

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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SHAWN WINT,

Plaintiff,

-against-

POLICE OFFICER JEREMIAH S. WILLIAMS, Shield  
No. 7878, SERGEANT ERIC FLORIO, and POLICE  
OFFICERS JOHN DOES #s 1-10 (names and number of  
whom are unknown at present),

Defendants.

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**SUMMONS**

Index No.:

The Basis of Venue is:  
Location of Incident

Plaintiff designates Bronx  
County as the place of trial.

**To the above named Defendants:**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York  
April 14, 2018

Yours, etc.

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/s/  
JACOBS & HAZAN, LLP.  
STUART E. JACOBS, ESQ.  
Attorney for Plaintiff  
30 Vesey Street, 4<sup>th</sup> Floor  
New York, New York 10007  
(212) 577-2690

TO: Police Officer Jeremiah S. Williams, Shield No. 7878, 47<sup>th</sup> Precinct, 4111 Laconia Avenue, Bronx, NY 10466  
Sergeant Eric Florio, 47<sup>th</sup> Precinct, 4111 Laconia Avenue, Bronx, NY 1046

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**INDEX NO.:**

**VERIFIED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff SHAWN WINT, by his attorneys, Jacobs & Hazan, LLP, as and for his Verified Complaint herein, alleges upon information and belief as follows:

**PRELIMINARY STATEMENT**

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Sections 1983 and 1988, and of rights secured by the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the common law and the laws of the State of New York. On August 4, 2015 at approximately 9:40 am plaintiff Shawn Wint was lawfully present in the vicinity of 726 East 227<sup>th</sup> Street, Bronx, New York, when he was subjected to an unlawful stop, question, frisk, search, false arrest, and false imprisonment by the defendant New York City police officers. Thereafter, plaintiff was subjected to a malicious abuse of process and a malicious prosecution by the defendant police officers, and he was denied the right to due process/and the right to a fair trial by the defendant officers. Defendants initially arrested plaintiff because they mistook him for someone else that they wanted to interrogate, and defendants only realized that plaintiff was not the individual the defendants were looking for when they ran plaintiff's fingerprints and received plaintiff's identity. Plaintiff was required to appear in Bronx Criminal Court on approximately eight dates to address the criminal charges brought against him for a crime he did not commit. All criminal charges were dismissed and sealed in their entirety on September 7, 2016. Plaintiff was deprived of his constitutional and common law rights when the individual defendants unlawfully stopped, questioned, frisked, searched, confined, falsely arrested, maliciously prosecuted, abused process, and denied plaintiff the right to a fair trial, in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, the common law and the laws of the State of New York.

## **PARTIES**

2. Plaintiff Shawn Wint is a resident of the state of New York.
3. Defendant Police Officer Jeremiah S. Williams, Shield No. 7878, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.
4. Defendant Police Officer Jeremiah S. Williams, Shield No. 7878, is and was at all times relevant herein, assigned to the 47th Precinct.
5. Defendant Police Officer Jeremiah S. Williams, Shield No. 7878 is being sued in his individual and official capacity.
6. Defendant Sergeant Eric Florio, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.
7. Defendant Sergeant Eric Florio, is and was at all times relevant herein, assigned to the 47th Precinct.
8. Defendant Sergeant Eric Florio is being sued in his individual and official capacity.
9. Defendants New York City Police Officers John Does #s 1-10 are and were at all times relevant herein officers, employees, and agents of the New York City Police Department.
10. Defendant New York City Police Officers John Does #s 1-10 are being sued in their individual and official capacities.
11. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.
12. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.

13. This action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

14. Plaintiff has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

### **STATEMENT OF FACTS**

15. By way of background, plaintiff slept at his friend Michael's home from the evening of August 3, 2015 through the morning of August 4, 2015, and plaintiff's friend lived in a different part of the Bronx from plaintiff, and not far from where defendants falsely arrested plaintiff on August 4, 2015.

16. On August 4, 2015 at approximately 9:30 am plaintiff and his friend Michael were lawfully walking to Michael's car on 227<sup>th</sup> Street towards White Plains Road because Michael intended to drive them to a restaurant to get breakfast.

17. As plaintiff and Michael were walking to Michael's car, Michael ran into a friend in the vicinity of 726 East 227<sup>th</sup> Street, Bronx, New York and they stopped briefly to chat with Michael's friend.

18. On August 4, 2015 at approximately 9:40 am, plaintiff was lawfully present on the sidewalk in the vicinity of 726 East 227<sup>th</sup> Street, Bronx, New York when defendants pulled up in their vehicle, alongside where plaintiff was standing, exited their vehicle and proceeded to unlawfully search plaintiff and the other individuals he was with, without probable cause.

19. At no time relevant herein did plaintiff commit a crime or violate the law nor did defendants have an objective factual basis to believe he committed a crime or to establish reasonable suspicion or probable cause.

20. Defendants did not recover any illegal drugs, weapons or contraband from plaintiff pursuant to their search of him.

21. The officers mistakenly and incorrectly believed they recognized plaintiff as an individual from the neighborhood who goes by the nickname "Sho."

22. The defendant officers wanted to arrest "Sho" so that they could transport him back to the precinct and interrogate him about crimes that occurred in the neighborhood.

23. Therefore, after the officers searched plaintiff they began walking slowly around the cars that were parked on the street nearby and defendants picked up what appeared to be the butt of a cigarette that had already been smoked.

24. The defendants falsely alleged that the item they picked up from the ground was the remains of a marijuana cigarette.

25. Defendants then walked directly up to plaintiff and stated to plaintiff "I am putting this on you."

26. Then the defendants unlawfully handcuffed plaintiff and falsely arrested him, without probable cause.

27. The officers had absolutely no objective factual basis to allege that plaintiff had possession, custody or control of the item the officers picked up from the ground.

28. The defendant officers transported claimant to the 47<sup>th</sup> Precinct against his will.

29. Defendants unlawfully searched claimant at the 47<sup>th</sup> Precinct without probable cause and did not recover anything from plaintiff's person pursuant to the search.

30. The defendants unlawfully interrogated plaintiff about people and crimes in the neighborhood and advised plaintiff that they knew he was "Sho." Plaintiff could not answer any of the officers' questions because he did not know any of the people they were questioning him about and plaintiff was not from that neighborhood.

31. After the officers unlawfully interrogated plaintiff they fingerprinted and photographed plaintiff.

32. Plaintiff's fingerprints revealed to the officers that plaintiff was not the individual named "Sho" that the officers thought he was, and the defendant officers acknowledged their mistake to plaintiff and advised plaintiff that they mistakenly confused him with another individual.

33. To avoid being disciplined, defendants had to justify why they arrested plaintiff and therefore, they did not simply release plaintiff when they realized the mistake they made.

34. Defendants unlawfully detained plaintiff in a holding cell for several hours.

35. On August 4, 2015 at approximately 5:30 pm defendants issued a Desk Appearance Ticket to plaintiff, falsely charging plaintiff with Criminal Possession of Marijuana and ordering plaintiff to appear in Bronx Criminal Court on September 23, 2015 at 9:30 am, and released plaintiff from custody.

36. At no time relevant herein did defendants have an objective factual basis to accuse plaintiff of possessing marijuana.

37. The allegations made by defendants against plaintiff that he possessed marijuana were completely fabricated by the defendant officers.

38. At no time was plaintiff in possession of any drugs, weapons, or contraband of any kind on August 4, 2015, nor did the defendant police officers have an objective reason to believe plaintiff possessed drugs, weapons, or contraband of any kind.

39. Based upon the false information provided by the defendant police officers to the District Attorney's Office, on September 23, 2015 plaintiff was arraigned in Bronx Criminal Court, falsely charged with Criminal Possession of Marijuana, and a criminal prosecution was maliciously initiated against him without probable cause by the defendant officers.

40. Plaintiff was released on his own recognizance at arraignment.

41. Plaintiff was required to appear in Bronx Criminal court on approximately 8 occasions to address the false criminal charges brought against him before all charges brought against plaintiff were dismissed and sealed and terminated in his favor on September 7, 2016.

42. Some of the police officer defendants observed the violation of plaintiff's rights under the Constitution of the United States and New York State Law and did nothing to prevent the unjustifiable stop, question, frisk, search, false arrest, false imprisonment, malicious prosecution, abuse of process, denial of fair trial, and use of excessive force against plaintiff.

43. The unlawful stop, question, frisk, search, false arrest, false imprisonment, malicious prosecution, abuse of process, denial of a fair trial, and the use of excessive force against plaintiff by the individually named defendants caused plaintiff to sustain physical, psychological and emotional trauma.

### **FIRST CAUSE OF ACTION**

#### **Violation of Plaintiff's Fourth Amendment, Fifth Amendment, and Fourteenth Amendment Rights**

44. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 43 with the same force and effect as if more fully set forth at length herein.

45. The individually named police officer defendants while acting in concert and within the scope of their authority, caused plaintiff to be unlawfully stopped, questioned, frisked, seized, unlawfully searched, falsely arrested, falsely imprisoned, maliciously prosecuted, subjected to abuse of process and denied the right to a fair trial without probable cause in violation of plaintiff's right to be free of an unreasonable seizure and denial of due process under the Fourth and Fifth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

## **SECOND CAUSE OF ACTION**

### **False Arrest and False Imprisonment**

46. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 45 with the same force and effect as if more fully set forth at length herein.

47. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York. Defendants intended to confine plaintiff and, in fact, confined plaintiff, and plaintiff was conscious of the confinement. In addition, plaintiff did not consent to the confinement and the confinement was not otherwise privileged.

48. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York and the United States Constitution.

49. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

50. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to physical, economic, emotional and psychological injuries.

## **THIRD CAUSE OF ACTION**

### **Unlawful Stop, Question, and Frisk**

51. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 50 with the same force and effect as if more fully set forth at length herein.

52. The illegal approach, pursuit, stop, questioning and frisk employed by defendants herein terminated plaintiff's freedom of movement through means intentionally applied.

53. The conduct of defendants in stopping, frisking, and searching, plaintiff was performed under color of law and without any reasonable suspicion of criminality or other constitutionally required grounds.

54. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York.

55. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

56. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to physical, economic, emotional and psychological injuries.

#### **FOURTH CAUSE OF ACTION**

##### **Unlawful Search**

57. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 56 with the same force and effect as if more fully set forth at length herein.

58. The illegal approach, pursuit, stop and search inside plaintiff's pockets, inside of the waistband of his pants and underneath his clothing employed by defendants herein terminated plaintiff's freedom of movement through means intentionally applied.

59. Defendants lacked probable cause to search plaintiff.

60. As a direct and proximate result of such acts, defendants deprived plaintiff of his rights under the laws of the State of New York.

61. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

62. As a result of the aforementioned conduct of defendants, plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

#### **FIFTH CAUSE OF ACTION**

##### **Malicious Prosecution**

63. Plaintiff repeats and realleges paragraphs 1 through 62 as if fully set forth herein.

64. The acts and conduct of the defendants constitute malicious prosecution under the laws of the United States Constitution, State of New York and New York State common law.

65. Defendants commenced and continued a criminal proceeding against plaintiff.

66. There was actual malice and an absence of probable cause for the criminal proceeding against plaintiff and for each of the charges for which he was prosecuted.

67. The prosecution and criminal proceedings terminated in plaintiff's favor on the aforementioned date.



68. Plaintiff was subjected to a post-arraignment deprivation of liberty sufficient to implicate plaintiff's Fourth Amendment rights.

69. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

## **SIXTH CAUSE OF ACTION**

### **Denial of Right to Fair Trial**

70. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 through 69 with the same force and effect as if fully set forth herein.

71. Defendants, individually and collectively, manufactured and/or withheld false evidence and forwarded this false evidence to prosecutors in the Bronx County District Attorney's Office.

72. Defendants filled out false and misleading police reports and forwarded them to prosecutors in the Bronx County District Attorney's Office.

73. Defendants signed false and misleading criminal court affidavits and forwarded them to prosecutors in the Bronx County District Attorney's Office.

74. In withholding/creating false evidence against plaintiff, and in providing/withholding information with respect thereto, defendants violated plaintiff's constitutional right to a fair trial under the New York State Constitution and under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

75. As a result of the foregoing, plaintiff, sustained, inter alia, loss of liberty, emotional distress, embarrassment and humiliation, lost earnings and deprivation of his constitutional rights.

76. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

## **SEVENTH CAUSE OF ACTION**

### **Malicious Abuse of Process**

77. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 76 with the same force and effect as if fully set forth herein.

78. