

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

DANA MCARTHUR as court-appointed,)
Guardian for DAVIS MCARTHUR)
Plaintiff,)

JURY TRIAL DEMANDED

v.)

Cause No.

THE CITY OF ADEL, GEORGIA, POLICE))
DEPARTMENT)

THE COOK COUNTY (GEORGIA))
SHERIFF’ DEPARTMENT, a Department)
of Cook County, Georgia)

SERGEANT JOHN GARY ROBERTS in)
his official and individual)
capacities,)

CORPORAL JOEL FUTCH, in his official)
and individual capacities,)

And)

OFFICER T. GREEN, in his official and)
individual capacities,)

Defendants.)

COMPLAINT

Davis McArthur, acting by and through his court-appointed Guardian, Dana McArthur, (“Plaintiff”) complains against Corporal Joel Futch (“Futch”), Officer T. Green (“Green”) and Sergeant John Gary Roberts (“Roberts”), police officers and/or former police officers for the City of Adel, Georgia, in their individual and official capacities, against The City of Adel, Georgia and against The Cook County, Georgia, Sheriff’s Office, (collectively “Defendants”), stating the following:

INTRODUCTION

This is an action against Defendants for money damages, declaratory, and injunctive relief brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, the Constitution of the State of Georgia and under the laws of the State of Georgia.

Plaintiff alleges that on August 27, 2019, Davis McArthur (“Davis”), a young, suicidal, mentally ill, African American male suffering from a psychiatric-suicidal medical crisis, was being transported from the Phoebe Sumter Medical Center in Americus, Georgia to the Greenleaf Psychiatric Hospital in Valdosta--the hospital designated by the 1013 Order as the “emergency receiving facility.” Davis was in the medical custody of Transcare Medical, LLC, (“Transcare”), a licensed Georgia ambulance service, pursuant to a “Form 1013 Involuntary Transfer Order” (“1013 Order”) but he was not sedated or restrained. The planned route from Americus to Valdosta allowed for a brief stop in Adel, Georgia so Transcare’s attendant-EMT could be relieved by another EMT. Immediately after Transcare’s EMT-exchange, Transcare’s crew lost control and a physical altercation ensued between Transcare’s EMT, Paramedic and Davis. 911 was called to the scene and Defendants Roberts, Futch and Green (collectively, “the Adel Police”) responded. Defendants, acting together, immediately arrested Davis without conducting *any* investigation or questioning anyone at the scene, unlawfully subverting and discontinuing Davis’ active Form 1013 Involuntary Transfer. The Adel Police unlawfully terminated Davis’ emergency medical care. Under Sergeant Roberts’ direction, the Adel Police violated Plaintiff’s State and Federal Constitutional rights, by restraining, detaining, arresting and delivering him into the possession of the Cook County Sheriff’s Department (i.e., the Cook County Jail) where Davis was placed into the general population of the Cook County jail without any medical treatment for nine (9) days. Plaintiff alleges that these constitutional violations were committed as a result of the policies and

customs of The City of Adel (“Adel”), Georgia and The Cook County Sheriff’s Office (“CCSO”). Each of the Adel Police officers and the Cook County Sheriff’s deputies at the jail were purportedly acting, respectively, within the course and scope of their respective authority as police officers for the City of Adel, Georgia and sheriff’s deputies for the Cook County Sheriff’s Department.

Plaintiff alleges that these constitutional violations were committed as a result of the policies and customs and that both Adel and CCSO are liable under the theory of respondeat superior for the torts committed by Roberts, Futch and Green and the multiple CCSO deputies who incarcerated Davis McArthur for nine (9) days without the emergency medical treatment mandated for him under the Form 1013 Order.

JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiff’s cause of action arising under the Constitution of the United States and 42 U.S.C. § 1983 and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over plaintiff’s causes of action arising under the Georgia state law pursuant to 28 U.S.C. § 1367.

2. Venue lies in the United States District Court for the Middle District of Georgia because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in The City of Adel, Cook County, Georgia. 28 U.S.C. § 1391(b)(2).

3. Divisional venue is in the Valdosta Division because the events leading to the claim for relief arose in Cook County, Georgia.

