

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHERRY CARROLL, Individually and as Natural Parent & Legal
Guardian on Behalf of DAVID CARROLL & DEVAN WHITE, Both
Infants Under the Age of Eighteen (18);

COMPLAINT

Plaintiffs,

Civ. No.:

-vs-

COUNTY OF MONROE, MONROE COUNTY SHERIFF'S
DEPARTMENT, PATRICK O'FLYNN, SHERIFF OF THE
MONROE COUNTY'S SHERIFF DEPARTMENT, In His Official
Capacity DEPUTY SHERIFF JAMES CARROLL, In His Official and
Individual Capacity, & THE GREATER ROCHESTER AREA
NARCOTICS ENFORCEMENT TEAM, ("GRANET"), OFFICER
MICHAEL R. DESAIN, In His Official and Individual Capacity;
SGT. ROBERT THROWBRIDGE, In His Official and Individual
Capacity; SGT. JOHN HENDERSEN, In His Official and
Individual Capacity,

Defendants.

JURY DEMAND

Trial by jury on all issues is demanded.

PRELIMINARY INTRODUCTION

1. This is an action brought pursuant to 42 U.S.C. § 1983 and the Fourth Amendment of the United States Constitution for the interference with the Plaintiffs' property rights, i.e. the ownership of their dogs, pursuant to the Fourth Amendment and for the use of excessive force in violation of the Fourteenth Amendment.

PARTIES

2. Plaintiff Sherry Carroll resides at 284 Ridgedale Circle, Rochester, New York 14616 which is located in the County of Monroe, State of New York.

3. Plaintiff David Carroll, by and through his natural parent and legal guardian Sherry Carroll, resides at 284 Ridgedale Circle, Rochester, New York 14616, which is located in the County of Monroe, State of New York.

4. Plaintiff Devan White, by and through his natural parent and legal guardian Sherry Carroll, resides at 284 Ridgedale Circle, Rochester, New York 14616, which is located in the County of Monroe, State of New York.

5. Upon information and belief, the Monroe County Sheriff's Department operates under the direct control of Monroe County, State of New York.

6. Defendant Patrick Flynn is the Sheriff of The Monroe County Sheriff's Department.

7. Defendant Deputy Sheriff James Carroll is a Deputy Sheriff hired and supervised by the County of Monroe.

8. The defendant Great Rochester Area Narcotic Enforcement Team("GRANET") is a drug task force that employs several local police agencies from Western New York located at 185 Exchange Boulevard, Rochester New York.

9. Defendants OFFICER MICHAEL R. DESAIN, In His Individual and Official Capacity; SGT. ROBERT THROWBRIDGE, In His Individual and Official Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity, are all members of several local police agencies who are also members of GRANET who were present on the evening of October 11, 2006 during the events which form the basis of this Complaint.

JURISDICTION

10. Plaintiffs' bring this action to recover damages for the violation of their civil rights under the Fourth and Fourteenth Amendments to the United States Constitution, codified at 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3).
11. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 13321 (federal question) and § 1343 (civil rights).
12. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.
13. Compensatory and punitive damages are sought pursuant to 42 U.S.C. § 1983 and § 1985.
14. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. Rule 54.

15. As mandated by the Supremacy Clause, in relation to actions brought pursuant to 42 U.S.C. § 1983, plaintiffs do not have to comply with Municipal Law Section 50-e with regard to filing a Notice of Claim with regard to federal causes of action.

VENUE

16. This action properly lies in the Western District of New York, pursuant to 28 U.S.C. § 1343(3) because the claims arose in this judicial district and the defendants reside in and/or do business in Monroe County.

1. Factual Background

17. On October 11, 2006, at approximately 7:30, Sherry Carroll and her son Devan White were lying in bed watching television.
18. David Carroll was in a room in the back of the house playing on the computer and petting his dog "Damian," who was asleep.
19. While settling in for the night they heard a loud crashing noise in the front of the house and witnessed many flashlights.
20. The crash that Plaintiffs heard was the sound of the above captioned individual defendants entering the Carroll premises pursuant to a duly executed search warrant.

