

No. 86-1088

(4)

Supreme Court, U.S.  
**FILED**  
MAY 5 1988  
JOSEPH E. SPANGL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1987

CITY OF CANTON, OHIO,  
v. *Petitioner,*

GERALDINE HARRIS, WILLIE G. HARRIS,  
BERNADETTE HARRIS,  
*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit

**JOINT APPENDIX**

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*Counsel for Petitioners*

May 5, 1988

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\* Counsel of Record

PETITION FOR WRIT OF CERTIORARI FILED JANUARY 2, 1987  
CERTIORARI GRANTED MARCH 7, 1988

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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Case No. C 80-18A

HARRIS, GERALDINE  
HARRIS, WILLIE G.  
HARRIS, BERNADETTE,

*Plaintiffs*

v.

CITY OF CANTON, OHIO  
CMICH, STANLEY  
CANTON POLICE DEPARTMENT  
MASER, DAVID,

*Defendants*

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DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
01-08-80	1	COMPLAINT filed. Summons issued. 9 Copies of complaint with 9 copies of summons issued to U.S. Marshal.
1-9-80	2	ORDER that Clerk transfer action to the Clerk in Cleveland for reassignment to another Judge filed. Contie, J. Copies mailed 1-9-80.
1/16/80	3	PRETRIAL ORDER filed. Manos, J.
1/22/80	4	ANSWER of The City of Canton & all Defts., in their official & individual capacities filed. c/m 1/21/80

DATE	NR.	PROCEEDINGS
1/30/80	5	SUMMONS returned and filed. served David Maser 1/9/80; served Raymond Samolia 1/9/80; served James R. Schnabel 1/9/80; served Mike Norcia 1/9/80; served J. Dianu 1/9/80; served Robert Kuehner 1/9/80; served Stanley Cmich, Mayor 1/9/80; served Canton Police Dept. 1/9/80;—FEES: \$27.00
3/27/80	6	MOTION of Pltfs for an extension of time to complete discovery with affidavit in support filed. c/m 3/24/80
3/28/80	7	ORDER extending the time for completion of discovery until 5/1/80 filed. Manos, J.—copies mailed.
4/11/80	8	TRIAL BRIEF of Defts., in support of First Defense of City of Canton and all defts., in their official and individual capacities filed. copy mailed 4/10/80
5/2/80	9	MOTION of pltfs. for leave to plead and joint motion for extension of time to complete discovery filed. Copy mailed 4/28/80.
5/9/80	10	TRIAL ORDER filed. Manos, J. (Case is scheduled for trial on 7/21/80 at 9:00 A.M., two copies of trial briefs are to be filed on 7/14/80, etc.) copies mailed.
5/16/80	11	MOTION of Defts., City of Canton, Stanley Cmich, Indiv, & in his official Capacity, Canton Police Dept. & David Maser to dismiss, with memorandum in support filed. copies mailed 5/14/80
5/19/80	12	MOTION of Pltfs., to strike & memorandum of Law, in opposition to Defts' Trial brief in support of first defense filed. copy mailed 5/15/80

DATE	NR.	PROCEEDINGS
5/27/80	13	MOTION of Pltfs., for an extension of time to complete discovery, until 6/16/80 and motion for leave to reply to defts motion to dismiss defts., City of Canton, Stanley Cmich & David Maser, with affidavit in support filed. copy mailed 5/23/80
6/2/80	14	ORDER extending the completion of all discovery herein until 6/16/80; further order the pltfs be permitted to reply to defts' motion to dismiss on or before 6/13/80 filed. Manos, J.—copies mailed.
*5/30/80	15	INTERROGATORIES of Pltf., (First set) propounded to Deft. David Maser filed. copy delivered 5/30/80
6/2/80	16	SUBPOENAS to produce on behalf of Pltfs., returned and filed. Served Major Paul Higgins, Canton Police Dept., 5/29/80
6/17/80	17	ANSWERS of David Maser to Pltf's (first) set of Interrogatories filed. copies mailed 6/13/80
6/18/80	18	MOTION of Pltfs., for leave to respond to Deft's motion to dismiss, with affidavit in support, until 6/18/80 filed.— copy mailed 6/18/80
7/1/80	19	MOTION of pltfs. for leave to respond to deft.'s motion to dismiss & motion to amend complaint and memo. of law in opposition to deft.'s motion to dismiss filed. Copy mailed 6/29/80. (Amended complaint attached).
7/14/80	20	TRIAL BRIEF of Defts., filed.

DATE	NR.	PROCEEDINGS
7/15/80	21	MOTION of Pltfs., to compel inspection and production of documents, with memorandum of Law in support filed. copy mailed 7/14/80
7/15/80	22	TRIAL BRIEF of Pltf., filed.
7/21/80	23	MOTION of Defts., to dismiss, with memorandum in support filed. copies mailed 5/14/80
8/11/80	24	MOTION of Pltf., to strike motion to dismiss; brief in support of Federal and pendent claims affected by applicable statute of Limitations & Savings Provision, with memorandum of Law in support filed. copy mailed 8/11/80
*8/19/80	25	MOTION of Defts., for an extension of time until 8/26/80 to file reply brief filed. copy mailed 8/18/80
8/21/80		ENDORSED Order granting motion of defts., leave until 8/26/80 to file reply brief filed. Manos, J.—copies mailed.
8/26/80	26	REPLY Brief of Defts., City of Canton, to motion to strike motion to dismiss filed. copy mailed 8/25/80
9/2/80	27	MOTION of Pltfs., for leave to file amended brief in support of Federal and pendent claims affected by applicable statute of limitations and savings provision of R.D.2305.19 filed. copies mailed 8/29/80
7/27/82	28	MEMORANDUM of Opinion granting motion of defts. to dismiss filed. Manos, J. (7/27/82).
7/27/82	29	ORDER granting motion of defts. to dismiss filed. Manos, J. (7/27/82).

