

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JESSICA LORRAINE SOLIS,

Plaintiff,

v.

CITY OF BAYTOWN, TEXAS;
SAMUEL A. SERRETT; and
TEDDY F. SIMS,

Defendants.

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CIVIL ACTION NO. _____

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Baytown police officers abused police power by assaulting Ms. Solis without cause, as retaliation for her simply making a video recording of the officers as allowed by the United States Constitution. If this were not enough, the officers arrested Ms. Solis and improperly caused her to be prosecuted for public intoxication. The prosecution was dismissed in the interest of justice. Ms. Solis was not intoxicated, and charges were dropped a few days later.



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TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff files this complaint and for cause of action will show the following.

I. Introductory Allegations

A. Parties

1. Plaintiff Jessica Lorraine Solis (“Ms. Solis” or “Lorraine”) is a natural person who resided in, was domiciled in, and was a citizen of Texas at all relevant times.

2. Defendant City of Baytown, Texas (“Baytown”) is a Texas incorporated municipality/city. Baytown may be served with process pursuant to Federal Rule of Civil Procedure 4(j)(2) by serving its chief executive officer. The identity of Baytown’s chief executive officer is determined by Baytown’s decision to use the council-manager form of government. As a result, Baytown’s chief executive officer is City Manager Richard L. Davis. City Manager Richard L. Davis may be served with process at Baytown City Hall, 2401 Market Street, Baytown, Texas 77520, or wherever he may be found. Baytown may also be served with process pursuant to Federal Rule of Civil Procedure 4(j)(2) by serving it in the manner prescribed by Texas State law for serving a summons or like process (a citation in Texas State courts) on such a Defendant. Texas Civil Practice and Remedies Code 17.024(b) reads, “In a suit against an incorporated city, town, or village, citation may be served on the mayor, clerk, secretary, or treasurer.” Therefore, Baytown may also be served with process by serving its mayor, clerk, secretary, or treasurer wherever any such person may be found. Baytown acted or failed to act at all relevant times, in accordance with its customs, practices, and/or policies, through its policymakers, chief policymakers, employees, agents, representatives, and/or police officers and is liable for such actions and/or failure to act to the extent allowed by law (including but not necessarily limited to law applicable to claims pursuant to 42 U.S.C. § 1983).

3. Defendant Samuel A. Serrett (“Officer Serrett” or “Mr. Serrett”) is a natural person who resides and is domiciled, and may be served with process at, 3804 Elm Grove Court, Kingwood, Texas 77339. Officer Serrett may also be served at his place of employment, Baytown Police Department, 3200 N. Main Street, Baytown, Texas 77521. Mr. Serrett may also be served with process wherever he may be found or, pursuant to Federal Rule of Civil Procedure 4(e), by leaving a copy of this complaint and a summons directed to Mr. Serrett at Mr. Serrett’s dwelling or usual place of abode with someone of suitable age and discretion who resides there. Officer Serrett is being sued in his individual capacity, and he acted at all relevant times under color of state law. Officer Serrett was employed by and/or was the agent and/or designee and/or contractor of and for Baytown at all such times and acted or failed to act in the course and scope of his duties for Baytown.

4. Defendant Teddy F. Simms (“Officer Sims” or “Mr. Sims”) is a natural person who resides and is domiciled, and may be served with process at, 308 Sleepy Hollow Drive, Apartment 513, Cleveland, Texas 77327. Officer Sims may also be served at his place of employment, Baytown Police Department, 3200 N. Main Street, Baytown, Texas 77521. Mr. Sims may also be served with process wherever he may be found or, pursuant to Federal Rule of Civil Procedure 4(e), by leaving a copy of this complaint and a summons directed to Mr. Sims at Mr. Sims’ dwelling or usual place of abode with someone of suitable age and discretion who resides there. Officer Sims is being sued in his individual capacity, and he acted at all relevant times under color of state law. Officer Sims was employed by and/or was the agent and/or designee and/or contractor of and for Baytown at all such times and acted or failed to act in the course and scope of his duties for Baytown. Officer Serrett and Officer Sims are collectively referred to herein, at times, as the “Defendant Officers.”

B. Jurisdiction

5. The court has original subject matter jurisdiction over this lawsuit according to 28 U.S.C. §§ 1331 and 1343(4), because this suit presents a federal question and seeks relief pursuant to federal statutes providing for the protection of civil rights. This suit arises under the United States Constitution and a federal statute – 42 U.S.C. § 1983.

6. The court has personal jurisdiction over Baytown because it is a Texas municipality. The court has personal jurisdiction over the natural person Defendants because they reside in, are domiciled in, and are citizens of Texas.

C. Venue

7. Venue is proper in the Houston Division of the United States District Court for the Southern District of Texas, pursuant to 28 U.S.C. § 1391(b)(2), because it is the division in the district in which a substantial part of the events or omissions giving rise to claims asserted in this pleading occurred.

II. Factual Allegations

A. Introduction

8. Plaintiff provides in the factual allegations sections below the general substance of certain factual allegations. Plaintiff does not intend that those sections provide in detail, or necessarily in chronological order, any or all allegations. Rather, Plaintiff intends that those sections provide Defendants sufficient fair notice of the general nature and substance of Plaintiff's allegations, and further demonstrate that Plaintiff's claim(s) have facial plausibility. Whenever Plaintiff pleads factual allegations "upon information and belief," Plaintiff is pleading that the specified factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

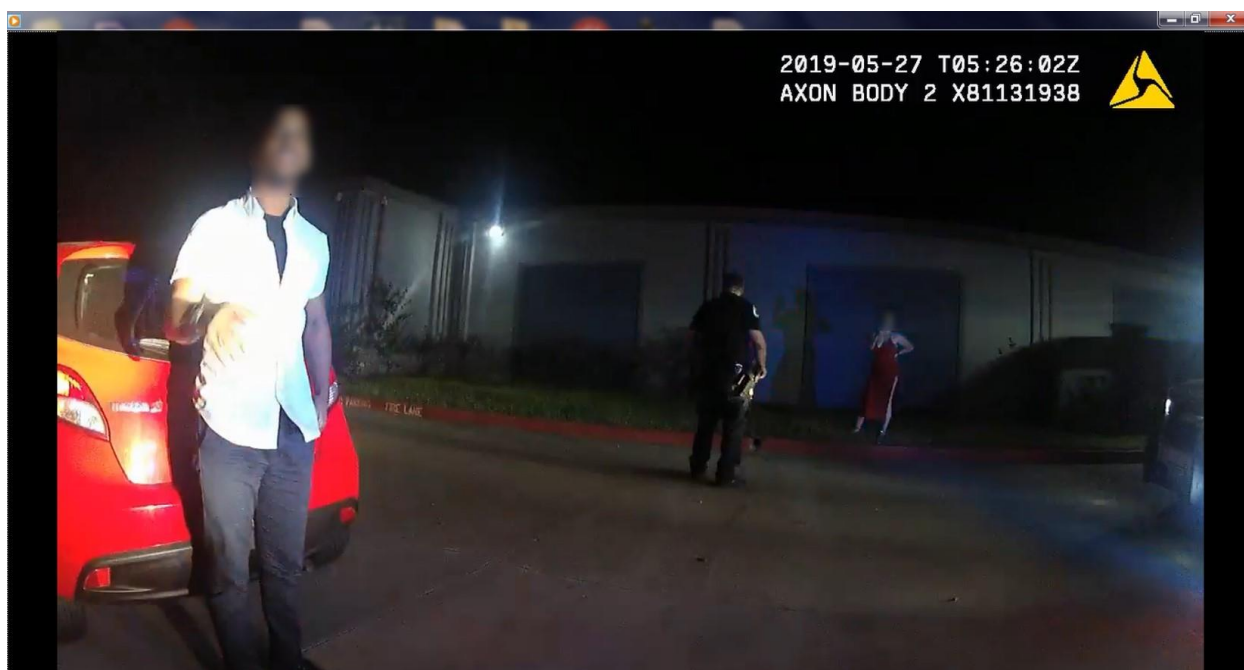
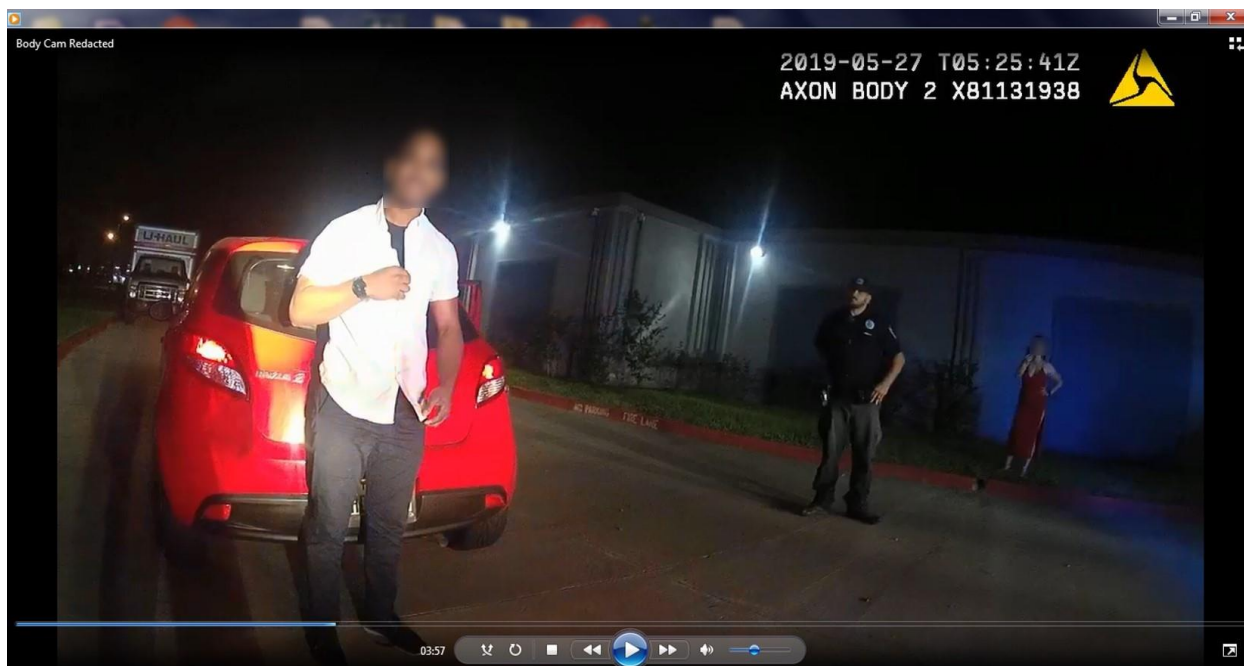
B. Defendant Officers Assault and Arrest Lorraine