PARTIES

4. Davis McArthur (“Plaintiff”) is an individual who lacks legal capacity due to multiple mental illness(es). He brings this case by and through Dana McArthur, his Court-Appointed

Guardian. Davis McArthur resides in Albany, Dougherty County, Georgia. Dana McArthur resides in Woodstock, Cherokee County, Georgia.

5. The Adel Police Department is a Department is operated by the City of Adel (“Adel”) , located in Cook County, Georgia. Adel is a municipal corporation and, at all relevant times, was the public employer of Defendants Roberts, Futch and Green.

6. The Cook County Sheriff’s Department (“Cook County Sheriff”) is operated as a Department of Cook County, Georgia. Doug Hanks is the Cook County Sheriff.

7. Defendant John Gary Roberts was a Sergeant with the Adel Police Department at all relevant times. He has since been terminated. He is sued in his individual and official capacities.

8. Defendant Joel Futch was a Corporal with the Adel Police Department when the relevant events occurred. He is sued in his individual and official capacities.

9. Defendant T. Green was an officer with the Adel Police Department when the relevant events occurred. He is sued in his individual and official capacities.

FACTUAL BACKGROUND

10. On or about August 26, 2019, Davis McArthur (“Davis”), a 20-year old, African American man with a lifelong history of multiple mental illnesses, suffered an extreme psychiatric (i.e., suicidal) crisis, and was taken to the Phoebe Sumter Regional Medical Center (“Phoebe Sumter”) from his group home in Americus, Georgia for an initial examination.

11. After conducting an initial assessment, Phoebe Sumter’s ER staff determined (a) that Davis was a danger to himself and others, and (b) that there was *probability* that Davis would cause injury to himself or others without further evaluation and treatment by appropriately qualified medical providers.

12. Phoebe Sumter’s ER staff completed an “Involuntary Form 1013 Transfer Order,”

providing for Davis' ambulance transport from Americus, Georgia to the designated "Emergency Receiving Facility," the Greenleaf Psychiatric Hospital, located about 2 hours away, in Valdosta, Georgia.

13. Transcare Medical, LLC ("Transcare") was selected by the Phoebe Sumter ER staff to provide the ambulance transport services. Transcare's crew planned a driving route passing through Adel, Cook County, Georgia, so they could effect an EMT staff-change at Transcare's regional headquarters.

14. Through a combination of Transcare's poor training, poor planning, negligence in the assessment of Davis' condition by Transcare's substituting-EMT, fatigue on the part of the Transcare's EMT staff, and the stress (i.e., emergency nature) of Davis' Form 1013 transport, a physical altercation broke out between Davis and Transcare's EMT's during the staffing exchange.

15. One of Transcare's EMTs called 911 and the City of Adel Police quickly responded.

16. Defendant Rogers was the first officer to arrive on the scene. Defendants Futch and Green arrived minutes later.

17. Without interviewing anyone at the scene, Defendant Rogers ordered Defendants Futch and Green to immediately handcuff Davis, arrest him, place him in their squad car and to take him (immediately) to the Cook County Jail 'for processing.'

18. Only after Davis was removed from the scene, Defendant Rogers began taking statements from Transcare's EMT and Paramedic, respectively, and offered each of them an opportunity for a medical examination for their slight and superficial scrapes—which they both refused.

19. No such offer was ever made to Davis, though Davis was in a hospital gown, obviously

being transported by ambulance, and he had visible cuts covering his arms, scrapes and abrasions on his body and a patch of his hair pulled out during the altercation.

20. Sergeant Rogers never inquired about the underlying medical conditions which necessitated Davis' ambulance transport and took no steps to investigate Davis' medical condition. He was not concerned about the fact that Transcare was in the process of effectuating a Form 1013 Involuntary Transport Order when the alleged altercation occurred, and claims that such knowledge would have made no difference in the decisions he made at the scene to arrest Davis and charge him with crimes.

21. Sergeant Rogers simply made an instantaneous assessment (a) that a crime had occurred, (b) that the young black man in the hospital gown was guilty of 'something' and (c) that it was not his [Sergeant Rogers'] own responsibility to concern himself with Davis' medical condition or needs.

22. Defendants Roberts, Futch and Green (the Adel Police officers) as well as the Transcare EMT most directly involved in the physical altercation are all Caucasians.

