

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

MIKAELA DYETT,

Plaintiff,

v.

ROYCE ZAH,

Defendant.

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Civil Action No.:

Jury Trial Demanded

COMPLAINT FOR DAMAGES

Plaintiff MIKAELA DYETT files this Complaint for Damages against Defendant ROYCE ZAH pursuant to 42 U.S.C §§ 1983 and 1988 and the First and Fourth Amendments of the United States Constitution. In support of her Complaint, Plaintiff shows the following:

INTRODUCTION

1.

This is a civil action asserting claims under federal law for unlawful seizure, excessive force, and retaliation for Plaintiff's exercise of First Amendment rights. Plaintiff demands a jury trial and seek an award of economic, compensatory, and punitive damages, as well as an award of attorneys' fees and costs.

PARTIES, JURISDICTION AND VENUE

2.

Plaintiff Mikaela Dyett is a resident of Georgia. At the time of these events, she was a student in journalism at Georgia State University.

3.

Defendant Royce Zah is a resident of Cobb County, Georgia and is subject to personal jurisdiction in this Court. Defendant Zah may be personally served with Summons and a copy of the Complaint at his home address of 1105 Sadlers Close, Marietta, GA 30068.

4.

At all times relevant to this action, Defendant Zah was acting under color of state law and within the scope of his functions as a duly sworn, certified law enforcement officer employed in the Georgia State Patrol by the State of Georgia.

5.

Venue is proper in this District.

FACTUAL ALLEGATIONS

6.

On the evening of May 29, 2020, Ms. Dyett attended a protest in downtown Atlanta in response to the murder of George Floyd by Minneapolis police officers. As a journalism student, Ms. Dyett hoped to observe and film the historic protests.

7.

Defendant Royce Zah was part of a contingent of Georgia State Patrol (GSP) officers deployed to the protest scene at the intersection of Centennial Drive and Marietta Street.

8.

Defendant Zah was armed with an FN Herstal 303 launcher, provided by GSP.

9.

Other law-enforcement agencies that were deployed to the protests were not equipped with the FN Herstal 303. Only GSP troopers used that weapon against protesters that night.

10.

The FN Herstal 303 is a “less lethal munition” that launches hard plastic bullets weighted with bismuth metal pellets. The plastic projectiles are designed to strike with great force and then shatter, causing trauma and delivering a payload of marking dye or chemical irritants.

11.

Although it is described as “less lethal,” the FN Herstal 303 is known to cause serious injury or death. In a well-publicized 2004 incident, Victoria Snelgrove was killed when a Boston police officer shot her in the eye with a FN Herstal 303 capsule during a civil disturbance after a sports event. The plastic capsule struck Ms. Snelgrove’s face with such force that shards of plastic shattered the bones around her eye, traveled through her eye socket, and lodged in her brain, killing her.

12.

FN Herstal’s written product materials for the 303 stated that its primary intended effect is “trauma”; that “[m]isuse may result in injury or death”; and that users should “[a]void aiming at [the] face or head.” The American Academy of Ophthalmology has condemned the use of plastic bullets such as the 303 projectiles in crowd control situations due to the risk of eye injury.

13.

During the May 29, 2020 protests, Trooper Zah deployed approximately two dozen FN Herstal 303 rounds against protesters in four different engagements.

14.

Trooper Zah’s fourth and last engagement of the night took place after officers shot tear gas canisters into the crowd to disperse the protesters.

15.

Ms. Dyett was standing in the crowd. She was unarmed and did not pose any threat to Trooper Zah or anyone else.

16.

Despite the fact that Ms. Dyett was not committing any crime and did not pose a threat, Trooper Zah fired a round from his FN Herstal 303 at her, striking her in the face just below her left eye.

17.

The polystyrene projectile shattered when it struck Ms. Dyett's face, causing extreme pain and damage to her face and eye. Plastic shards and bismuth pellets from the projectile embedded in her facial tissues. She ran away, bleeding from her face and eye.

18.

The damage to Ms. Dyett's face and eye caused by Trooper Zah's FN Herstal 303 projectile has required her to undergo extensive medical procedures and has caused permanent facial disfigurement.

19.

At no time did Ms. Dyett make any threatening movements that might have given Zah a reason to believe that she posed a threat.

Count One - Unreasonable Seizure and Excessive Force

20.

At all relevant times, Trooper Zah acted under color of state law in his capacity as a Trooper with the Georgia State Patrol.

21.

Trooper Zah lacked probable cause or reasonable suspicion to believe that Ms. Dyett was committing any crime or posed any threat to anyone.

22.

Trooper Zah was not legally authorized to seize Ms. Dyett or use any force against her whatsoever.

23.

Trooper Zah seized Ms. Dyett within the meaning of the Fourth Amendment.

24.

In effecting that seizure, Trooper Zah used a level of force against Ms. Dyett that could foreseeably cause significant bodily harm or death.

25.

The level of force used by Trooper Zah was unconstitutionally excessive.

26.

Trooper Zah's use of force proximately caused serious injuries to Ms. Dyett.

27.

Ms. Dyett is entitled to compensatory damages, including, but not limited to, damages for medical costs; pain and suffering; mental anguish; and violation of her constitutional rights; and punitive damages.

Count Two - Unlawful Retaliation for Exercise of First Amendment Rights

28.

At the time of Trooper Zah's use of force against her, Ms. Dyett was in the exercise of her First Amendment right to protest and petition the government for a redress of grievances.

29.

By unlawfully shooting her in the face with a projectile, Trooper Zah intended to, and did, prevent and deter Ms. Dyett from continuing to participate in the protest.

30.

Trooper Zah's use of force was such as to deter a person of ordinary firmness from the exercise of First Amendment Rights.

31.

Ms. Dyett is entitled to compensatory and punitive damages for Trooper Zah's infringement of her First Amendment rights.

Count Three: Attorneys' Fees and Expenses of Litigation

32.

Because of Defendant's violations of her civil rights, Plaintiff is entitled to an award of costs, including but not limited to reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiff respectfully requests the following relief:

- (a) That the Court award Plaintiff compensatory, punitive, and/or nominal damages against all Defendants in an amount to be determined by the enlightened conscience of an impartial jury;
- (b) That the Court grant Plaintiff her reasonable costs and attorney's fees in bringing this action in an amount to be determined at trial;
- (d) That Plaintiff be granted a trial by jury on all issues so triable; and
- (e) That Plaintiff be granted such other and further relief as this Court deems just and proper.

This 18th day of May, 2022.

Respectfully submitted,

s/Miguel Dominguez
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