DATE	NR.	PROCEEDINGS
8/26/82	30	NOTICE of appeal by pltfs. filed. Copies sent 9/8/82 to USCA, Fitten & Albu.
*8/11/80	31	MOTION of pltfs. for relief from order 60(b) Fed. R. Civ. P. filed Copy mailed 8/11/80.
*8/11/80	32	BRIEF in support of motion for relief from order filed. Copy mailed.
*10/9/81	33	ORDER denying motion of pltfs. for relief from order nunc pro tunc as of 9/1/80 filed. Krupansky, J.
9/13/82		CERTIFIED original pleadings mailed to USCA.
9/22/82	34	CERTIFIED original pleadings received (9/14/82) by USCA #82-3560.
9/22/82	35	CERTIFIED original pleadings filed (9/13/82) by USCA #82-3560.
2/9/84		TRUE copy of Mandate from USCA vacating & remanding case to Distict Court for further proceedings in accordance with the opinion of this court, filed. Each Party to bear its own costs on this appeal. Kennedy & Jones, CJS. & Cohen, District Judge. Issued as Mandate: 2/6/84. Costs: None. Record Returned. (n. 2/9/84). (1/13/84).
2/9/84		SLIP OPINION, filed.
3/19/84	36	TRIAL Order filed. Trial on for 5/2/84 9:15 am Briefs submitted 4/25/84. Manos, J. (n.3/19/84).
3/30/84	37	NOTICE of William C. H. Ramage of Harrington, Huxley & Smith 1200 Mahoning Bank Bldg. enters his appearance ast attorney for deft. Stanley Cmich.

DATE	NR.	PROCEEDINGS
4/24/84	38	TRIAL BRIEF of Stanley Cmich, individually and in his official capacity as Mayor of the City of Canton, Ohio filed. c/m 4/23/84.
4/26/84	39	SUPPLEMENTAL Trial Brief of Plaintiff filed. c/m 4/26/84.
4/27/84	40	NOTICE of Plaintiff to take Video Tape Deposition upon Oral Deposition on 4/28/84 filed. c/m 4/27/84
4/27/84	41	BRIEF of Plaintiff in support of notice to take Deposition upon Oral Examination filed. c/m 4/27/84.
4/27/84	42	ORDER to take Video Tape Deposition on 4/28/84 filed. Manos, J. (n. 4/30/84).
5/1/84	43	VOIR DIRE (proposed) questions of the Plaintiff filed. c/m 5/1/84.
5/1/84	44	JURY INSTRUCTIONS (proposed) of the Plaintiff filed. c/m 5/1/84.
5/1/84	45	EXHIBITS, Plaintiff's list of proposed exhibits filed. c/m 5/1/84.
5/2/84	46	VOIR DIRE questions (proposed) of Defendant Stanley Cmich filed. c/m 4/30/84.
5/2/84	47	EXHIBITS (proposed) of Defendants filed.
5/3/84	48	SUBPOENA to produce on behalf of the Plaintiff returned and filed by Dexter W. Clark. Served W.J.K.W. (Sherie Molesky) personally on 4/27/84.
5/4/84	49	MOTION of Plaintiff for disqualification of Judge and Brief in support filed. c/m 5/3/84.



DATE	NR.	PROCEEDINGS
5/4/84	50	ORDER that the above-captioned case be returned to the Clerk of Courts for reassignment by random draw pursuant to L. Civ. R. 7.09(1) filed. Manos, J. (n. 5/4/84).
5/4/84		File mailed to Clerk of Court, United States District Court, Akron, Ohio on 5/4/84; Case reassigned to Judge Beli.
5/22/84	51	ANSWER of defendant Stanley Cmich individually and in his official capacity as former Mayor of Canton, OH to amended complaint filed. Copies mailed 5/16/84.
5/25/84	52	ANSWER of defendants City of Canton, Ohio; David Maser, individually and in his official capacity as Chief of Police; Canton City Police Department; Patrolman James R. Schnabel; Patrolman Mike Norcia; Patrolman J. Daianu and Patrolman Robert Kuehner, individually and in their official capacity as members of the Canton Police Department with attachments filed. Copies mailed 5/24/84.
5/25/84	53	MOTION of defendants City of Canton, OH; David Maser, Patrolmen Schnabel, Samolia, Norcia, Daianu and Kuehner for more definite statement of the amended complaint with brief and attachments in support filed. Copies mailed 5/24/84.
5/25/84	54	MOTION of defendants City of Canton, OH, Canton Police Department and David Maser individually and in his official capacity as Chief of Police of Canton City Police Dept. to dismiss complaint with memorandum of law in support filed. Copies mailed 5/24/84.

DATE	NR.	PROCEEDINGS
6/6/84	54	MOTION of plaintiffs for extension of time to 6/26/84 to file briefs in opposition filed. Copies mailed 6/6/84. 6/8/84, ENDORSED ORDER GRANTING motion filed. Bell, J. Copies mailed 6/11/84.
6/21/84	55	SECOND MOTION of plaintiff for extension of time to 7/6/84 to file briefs in opposition filed. Copies mailed 6/21/84. 6/27/84, ENDORSED ORDER GRANTING motion with NO FURTHER DELAYS filed. Bell, J. Copies mailed 6/27/84.
7-16-84	56	MOTION of plaintiff to strike defendants' amended answer and motion for a more definite statement; memorandum contra to defendants' motion to dismiss defendants, City of Canton, Canton Police Dept. and David Masser with memorandum in support filed. Copies served 7-12-84.
8/8/84	57	ORDER that case is scheduled for trial in Cleveland 8/28/84 at 9:00 a.m. filed. Bell, J. Copies mailed 8/9/84.
8/21/84		NOTICE that case has been set for final pre-trial conference with clients in personal attendance 8/27/84 at 3:30 p.m. at Cleveland mailed.
8/28/84	58	SUBPOENAS (19) to testify of behalf of plaintiff 8/28/84 at 9:00 a.m. returned and filed. Served Stanley Cmich; R. Kepler; Tom Rollo; Sheldon Gatschall; Thomas W. Wyatt; Director of Medical Records & Billing; Timken Mercy Medical Center; Capt.