23. No attempt was made to interview Davis at the scene or at any time thereafter concerning the facts and circumstances leading to the altercation, but Defendant Roberts took statements from Transcare's EMTs to collect *their* version of the facts.

24. The Adel Police offered each of Transcare's EMTs an opportunity to be medically assessed and treated for their but no such opportunity was ever offered to Davis, even though it was clearly evident that Davis, wearing a hospital gown and covered with cuts, was being transported by ambulance when the altercation occurred.

25. Plaintiff contends that racial discrimination was a key factor in Defendants' disparate treatment of him, and that that discriminatory treatment continued through Davis' several hours-

long ‘processing’ after he arrived at the Cook County Jail.

26. Defendant Roberts’ employment with the Adel Police was terminated a short time following this incident for making racially derogatory remarks about African American people—though he claims that his termination was not related to the incident forming the basis for this suit.

27. Upon arriving at the Cook County jail, Davis’ hospital gown was taken from him and he was left completely naked for several hours while he waited to be processed in an open ‘holding’ area, while he waited to be charged and processed into the general population of the jail.

28. Davis was never questioned about the facts or circumstances leading to the altercation and he was not asked about , but he was charged with two (2) misdemeanor counts of battery and two (2) felony counts of *willfully* and *knowingly* Interfering with an Emergency Medical Technician.

29. Davis was not examined or treated by any medical professionals, despite having arrived at the jail wearing only a hospital gown and having visible injuries covering his body.

30. Davis remained incarcerated in the general population of the Cook County jail for the next nine (9) days, without ever receiving the emergency medical care legally mandated by the Form 1013 Involuntary Transfer Order.

31. Only a few weeks after Davis’ arrest, Sergeant Rogers’ was terminated from the Adel Police due (in part) to openly expressed derogatory comments concerning African Americans as a race, in general.

32. Approximately eighteen (18) months after Davis’ arrest, a Cook County Grand Jury issued an indictment on the charges referenced in paragraph 21, above, despite *knowing* that the incident occurred while Davis’ was being transported under an Involuntary Form 1013 Transport

Order, that the Adel Police and Cook County Sheriff had interrupted that emergency transport—by arresting and incarcerating Davis, and that the Adel Police and Cook County Sheriff deprived Davis of the emergency care that had been ordered for Davis (and for which he was entitled).

33. The above-referenced criminal charges against Davis are still pending in Cook County, Georgia.

34. On May 13, 2021, The City of Adel and Cook County, Georgia were provided a detailed Notice of Plaintiff’s claims. A true and accurate copy of that Notice will be filed with this Original Complaint as “Exhibit 1”. Neither local government entity has ever responded—other than by continuing the above-referenced criminal prosecutions against Davis.

35. As a direct and proximate result of the acts of Defendants, Plaintiff suffered the following injuries and damages:

- a. Violation of his constitutional rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure of his person and his right not to be subjected to cruel and unusual punishment;
- b. Loss of his physical liberty;
- c. Intentional, offensive contact with his body and public embarrassment and humiliation;
- d. Extreme mental anguish,
- e. Post-Traumatic Stress Disorder,
- f. The stigma of having been arrested and incarcerated—and the loss of housing and employment opportunities resulting therefrom,
- g. The overwhelming stress of having to defend himself against criminal charges and the fear of long-term incarceration, and

- h. Shame, depression, loss of the enjoyment of life (i.e., hedonic damages) directly resulting from Defendants’ actions and fear of public authority figures—whom Davis once revered and respected.

36. The actions of Defendants violated the following clearly established and well-settled federal constitutional rights of Plaintiff:

- a. Freedom from the unreasonable seizure of his person.
- b. Freedom from cruel and unusual punishment.
- c. Deprivation of Plaintiff’s right to receive emergency care in the midst of a psychiatric-suicidal crisis, as mandated by under the (Georgia) statutorily-created “Form 1013 Involuntary Transfer Order.”
- d. The right to be free from racial discrimination in the administration of Georgia’s emergency medical services.

37. At all relevant times, Defendants were acting under color of law and under color of authority as police officers, employees, and agents or servants of the City of Adel, Georgia and Cook County, Georgia, respectively, and as agents of the State of Georgia.

COUNT I

Against Defendants City of Adel Police Department,

Roberts, Kutch and Greene—wrongful arrest in violation of 42 U.S.C. §1983

38. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

39. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendants for violation of his constitutional rights under color of law.

