allegations." *Id.*

5 Indeed, *5 "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

Although the Court may hold a *pro se* litigant to "a less stringent standard," the *pro se* litigant may not rely on conclusory allegations or legal conclusions in the place of factual allegations to overcome a motion to dismiss.

Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1999).

II. Section 1983 Claims and Qualified Immunity

Section 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Thus, to state a *prima facie* claim under section 1983, Plaintiff must establish that (1) Defendants' conduct caused the constitutional violation, and (2) the challenged conduct was committed "under color of state law." See *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1276-77 (11th Cir. 2003).

Defendants argue, in relevant part, that they are entitled to qualified immunity. The Eleventh Circuit explains that:

Search all cases and statutes...

JX

Opinion **Case details**

Harlow v. Fitzgerald, 457 U.S. 800, 818-19, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). But when these same officials make decisions that do not knowingly violate such rights, they are not required to defend themselves in a lawsuit seeking damages. *Id.* They are "immune" from suit. *Id.* We call this defense "qualified immunity" because the official is immune from a damage lawsuit, qualified upon his ability to show that he did not knowingly violate the plaintiff's clearly established constitutional right. *Id.*

Ray v. Foltz, 370 F.3d 1079, 1081-82 (11th Cir. 2004). A plaintiff withstands a motion to dismiss predicated on qualified immunity by alleging "sufficient facts to support a finding of a constitutional violation of a clearly established law." *Chandler v. Sec'y of Fla. Dep't of Transp.*, 695 F.3d 1194, 1198 (11th Cir. 2012) (citing *Oliver v. Fiorino*, 586 F.3d 898, 905 (11th Cir. 2009)); *see also Andreu v. Sapp*, 919 F.2d 637, 639 (11th Cir. 1990) ("[T]he defendant is entitled to dismissal when the plaintiff has failed to *allege* a violation of a clearly established right.") (emphasis in original).

DISCUSSION

I. Claims against Defendants' Case and Bernd

Plaintiff alleges various section 1983 claims and related state-law claims against Case, Bernd, and City of New Port Richey.² Specifically, Plaintiff
7 avers that Case and *7 Bernd arrested him without any basis. Plaintiff also claims that they utilized excessive force and held Plaintiff against his will.

² Plaintiff sues Case and Bernd in their individual and official capacities. The official capacity claims are redundant because these claims are essentially against City of New Port Richey, a Defendant in this case. Thus, the official capacity claims against Case and Bernd are dismissed with prejudice. *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985) ("Official capacity suits . . . 'generally represent only another way of pleading an action against an entity



Search all cases and statutes...

JX

Opinion Case details

The Court construes Plaintiff's section 1983 allegations against Case and Bernd as a claim for violation of the Fourth Amendment's prohibition against unreasonable search and seizure. An arrest without probable cause violates the Constitution and provides a basis for a section 1983 claim, but the existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest. *See Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 734 (11th Cir. 2010). With regard to a qualified immunity analysis, however, the issue is not whether there was probable cause, but whether there was "arguable probable cause." *See Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1332 (11th Cir. 2004). "Arguable probable cause exists if, under all of the facts and circumstances, an officer reasonably could - not necessarily would - have believed that probable cause was present." *Id.*

In addition, "the Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force in the course of an arrest." *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002) (citing *Graham v. Connor*, 490 U.S. 386, 394-95 (1989)). The Eleventh Circuit has "repeatedly ruled that a police officer violates the Fourth

8 Amendment, and is denied qualified *8 immunity, if he or she uses gratuitous and excessive force against a suspect who is under control, not resisting, and obeying commands." *Saunders v. Duke*, 766 F.3d 1262, 1265 (11th Cir. 2014) (citing *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 927 (11th Cir. 2000)).

Plaintiff alleges that he was outside his home, arguing with his neighbors across the street, when Case charged him and threw him to the ground. Plaintiff did not act violently towards Case or resist Case in any way. There was no basis for Case's actions. Case did not tell Plaintiff that he was under arrest. Plaintiff was wearing only a pair of shorts and suffered physical damage to his body when he was pushed on the hard pavement and handcuffed in a "hog-tie" manner. Plaintiff also suffered emotional and psychological trauma as a result of the false arrest. Bernd assisted Case and

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Opinion **Case details****insufficient at this stage.**

9 However, to the extent that Plaintiff is attempting to state a claim for federal false imprisonment under section 1983, he does not allege sufficient facts. Plaintiff provides no facts regarding the length of his detention or the Officers' knowledge during his detention that informed them that he was entitled to release. This Fourteenth Amendment *9 claim is more akin to the Fourth Amendment false arrest claim, making it duplicative. *See Galloway v. City of Abbeville, Ala.*, 871 F. Supp. 2d 1298, 1309 (M.D. Ala. 2012) (dismissing federal false imprisonment claim and stating that "a brief detention is more properly addressed under the Fourth Amendment.").