DATE	NR.	PROCEEDINGS
		Alan Maxon; Frank Burnasky; Edward Coleman; Dave Maser; Clerk of Court, Canton Municipal Court; Robert Fisher; Capt. Alan Maxson; Walter Cherry; Paul Higgins, Director of Motor Vehicle Maintenance; Donald Wartz; M. Fox; Ronald Inman and Melvin Gravely who refused to accept subpoena. FEES: \$665.00.
8/28/84	59	SUBPOENA returned and filed. Served Ron Ponder 8/28/84. FEES: \$35.00.
**8/30/84	60	WITNESS List of defendant filed. Copies mailed 8/30/84.
8/28/84	61	MINUTES of proceedings filed. Bell, J. Salopek, R. Jurors and alternate jurors impaneled.
8/29/84	62	MINUTES Of proceedings filed. Bell, J. Salopek, R. Trial resumed from 8/28/84. Plaintiff called Dr. Shirley Gregory, Donald Wuertz, Geraldine Harris, Willie Harris, Ronny Harris, Dr. Saverio Caruso, Ronald Ponder, Edward Coleman, Allan Maxson. Trial continued to 8/30/84 at 9:00 a.m.
8/30/84	63	MINUTES of proceedings filed. Bell, J. Salopek, R. Trial resumed from 8/29/84. Plaintiffs called Thomas Wyatt, Richard Kepler. Trial continued to 8/31/84 at 9:00 am.
8/31/84	64	MINUTES of proceedings filed. Bell, J. Kraemer, R. Trial continued from 8/30/84. Plaintiff called the following witnesses: James Schrabel. Trial continued to 9/4/84.

DATE	NR.	PROCEEDINGS
9/4/84	65	MINUTES of proceedings filed. Bell, J. Kraemer, R. Trial resumed 9:00 a.m. Plaintiff's case continues. Recessed at 4:35 p.m. with instructions that trial shall resume at 9:00 a.m. on 9/5/84.
9/4/84	66	ORDER that U.S. Marshal for ND/OH, shall provide security to this court and to provide for ingress and egress at the U.S. Court House, Akron, 9/1/84 during the day as needed; FURTHER, this order is entered nunc pro tunc to 8/31/84 filed. Bell, J. Copies mailed 9/4/84.
9/5/84	67	MINUTES Of proceedings filed. Bell, J. Kraemer, R. Plaintiff's case resumed at 9:15 a.m. and adjourned at 4:30. Jury instructed to return at 10:00 a.m. 9/6/84.
9/5/84	68	MOTION of plaintiffs to show cause why Walter Cherry and Ronald Inman should not be held in contempt of court with exhibits attached filed. Copies mailed 9/6/84.
9/5/84	69	ORDER to show cause re Donald Inman to appear 9/6/84 at 9:00 a.m. at Cleveland filed. Bell, J. Copies mailed 9/5/84.
9/5/84	70	ORDER to show cause re Walter Cherry to appear 9/6/84 at 9:00 a.m. at Cleveland filed. Bell, J. Copies mailed 9/5/84.
9/6/84	71	MINUTES of proceedings filed. Bell, J. Kraemer, R. Plaintiffs' case resumed at 10:00 a.m. after show cause hearing at 9:00 a.m. Plaintiff rested at 1:30

DATE	NR.	PROCEEDINGS
		and defendant moved for directed verdict. Some parties and claims discussed by ruling of court at 4:45 p.m. Defendant's case to begin at 9:00 a.m. 9/7/84. Defendants dismissed, Bernosky, Maser, Cmich.
** (over)		
9/7/84	72	REQUEST of defendants for jury instructions filed. Copies mailed 9/7/84.
9/10/84	73	MOTION of plaintiffs to dismiss the City of Canton as a party defendant with brief in support of motion filed. Copies mailed 9/10/84.
9/10/84	74	MINUTES of proceedings filed. Bell, J. Kreamer, R. The defendants renewed their motion for directed verdict. The motion is granted on the issues involving 42 U.S.C. Sec. 1985 and 1986.
***		
9/11/84	75	REQUEST of defendants for submission of written interrogatories to the jury filed. Copies mailed 9/10/84.
9/13/84	76	REQUEST for jury instructions of defendants filed. Copies mailed 9/7/84.
**		
9/7/84	77	MINUTES Of proceedings filed. Bell, J. Kraemer, R. Defendant's case begun at 9:00 a.m., concluded at 3:15 p.m. Defendants rest and their exhibits ruled on (none admitted); motions of defendant for directed verdicts.
9/12/84	78	VERDICT of jury in favor of plaintiff Geraldine Harris on her section 1983 Claim and against the city of Canton and award damages in the amount of \$200,000.00; filed.

DATE	NR.	PROCEEDINGS
9/12/84	79	VERDICT that verdict is not being returned against defendants James Schnabel, Matthew Norcia, Raymond Samolia, Robert Kuehner and John Daianu filed.
9/12/84	80	VERDICT in favor of James Schnabel, Matthew Norcia, Raymond Samolia, Robert Kuehner and John Daianu and against plaintiff on her assault and battery claim filed.
9/12/84	81	VERDICT in favor of defendant James Schnabel and against Geraldine Harris on her section 1983 claim and award no damages filed.
9/12/84	82	VERDICT in favor of defendant Samolia and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	83	VERDICT in favor of defendant Norcia and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	84	VERDICT in favor of defendant Kuehner and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	85	VERDICT in favor of defendant Daianu and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	86	VERDICT in favor of defendant Norcia and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	87	VERDICT in favor of defendant Raymond Samolia and against plaintiff on her Section 1983 claim and award no damages filed.

DATE	NR.	PROCEEDINGS
9/12/84	88	VERDICT in favor of defendant Schnabel and against plaintiff on her Section 1983 claim and award no damages filed.
9/12/84	89	VERDICT is not returned against defendants Schnabel, Norcia, and Samolia re Assault and Battery claim filed.
9/12/84	90	VERDICT in favor of defendants Schnabel, Norcia and Samolia and against plaintiff on her assault and battery claim filed.
9/12/84	91	VERDICT in favor of defendant Samolia and against plaintiff Willie Harris on his loss of consortium claim and award no damages filed.
9/12/84	92	VERDICT in favor of defendant Schnabel and against plaintiff Willie Harris on his loss of consortium claim and award no damages filed.
9/12/84	93	VERDICT in favor of defendant Norcia and against plaintiff Willie Harris on his loss of consortium claim and award no damages filed.
9/12/84	94	VERDICT in favor of defendant Kuehner and against plaintiff Willie Harris on his loss of consortium claim and award no damages filed.
9/12/84	95	VERDICT in favor of defendant Daianu and against plaintiff Willie Harris on his loss of consortium claim and award no damages filed.
9/12/84	96	INTERROGATORIES (1-15) to jury filed.

DATE	NR.	PROCEEDINGS
9/14/84	97	JUDGMENT entry that plaintiff Geraldine Harris recover the sum of \$200,000.00 plus reasonable attorney fees and costs; FURTHER, that all other claims of plaintiff Geraldine Harris against all defendants are hereby dismissed, with prejudice; FURTHER, that all claims of the remaining plaintiffs against all defendants are hereby dismissed, with prejudice filed. Bell, J. Copies mailed 9/18/84.
9/20/84	98	MOTION of defendant City of Canton for judgment notwithstanding verdict and alternative motion for new trial by defendant City of Canton filed. Copies mailed 9/19/84.
9/20/84	99	MOTION of defendant City of Canton for stay of execution filed. Copies mailed 9/19/84.
9/21/84	100	MARSHAL'S RETURNED re motion to show cause and order (2) returned and filed. Personal service for both 9/5/84 on Ronald L. Inman and Walter Cherry. FEES: \$13.20.
10/2/84	101	MOTION of plaintiff to strike defendant's motion for judgment notwithstanding verdict and alternative motion for new trial filed. Copies mailed 10/2/84.
10/2/84	102	OBJECTION of plaintiff to defendant's motion of stay of execution with brief in support filed. Copies mailed 10/2/84.
10/2/84	103	RESPONSE Of plaintiffs to defendants' motion for judgment notwithstanding verdict, and alternative motion for new trial with brief in support filed. Copies mailed 10/2/84.



DATE	NR.	PROCEEDINGS
10/3/84	104	PROOF of Service of plaintiff filed. Copies mailed to Mark M. Behnke, plaintiff's Objections to defendants' motion to Stay execution; response to defendants' motion for judgment notwithstanding verdict and alternative motion for new trial and motion to strike defendant's motion for judgment notwithstanding verdict and alternative motion for new trial.
3/14/85	105	ORDER that a hearing shall be held 3/27/85 at 8:30 a.m.; FURTHER, counsel for City is directed to be prepared to go forward on the motion to stay execution of the judgment entered 9/14/84 pursuant to Rule 62 of the Federal Rules of Civil Procedure filed. Bell, J. Copies mailed 3/14/85.
3/14/85	106	ORDER that defendant City of Canton's motion for judgment notwithstanding the verdict and alternative motion for new trial are DENIED filed. Bell, J. Copies mailed 3/14/85. (NOTED: 3/14/85)
4/9/85	107	ORDER that judgment against City of Canton is suspended pending appeal and that City provide supersedeas bond in amt. of \$1,000 filed. Bell, J. cm/n 4/11/85)
4/11/85	108	NOTICE of Appeal of defendant/appellant filed. No service indicated. Copies of Notice mailed to USCA for the Sixth Circuit, Steven M. Fitten, Thomas P. Albu and William J. Hamann, and William C.H. Ramage 4/17/85. No fees paid. (4/18/85, \$70.00 fee paid, receipt #121392.)

DATE	NR.	PROCEEDINGS
4/11/85	109	SUPERSEDEAS (Restitution) Bond filed.
4/23/85	110	TRANSCRIPTS Order of defendant/ap-pellee filed. Transcript of Jury Instruc-tions requested.
4/29/85	111	ACKNOWLEDGMENT from the USCA for the Sixth Circuit of the Notice of Appeal filed. Received 4/22/85; filed 4/24/85. CASE NO. 85-3314.
5/22/85	112	MOTION of plaintiffs for extension of time to file cross-appeal filed. Copies mailed 5/22/85.
6/7/85	113	MOTION of defendants/appellants for extension of time to file cross-appeal CONTRA with memorandum in sup-port filed. Copies mailed 6/6/85.
6/13/85	114	ORDER that plaintiffs' motion for exten-sion of time to file a cross-appeal is denied filed. Bell, J. Copies mailed 6/14/85. (NOTED: 6/14/85)
6/17/85	115	TRANSCRIPT of proceedings before the Honorable Sam H. Bell commencing 8/31/84 filed. Kraemer, R.
6/17/85	116	TRANSCRIPT of proceedings before the Honorable Sam H. Bell commencing 9/5/84 filed. Kraemer, R.
6/18/85	117	TRANSCRIPT of proceedings before the Honorable Sam H. Bell and Jury 8/28/85 at 1:30 p.m. filed. Pallo-Salopek, R.
6/18/85	118	TRANSCRIPT of proceedings before the Honorable Sam H. Bell and Jury 8/29/85 at 1:30 p.m. filed. Pallo-Salopek, R.
6/27/85		CERTIFIED Original Pleadings mailed to USCA for the Sixth Circuit 6/27/85.

