

STATE OF MAINE
Hancock, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

JILL WALKER and SABATINO)
 SCATTOLONI,)
)
 Plaintiffs,)
)
 v.)
)
 OFFICER BENJAMIN NOYES, Jr.,)
)
 Defendant.)
)
)
)
)

COMPLAINT

COMPLAINT

Plaintiffs Jill Walker and Sabatino Scattoloni bring this civil action, and allege as follows:

INTRODUCTION

1. This is a case about the right of members of the public to peacefully and unobtrusively observe and record police behavior without fear of threats or unlawful arrest.
2. Plaintiffs Jill Walker and Sabatino Scattoloni were visiting Portland for vacation. Near midnight on the night May 24th, Walker and Scattoloni were on their way back to their hotel room when they observed a police encounter between five Portland police officers and one woman.

3. Walker and Scattoloni decided to watch the interaction and to record it using their phone—initially from across the street, and subsequently from the same side of the street but some distance away. They watched silently, they did not approach or address the officers, and they did not in any way interfere with the officers' work; they simply stood bearing witness.
4. Walker and Scattoloni were then approached by Defendant Officer Benjamin Noyes, Jr. and were told, forcefully, "You have two seconds to get off this sidewalk or you will be under arrest!" Walker and Scattoloni asked Officer Noyes why they would be arrested and, instead of providing explanation for this threat, Officer Noyes ordered two other officers to arrest Walker and Scattoloni.
5. Walker and Scattoloni were taken by squad car to the Cumberland County Jail, where they were booked, searched, fingerprinted, and interrogated (they were not given *Miranda* warnings). They were then incarcerated until they were able to arrange for bail. Subsequently, Officer Noyes lied about Walker and Scattoloni's conduct in his police report.
6. Walker and Scattoloni were charged with "Obstructing Government Administration" and were obligated to hire a criminal defense attorney to handle the case, which, ultimately the District Attorney declined to prosecute. For the rest of their lives, on any job application, school application, or application for credit, Walker and Scattoloni will have to

answer “yes” when asked if they have ever been arrested, all because they were standing on a public sidewalk watching the police do their job.

7. Officer Noyes’s actions violated Walker and Scattoloni’s First Amendment right to observe and record the police doing their job in public, and it violated their Fourth Amendment right to be free from unlawful arrest.

PARTIES

8. Plaintiff Jill Walker is a resident of the Town of Bar Harbor, County of Hancock, State of Maine.
9. Plaintiff Sabatino Scattoloni is a resident of the Town of Bar Harbor, County of Hancock, State of Maine.
10. Defendant Officer Benjamin Noyes, Jr. is a police officer with the City of Portland Police Department, County of Cumberland, State of Maine. At all times relevant to this complaint, Noyes was acting under color of state law.

JURISDICTION AND VENUE

11. Jurisdiction is pursuant to 4 M.R.S. §105 and 42 U.S.C. §1983.
12. Venue is proper in Hancock County, pursuant to 14 M.R.S. §501.

FACTS

13. Near midnight on May 24, 2014, Walker and Scattoloni were walking to their hotel on Spring Street in Portland when they observed a number of police officers interacting with one unaccompanied woman.
14. From across the street, Walker and Scattoloni quietly observed the interaction and recorded it using the video camera on their phone.

15. A police officer approached Walker and Scattoloni and asked if they knew the woman involved in the police interaction. Walker and Scattoloni replied in the negative.
16. Scattoloni then asked the officer what had happened, and the officer responded that the woman had sideswiped a police cruiser. The officer then crossed back to the other side of the street.
17. After watching for several more minutes, Walker and Scattoloni crossed the street and stood approximately 25-feet from where the police were interacting with the woman.
18. Walker and Scattoloni did not approach the police officers; they did not yell at the police officers; and they did not make any sudden movements.
19. Walker and Scattoloni in no way interfered with the police doing their job.
20. Walker and Scattoloni observed and recorded the police out of concern for the woman (who was unaccompanied) and out of concern for police abuse of power.
21. After a few more minutes, another police officer approached Walker and Scattoloni and asked whether they knew the woman. Again, Walker and Scattoloni responded in the negative. That officer then went back to where the other officers were standing.
22. After a few more minutes, Officer Noyes approached Walker and Scattoloni and stated, "You have two seconds to get off this sidewalk or you will be

- under arrest.” This was the first time that any of the officers had expressed any concern regarding Walker and Scattoloni’s presence or behavior.
23. Walker asked Officer Noyes why they would be arrested, and Scattoloni responded to Officer Noyes that they were simply standing there.
 24. Instead of responding or explaining what law Walker and Scattoloni had broken, Officer Noyes ordered two other officers to place Walker and Scattoloni under arrest.
 25. Walker’s handbag was taken from her and she was tightly handcuffed, which caused significant bruising.
 26. Scattoloni was holding a box of leftover pizza, which the officers threw onto the ground. He was also handcuffed.
 27. Walker asked Officer Noyes why they were being arrested. He responded, “Obstructing government administration.”
 28. “Obstructing government administration”—17-A M.R.S. §751—means the intentional interference by force, violence, or intimidation or by any physical act with a public servant performing or purporting to perform an official function. “Obstructing government administration” is a Class D crime, punishable by up to 364 days in jail.
 29. Neither Walker nor Scattoloni interfered in any way with the police doing their job.
 30. Neither Walker nor Scattoloni applied any force to any officer.
 31. Neither Walker nor Scattoloni used any violence towards any officer.