21. Plaintiffs then heard “get down on the floor, put your hands up, everybody on the floor.”
22. David Carroll was startled, as was Damian, who awoke when he jumped up from the crashing noise.
23. David Carroll started walking out to the front of the house with Damian following him when he recognized the people breaking into the house were police officers.
24. David Carroll then grabbed the collar of his dog and walked into the front of the house where the police were.
25. Sherry Carroll then witnessed her son David Carroll walking towards the front of the house with Damian where above the captioned individual defendants were located.
26. Sherry Carroll noticed that her son David Carroll had a hold of Damian’s collar while walking to the front of the house.

27. When David Carroll and Damian made it to the front of the house Damian started wagging his tail, as he does when company comes over to the house.
28. At no time was Damian growling, attacking, or acting fiercely towards the officers.
29. Deputy James Carroll, of the Monroe County Sheriff's Office, immediately drew his firearm and told the infant David Carroll to leave the room.
30. Upon Deputy Carroll's demand, David Carroll let loose of Damian's collar briefly and turned around to get him again, as he was walking towards the kitchen away from the officers.
31. Just as David Carroll turned around he heard a bang from the discharge of the firearm in the Carroll residence.
32. Sherry Carroll and Devan White also heard an officer holler "get back," and then heard a loud pop and saw a bright flash of light from the front of the home.
33. Deputy James Carroll of the Monroe County Sheriff's Office shot Damian in the head with the infant David Carroll standing only a couple feet away.

34. David Carroll, scared and traumatized, then ran toward the bedroom where Sherry Carroll and Devan White were located yelling “mom, they shot Damian.....they shot our dog.”
35. At this time an unidentified man wearing a black mask entered Sherry Carroll’s bedroom and pushed her face down on the floor.
36. An unidentified officer then pointed a gun at the infant David Carroll and told him to “put his hands up.” David Carroll was very emotional and was afraid of being shot.
37. An unidentified officer then grabbed Sherry Carroll’s left pointer finger and right arm, bending both back to the point of severe pain. The officer then grabbed her right arm and pulled it behind her back and handcuffed her.
38. The officers kept Sherry Carroll, David Carroll, and Devan White in a closed bedroom for approximately 20 minutes.
39. During the time all three (3) Plaintiff’s were locked in the bedroom, they heard the officers making comments such as “she brought this shit on herself,” look at the fucking mess she has to clean up here,” “this bitch had it coming,” “this bitch is a slut.”

40. Two (2) officers then came into Sherry Carroll's bedroom and escorted David Carroll and Devan White to a room in back of the house, and kept Sherry Carroll in the bedroom.
41. An officer with a GRANET wind jacket on kept Sherry Carroll in the bedroom and compelled her to make a statement against her will.
42. The officer making the statement asked Sherry Carroll if she heard the dog growl, to which she replied "no," he then again tried to get Sherry Carroll to state that her dog had growled, and again she stated he had not. The officer then asked her if she had sex with her older sons friends, referring to them as "gang members."
43. During the whole time the officer was making this statement, Sherry Carroll was only asked yes and no questions, was not given any opportunity to make a statement herself, and was coerced, already in a hysterical state after her dog was shot in her home, into signing whatever statement the officer had written down.
44. During the entirety of the incident, the Plaintiffs heard a lot of commotion going on throughout their house, including glass being broken, and the crashing and banging of furniture upstairs.

45. The police found no drugs pursuant to their duly executed search warrant.
46. That the discharge of a firearm in a house full of children; killing the family dog was plainly an irresponsible action on the behalf of the defendants and constitutes gross negligence.
47. Further, the October 11, 2006 police report, authored by Officer Michael Desain of the Brighton Police Department is totally devoid of any evidence that shooting the dog Damian to death was necessary, i.e. there is *no written evidence* that Damian was feral, was on the loose, running wild, or that he attempted to hurt anyone.
48. Defendants, acting under color of state law, violated Plaintiffs' Fourth and Fourteenth Amendment right against unreasonable searches and seizures in that defendants unreasonably interfered with Plaintiffs Sherry Carroll, David Carroll, and Devan Whites' possessory interest in their dog Damian when he was shot needlessly by defendants while their owner looked on, desirous of retaining custody of their dog Damian.
49. Damian presented no imminent danger, in that he was not acting fiercely, threatening or harassing anyone when he was killed in front of the children who owned him.