9. Lorraine was doing nothing unlawful, and in fact was exercising her constitutional rights, when Defendant Officers chose to assault her, arrest her, and have her prosecuted for a crime which she did not commit. Defendant Officers did so in retaliation for Lorraine making an audio and video recording of Defendant Officers performing their duties. Thus, law enforcement officers who undoubtedly swore to uphold the United States Constitution in fact intentionally violated it.

10. On May 27, 2019, a few minutes after midnight, Lorraine's boyfriend was driving Lorraine's car to their home. They lived on on-site at a storage facility, where Lorraine was the manager. Lorraine was seated in the front passenger seat.

11. Officer Serrett initiated a stop of the vehicle. Lorraine and her boyfriend exited the car. Officer Serrett began to interact with Lorraine's boyfriend regarding an allegation that he was driving while intoxicated. Lorraine began to record the interaction with her cell telephone, using the video recording function. Officer Sims appeared at the scene at some point. Lorraine also recorded Officer Sims, as well as other things at the scene.

12. Lorraine was instructed to stay a distance away from where her boyfriend was interacting with Officer Serrett. Lorraine followed the officer's instruction, and Officer Sims stood a few feet away from her – appearing to guard her.



13. The two still images immediately preceding this paragraph were taken from Officer Serrett's body camera recording. Lorraine's boyfriend can be seen standing next to the red car, while Officer Sims is at some distance from him. Lorraine is even further away in the image. Lorraine is standing on a grassy area behind the red painted fire-lane curb, calmly videotaping

police officers performing their duties. Every citizen has the constitutional right to do what Lorraine was doing.

14. Most of the time, Officer Sims remained facing Lorraine. This was, upon information and belief, not because Officer Sims had any concern about Lorraine doing anything unlawful and/or interfering with the officer's duties, but instead to discourage Lorraine from recording the incident. Officer Sims was in full uniform and likely possessed several weapons, and handcuffs, on his duty belt. Officer Sims never activated his body camera. Upon information and belief, he did not do so because he did not want to create additional evidence of his unabashed violation of Lorraine's constitutional rights.

15. Lorraine did not interfere with duties being performed by Defendant Officers, did not threaten Defendant Officers, did not have a weapon with which to threaten Defendant Officers, did not commit any crime, and physically did not have the ability to exhibit any threat to Defendant Officers, even if she had chosen to do so. Lorraine was simply standing outside the parking lot, past a curb, on a grassy area, filming Defendant Officers performing their duties. This was a clearly-established, constitutionally-protected right. She was on property owned by her employer or, in the alternative, adjacent to such property.

16. Further, Lorraine was not and did not appear to be a danger to herself or others. She was simply a woman standing at an appropriate location and distance from Defendant Officers engaging in activity undisputedly protected by the 1st Amendment – taking audio and video recordings of Defendant Officers performing their duties. Thus, there was no reason for Defendant Officers to do anything at all to Lorraine. Unfortunately, they had other ideas. Those ideas included abusing their power, violating the Constitution, and then enjoying a laugh about it – at Lorraine's expense.

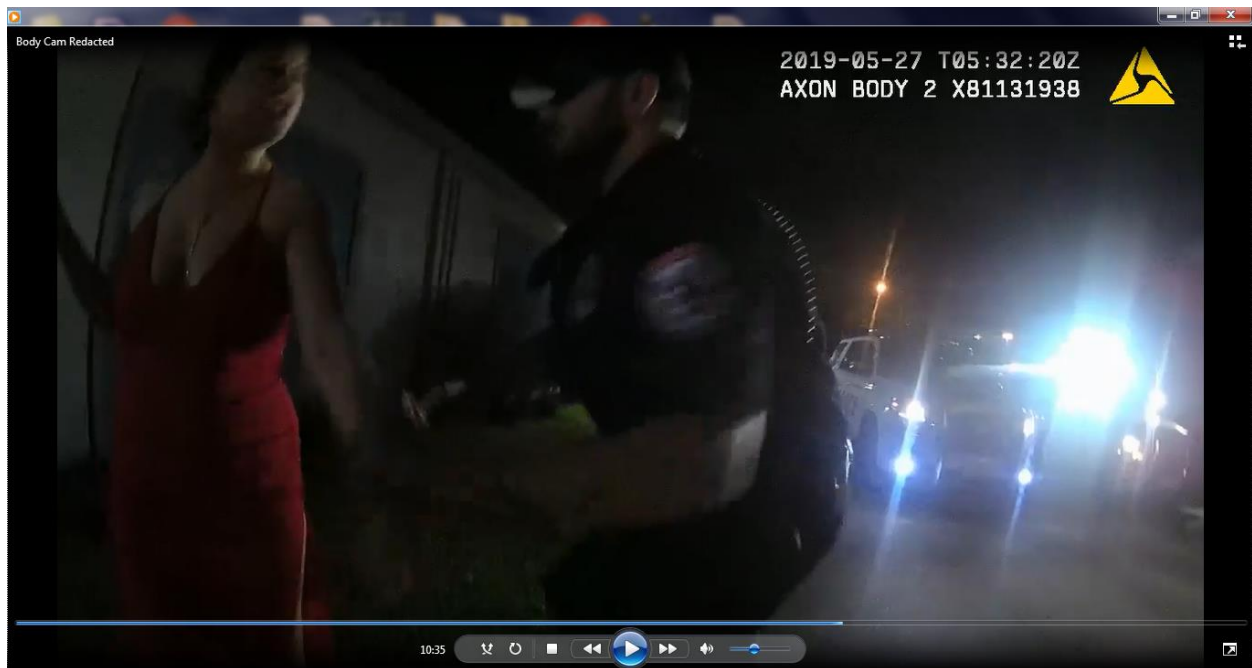
17. Officer Serrett ultimately arrested Lorraine's boyfriend and put him into the marked police vehicle. He then walked to where Officer Sims was standing near Lorraine.