COUNT II

Against Defendants City of Adel Police Department,

Roberts, Kutch and Greene—Racial Discrimination with Respect to Emergency Medical Transportation in Violation of U.S. Code Title 42, Chapter 21

40. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

41. Plaintiff claims damages under U.S. Code Title 42, Chapter 21 for the injuries set forth above against Defendants for unlawful racial discrimination against Plaintiff's right to public accommodations, specifically the right to receive the emergency medical care and treatment mandated under the Form 1013 Involuntary Transfer Order—specifically including the right to be transported to the designated “Emergency Receiving Facility” at the Greenleaf Psychiatric Hospital in Valdosta, Georgia and the right to receive emergency medical assessment and treatment from appropriately qualified and trained medical personnel.

42. Georgia law provides, in pertinent part, that “[p]ersons providing transportation are authorized to transport a patient from a sending facility to a receiving facility but shall not release the patient *under any circumstances* except into the custody of the receiving facility. O.C.G.A. § 37-3-101(b).

43. Davis had a vested legal right, under Georgia law, to be transported to the Form 1013-designated “receiving facility”, assessed and treated for his psychiatric-suicidal crisis, regardless of whether or not Defendants City of Adel Police Department, Roberts, Kutch and Greene actually *believed* he had allegedly committed any crimes.

44. Georgia law provides for no exceptions or circumstances under which medical custody of a Form 1013 patient may be diverted, terminated or superseded by law enforcement before the patient has been transported to the emergency receiving facility designated in the Form 1013 Order.

45. Georgia law expressly provides a statutory framework for situations in which the subject of a Form 1013 Order is charged with the commission of crime. Defendants City of Adel Police Department, Roberts, Kutch and Greene failed to act within that statutory framework.

46. Defendants City of Adel Police Department, Roberts, Kutch and Greene each deprived

Plaintiff of his rights based, at least in part, on the culture of racial discrimination against Davis, an African American, which permeated the City of Adel's police department.

47. Whether Transcare 'abandoned' medical custody to Defendants or Defendants removed Davis from that custody for purposes of arresting him and charging him with criminal offenses, Defendants acted in violation of Title 42, Chapter 21 of the U.S. Code which prohibits racial discrimination with respect to the provision of public accommodations, such as Georgia's emergency medical transport services under its Form 1013 process.

48. Plaintiff claims damages under Title 42, Chapter 21 of the U.S. Code for the injuries set forth above against Defendants for violation of his constitutional rights under color of law.

COUNT III

Against Defendant Cook County Sheriff's Department

Wrongful Seizure (Arrest and Confinement) in Violation of 42 U.S.C. §1983

49. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

50. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendants for violation of his constitutional rights under color of law.

COUNT IV

Against City of Adel in Violation of 42 U.S.C. § 1983

51. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

52. Prior to August 27, 2019, the Adel Police Department developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Adel, which caused the violation of Plaintiff's rights.

53. It was the policy and/or custom of the Adel Police Department to fail to exercise reasonable care in hiring and supervision of its police officers, including Defendant Roberts, thereby failing to adequately prevent constitutional violations on the part of its police officers.

54. It was the policy and/or custom of the Adel Police Department to inadequately supervise and train its police officers, including Defendants Roberts, Futch and Green, thereby failing to adequately discourage further constitutional violations on the part of its police officers.

55. As a result of the above-described policies and customs, police officers of the City of Adel, including Defendants Roberts, Futch and Green, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

56. The above described policies and customs demonstrate a deliberate indifference on the part of the City of Adel to the constitutional rights of persons within the City of Adel, and were the cause of the violations of Plaintiff's rights alleged herein.

COUNT V

Against City of Adel for Violation of 42 U.S.C. § 1983

57. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

58. Prior to August 27, 2019, the Adel Police Department developed and maintained policies or customs exhibiting deliberate indifference to the rights of psychiatric patients who, in medical emergencies, have to be transported pursuant to a Georgia Form 1013 Involuntary Transport Order.

59. It was the policy and/or custom of the Adel Police Department to disregard Georgia law entirely concerning the uninterrupted and undeterred provision of emergency services to persons being transported under Form 1013 Orders.