DATE	NR.	PROCEEDINGS
**8/30/84	119	AMENDED Complaint with JURY DEMAND filed. Copies mailed 6/29/84.
8/30/84	120	SUPPLEMENTAL Proposed Jury Instructions of plaintiffs filed. Copies mailed 8/30/85.
9/11/84	121	TRANSCRIPT of Testimony of Thomas A. Rollo before the Honorable Sam H. Bell and jury commencing 8/28/84 at 1:15 p.m. filed. Pallo-Salopek, R.
7/17/85	122	ACKNOWLEDGMENT from the USCA for the Sixth Circuit of receipt of certified original pleadings filed. Received 6/28/85; filed 7/10/85.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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Case No. C 80-18A

HONORABLE JOHN M. MANOS

---

GERALDINE HARRIS  
WILLIE G. HARRIS  
BERNADETTE HARRIS  
1817 Penn Place, N.E.  
Canton, Ohio 44704,

*Plaintiffs*

-vs-

CITY OF CANTON, OHIO  
STANLEY CMICH, MAYOR  
City Hall  
Canton, Ohio 44702

STANLEY CMICH  
individually and in his official  
capacity as Mayor  
City of Canton  
City Hall  
Canton, Ohio 44702

FRANK J. BURNOSKY  
individually and in his official  
capacity as  
Director of Public Safety  
City of Canton  
City Hall  
Canton, Ohio 44702

CANTON POLICE DEPARTMENT  
PAUL HIGGINS, Acting Chief of Police  
City Hall  
Canton, Ohio

DAVID MASER  
individually and in his official  
capacity as Chief of Police  
Canton Police Department  
City Hall  
Canton, Ohio 44702

PATROLMAN JAMES R. SCHNABEL  
PATROLMAN RAYMOND SAMOLIA  
PATROLMAN MATT NORCIA  
PATROLMAN JOHN DAIANU  
PATROLMAN ROBERT KUEHNER  
individually and in their official  
capacity as members of the  
Canton Police Department  
City Hall  
Canton, Ohio 44702,  
*Defendants*

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**AMENDED COMPLAINT:  
CIVIL RIGHTS; JURY DEMAND**

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**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1341 and 1343; the Fourth, Fifth, Eighth, Thirteenth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. Sections 1981, 1983, 1985 and 1986 in that Plaintiffs seek redress for the deprivation, under color and authority of State law, of rights, privileges and immunities secured by the U.S.

Constitution and laws of Congress. The amount in controversy exceeds \$10,000.00, exclusive of interest and costs. All other claims are cognizable by this Court pursuant to the doctrine of pendent jurisdiction.

2. All of the act alleged herein occurred within the Northern District of Ohio and in the municipality of Canton, Ohio.

### PARTIES

3. During all times mentioned in this Complaint, Plaintiffs Willie G., Geraldine and Bernadette Harris were and still are citizens of the United States and residents of the State of Ohio, County of Stark, and residing at 1817 Penn Place, N.E., Canton, Ohio.

4. Defendant, The City of Canton, is an Ohio municipal corporation, and during all times mentioned herein had, as its elected and appointed officials, agents and employees, Defendants: Stanley Cmich, David Maser, Frank J. Burnosky, James R. Schnabel, Raymond Samolia, Matt Norcia, John Daianu and Robert Kuehner, which Defendants are being sued individually and in their official capacity.

5. Defendant, Stanley Cmich, is the duly elected Mayor of the City of Canton, and as such has responsibility for the proper administration of all the affairs of the City of Canton, for the supervision and direction of all employees, appointed officials and agents of the City of Canton, for the proper enforcement of all of the laws and ordinances of the City of Canton, and to insure that the Constitution, laws and statutes of the State of Ohio and the United States of America are properly obeyed, implemented and upheld by the appointed officials, agents, servants and employees of the City of Canton.

6. Defendant, David Maser, was the duly appointed Chief of Police since at least January 1, 19— until May 23, 1980, and as such was responsible for the management, control, and supervision of the Canton Police De-

partment in the preservation of the peace and dignity of the City of Canton, for the protection of persons and property, and enforcement of all laws and ordinances of the City of Canton, and the Constitution, statutes, and laws of the State of Ohio and United States of America.

7. Defendant, Frank J. Burnosky, is the duly elected Public Safety Director of the City of Canton, and as such has responsibility for the issuance, administration, and enforcement of the operations, rules and regulations of the Canton, Ohio Police Department and the Statutes of the State of Ohio and Ordinances of the City of Canton for the government, discipline, administration and operation of the Canton Police Department.

8. Defendants, Stanley Cmich, David Maser and Frank J. Burnosky as duly elected and appointed officials of the City of Canton, Ohio, have the power and authority to promulgate and/or to direct to be promulgated, such orders, rules, guidelines, regulations, directives, and Codes deemed necessary to maintain discipline and insure reasonable, prudent and proper conduct of the officers and members of the police force of the City of Canton.

9. Defendants, James R. Schnabel, Raymond Samolia, Matt Norcia, James Daianu and Robert Kuehner, are patrolmen employed by the Police Department of the City of Canton, and, as such, are under a duty to, at all times, protect life and property and to preserve the public peace and obey the laws and ordinances of the City of Canton, and the Constitution, laws, and statutes of the State of Ohio and the United States of America.

10. Defendant, Canton Police Department is a departmental agency of the City of Canton, Ohio, and is responsible for the preservation of the peace and dignity of the City of Canton, for the protection of persons and property and enforcement of all laws and ordinances of the City of Canton, and the constitution, statutes, and laws of the State of Ohio and United States of America.

11. Each and all of the acts of defendants alleged herein were done by defendants under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the State of Ohio, the City of Canton, and the County of Stark, and under the authority of their office for such city and county.