18. The two still images immediately preceding this paragraph were taken from Officer Serrett's body camera recording. After some brief conversation, Officer Serrett asked Lorraine to give him her cell telephone while extending his arm with an intent to take it (as shown in images below).



19. The two still images immediately preceding this paragraph were taken from Officer Serrett's body camera recording. When Lorraine refused to hand over her cell telephone, which she had the legal right to do, Officer Serrett said that he was going to arrest Lorraine. Officer Sims could have intervened, but he chose to not to do so. Instead, Officer Sims chose to act jointly with Officer Serrett in subsequent events, up through and including failing to intervene in prosecution of Lorraine. The brief conversation before Defendant Officers assaulted and arrested Lorraine was generally businesslike. Lorraine had no clue as to what was about to happen, as any observer would have likewise been baffled as to what Defendant Officers chose to do. When Officer Serrett asked for Lorraine's phone, she responded that he could not have it. Within approximately two seconds, Officer Sims grabbed Lorraine's left arm, twisted it behind her back, and she was thrown to the ground in an aggressive, unreasonable, unprofessional, and inappropriate manner.



The physical interaction between the officers was such that, upon information and belief, Officer Serrett's body camera fell off of his uniform. As can be seen in still images in this pleading, Lorraine was not dressed for such a fall. The officers were simply bullies, and Lorraine was their

target. After tackling and handcuffing Lorraine, one of the officers, upon information and belief, Officer Serrett, said in substance, “Damn – that didn’t go as fun as you thought it was gonna go.” He was directing that comment at Lorraine, belittling her.

20. Lorraine was shocked, because she had done absolutely nothing wrong. She was not intoxicated, and she did not appear to be intoxicated. Lorraine was not swaying, she was not slurring her words, and she was not affected by any alcohol ingestion at all. No reasonable officer in the position of Defendant Officers would have believed that she was intoxicated. Defendant Officers’ actions and inaction caused, were producing causes of, and were proximate causes of physical injuries to Lorraine as well as other damages referenced in this pleading. Defendant Officers were gloating and enjoyed what they had just done. They did not like Lorraine taking a video recording of them. They did not like Lorraine’s comments before they decided to physically assault her, because of the content of those comments. They believed that they were above the law, and no citizen such as Lorraine should be able to record them and make statements about racial issues. This was further evidenced by comments they made after arresting Lorraine and putting her into a squad car with her boyfriend.



21. Defendant Officers began to search the car. Officer Sims said something about, upon information and belief, Lorraine recording Defendant Officers. After a short laugh in response, Officer Serrett said in substance:

Did you . . . did you like how I was, like, let me see your phone real quick. She was like “Why?” I just don’t want you to drop it when I arrest you.

As soon as Officer Serrett said “did you like how was, like, let me see your phone real quick,” as shown in the block quotation above, Officer Sims said in response and with glee, “That . . . that was good!” Officer Sims also laughed in the middle Officer Serrett’s comments at Lorraine’s expense. They in essence laughed at every other person who they would stop, using their police powers, and who they wanted to arrest without cause. This interaction further proves that the whole purpose of the arrest was for Defendant Officers to punish Lorraine for exercising her constitutionally-protected rights of speech and recording police officers.

22. The excited banter between Defendant Officers continued. Officer Serrett said in substance, “Freaking . . . the news media is everywhere.” Officer Sims, “Yeah. I know.” Officer

Serrett, “It’s in everybody’s pocket.” This was further demonstration that Defendant Officers did not want to be accountable for their actions; they did not want citizens such as Lorraine, who were violating no law, to record them while they engaged in their duties. Fortunately, such recordings exist. Otherwise, the lies about Lorraine would have likely been believed.

23. Lorraine was taken to the jail/police station. She was required to change into jail clothing. She was fingerprinted. She had her mugshot taken.





Lorraine was upset and humiliated. Defendant Officers had arrested her for doing absolutely nothing wrong.

24. There was no probable cause for Lorraine's arrest, and Defendant Officers knew it. They arrested her solely because of her lawful exercise of 1st Amendment rights. If Lorraine was at danger of assault, arrest, and prosecution for doing nothing, every other lawful citizen in Baytown is likewise at risk.

25. Lorraine suffered damages for actions and inaction referenced in this pleading for including but not necessarily limited to:

- past physical pain;
- past mental anguish;
- future mental anguish;
- past physical impairment;
- past disfigurement;

- costs related to towing and redemption of her car; and
- other expenses related to arrest and/or prosecution of Lorraine.

Defendants' actions and inaction referenced in this pleading caused, were producing causes of, were proximate causes of, and/or were moving forces behind all of these damages.

C. Defendants' Knowledge and Education

26. The Texas Commission on Law Enforcement ("TCOLE") keeps records of the service histories and some training and education of Defendant Officers and which relates to law enforcement activities. TCOLE records indicate that Defendant Officers had sufficient experience and/or education to be fully aware that violated the United States Constitution.

27. TCOLE records indicate the following service history for Officer Serrett:

Appointed As	Department	Award	Service Start Date	Service End Date
Peace Officer (Full Time)	Baytown Police Dept.	Peace Officer License	09/13/17	

28. TCOLE records indicate the following award history for Officer Serrett:

Award	Type	Action	Action Date
Peace Officer License	License	Granted	09/13/17
Basic Peace Officer	Certificate	Certification Issued	08/29/18

29. TCOLE records indicate that Officer Serrett received the following training and/or education, through which he, upon information and belief, obtained sufficient knowledge to know that his decision to act inappropriately regarding Lorraine was unreasonable, deliberately indifferent, and violated the United States Constitution:

Course No.	Course Title	Course Date	Course Hours	Institution
30148	Civilian Interaction Training	04/27/19	2	Praetorian Group – Police One

3402	DWI/DUI Detection and Enforcement	04/24/19	4	Texas Municipal Police Association
394	Cultural Diversity Web with Exercises	12/20/18	8	TCOLE Online
3722	Peace Officer Field Training	03/27/18	160	Baytown Police Academy
3185	8 th Legislative Session Legal Update	12/06/17	4	Baytown Police Academy
3404	Traffic Stops	10/25/17	16	Baytown Police Academy
1000643	Basic Peace Officer Course (643)	08/24/17	643	University of Houston – Downtown LEA

Ironically, the last law enforcement-related course Officer Serrett took, only approximately one month before his interaction with Lorraine, was the Civilian Interaction Training course. Apparently, Officer Serrett chose to ignore that training.

30. TCOLE records indicate the following service history for Officer Sims:

Appointed As	Department	Award	Service Start Date	Service End Date
Peace Officer (Full Time)	Baytown Police Department	Peace Officer License	07/16/18	
Peace Officer (Full Time)	Polk County Sheriff's Office	Peace Officer License	10/05/15	06/22/18
Peace Officer (Full Time)	Corrigan Police Department	Peace Officer License	06/12/15	10/05/15
Telecomm- unications Operator (Part Time)	Corrigan Police Department	Temporary Telecomm. Operator License	07/21/14	08/17/15

31. TCOLE records indicate the following award history for Officer Sims:

Award	Type	Action	Action Date
Temporary Telecommunications Operator License	License	Granted	07/21/14

Peace Officer License	License	Granted	06/12/15
Basic Peace Officer	Certificate	Certification Issued	08/09/17

32. TCOLE records indicate that Officer Sims received the following training and/or education, through which he, upon information and belief, obtained sufficient knowledge to know that his decision to act inappropriately regarding Lorraine was unreasonable, deliberately indifferent, and violated the United States Constitution:

Course No.	Course Title	Course Date	Course Hours	Institution
30418	Civilian Interaction Training	04/30/19	2	Praetorian Group – Police One
8158	Body Worn Camera	08/03/18	4	Baytown Police Academy
3185	85 th Legislative Session Legal Update	01/25/18	4	Polk County Sheriff's Office
77254	OSS – Street Level Interviewing	09/22/17	1	OSS Academy
3702	Field Training Officer	06/09/17	20	OSS Academy
2045	Patrol Procedures	05/13/17	16	Polk County Sheriff's Office
3196	Law Seminar	04/26/17	8	Angelina College Police Academy
3039	Conflict Resolution	10/25/16	8	Polk County Sheriff's Office
2178	Standard Field Sobriety Tests Practitioner Update	10/06/16	1	Texas Municipal Police Association
2108	Arrest, Search, and Seizure (Intermediate)	01/05/16	15	Classen Buck Seminars, Inc.
3722	Peace Officer Field Training	12/11/15	160	Polk County Sheriff's Office
1000643	Basic Peace Officer Course (643)	06/10/15	643	Angelina College Police Academy
3925	Ethics for Law Enforcement Distance	10/11/14	4	TCOLE Online

Officer Simms – just like Officer Serrett – took as his last course before interacting with civilian Lorraine Solis the Civilian Interaction Training course. Officer Sims also apparently decided to ignore his training when dealing with Lorraine.