In sum, Plaintiff alleges sufficient section 1983 claims of false arrest and excessive force against Case and Bernd. For these same reasons, Plaintiff's state-law claims of false arrest, battery, and assault survive at this stage. The remaining state-law claims of false imprisonment, reckless endangerment, malicious prosecution, and libel are legally insufficient and dismissed with prejudice.³

³ Notably, "[a] police officer who arrests a suspect but does not make the decision of whether or not to prosecute cannot be liable for malicious prosecution under § 1983." *Derosa v. Rambosk*, 732 F. Supp. 2d 1285, 1301 (M.D. Fla. 2010) (citing *Eubanks v. Gerwen*, 40 F.3d 1157, 1160-61 (11th Cir. 1994)).

II. Claims against City of New Port Richey

To state a section 1983 claim against a municipality, Plaintiff must allege that the execution of a government entity's official custom or policy caused the constitutional injury. *Monell*, 436 U.S. at 694. Plaintiff must establish that (1) his constitutional rights were violated, (2) the municipality had a custom or policy that constituted deliberate indifference to that right, and (3) the

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Opinion **Case details**

of encouraging its officers to falsely arrest innocent citizens and utilize excessive force; this custom and practice caused Plaintiff's false arrest and the related excessive force. Plaintiff's amended complaint includes examples of an alleged widespread practice of City of New Port Richey condoning or encouraging its officers to arrest citizens without probable cause and in a manner that utilized unreasonable force under the circumstances. Accordingly, Defendant City of New Port Richey's motion to dismiss is denied at this stage.

III. Claim against State Attorney McCabe

It is unclear what legal claims Plaintiff is attempting to assert against State Attorney McCabe. However, under the facts alleged, any such claim would fail. "Prosecutors acting within the scope of their prosecutorial duties enjoy absolute immunity from suit under § 1983." *Jarallah v. Simmons*, 191 Fed. Appx. 918, 921 (11th Cir. 2006) (citing *Imbler v. Pachtman*, 424 U.S. 409 (1976)). Initiating a case, which would include a first appearance, is within the scope of prosecutorial duties. *See id.* Accordingly, State Attorney McCabe is entitled to absolute immunity for the conduct of which Plaintiff

11 complains. *11 **IV. Claims against Corporal Derouin, Chris Nocco, and "John Does"**

Plaintiff sues Corporal Derouin, Pasco Sheriff Chris Nocco, and "John Does" for deprivation of liberty without due process under the Fifth and Fourteenth Amendments, deprivation of assistance of counsel under the Sixth Amendment, deprivation of the right to be informed of the nature and cause of accusations against him under the Fourth Amendment, and deprivation of the right to equal protection under the Fourteenth Amendment. As Corporal Derouin points out, none of these claims against him amount to constitutional violations. Thus, they should be dismissed.

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Opinion **Case details**

when Plaintiff requested a lawyer, Derouin filled in some type of form with all zeroes and circled all "no's." Plaintiff also alleges that the jail's phones required a PIN that essentially precluded Plaintiff from making a phone call.

There is no authority in this Circuit that indicates that arrestees are constitutionally entitled to have *jail deputies* put them in touch with public defenders upon arrest. In fact, "[t]he Supreme Court has clearly held that this right [to counsel] attaches 'at or after the initiation of adversary judicial proceedings - whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" *United States v. ¹² Montaner*, No. 10-20289-CR, 2012 WL 442985, at *5 (S.D. Fla. Jan. 23, 2012) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)).

There is also no authority in this Circuit that establishes a constitutional violation based on a jail deputy's failure to inform an arrestee of the nature or cause of the accusations against him. And Plaintiff's claim related to his use of the jail phone is without merit.

Finally, Plaintiff's vague claims against an unidentified "John Doe" Defendant are also dismissed.

CONCLUSION

For the reasons explained herein, it is ORDERED and ADJUDGED that:

1. The Motion to Dismiss filed by Defendants Justin Case, Brian Bernd, and City of New Port Richey (Dkt. 12) is granted in part and denied in part.
2. The Motion to Dismiss filed by Defendants Sheriff Nocco and Corporal Derouin (Dkt. 13) is granted.



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Opinion Case details

is directed to terminate these Defendants.

4. Defendant McCabe's Motion for Extension (Dkt. 22) is denied as moot.

13 *13

5. Defendants Justin Case, Brian Bernd, and City of New Port Richey shall file an answer to the amended complaint within fourteen (14) days of this Order.

DONE and ORDERED in Tampa, Florida on April 30, 2015.

/s/ _____

JAMES S. MOODY, JR.

UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel/Parties of Record

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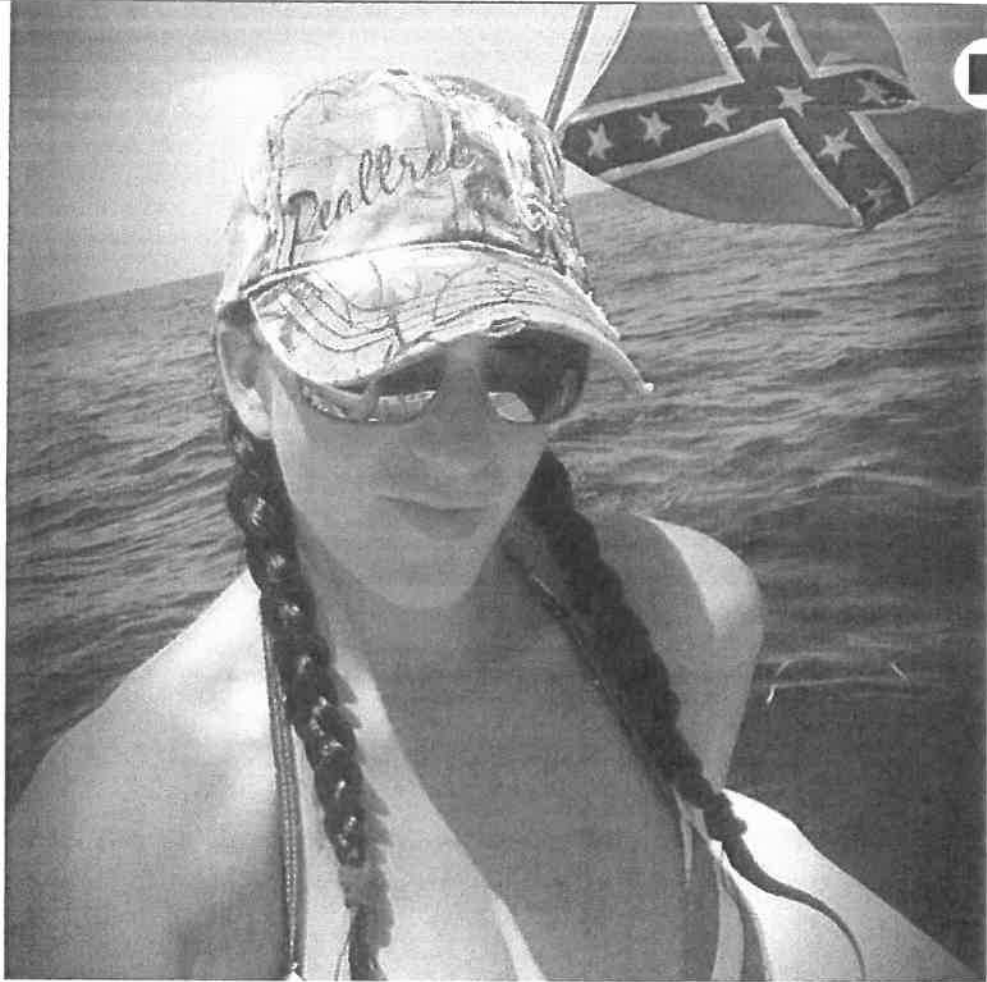
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NPR tonight??

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#backtheblue #notinourtown

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1

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2



Corey Oliver

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OLIVER

ARCHIVE**TASERED IN POLICE CHASE,
MAN, 34, DROWNS IN POND****By DANNY VALENTINE**

Published Mar. 21, 2011

A 34-year-old Pinellas Park man drowned after being hit with a Taser and crawling into a pond during a police chase early Sunday, according to police.

A Police Department spokesman said the death was accidental, and none of the officers involved would be put on leave.

At 12:19 a.m., police received an emergency call for a domestic dispute in the area of 43rd Street and 70th Avenue N.

Police found Dale Lee Mitchell leaving a wooded area and began questioning him. They determined he lived at the location of the 911 call and was involved in some kind of disturbance.

While questioning him, police said, they saw Mitchell toss some pills on the ground. As they tried to identify the pills, he fled, according to police.

He ran through the neighborhood before entering his back yard at 4316 70th Ave. N.

Officer Matthew Patsch, 32, caught up to Mitchell as he was climbing a 4-foot fence separating the yard and the pond, said police spokesman Capt. Sanfield Forseth. The officer fired a Taser, and Mitchell fell and rolled on the ground, dislodging the Taser wires.

Tampa Bay Times

Forseth said it was unknown whether both barbs of the Taser struck Mitchell, which would have been required for the stun gun to work. That will have to be determined by a Medical Examiner's Office examination, he said.