50. Non-lethal methods could have been used instead of killing the dog Damian, but were not exhausted.
51. Defendant Deputy Carroll acted unreasonably as judged objectively by the prospective of a reasonable sheriff's deputy, and not the subjective intent of Deputy Carroll.
52. Plaintiffs' interest in being free from such unreasonable searches and seizures unreasonably interfering with their dog outweigh any interest defendants may have to justify the interference with Plaintiffs' property rights in the ownership of their dog Damian.

**FIRST CAUSE OF ACTION FOR VIOLATIONS OF FOURTH AND FOURTEENTH AMENDMENT
AS PER 42 U.S.C. § 1983 AGAINST MONROE COUNTY SHERIFF'S DEPARTMENT
DEPUTY JAMES CARROLL, In His Official and Individual Capacity**

53. Plaintiffs Sherry Carroll, David Carroll, and Devan White repeat and reiterate each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
54. On October 11, 2006, at about 7:30 p.m, defendants came to Plaintiff Sherry Carroll's residence where Plaintiff Sherry Carroll, David Carroll, and Devan White were all present, and came into the residence pursuant to a search warrant. Upon defendant entering the residence, Plaintiff David Carroll, with

his dog Damian following him, came from a back room where he was on the computer to see what the commotion was. Upon learning that it was police enforcement, David Carroll grabbed Damian's collar and proceeded to the front of the house where the officers were located. Upon David Carroll and Damian entering the room Deputy James Carroll of the Monroe County Sheriff's Office drew his firearm. Deputy Carroll yelled for David Carroll to get back and leave the room, David Carroll, at this point being shocked and terrified, let go of Damian's collar. Damian started *walking away from the officers toward the kitchen*. When David Carroll turned around to grab his collar again Deputy Carroll shot and killed Damian for no apparent reason.

55. Defendant Deputy Carroll, acting under color of state law, violated Plaintiffs' Fourth Amendment right against unreasonable searches and seizures in that defendants unreasonably interfered with Plaintiffs' possessory interest in their dog Damian as he was shot by Deputy Carroll while Plaintiffs were on-looking and desirous of retaining custody. Damian presented no imminent danger, in that he was not growling, acting fiercely, or harassing anyone when he was killed. Additionally, non-lethal methods could have been used, and were not exhausted. Defendant James Carroll acted unreasonably, as judged objectively by the prospective of a reasonable officer, and not the subjective intent of the defendants. Plaintiffs' interest in being free from such unreasonable searches and seizures and unreasonably interfering with the possessory interest in their

dog Damian pursuant to the Fourth Amendment clearly outweigh any interest defendants may have to justify the intrusion.

56. The shooting of Damian by the defendant Deputy James Carroll constituted or was brought about because of the grossly negligent act by Officer Carroll in shooting Damian to death, which constitutes an official policy of defendants to shoot and kill dogs under the factual circumstances described herein, while knowing of and fully disregarding the constitutional rights of the Plaintiffs under the 14th Amendment of the United States Constitution.