#### STATEMENT OF CLAIM

12. On April 26, 1978 at approximately 7:55 a.m., plaintiff, Geraldine Harris, accompanied by her daughter Bernadette, was lawfully operating her automobile in the City of Canton, County of Stark, State of Ohio, along Park Drive, N.W., heading towards McKinley High School. Shortly thereafter Defendant James R. Schnabel signaled Mrs. Harris to stop her vehicle, which she did, and was cited for speeding. Schnabel was then operating an automotive police patrol vehicle owned and maintained by the City of Canton for the use and benefit of its police department.

13. At defendant's request, plaintiff displayed her valid Ohio driver's license, whereupon defendant, without any warrant or probable cause therefor, arrested and ordered plaintiff to get out of her car and go to the police cruiser. Schnabel then verbally assaulted and abused Mrs. Harris with the intent and purpose of humiliating and embarrassing plaintiff in the presence of the public generally, and particularly the people present at the scene.

14. Bernadette Harris pleaded with Schnabel to issue a citation. Subsequently, he made a call on the police radio, faced Bernadette, reached for his gun and put his hand on the pistol grips.

15. Another patrol car and paddy wagon, driven by Canton Policemen Raymond Samolia and Matt Norcia, respectively, arrived on the scene, conferred and conspired with Schnabel, and in concert, pulled, shoved, cuffed and assaulted Geraldine and struck Bernadette Harris, several



times, causing them to sustain physical pain and injury, humiliation, and suffer grave emotional shock and distress. Bernadette and Geraldine Harris received medical treatment for their injuries.

16. At the Canton, Ohio Police Department Jail, Mrs. Harris was disrobed, searched and subjected to manual indignities by Canton Policemen Daianu, Samolia, Norcia and Kuehner. Throughout her custody and incarceration, Mrs. Harris was taunted by Police and grew increasingly ill and required immediate medical treatment. Defendant Policemen refused to provide medical assistance and to advise Mrs. Harris of her rights, including the right to an attorney, telephone calls, bail and visitation. Mrs. Harris was detained from approximately 8:00 a.m. until 9:00 a.m. by defendants on April 26, 1978.

17. Defendants forced Mrs. Harris to abandon her vehicle, which was later towed away and impounded even though Bernadette was duly licensed and begged the police to operate the car. Mrs. Harris was booked on "open charges" and compelled to submit to fingerprinting by Kuehner and Norcia under the supervision Daianu and Canton Police Captain Alan Maxon and Police Chief David Maser.

18. No felony or misdemeanor charges were ever preferred against Mrs. Harris in connection with or in support of the arrest, search, seizure, and imprisonment to which plaintiff was subjected as set forth herein. Mrs. Harris was never brought before a magistrate, notified of the criminal charges of which she was being held, and ignored when she inquired as to the aforementioned.

19. By reason of the injuries resulting to Geraldine and Bernadette Harris, expert medical treatment and hospital care was required for both parties. Plaintiffs incurred hospital expenses in excess of \$1,500.00. Mrs. Harris has and will continue to incur necessary and rea-

sonable physician expenses for physical and psychological treatment by reason of such injury.

20. Plaintiffs incurred attorneys fees and expenses in connection with the arrest and impoundment of their car.

21. As a result of the injuries to his wife and daughter, Plaintiff Willie G. Harris, has been deprived of their services as they were and are not able to perform their duties in the home in the same manner prior to the incident.

22. Further, as a result of Defendants action, Plaintiff Willie G. Harris, has been deprived of his wife's and daughter's society, companionship, affection and assistance.

23. During all times mentioned herein, Defendants, acting separately and in concert and under color and authority of State law, subjected and caused to be subjected Plaintiffs to the deprivation of rights and secured by the Constitution of the State of Ohio and the United States of America, to wit: the right to life and liberty, the right against unlawful searches and seizures, the right to freedom from assault and infliction of bodily injury; and the right to due process of law, when, on April 26, 1978, Plaintiff Geraldine Harris was arrested and imprisoned and Plaintiffs Geraldine and Bernadette Harris was Physically assaulted.

24. Defendants, in the period in question, committed certain acts which effected the deprivation alleged in paragraph 23 above. The acts include, among others, the following:

(a) The Defendant, City of Canton, by and through its elected officers, agents, appointed officials and employees, acting in concert, hired and placed on the streets of Canton, Ohio, on the days prior to and including April 26, 1978, improperly and insufficiently trained police officers with loaded guns, and other weapons, who were permitted

to use the power of arrest and to inflict serious physical injury upon the citizens of the City of Canton without justification, and who, negligently, intentionally, recklessly, willfully, wantonly and without justification, deprived Plaintiffs of life, liberty, due process and inflicted cruel and unusual punishment and serious physical injury and suffering.

(b) The Defendant, Stanley Cmich, the duly elected Mayor (sic) and chief administrator and executive officer of Canton, Ohio and Frank J. Burnosky, Safety Director, on the days prior to and including April 26, 1978, negligently, intentionally, willfully, and wantonly hired and ordered on the streets of the City of Canton, police officers who utilized their status as police officers to perpetuate and conceal their deprivation of life and liberty and to conduct an unlawful arrest, search, seizure and detainment, and to inflict punishment and injury without justification and due process of law.

(c) The Defendant, David Maser, Canton, Ohio Chief of Police, on the days prior to and including April 26, 1978, as the Chief executive officer of the department, and while acting in concert with all defendants named herein, hired, ordered and placed upon the streets of the City of Canton, Ohio, police officers improperly and insufficiently trained as police officers, and who, displaying a lack of judgment, used their status as police officers under the direction of defendant, David Maser, Chief of Police, to perpetuate and conceal the deprivation of life and liberty and to conduct an unlawful arrest, search, seizure and detainment, and to inflict punishment and injury without justification and due process of law.