Police said Mitchell crawled into the pond, then moved into deeper water. Officers said he disappeared under the water.

Cpl. Cassidy Perry, 35, went into the pond, but couldn't find him. Forseth said Perry waded in up to his neck in the attempt.

A fire department dive team found Mitchell at 2:40 a.m. He was pronounced dead.

Police said the initial domestic dispute was between Mitchell and his live-in girlfriend.

That girlfriend, Janitta Leaks, told Bay News 9 she believed police were responsible.

"I believe they just let him die, I really do," she said. "It took them at least a good hour before the scubas got in there."

Pinellas Park police officers use the X26 Taser, which fires two probes that carry electrical pulses to a suspect's body.

Officers are authorized to use the weapon whenever the use of other control techniques will most likely result in a physical confrontation that may injure an officer or the person being taken into custody.

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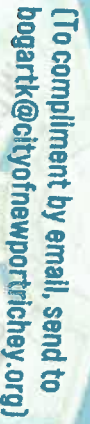
COMMENDATIONS

The New Port Richey recognizes its employees' exemplary performance through the use of commendations.

THERE ARE THREE CATEGORIES:

- Written Acknowledgement (Letters of Recognition)
- Departmental Awards, and
- Community-sponsored Awards

The Department receives many letters of recognition and phone calls from citizens expressing appreciation and gratitude for jobs well done. You may compliment an employee by mail, email or phone call. A written compliment is preferred since it can be posted within police headquarters and a copy place in the employee's file.



(To compliment by email, send to bogartk@cityofnewportrichey.org)

OUR COMMITMENT TO YOU

The New Port Richey Police Department is committed to providing courteous and professional service to our citizens. We hope that all of contacts with our employees are positive; however, if you are dissatisfied with the performance or service of an employee, we will thoroughly review your complaint and resolve it fairly. Police Officers are sworn to protect the rights of all citizens, including those taken into custody, without regard to race, national origin, citizenship, religion, ethnicity, age, gender or sexual orientation.

The information in this brochure is provided to you in the spirit of community cooperation. We are committed to excellence and strive to provide the finest quality service available to our citizens.

The New Port Richey Police Department takes complaints seriously and to protect the integrity of the agency, we have adopted internal safeguards.

COMPLAINTS

The New Port Richey Police Department is committed to providing courteous and professional service to our citizens. We hope that all contacts with our employees are positive. However, if you are dissatisfied with the performance or service of an employee, we will thoroughly review your complaint and resolve it fairly.

(POLICE OFFICERS ARE SWORN TO PROTECT THE RIGHTS OF ALL CITIZENS, INCLUDING THOSE TAKEN INTO CUSTODY WITHOUT REGARD TO RACE, NATIONAL ORIGIN, CITIZENSHIP, RELIGION, ETHNICITY, AGE, GENDER OR SEXUAL ORIENTATION.)

The Department recognizes its responsibility to thoroughly investigate complaints of misconduct brought against its members. To accomplish this, the Department has a Professional Standards System in place with procedures to provide for diligent systematic investigation of complaints. The goal is to maintain the integrity of the Department and ensure that valid complaints based on facts are separated from false or unsupported allegations, so appropriate corrective measures can be taken.

WHO CAN FILE A COMPLAINT?

Any person who witnesses or has direct knowledge of police may file a complaint. (It does not matter whether the person making the complaint was directly involved in the incident.) The complaint should be made as soon as possible using the procedures outlined in this guide.

WHAT IS THE COMPLAINT PROCEDURE?

To register a complaint, contact any police department supervisor. In most cases, that will be the accused employee's supervisor, who will take the initial information and begin the process. When complaints are minor in nature, the entire matter may be investigated and resolved by the employee's supervisor. However, when allegations are of a serious nature, the investigation is assigned to a Professional Standards System investigator who reports to the Chief of Police.

(It is important to know: false reporting in an attempt to cause unjust discipline, or defame police personnel or to place their employment in jeopardy can result in criminal charges or civil suit by the employee involved.)

AFTER THE INVESTIGATION IS COMPLETE

The outcome of the investigation will fall into one of the following categories:

Exonerated – Conduct was proper or within department policy.

Unfounded – The allegation was found to be false.

Not sustained – There is insufficient evidence to prove or disprove the allegation.

Sustained – The allegation is supported by sufficient evidence and was determined to be true.

FOLLOWING UP WITH THE COMPLAINT

The complainant will be advised of the supervisor's findings. City, state and federal laws govern a police employee's privacy rights; therefore, you may not be entitled to certain information.

CONTACT US



New Port Richey Police
Department

6739 Adams Street New
Port Richey, FL 34652

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*Serving Alongside our Community
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COMMENDATION - COMPLAINT GUIDE

Chief of Police Kim Bogart