SECOND CAUSE OF ACTION FOR PLAINTIFFS SHERRY CARROLL, ET AL, FOR VIOLATIONS OF THE FOURTEENTH AMENDMENT AS PER 42 U.S.C. § 1983 AGAINST THE COUNTY OF MONROE, MONROE COUNTY SHERIFF'S OFFICE

57. Plaintiffs Sherry Carroll, David Carroll, and Devan White repeat and reiterate each and every foregoing allegation of this complaint with full force and effect as if set forth at length in this cause of action.
58. On October 11, 2006, at about 7:30 p.m, defendants came to Plaintiff Sherry Carroll's residence where Plaintiff Sherry Carroll, David Carroll, and Devan White were all present, and came into the residence pursuant to a search warrant. Upon defendant entering the residence, Plaintiff David Carroll, with his dog Damian following him, came from a back room where he was on the computer to see what the commotion was. Upon learning that it was police enforcement, David Carroll grabbed Damian's collar and proceeded to the front

of the house where the officers were located. Upon David Carroll and Damian entering the room Deputy James Carroll of the Monroe County Sheriff's Office drew his firearm. Deputy Carroll yelled for David Carroll to get back and leave the room, David Carroll, at this point being shocked and terrified, let go of Damian's collar. Damian started *walking away from the officers toward the kitchen*. When David Carroll turned around to grab his collar again Deputy Carroll shot and killed Damian for no apparent reason.

59. Defendant Deputy Carroll, acting under color of state law, violated Plaintiffs' Fourth Amendment right against unreasonable searches and seizures in that defendants unreasonably interfered with Plaintiffs' possessory interest in their dog Damian as he was shot by Deputy Carroll while Plaintiffs were on-looking and desirous of retaining custody. Damian presented no imminent danger, in that he was not growling, acting fiercely, or harassing anyone when he was killed. Additionally, non-lethal methods could have been used, and were not exhausted. Defendant James Carroll acted unreasonably, as judged objectively by the prospective of a reasonable officer, and not the subjective intent of the defendants. Plaintiffs' interest in being free from such unreasonable searches and seizures and unreasonably interfering with the possessory interest in their dog Damian pursuant to the Fourth Amendment clearly outweigh any interest defendants may have to justify the intrusion.

60. The County of Monroe caused Plaintiffs to be subjected to Fourth Amendment violations because Deputy Carroll's actions were part of the customary practices of the County of Monroe, Monroe County Sheriff's department. Such repeated Fourth & Fourteenth Amendment violations amount to the County of Monroe's deliberate indifference to an obvious need for training of its officers, including and especially, Deputy Carroll. This failure to adequately train resulted in Deputy Carroll's actions that caused the Plaintiffs harm, and will continue to do so if nothing is done by the Monroe County Sheriff's Department.
61. That the aforementioned misuse of authority and power by defendant Deputy Carroll was egregious and shocking to the conscience. As a direct result, plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to engage in the physical contact and unlawful confinement described, against her will; and was caused and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.
62. Such deprivations were in violation of the rights secured to Plaintiffs by the Fourth and Fourteenth Amendments of the United States Constitution and by Title 42 U.S.C. § 1983.

63. As a result of defendant Deputy Carroll's deprivation of Plaintiffs' civil rights, Plaintiff has been damaged in an amount to be determined at trial.
64. That Plaintiffs demands costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

THIRD CAUSE OF ACTION FOR PLAINTIFFS SHERRY CARROLL, ET AL, FOR VIOLATIONS OF THE FOURTEENTH AMENDMENT AS PER 42 U.S.C. § 1983 AGAINST MONROE COUNTY, MONROE COUNTY SHERIFF'S OFFICE, DEPUTY JAMES CARROLL, In His Official and Individual Capacity, GRANATE, OFFICER MICHAEL R. DESAIN, In His Individual and Official Capacity; SGT. ROBERT THROWBRIDGE, In His Individual and Official Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity

65. Plaintiffs repeat the allegations contained in the above stated paragraphs of the Complaint as if fully set forth herein in this cause of action..
66. In engaging in the conduct described, by using excessive force against Plaintiff Sherry Carroll to effectuate the above stated search warrant, defendants and each of them deprived plaintiff of her civil rights pursuant to 42 U.S.C. § 1983. Further, as police officers employed by defendants County of Monroe and GRANATE, defendants, and each of them, were acting under the color of State law.
67. That the aforementioned misuse of authority and power by defendants was egregious and shocking to the conscience. As a direct result, Plaintiff was caused to undergo the humiliation and indignities resulting from being compelled to engage in the unnecessary and unwanted physical contact with defendants against her will; was compelled to give a statement against her

own interests; will and was caused, and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.