(d) Defendants, Stanley Cmich, Frank J. Burnosky and David Maser, as duly elected and appointed officials, and employees of the City of Canton have promulgated or directed to be promulgated, certain General Police Orders, Rules of Conduct and other guidelines which fail clearly, adequately and specifically delineate policies regulating

arrest procedures and the use of force in conjunction therewith by Canton Police Officers while acting within the scope of their authority as employees, and members of the Police Department of Canton, Ohio.

(e) The Defendants, Patrolmen James R. Schnabel, Raymond Samolia, Mike Norcia, John Daianu and Robert Kuhner, Canton Police Officers, acting within the scope of their employment as police officers, and acting in concert with all Defendants named herein, conspired and unlawfully arrested Plaintiff Geraldine Harris and assaulted Plaintiffs Geraldine and Bernadette Harris, utilizing their status as police officers to perpetuate and conceal their deprivation of life and liberty and to inflict injury and punishment without justification and due process of law.

25. As a result of Defendants' conduct, Plaintiffs and other citizens of the City of Canton have been and may be denied certain rights secured to all citizens by the Constitution of the State of Ohio and the United States to wit:

- (a) The right to due process of law;
- (b) The right to equal protection of the law;
- (c) Freedom from harassment and intimidation by police officers;
- (d) Freedom from coercion and intimidation;
- (e) Freedom from unnecessary force when arrested;
- (f) Freedom from bodily injury and assault; and
- (g) Freedom from unlawful searches and seizures.

Plaintiff states that Defendants intentionally engaged in malicious, willful and wanton misconduct and recklessly caused Plaintiffs to be unlawfully arrested and assaulted and their automobile absconded.

26. Plaintiffs state that at the time the above Defendants arrested and assaulted Plaintiffs, neither Geraldine

or Bernadette Harris were violating any law nor were they contributorily negligent. Defendants were and are under a legal duty to protect Plaintiffs and breached this duty.

27. Plaintiff states that Defendants actions as described herein also deprived Plaintiffs of their Civil Rights and were motivated and intended because of Plaintiffs race (Black).

28. Defendant David Maser, as Canton, Ohio Chief of Police, has during his term in said position and on April 26, 1978 failed to manage, train, supervise, and review and discipline members of the police force resulting in an official policy or custom which authorized and acquiesced in the deprivation of plaintiffs' rights and in the reckless disregard of constitutional safeguards and public safety. Maser's failure in this regard has directly contributed to lawlessness and disorganization within the police department.

29. Defendant Frank J. Burnosky, during his term as Safety Director and on April 26, 1978, has failed to initiate investigations of police misconduct and complaints of violations of civil rights, unlawful arrests and seizures brutality, and assure that members of the Canton police force have adequate training, working knowledge, and continuing education in the rules, regulations, law, and judicial decisions governing criminal procedure arrests, and the use of force. Burnosky has failed to periodically evaluate, update, and define the rules, and regulations of the Canton Police Department.

30. Defendant Stanley Cmich, as Mayor, has at all times authorized by official policy, statements, directives, and orders, unlawful arrest procedures and other police action, and refused to monitor and command the Public Safety Director to investigate incidents and complaints of police misconduct and to review on a continuing basis supervision, training, and the administration of the Canton Police force.

31. Defendant David Maser was present and had knowledge of the events surrounding Mrs. Harris' arrest on April 26, 1978 yet did nothing to secure her release and suppressed and prevented any action taken against the policemen involved.

32. Defendants Cmich and Burnosky and Maser collectively condoned the arrest, incarceration, and brutalization of Bernadette and Geraldine Harris and exhibited deliberate and conscious indifference to her plight, the affairs of the Canton Police Department, and public safety as a whole.

#### COUNT I

33. Plaintiffs incorporates by reference paragraphs 1-32 above as if fully rewritten herein.

34. This Count arises under state claims and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution which provide the right of all persons to be secure in their persons and property and proscribe unlawful arrests and arrest procedures, and seizure of property.

Defendant's act and conduct as alleged herein violate the Fourth, Fifth and Fourteenth Amendments and have deprived Plaintiffs of life, liberty, due process and caused them to suffer bodily injury, stress and trauma.

#### COUNT II

35. Plaintiffs incorporate by reference paragraphs 1-35 above as if fully rewritten herein.

36. This Count arises under the Eighth and Fourteenth Amendments to the United States Constitution which provide that cruel and unusual punishment shall not be inflicted nor a person punished for crimes of status or where an arrest is unnecessary and bodily injury, assaults and severe penalties or conditions are imposed or occasioned thereby.

37. Defendants acts and conduct as alleged herein violate the Eighth and Fourteenth Amendments to the United States Constitution, causing Plaintiff Geraldine Harris to endure unlawful imprisonment and confinement, searches and physical assaults and abuse.

### COUNT III

38. Plaintiffs incorporate by reference the allegations of Paragraphs 1-37 as if fully rewritten herein.

39. This Count arises under the Thirteenth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1981 which provides that all persons within the jurisdiction of the United States shall have the same right in every state to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like penalties and punishment.

40. Defendants acts and conduct as alleged herein deprived Plaintiffs of equal benefits of the law and were made to suffer under hardship, injury and punishment because of their race.

### COUNT IV

41. Plaintiffs incorporate by reference the allegations of Paragraphs 1-40 as if fully rewritten herein.

42. This Count arises under the Thirteenth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983 which protects against the deprivation of rights, privileges or immunities by persons or agencies acting under color of State law or authority.

43. Defendants' acts and conduct as alleged herein deprived Plaintiffs of life and liberty and made them suffer hardship, injury and punishment unlawfully also because of their race.

## COUNT V

44. Plaintiffs incorporate by reference the allegations of Paragraphs 1-43 as if fully rewritten herein.

45. This Count arises under 42 U.S.C. Section 1985 which protects against the deprivation of civil rights of any person or class of persons by two or more persons acting in concert.