60. It was also the policy and/or custom of the Adel Police Department to disregard the emergency medical condition(s) and needs of persons being transported under Form 1013 Orders if, in an officer's opinion, that individual could be charged with any crime---and, in such cases, to arrest and imprison such persons without making provisions for them to receive the

emergency medical services required under the applicable Form 1013 Order.

61. It was the policy and/or custom of the Adel Police Department to inadequately supervise and train its police officers, including Defendants Roberts, Futch and Green, thereby failing to adequately discourage further constitutional violations on the part of its police officers.

62. As a result of the above-described policies and customs, police officers of the City of Adel, including Defendants Roberts, Futch and Green, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

63. The above described policies and customs demonstrate a deliberate indifference on the part of the City of Adel to the constitutional rights of persons within the City of Adel, and were the cause of the violations of Plaintiff's rights alleged herein.

COUNT VI

**Against Defendants City of Adel Police Department,
Roberts, Kutch and Greene in Violation of Plaintiff's under of the Georgia Constitution
Section 1, Paragraph XIII (Unreasonable Searches and Seizures) and Section 1, Paragraph XVII
(i.e., abusive arrest and/or while under arrest)**

64. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

65. Plaintiff claims damages under The Constitution of the State of Georgia, Section 1, Paragraphs XIII and XVII, for the injuries set forth above against Defendants for violation of his State Constitutional rights under color of law.

COUNT VII

Respondeat Superior of City of Adel

66. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

67. Defendant City of Adel is liable for the wrongful arrest and false imprisonment committed against Plaintiff by Defendants Roberts, Futch and Green and the Cook County Sheriff's Department. The City of Adel employed the officers, who wrongfully arrested Plaintiff

while he was in the medical custody of Transcare pursuant to the Form 1013 Involuntary Transfer Order, and falsely imprisoned him while acting in the scope of their employment.

COUNT VIII
Relief Under the Federal Declaratory Judgments Act
28 U.S. Code § 2201

68. Plaintiff re-alleges and incorporates by reference ¶¶ 1–37.

69. Plaintiff seeks Declaratory Relief, pursuant to 28 U.S. Code § 2201 for declaratory relief, finding that:

- a. Plaintiff had the following rights, at a minimum, under O.C.G.A. § 37-3-101
 - i. To receive an emergency medical assessment and treatment by the Form 1013 Involuntary Transfer Order’s designated “Emergency Receiving Facility”,
 - ii. To be transported, without interruption or delay, to the Greenleaf Psychiatric Hospital,
 - iii. To remain in the medical custody and/or control of Transcare (i.e., without interference, interruption or termination of that custody) until such time as the Form 1013 Order had been fully carried out—i.e., until Plaintiff’s medical custody was assumed by the Greenleaf Psychiatric Hospital.
- b. Under O.C.G.A. § 37-3-101, Defendants City of Adel Police Department, Roberts, Kutch and Greene lacked the legal authority to interrupt and/or terminate the active Form 1013 Order for purposes of arresting Plaintiff prior to Plaintiff’s emergency medical assessment and, if applicable, treatment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- A. Enter judgment in favor of Plaintiff and against Defendants;
- B. Enter an order declaring Defendants conduct unconstitutional;
- C. Award Plaintiff compensatory and punitive damages against Defendants;

- D. Award Plaintiff's counsel reasonable attorneys' fees, expert fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law;
- E. Award Plaintiff the Declaratory Relief requested herein;
- F. Enter a permanent injunction, upon proper motion, requiring Defendant City of Adel to adopt appropriate policies related to the hiring and supervision of its police officers; and
- G. Grant to Plaintiff such other and further relief as may be just and proper under the circumstances, including but not limited to appropriate injunctive relief.

JURY TRIAL DEMAND

Plaintiff demands a jury trial, pursuant to the Seventh Amendment to the Constitution of the United States, as to all claims for damages.

This 22nd day of August 2022.

Respectfully submitted,
THE LAW OFFICES OF BILL REED

BY: s/ *Bill Reed*
James William ("Bill") Reed

The Law Office of Bill Reed
P.O. Box 964
Holly Springs, Georgia 30142
Telephone: 480.227.9911
Facsimile: 678-669-2897
Email: billreedattorney@gmail.com