68. Such deprivations were in violation of the rights secured to plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by 42 U.S.C § 1983.
69. As a result of defendant deprivation of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.
70. That plaintiffs demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

FOURTH CAUSE OF ACTION FOR PLAINTIFF DAVID CARROLL FOR VIOLATIONS OF THE FOURTEENTH AMENDMENT AS PER 42 U.S.C. § 1983 AGAINST MONROE COUNTY, MONROE COUNTY SHERIFF'S OFFICE, DEPUTY CARROLL, In His Official and Individual Capacity, GRANATE, OFFICER MICHAEL R. DESAIN, In His Individual and Official Capacity; SGT. ROBERT THROWBRIDGE, In His Individual and Official Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity

71. Plaintiffs repeat the allegations contained in the above stated paragraphs of the Complaint as if fully set forth herein in this cause of action..

72. In engaging in the conduct described, by using excessive force against Plaintiff David Carroll to effectuate the above stated search warrant, defendants and each of them deprived plaintiff of her civil rights pursuant to 42 U.S.C. § 1983. Further, as police officers defendants DEPUTY JAMES CARROLL, OFFICER MICHAEL R. DESAIN, In His Individual and Official Capacity; SGT. ROBERT THROWBRIDGE, In His Individual and Official Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity County of Monroe and GRANET, defendants, and each of them, were acting under the color of State law.
73. That the aforementioned misuse of authority and power by defendants was egregious and shocking to the conscience. As a direct result, the infant Plaintiff David Carroll was caused to undergo the humiliation and indignities resulting from being compelled to engage in the unnecessary and unwanted physical contact with defendants against his will in having a gun pointed at his head and for having to witness his dog be shot in front of him; and was caused, and will continue to undergo and endure severe mental anguish, humiliation and economic hardship as a consequence thereof.
74. Such deprivations were in violation of the rights secured to plaintiff by the Fourth and Fourteenth Amendments of the United States Constitution and by 42 U.S.C § 1983.

75. As a result of defendant deprivation of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined at trial.

76. That plaintiffs demand costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

PUNITIVE DAMAGES AGAINST DEFENDANT DEPUTY CARROLL, In His Official and Individual Capacity, OFFICER MICHAEL R. DESAIN, In His Official and Individual Capacity; SGT. ROBERT THROWBRIDGE, In His Official and Individual Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity

77. Plaintiffs incorporate herein by reference all of the allegations set forth herein in this Complaint as if fully set forth herein.

78. Defendants Deputy Carroll, In His Individual and Official Capacity, OFFICER MICHAEL R. DESAIN, In His Individual and Official Capacity; SGT. ROBERT THROWBRIDGE, In His Individual and Official Capacity; SGT. JOHN HENDERSEN, In His Official and Individual Capacity were deliberately indifferent to Plaintiff Carrolls' constitutional rights as a result of his indifference and malice by shooting the dog Damian in front of children in a private residence.

79. Punitive damages are justified against the above stated defendants for their deliberate indifference and malice towards the Plaintiffs herein.

WHEREFORE, Plaintiffs demand judgment on the above counts against defendants, their units, their officers, employees, agents, and other persons acting in concert or participation with them as stated above, and award the following amounts:

- A. Compensatory damages in favor of Plaintiffs in an amount to be determined by a jury;
- B. Exemplary damages in favor of each Plaintiff;
- C. Costs of this action, including reasonable attorney fees to the Plaintiff Pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, U.S.C. § 1988 (1976); and
- D. Such other and further relief as the court may deem appropriate.

Dated: Rochester, New York
February 28, 2007

/s/Christina A. Agola, Esq.
Law Office of Christina A. Agola
Attorney for Plaintiffs
28 East Main Street
730 First Federal Plaza
Rochester, New York 14614
585.262.3320
caesq@rochester.rr.com