33. Upon information and belief, much of the training listed above for Defendant Officers provided to them clear information about how, where, and when to use appropriate and/or reasonable force, and/or make arrests, as well as Fourth Amendment constitutional limitations on use of force and arrest. Moreover, upon information and belief, Defendant Officers had learned, through above-referenced coursework or otherwise, prior to interacting with Lorraine, standardized field sobriety testing (“SFST”). Upon information and belief, they learned at least the following standardized field sobriety tests:

- Horizontal Gaze Nystagmus (involuntary jerking of the eyes);
- Walk-and-Turn; and
- One-Leg Stand.

Upon information and belief, they also learned the following field sobriety tests, which may not be, or in the alternative are not, standardized:

- Alphabet (requires a person to cite part of the alphabet, beginning with any letter other than A, and ending on a letter other than Z);
- Count-Down (requires a person to count backwards, never using numbers that end with a 5 or 0); and
- Finger-Count (requires a person to touch the tip of the person’s thumb to the tip of each finger on the same hand while simultaneously counting up 1, 2, 3, 4, then reversing direction counting down.

34. Upon information and belief, Defendant Officers learned that the Horizontal Gaze Nystagmus test is deemed the most reliable field sobriety test, and that it begins with a person's left eye. Upon information and belief, they also learned that the maximum number of clues is six, and only three clues can appear in each eye. Further, upon information and belief, Defendant Officers learned that the Horizontal Gaze Nystagmus test is approximately 77% accurate, the Walk-and-Turn test is approximately 68% accurate, and the One-Leg-Stand test is approximately 65% accurate.

35. Therefore, upon information and belief, Defendant Officers had the tools to determine for themselves a reasonable belief, and more importantly probable cause, as to whether Lorraine was intoxicated. They chose not to use any of these tests, but instead to arrest Lorraine for public intoxication and have her prosecuted. Defendant Officers chose not to use any of these tests for other reasons set forth in this pleading. Regardless, Lorraine was not intoxicated at the time she was arrested, and she did not, as the Texas statute regarding public intoxication required, present a danger to herself or others.

D. Baytown Police Department Policies

36. A police officer's failure to comply with his or her department's policies can be evidence that constitutional violations occurred. Defendant Officers violated Baytown policy when using force with Lorraine.

37. A Baytown Police Department general order, issued June 27, 2016, contained definitions and policies regarding arrest of and use of force with citizens. Definition 3.02 in that order defines "arrest:" "To deprive a person of his/her liberty by legal authority." Moreover, Definition 3.03 defines "arresting officer:" "A sworn law enforcement officer who takes a person into custody, with or without a warrant." Definition 3.11 for, "physical arrest," reads, "Any

enforcement action that consists of taking persons into custody with a purpose of holding or detaining them to answer to a charge of law violation before the court.” Thus, pursuant to federal law, for constitutional purposes, and in accordance with Baytown policy, Lorraine had been physically arrested by Defendant Officers.

38. The general order issued June 27, 2016 also contains an “Arresting Procedures” section. That section requires that Baytown officers making an arrest “will use only that amount of force necessary to affect [sic] such arrest and protect themselves or others.” That section also reads in part, “The arresting officer assumes primary responsibility for the health, safety, and welfare of his/her prisoner.” That section also reads in part, “The arresting officer will inform the suspect that he/she is under arrest and name the charge or cause for arrest.” Defendant Officers did not notify Lorraine what she would be under arrest for, but instead physically assaulted her and threw her to the ground. Thus, they violated the general order. They did not notify her of the basis for her arrest, because they were having fun at her expense and knew that she was not intoxicated.

39. Thus, Defendant Officers jointly arrested Lorraine and, since both physically caused her to be thrown to the ground, both used force incident to that arrest. When doing so, they violated the Baytown policy requiring them to only use the amount of force necessary to effect the arrest and protect themselves or others. There was no need to throw Lorraine to the ground, and every reasonable police officer would agree that the force used to arrest and handcuff Lorraine was unreasonable. It was therefore unconstitutional. There was no conversation with Lorraine about the purpose of being thrown to the ground. There was no conversation with Lorraine about the basis for the arrest. There was no instruction to Lorraine to turn around and put her hands behind

her back. There was just the smart aleck remark that Lorraine should hand her phone to Officer Serrett so that it did not fall to the ground when she was arrested. This was abuse of police power.

40. The Arresting Procedures section also addresses the situation in which a Baytown police officer observes circumstances in which he or she believes an immediate threat of serious injury or death to any prisoner exists. In that situation, in addition to taking other actions, the officer observing such a situation is instructed to notify a field supervisor. Thus, Defendant Officers knew that, if either of them believed that the other was acting improperly or inconsistent with Lorraine's constitutional rights, they could stop what was occurring and contact a field supervisor. Neither chose to do so, because they both intended to violate Lorraine's rights for their own pleasure and enjoyment, which arose from their intent to punish Lorraine for exercising her constitutionally-protected rights. They acted jointly in causing Lorraine's damages.

41. The Arresting Procedures section of the above-referenced June 27, 2016 general order also includes a policy for prisoners arrested for public intoxication and who are admitted to a hospital. Presumably, such a hospital admission would be due to a person being so intoxicated that he or she is in danger of death or serious injury. Even then, the procedure allows a supervisor to determine that such a prisoner is no longer intoxicated to the extent that he/she is a danger to him/herself or to others," and to release that person. Thus, the procedure contemplates a situation in which a person who is not a danger to himself or herself or others need not be in custody. That should go without saying, Lorraine was never a danger to herself or others and should have never been in custody. Thus, Defendant Officers violated the spirit and substance of this policy by arresting and incarcerating and causing Lorraine to be prosecuted.

E. Defendant Officers Cause Unfounded Prosecution of Lorraine

42. Defendant Officers caused an improper, unreasonable, and unfounded prosecution of Lorraine. Neither officer conducted a horizontal gaze nystagmus test, or any other field sobriety

test. Neither officer did absolutely anything to determine whether Lorraine was intoxicated. They did not do so, because they fabricated a reason to arrest and jail her, and to have her prosecuted.

43. Defendant Officers did not like Lorraine recording them while they performed their duties, and they intended to punish her for exercising her constitutional rights. Thus, in addition to arresting Lorraine without probable cause, and without a warrant, they chose to initiate an unfounded, improper, and unreasonable prosecution of Lorraine for public intoxication.

44. Officer Serrett completed a general offense report, in which he alleged that Lorraine was guilty of the offense of public intoxication. Officer Sims accompanied Officer Serrett, according to the report. Upon information and belief, Officer Sims was fully aware that Lorraine was being charged with public intoxication, and he chose to do nothing about it. Further, upon information and belief, he had the ability to stop the prosecution and simply tell the truth. If he had told the truth, upon information and belief, Lorraine would have never been prosecuted. Moreover, if he had acted based on the truth and what he had observed, Lorraine would not have been jailed and/or prosecuted. Thus, Defendant Officers' actions in arresting, jailing, and having Lorraine prosecuted caused, were proximate causes of, and were producing causes of Lorraine's damages.

45. The Texas statute listing public intoxication as an offense requires that a person is publicly intoxicated only if the person appears "in a public place while intoxicated to the degree that the person may endanger the person or another." Tex. Penal Code § 49.02(a). First, Lorraine was not in a public place. She was on property at which she lived and worked. Lorraine was the manager of the storage facility at which she also resided.