32. Neither Walker nor Scattoloni intimidated any officer.
33. Neither Walker nor Scattoloni engaged in any physical act towards any officer.
34. No reasonable police officer would believe that Walker or Scattoloni was intentionally interfering by force, violence, or intimidation or by any physical act with a public servant performing or purporting to perform an official function.
35. At no point were Walker and Scattoloni given a *Miranda* warning.
36. Walker's handbag was searched without her consent.
37. One of the arresting officers reached into the pockets of Scattoloni's pants without his consent.
38. Walker and Scattoloni were placed in separate police cars and were transported to Cumberland County Jail.
39. At the jail, Walker and Scattoloni were questioned regarding their relationship to one another.
40. Walker and Scattoloni were fingerprinted and their mugshots were taken.
41. Walker and Scattoloni were then sent to a waiting area for approximately an hour.
42. Walker and Scattoloni were then separated again, and each was sent to a separate holding cell.
43. Eventually, in the early morning hours of May 25, 2014, and after paying \$60 in bail each, Walker and Scattoloni were released.

44. In his arrest report, Officer Noyes recorded that he ordered the arrest of Walker and Scattoloni because of “the combative nature of the arrestee,”—the woman whom Walker and Scattoloni were observing—“their proximity to the combative female and their refusal to follow my commands[.]”
45. Officer Noyes’s report does not state that Walker or Scattoloni was being violent or intimidating, or that they were interfering with police work in any way.
46. At no point did Walker or Scattoloni observe the woman interacting with the police being combative or difficult in any way.
47. In his police report, Officer Noyes also claimed that there was no video or audio recording of the incident. This was a false statement.
48. In his police report, Officer Noyes stated that the incident was “Alcohol Related.”
49. Neither Walker nor Scattoloni was intoxicated at the time of their arrest.
50. In his police report, Officer Noyes claimed that Walker and Scattoloni yelled at the police.
51. Neither Walker nor Scattoloni ever yelled at the police.
52. In his police report, Officer Noyes claimed that Walker and Scattoloni declared, while being transported to jail, that they do not subscribe to our form of government.
53. Neither Walker nor Scattoloni ever stated that they do not subscribe to our form of government.

54. Both Walker and Scattoloni do, in fact, subscribe to our form of government, and they intend to make use of our government's judiciary to hold Officer Noyes accountable for his unconstitutional conduct.

CLAIM FOR RELIEF

**Count I. Freedom of Speech
(First Amendment)**

55. Plaintiffs incorporate the allegations in paragraphs 1-54.
56. The right to free speech includes the right to observe, photograph, and record the police performing their work in public.
57. Walker and Scattoloni attempted to observe and record Portland police officers effectuating a stop and search.
58. Officer Noyes infringed upon and violated Walker and Scattoloni's free speech rights by ordering their arrest in response to their peaceful exercise of those rights.

**Count II. Unlawful Arrest
(Fourth Amendment)**

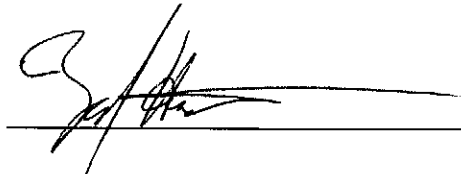
59. Plaintiffs incorporate the allegations contained in paragraphs 1-58.
60. The right to be free from unreasonable search and seizure includes the right not to be arrested except when facts and circumstances, of which the arresting officer has reasonably trustworthy information, would warrant an ordinarily prudent and cautious police officer to believe the subject did commit or was committing a crime.

61. There was no evidence of facts and circumstances sufficient to justify the belief that Walker or Scattoloni was committing a crime.
62. Officer Noyes violated Walker and Scattoloni's right to be free from unlawful arrest when he ordered them arrested when they were simply standing on a public sidewalk observing police conduct.

PRAYER FOR RELIEF

1. Plaintiffs therefore respectfully request that the Court enter a judgment including, but not limited to:
 - a) An award of monetary damages that is reasonable in the premises;
 - b) Recovery of their attorneys' fees and costs; and
 - d) Such additional and further relief as the Court deems just and equitable.

Respectfully submitted, this 16th day of September, 2014,



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