46. Defendants, acting in concert, deprived Plaintiffs of their civil rights as described herein and caused them to suffer injury and loss of freedom, by and through the use of force, intimidation, threats and unlawful restraint.

## COUNT VI

47. Plaintiffs incorporate by reference the allegations of Paragraphs 1-46 as if fully rewritten herein.

48. This count arises under 42 U.S.C. Section 1986 which protects against conspiratorial action by every person who, having knowledge that any wrongs conspired to be done, does nothing or neglects to prevent such action.

49. Defendants intentionally, collectively and in concert deprived Plaintiffs of their Civil Rights and caused them to suffer injury and damages.

## RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. Judgment against Defendants, Canton, Ohio, Stanley Cmich, Frank J. Burnosky, David Maser, James R. Schnabel, Raymond Samolia, Matt Norcia, John Daianu and Robert Kuehner, jointly and severally in the amount of One Million Dollars (\$1,000,000.00) as compensatory damages.
2. Judgement against defendants, Canton, Ohio, Stanley Cmich, David Maser, James R. Schnabel,



Raymond Samolia, Mike Norcia, John Darianu and Robert Kuehner, Canton Police Department and Frank J. Burnosky, in the amount of Two Million Dollars (\$2,000,000.00) as exemplary damages.

3. Award Plaintiffs the costs and expenses incurred in this action at the rate of six percent (6%) plus reasonable attorneys fees.
4. An order from this Court enjoining Defendants from promulgating, encouraging, approving, and/or allowing practices, procedures and guidelines regulating arrest and use of force by police officers which violate the Constitutional rights of the citizens of Canton, Ohio.
5. An order from this Court requiring Defendants to begin forthwith to develop specific, adequate and clear guidelines in accordance with all rights secured and guaranteed by the Constitution of the State of Ohio and the United States of America, regulating arrests and use of force by police for the immediate implementation by the Canton Police Department.
6. Pursuant to this Court's inherent equitable powers and 42 U.S.C. Section 1988, grant such other relief as is appropriate in this action.
7. Declare that the practices, policies, customs, and conduct of Defendants are unconstitutional, as complained of herein.

/s/ Steven M. Fitten  
STEVEN M. FITTEN  
Attorney for Plaintiffs  
Courts Tower Building  
41 N. Perry Street, Suite 300  
Dayton, Ohio 45402  
(513) 228-5126

(Certificate of Service Omitted in Printing)

## EXHIBIT A

333.24 He shall inspect his vehicle prior to using same, making sure all necessary equipment is available. Replacing and replenishing necessary equipment and notifying his supervisor of these facts.

## 334 JAILER

A Patrol Officer assigned as a Jailer shall be responsible through intermediate superiors to the Commanding Officer of the Patrol Shift to which he is assigned for the efficient operation of his assignment in conformance with established procedures and policies.

334.1 He shall, upon assuming supervision of the jail cell block, either because of shift change or by special assignment, immediately determine the number of prisoners confined in the jail, classifying them as felons, misdemeanors, male or female, satisfying himself that there is a special file card for each prisoner and report such findings to his supervisor.

334.2 He shall, after booking a prisoner, cause him or her to be searched thoroughly before committing him or her to a cell. He shall enter the name, together with other relative information on prescribed forms assuring that such forms are complete and properly filed.

334.3 He shall under no circumstances enter the cell block at any time, except in extreme emergency, unless other police officers are present. At no time shall he enter the cell

block while armed unless circumstances so warrant.

- 334.4 He shall be held strictly responsible for monies received, property taken from prisoners, either as evidence of crime or for safekeeping and for any other valuables or property trusted to him by virtue of his official position.
- 334.5 He shall keep a record as prescribed for all services rendered to the prisoner, including telephone calls, names of visitors, medical care, when transferred and where, and any other services rendered, listing the data and time of said services.
- 334.6 He shall, when handling and processing a violent mental or suspected mentally ill prisoner, be governed by the Ohio Revised Code Section 5122.10 of which states that such persons may be taken into custody and transferred to a mental hospital. He shall complete the prescribed forms in compliance with department procedure and have such person transferred to said hospital.
- 334.7 He shall, when a prisoner is found to be unconscious or semi-unconscious, or when he or she is unable to explain his or her condition, or who complains of being ill, have such person taken to a hospital for medical treatment, with permission of his supervisor before admitting the person to City Jail.
- 334.8 He shall make inspections of the entire jail block area, determining the cleanliness and operative condition of the jail, including all equipment, particularly the breathalyzer,

implements, utensils and other assigned jail and kitchen equipment, noting the deficiencies and irregularities found to be existing, reporting his findings to his supervisor.

- 334.9 He shall be responsible for providing food for the prisoners as prescribed in accordance with department procedure. He shall maintain an inventory of all food supplies and furnish the Day Shift Jailer with a daily list of needed food. It shall be the responsibility of the Day Shift Jailer to see that such foods are made available.
- 334.10 He shall never permit the jail keys to leave his person, always transferring the keys to his relief at shift change or other persons authorized to receive the keys by person to person exchange. He shall see to it that jail keys are never permitted to lie on a desk, table, floor or other place.
- 334.11 He shall call upon the Wagon Driver to assist him in any and all duties pertaining to the jailer's duties if and when such assistance may be needed or required and it shall be the duty of the Wagon Driver to render such assistance.
- 334.12 He shall be responsible for administering the breathalyzer examination to those prisoners that have been charged with driving while under the influence of intoxicants and shall complete the necessary forms as prescribed by department procedure and policy.
- 334.13 He shall be governed by the general rules and regulations of the department and the rules and regulations adopted for Pat. ol

Officers, in so far as they do not relate to specific uniformed assignments.

335 WAGON DRIVER

A Patrol Officer assigned as a Wagon Driver shall be responsible through intermediate supervisors to the Commanding Officer of the shift to which he is assigned for the efficient operation of his assignment in conformance with established procedures and policies.