46. Moreover, no reasonable officer would or could believe that Lorraine was intoxicated. Defendant Officers knew that Lorraine was not intoxicated. Lorraine exhibited no

signs of intoxication, and it was clear to Defendant Officers that she was as lucid as they were. Further, even if one could stretch the bounds of reasonable and assume that Lorraine was intoxicated, there was absolutely no evidence or indication that she would be a danger to herself or any other. Lorraine was at home. She could simply walk into her residence and do whatever she chose to do.

47. Further, Lorraine made no threats against anyone or exhibited any behavior at the scene of the incident indicating that she would harm or endanger another person. Thus, Defendant Officers' arrest and prosecution of Lorraine for the offense of public intoxication was without basis, frivolous, and founded on a false narrative. There was no probable cause for her arrest, being jailed, and/or prosecution. Succinctly, these actions violated Lorraine's clearly established constitutional rights.

48. The offense report indicated that the bond amount for the false public intoxication charge against Lorraine would be \$297.00. The report invaded her privacy, by listing her height, weight, handedness, whether she wore contacts, place of employment, and other personal information. The report made it clear, if there could be any doubt, that Lorraine was "taken into custody." Lorraine's vehicle was referenced in the report as being the "prisoner's vehicle." Thus, Defendant Officers' charade resulted in Lorraine's vehicle being towed away from her residence when completely unnecessary. Officer Serrett, apparently committing a crime by including false information in his report, wrote the following:

I then moved to speak with Solis. Solis was still filming with her cell phone and had become irate in insisting that my decision to arrest [Lorraine's boyfriend] had been racially motivated. As Solis spoke I was able to clearly detect the strong odor of an alcoholic beverage emitting from her breath and person. I could see that Solis' eyes were glassy and bloodshot and her balanced seemed wobbly and uncertain. I believe Solis was intoxicated to the degree she was a danger to herself and others. I requested Solis give her cell phone to me or set it down so I could place her under arrest for public intoxication without the risk of damage to her property. Solis

refused and pulled her hands away from myself and Ofc Sims as I attempted to place her in handcuffs. For the safety of Solis and ourselves, we assisted Solis to the ground in order to safely place her in handcuffs.

(Original was in all capital letters).

49. Officer Serrett tells a “tall tale,” at Lorraine’s expense – and at the expense of his integrity. Officer Serrett initially notes the whole purpose of his concern – Lorraine filming him with her cell telephone. He then included a blatant lie when writing that Lorraine “had become irate in insisting that my decision to arrest [Lorraine’s boyfriend] had been racially motivated.” Lorraine exhibited nothing indicating she was “irate,” and she was saying nothing about racial motivation when Defendant Officers decided to assault her without notification as to why she was being arrested. Lorraine had made a comment about racial motivation earlier. Therefore, upon information and belief, Defendant Officers were also taking all actions in this pleading due to Lorraine’s exercise of her 1st Amendment right to free speech which includes the right to say whatever a person chooses to say. Regardless, Officer Serrett included this false allegation to attempt to build support for his further false allegation that Lorraine was publically intoxicated.

50. Officer Serrett also falsely alleged that he was able to clearly detect the strong odor of an alcoholic beverage emitting from her breath and person, and that her eyes were glassy and bloodshot. He further falsely alleged that “her balance seemed wobbly and uncertain.” Video recordings underlying allegations in this complaint shows that such an allegation was false. Lorraine had even stood on the curb adjacent to the grass, and she did so firmly. A person intoxicated to the extent that she would be a danger to herself or others would generally not be able to stand on a curb without at least wobbling and/or swaying back and forth.

51. Officer Serrett, knowing that he needed to parse words to make an appropriate false allegation against Lorraine stick, falsely alleged that he believed Lorraine was “intoxicated to the

degree she was a danger to herself and others.” Officer Serrett knew that Lorraine lived at the location at which the incident occurred. He knew she could simply walk into her residence. He knew that she had not threatened anyone and had not exhibited any ability to physically harm anyone at the scene. He knew that Lorraine was not intoxicated and could not and would not harm anyone else due to the alleged false intoxication. However, Officer Serrett also knew that, absent such an allegation, he could not have Lorraine jailed for at least the night and prosecuted for an offense that she never committed. Therefore, Officer Serrett did the only thing he knew to do to punish Lorraine for her video recording of Defendant Officers and use of words and/or verbiage which Defendant Officers did not like – he falsified a report to have Lorraine arrested, jailed, and prosecuted.

52. Officer Serrett then indicates that Lorraine refused to provide her phone to him. This is true. He also indicates in his report that she pulled her hands away from Officer Serrett and Officer Sims as Officer Serrett attempted to place her in handcuffs for the safety of Lorraine and Defendant Officers. This is false. Defendant Officers virtually immediately threw Lorraine to the ground and caused her to suffer injuries including abrasions and/or bruising. Lorraine suffered physical injuries as a result of being thrown to the ground and she was not, as Officer Serrett writes, in a seemingly calming fashion, “assisted . . . to the ground.”

53. Lorraine clearly had no choice as to whether she was going to be arrested and prosecuted. However, fortunately, as a result of prosecutorial discretion and integrity, the public intoxication charge against Lorraine was dismissed “in the interest of justice.”

CAUSE NUMBER: 19-008566
OFFENSE: PUBLIC INTOXICATION

STATE OF TEXAS

IN THE MUNICIPAL COURT OF RECORD

VS.

CITY OF BAYTOWN

JESSICA LORRAINE SOLIS

HARRIS/CHAMBERS COUNTY, TEXAS

ORDER TO DISMISS

On May 31, 2019, came to be heard the Motion for Dismissal of JESSICA LORRAINE SOLIS, who moved the Court to dismiss the offense PUBLIC INTOXICATION for the reason of:


DISMISS - IOJ. kah

The Court, having duly considered said motion, determines that said cause should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that this cause be, and the same is, hereby dismissed.

Signed and entered on May 31, 2019






Judge, Baytown Municipal Court of Record
Harris/Chambers County, Baytown, Texas

Baytown Municipal Court of Record
Release of Record

JUN 05 2019

Released by: 
No. of Pages: 1

The letters “IOJ” in the order above mean “in the interest of justice.” Dismissal occurred only four (4) days after Lorraine’s arrest. This quick dismissal evidenced that there was never any probable cause for Lorraine’s arrest and prosecution. Charges were dismissed against Lorraine because there was no probable case for the charges in the first place, and because Lorraine was never guilty of public intoxication. Every reasonable officer possessing knowledge of Defendant Officers, in the positions in which they found themselves at the scene of the incident, would have known that Lorraine was not guilty of public intoxication, and that there was no probable cause for her arrest and/or prosecution.

F. *Monell* Liability Facts

54. Baytown is liable for all damages suffered by Lorraine and referenced in this pleading pursuant to *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978) and its progeny. Such liability arises due to the action and/or inaction of the chief policymaker for Baytown regarding material issues in this case. The chief policymaker was the Chief of Police (or his or her predecessor and/or successor). In the alternative, the chief policymaker was another person with managerial authority and, obviously, authority to make policies and procedures to be used by Baytown police officers. Plaintiff need not, pursuant to Fifth Circuit authority, name the actual policymaker at the pleading stage. Plaintiff is informed and believes that, through discovery, Plaintiff will identify with certainty the applicable chief policymaker. Baytown’s action and inaction otherwise referenced in this pleading, related to damages suffered by Lorraine, and Baytown’s policies, practices, and/or customs, were moving forces behind, resulted in, were producing causes of, and were proximate causes of the referenced constitutional violations and damages suffered by Lorraine as a result. This paragraph is incorporated by reference into all

paragraphs below within this “*Monell* liability facts” section, as well as sections below asserting causes of action against Baytown.

1. Baytown’s Policy, Practice, and/or Custom of Not Conducting Field Sobriety Tests for Public Intoxication Arrests was a Moving Force Behind and Caused Plaintiff’s Damages

55. Upon information and belief, Baytown’ policy, practice, and/or custom of not conducting field sobriety tests for potential public intoxication arrests was a moving force behind, caused, proximately caused, and was a producing cause of Lorraine’s damages. Upon information and belief, Baytown had a policy, practice, and/or custom of not requiring its police officers to perform field sobriety tests when determining whether to arrest a person for the offense of Public Intoxication. Thus, Baytown chose to have a policy, practice, and/or custom which did not require police officers to use any of the elements of a field sobriety test to determine whether a person is intoxicated.

56. It is impossible to determine whether a person is intoxicated without using a field sobriety test. A police officer cannot simply look at a person and determine that he or she is intoxicated, thus allowing arrest for public intoxication (if the other elements of the relevant statute are met). There is a reason for a field sobriety test. It allows an officer to use standardized tests to form what would be a reasonable belief as to whether a person is – or is not – intoxicated, and ultimately potentially probable cause regarding any such intoxication. An officer cannot form probable cause without conducting such standardized testing. A person could act in a certain manner because he or she hit her head, has a traumatic brain injury, is having a blood sugar crisis, is having a seizure, or is suffering numerous other maladies. Without performing field sobriety testing, an officer alleging that probable cause exists to arrest an allegedly intoxicated person does

so based upon no reasonable determination. In other words, probable cause could not exist for such an arrest without an officer conducting a field sobriety test.

57. Thus, a Baytown police officer could not reach a reasonable conclusion about whether a person was intoxicated without using facts established through conducting a field sobriety test. Baytown knew information pled in this portion of this pleading, and information elsewhere in this pleading regarding field sobriety testing, when it chose to institute or allow a policy, practice, and/or custom of no field sobriety testing by police officers, when such officers were considering whether to arrest a person based upon an alleged public intoxication offense. It was obvious to Baytown and the relevant chief policymaker that this policy, practice, and/or custom would result in people who are not intoxicated, and who are not a danger to themselves or others, being arrested, jailed, and improperly prosecuted. The decision to have such a policy, practice, and/or custom, in light of this obvious knowledge, was deliberate indifference to the rights of people (including Lorraine) who would come into contact with Baytown police officers. The result of having such a policy, practice, and/or custom was therefore obvious and foreseeable. Baytown police officers would arrest and cause to be prosecuted people who were not in fact intoxicated, and who were not a danger to themselves and/or others.

58. The decision by Baytown to have such a policy, practice, and/or custom was a moving force behind, caused, and proximately caused all damages referenced in this pleading. This equated to recklessness and more, and it would result, to a moral certainty, in false and improper arrests and improper and/or malicious prosecutions. This would cause, and in Lorraine's case did cause, violations of Fourth Amendment and Fourteenth Amendment rights. Lorraine was not intoxicated, and conducting a field sobriety test would have determined as much.

2. Baytown's Unwritten Policies, Practices, and/or Customs of Using Excessive Force, Making False Arrests, and Allowing False Prosecutions were Moving Forces Behind and Caused Plaintiff's Damages

59. Upon information and belief, Baytown's policy, practice, and/or custom of using excessive force was a moving force behind and caused Lorraine's damages. This unwritten policy, practice, and/or custom was demonstrated by at least circumstantial evidence.

60. Upon information and belief, Baytown failed to appropriately discipline Defendant Officers as a result of the unconstitutional seizure, use of force, arrest, subsequent prosecution, retaliation, and other constitutional violations alleged herein. Upon information and belief, Defendant Officers were not given any or sufficient time off without pay, were not materially disciplined, were not significantly reprimanded, were not instructed to act in any appreciably different manner in the future, and were not instructed to participate in any additional training and/or education. Upon information and belief, after assaulting Lorraine, Defendant Officers were not put on light or administrative duty but were instead allowed to continue to wear a firearm and drive a Baytown Police Department marked vehicle. This is evidence of a pre-existing policy, practice, and/or custom of allowing such a use of force, arrest, and prosecution.

61. Allegations above about what Baytown did and/or did not do regarding Officer Serrett and/or Officer Sims after Officer Serrett chose to assault Lorraine are not allegations that *Monell* liability arises solely as a result of Baytown failing to appropriately supervise, train, and/or discipline Officer Serrett and/or Officer Sims, and/or that such failure was a moving force behind and proximately caused constitutional violations and damages set forth in this pleading. Instead, those allegations demonstrate evidence of a policy, practice, and/or custom of using excessive force that pre-existed the assault, improper arrest, and improper prosecution of Lorraine.

62. Further evidence of the pre-existing policies, practices, and/or customs allowing and condoning what Defendant Officers did exists in the form of an email from the City of Baytown to Plaintiff's counsel's office. Before filing suit, Plaintiff's counsel obtained evidence through use of Texas Public Information Act requests. After Plaintiff's counsel received in response to a Public Information Act request for body camera recordings only a recording for Officer Serrett, he followed up on the request seeking copies of all body camera video of the relevant incident. Baytown confirmed in an email that Officer Sims did not activate his body camera. Baytown then provided a false excuse, consistent with Officer Serrett's false allegations regarding Lorraine, when Baytown asserted that Officer Sims acted consistent with Baytown policy. Baytown wrote that Officer Sims could not activate his camera because his interaction with Lorraine "was both unpredicted and abrupt," and that Officer Serrett "did not have time to active his camera." This was patently false.

Shelby Hunter

From: Kristen.Mills <Kristen.Mills@baytown.org>
Sent: Wednesday, October 09, 2019 2:50 PM
To: Shelby Hunter
Cc: Amanda.Pell
Subject: Public Information Act Request (3811 SOS) re: Client PIA
Attachments: Baytown PD - TDM Ltr missing bodycam.pdf

Importance: High

Ms. Hunter,

After discussing procedures and policies about Body Worn Cameras with the Assistant Chief of Patrol, we have determined that the second Officer did not violate any policy issues by not activating his body worn camera. Because the interaction with Ms. Solis was both unpredicted and abrupt as she was not the initial cause for the traffic stop, the Officer did not have time to activate his camera. This would fall under Section E.2 of BPD GO No. 5.15: "When activation of the body-worn camera system would be unsafe, unrealistic, or impracticable." Therefore, there are no other videos responsive to your request other than what has already been provided. I'm sorry for any confusion this may have caused and please feel free to contact me with any other questions you may have.

Thank you.

Kristen Mills
Open Records Specialist



281-420-6673
3200 N. Main
Baytown TX 77521

"Together we Enrich Lives and Build Community"

63. Officer Sims stood watching Lorraine and conversed with her for several minutes. He had plenty of time to active his camera, well before he even had such interaction. He could have simply activated the camera when he exited his police vehicle, as neither Lorraine nor her boyfriend were ever aggressive, fleeing, or threatening. Baytown asserted that the Baytown policy with which Officer Sims complied read, "When activation of the body-worn camera system would be unsafe, unrealistic, or impracticable," it would be alright not to do so. Baytown is covering up

for Defendant Officers, as it agrees that their actions and inaction complied with pre-existing policy for which *Monell* liability lies.

III. Causes of Action

A. Cause of Action Against Defendant Officers Under 42 U.S.C. § 1983 for Violation of 4th Amendment Rights: Excessive Force and Improper Seizure and Arrest

64. In the alternative, without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein (including all factual allegations above) to the extent they are not inconsistent with the cause of action pled here, Samuel A. Serrett and Teddy F. Sims are liable to Plaintiff, pursuant to 42 U.S.C. § 1983, for violating Plaintiff's rights guaranteed by the Fourth Amendment, as the Fourth Amendment has been incorporated to be applied to the States pursuant to the Fourteenth Amendment or otherwise, as a result of use of excessive force and making an improper arrest and seizure of Lorraine. Defendant Officers acted and failed to act under color of state law at all times referenced in this pleading. Defendant Officers were deliberately indifferent to Lorraine's constitutional rights, and they acted in an objectively unreasonable manner when seizing, arresting, and using force with Lorraine. They exercised constitutionally-impermissible excessive arrest power, force, and seizure. They violated clearly established constitutional rights, and their conduct was objectively unreasonable in light of clearly established law at the time of the relevant incident.

65. It was, at the time, clearly-established law in the Fifth Circuit that a law enforcement officer's use of force is excessive when an officer strikes, punches, or violently slams a suspect who is not resisting arrest. Further, it was clearly established law at the time that such should not occur if Lorraine was not accused of a serious crime, was not an immediate threat to the safety of law enforcement officers or others, and was not actively resisting arrest or attempting

to evade arrest by flight. Officer Serrett used comments he thought were “cute” in asking Lorraine for her phone. He gave her no time to deliberate or to understand what was happening. She was reasonably and clearly shocked when officers threw her to the ground without provocation and/or notice. Thus, any perception of resistance by Lorraine was simply a physical reaction to being assaulted by two physically superior males

66. Further a person protecting himself or herself from a physical assault by a police officer does not equate to resisting arrest, but is instead a natural reaction pursuant to a God-given right to protect oneself, and the right not to have one’s bodily integrity violated. Non-cooperation with an arrest is not by itself an act of the use of force against a police officer. A citizen does not need to merely stand, sit, or lye limp and not protect himself of herself from an improper and unreasonable physical assault by a police officer, simply because the police officer is wearing a uniform and carrying weapons. Police officers are not above the law.

67. Defendant Officers’ use of force was clearly unreasonable, unconstitutional, and against clearly-established law. There were also no exigent circumstances allowing Defendant Officers to use the force which they chose to use. Lorraine was not going anywhere, was not threatening anyone, and presented no threat of harm to anyone. Therefore, Defendant Officers are not entitled to qualified immunity.

68. It was further established in the Fifth Circuit, at the time Lorraine was assaulted, that a police officer who is a bystander can be held liable pursuant to 42 U.S.C. § 1983 under the theory of bystander liability. That theory of liability applies when the bystander officer (1) knows that a fellow officer is violating an individual’s constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. As demonstrated through facts pled in this pleading, Defendant Officers are each liable for the other’s action and/or inaction. Each

could have stopped actions and/or inaction of the other, and which lead to Lorraine's damages.

69. Plaintiff seeks all remedies and damages available for Plaintiff's 42 U.S.C. § 1983 claims. Damages suffered by Plaintiff were caused and/or proximately caused by Defendant Officers, individually, collectively, and/or jointly, or in the alternative their conduct was a producing cause of Plaintiff's damages. Defendant Officers are also each individually liable for the other's action and/or inaction pursuant to bystander liability. Therefore, Plaintiff seeks all legally-available damages including but not necessarily limited to:

- past physical pain;
- past mental anguish;
- future mental anguish;
- past physical impairment;
- past disfigurement;
- costs related to towing and redemption of her car;
- other expenses related to arrest and/or prosecution of Lorraine; and
- exemplary/punitive damages.

Exemplary/punitive damages are appropriate in this case to deter and punish clear and unabashed violation of Plaintiff's constitutional rights. Defendant Officers' actions and inaction showed a reckless or callous disregard of, or indifference to, Plaintiff's rights. Defendant Officers knew that there was a substantial risk of harm and injury to Plaintiff when they chose to take actions described in this pleading, but they nevertheless proceeded with conscious indifference to Plaintiff's rights, welfare, and safety. Moreover, Plaintiff seeks reasonable and necessary attorneys' fees available pursuant to 42 U.S.C. §§ 1983 and 1988.

B. Cause of Action Against Defendant Officers Under 42 U.S.C. § 1983 for Violation of 1st Amendment Rights:

70. In the alternative, without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein (including all factual allegations above) to the extent they are not inconsistent with the cause of action pled here, Samuel A. Serrett and Teddy F. Sims are liable to Plaintiff, pursuant to 42 U.S.C. § 1983, for violating Plaintiff's rights guaranteed by the First Amendment, as the First Amendment has been incorporated to be applied to the States pursuant to the Fourteenth Amendment or otherwise, as a result of his retaliation against Plaintiff for Plaintiff's exercise of First Amendment rights. Lorraine had the right to record, both through audio and video, Defendant Officers. She also had the right to say whatever she chose to say at the scene. Defendant Officers' subsequent actions, referenced in this pleading, were in retaliation for Lorraine's exercise of First Amendment rights, and those actions caused Lorraine to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity. Being assaulted, arrested, and prosecuted would chill First Amendment exercise by virtually any person. The subsequent prosecution of Lorraine, in retaliation for exercise of Lorraine's First Amendment rights, implicates not only First Amendment rights but also rights pursuant to the Fourth Amendment and/or Fourteenth Amendment. Those rights are again asserted in another section of this pleading below out of an abundance of caution.

71. Defendant Officers' adverse actions were substantially motivated by Lorraine's exercise of constitutionally-protected conduct. Defendant Officers retaliated against Lorraine for exercising her First Amendment rights of free expression, to speech, and/or to make recordings of officers engaged in their duties. Defendant Officers acted and failed to act under color of state law at all times referenced in this pleading. Defendant Officers were deliberately indifferent to

Lorraine's constitutional rights, and they acted in an objectively unreasonable manner when seizing and using force with Lorraine, arresting her, and subsequently causing Lorraine to be prosecuted, as a result of Lorraine's exercise of First Amendment rights. Defendant Officers violated clearly established constitutional rights, and their conduct was objectively unreasonable in light of clearly established law at the time of the relevant incident.

72. It was established in the Fifth Circuit, at the time Lorraine was assaulted, that a police officer who is a bystander can be held liable pursuant to 42 U.S.C. § 1983 under the theory of bystander liability. That theory of liability applies when the bystander officer (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. As demonstrated through facts pled in this pleading, Defendant Officers are each liable for the other's action and/or inaction. Each could have stopped actions and/or inaction of the other, and which lead to Lorraine's damages.

73. Plaintiff seeks all remedies and damages available for 42 U.S.C. § 1983 claims. Damages suffered by Plaintiff were caused and/or proximately caused by Defendant Officers, or in the alternative Defendant Officers' conduct were producing causes of Plaintiff's damages. Therefore, Plaintiff seeks all legally-available damages for Plaintiff including but not necessarily limited to the following:

- past physical pain;
- past mental anguish;
- future mental anguish;
- past physical impairment;
- past disfigurement;
- cost related to towing and redemption of her car;

- other expenses related to arrest and/or prosecution of Lorraine; and
- exemplary/punitive damages.

Exemplary/punitive damages are appropriate in this case to deter and punish clear and unabashed violation of Plaintiff's constitutional rights. Defendant Officers' actions and inaction showed a reckless or callous disregard of, or indifference to, Plaintiff's rights. Defendant Officers knew that there was a substantial risk of harm and injury to Plaintiff when they chose to take actions described in this pleading, but they nevertheless proceeded with conscious indifference to Plaintiff's rights, welfare, and safety. Moreover, Plaintiff seeks reasonable and necessary attorneys' fees available pursuant to 42 U.S.C. §§ 1983 and 1988.

C. Cause of Action Against Defendant Officers Under 42 U.S.C. § 1983 for Violation of 1st Amendment, 4th Amendment, and/or 14th Amendment Rights: False Arrest/Improper Seizure, Malicious/False Prosecution, and/or Due Process Violations

74. In the alternative, without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein (including all factual allegations above) to the extent they are not inconsistent with the cause of action pled here, Samuel A. Serrett and Teddy F. Simms are liable to Plaintiff, pursuant to 42 U.S.C. § 1983, for violating Plaintiff's rights guaranteed by the First Amendment, Fourth Amendment, and/or Fourteenth Amendment as a result of the false arrest, and malicious and/or false prosecution of, Plaintiff for crimes which Plaintiff did not commit. Officer Serrett provided false information for the purpose of having Plaintiff prosecuted. He did so with malicious intent and out of anger directed toward Plaintiff. He thus initiated criminal charges without probable cause. This resulted in violation of Plaintiff's rights pursuant to the Fourth Amendment and/or Fourteenth Amendment, specifically those related to improper and/or malicious prosecution, wrongful initiation of legal process (criminal prosecution), and/or the right

to due process.

75. This also was a violation of Plaintiff's rights pursuant to the First Amendment, because such prosecution was retaliation for Plaintiff's free exercise of First Amendment rights. Plaintiff was wrongfully arrested and prosecuted as a result of Defendant Officers' actions. Thus, deliberations by and/or actions of prosecutors and others who actually began the criminal prosecution, whether through drafting of an information or otherwise, were tainted by Defendant Officers' actions. Defendant Officers had not only malicious intent directed toward Plaintiff, as was demonstrated through physical assault of Plaintiff, but they also had malicious motives. Defendant Officers were upset that Plaintiff would lawfully make disagreeable statements and record Defendant Officers, and Defendant Officers thus engaged in all actions referenced in this pleading. Defendant Officers' malicious motives lead them to withhold relevant information or otherwise misdirect prosecutors and/or others involved in the prosecution process by omission or commission. Upon information and belief, only when one or more prosecutors were able to view body cam recordings did those prosecutors dismiss proceedings "in the interest of justice." Thus, Defendant Officers deceived prosecutors and/or others connected with relevant prosecutions against Lorraine.

76. Moreover, the prosecution occurred in retaliation for Plaintiff's exercise of First Amendment rights to speech, expression, and/or to record police officers conducting their duties. The prosecution of Plaintiff meets the elements for malicious criminal prosecution pursuant to Texas law. A criminal prosecution was commenced against Plaintiff, and Defendant Officers initiated or procured the prosecution. The prosecution was terminated in Plaintiff's favor, and Plaintiff was innocent of the charges. Defendant Officers did not have probable cause to initiate or procure the prosecution, but they instead did so with malice. Plaintiff suffered damages as a

result of the prosecution and which are referenced in this pleading. Defendant Officers acted and failed to act under color of state law at all times referenced in this pleading. Defendant Officers were deliberately indifferent to Lorraine's constitutional rights, and they acted in an objectively unreasonable manner. Defendant Officers violated clearly established constitutional rights, and their conduct was objectively unreasonable in light of clearly established law at the time of the relevant incident.

77. It was clearly-established law, in the Fifth Circuit, at the time Defendant Officers chose to seek prosecution of Lorraine, that a law enforcement officer should not submit false or misleading information, or omit material information, when communicating with prosecutors and/or others regarding anticipated criminal prosecution. It was also clearly-established law that a law enforcement officer should not arrest a person, without probable cause, and then initiate or procure prosecution of that person as a result of the false and improper arrest. Therefore, Defendant Officers are not entitled to qualified immunity.

78. It was further established in the Fifth Circuit, at the time Lorraine was assaulted, that a police officer who is a bystander can be held liable pursuant to 42 U.S.C. § 1983 under the theory of bystander liability. That theory of liability applies when the bystander officer (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. As demonstrated through facts pled in this pleading, Defendant Officers are each liable for the other's action and/or inaction. Each could have stopped actions and/or inaction of the other, and which lead to Lorraine's damages.

79. Plaintiff seeks all available remedies and damages for 42 U.S.C. § 1983 claims. Damages suffered by Plaintiff were caused and/or proximately caused by Defendant Officers, or Defendant Officers' conduct was a producing cause of Plaintiff's damages. Therefore, Plaintiff

seeks all legally-available damages including but not necessarily limited to:

- past physical pain;
- past mental anguish;
- future mental anguish;
- past physical impairment;
- past disfigurement;
- costs related to towing and redemption of her car;
- other expenses related to arrest and/or prosecution of Lorraine; and
- exemplary/punitive damages.

Exemplary/punitive damages are appropriate in this case to deter and punish clear and unabashed violation of Plaintiff's constitutional rights. Defendant Officers' actions and inaction showed a reckless or callous disregard of, or indifference to, Plaintiff's rights. Defendant Officers knew that there was a substantial risk of harm and injury to Plaintiff when they chose to take actions described in this pleading, but they nevertheless proceeded with conscious indifference to Plaintiff's rights, welfare, and safety. Moreover, Plaintiff seeks reasonable and necessary attorneys' fees available pursuant to 42 U.S.C. §§ 1983 and 1988.

D. Cause of Action Against Defendant City of Baytown Under 42 U.S.C. § 1983 for Violation of 4th Amendment and/or 14th Amendment Rights: False Arrest/Improper Seizure, Malicious/False Prosecution, and/or Due Process Violations

80. In the alternative, without waiving any of the other causes of action pled herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other allegations herein (including all factual allegations above) to the extent they are not inconsistent with the cause of action pled here, Baytown is liable to Plaintiff, pursuant to 42 U.S.C. § 1983, for violating Plaintiff's rights guaranteed by the Fourth Amendment and the Fourteenth

Amendment as a result of the false arrest, and malicious and/or false prosecution of, Plaintiff for a crime which Plaintiff did not commit – alleged public intoxication. Plaintiff incorporates by reference as if fully set forth in this section of this pleading sections above entitled in which claims are asserted against the natural person Defendants. Plaintiff also incorporates by reference as if fully set forth in this section factual allegations above regarding Baytown’s policies, practices, and/or customs.

81. Defendant Officers were at all times referenced in this pleading acting in the course and scope of their duties of and for Baytown, and they were acting color of state law. Baytown acted or failed to act under color of state law at all relevant times. Upon information and belief, Baytown’s customs, practices, and/or policies caused, were a proximate cause, and/or were a producing cause of Plaintiff’s damages resulting from unconstitutional false arrest and seizure, and malicious and/or false prosecution of, Plaintiff for a crime which Plaintiff did not commit – alleged public intoxication. Therefore, Plaintiff seeks from Baytown all legally-available damages, including but not necessarily limited to:

- past physical pain;
- past mental anguish;
- future mental anguish;
- past physical impairment;
- past disfigurement;
- costs related to towing and redemption of her car; and
- other expenses related to arrest and/or prosecution of Lorraine.

82. Upon information and belief, the Baytown chief of police was the chief policymaker for Baytown at all times relevant to this pleading, and involving police matters

material and/or at issue and referenced in this pleading, and he was the one that determined the customs, practices, and policies referenced herein. In the alternative, another relevant chief policymaker, at all times relevant to this pleading, determined the customs, practices, and policies referenced herein. The chief policymaker's adoption of the field sobriety test policy, practice, and/or custom referenced in this pleading, as well as his or her failure to stop customs, practices, and policies which developed and which are mentioned in this pleading, were intentional choices. Thus, Baytown was deliberately indifferent to, and acted in an objectively unreasonable manner regarding, Plaintiff's constitutional rights. These customs, practices, and policies were moving forces behind the violation of Plaintiff's rights, showed deliberate indifference to the known or obvious consequences of constitutional violations, and were objectively unreasonable and resulted in objectively unreasonable and/or deliberately indifferent actions by Defendant Officers.

IV. Concluding Allegations

A. Conditions Precedent

83. All conditions precedent to assertion of Plaintiff's claims have occurred.

B. Use of Documents

84. Plaintiff intends to use at one or more pretrial proceedings, in motion practice, and/or at trial all documents produced by Defendants in this case in response to written discovery requests.

C. Jury Demand

85. Plaintiff demands a jury trial on all issues which may be tried to a jury.

D. Prayer

86. For these reasons, Plaintiff asks that Defendants be summoned to appear and answer, and that Plaintiff have judgment for damages within the jurisdictional limits of the court and against Defendants, jointly and severally, as legally applicable, for:

- a) actual damages of and for Plaintiff for including but not necessarily limited to:
 - past physical pain;
 - past mental anguish;
 - future mental anguish;
 - past physical impairment;
 - past disfigurement;
 - costs related to towing and redemption of her car; and
 - other expenses related to arrest and/or prosecution of Lorraine.
- b) exemplary/punitive damages from and against Officer Serrett and Officer Sims;
- c) reasonable and necessary attorneys' fees through trial and any appeals and other appellate proceedings, pursuant to 42 U.S.C. §§ 1983 and 1988;
- d) court costs and all other recoverable costs;
- e) prejudgment and postjudgment interest at the highest allowable rates; and
- f) all other relief, legal and equitable, general and special, to which Plaintiff is entitled.

Respectfully submitted,

/s/ T. Dean Malone

T. Dean Malone
Attorney-in-charge
Texas State Bar No. 24003265
Southern District of Texas Bar No. 37893
Law Offices of Dean Malone, P.C.
900 Jackson Street
Suite 730
Dallas, Texas 75202
Telephone: (214) 670-9989
Telefax: (214) 670-9904
dean@deanmalone.com

Of Counsel:

Michael T. O'Connor
Texas State Bar No. 24032922
Southern District of Texas Bar No. 37991
Law Offices of Dean Malone, P.C.
900 Jackson Street
Suite 730
Dallas, Texas 75202
Telephone: (214) 670-9989
Telefax: (214) 670-9904
michael.oconnor@deanmalone.com

Attorneys for Plaintiff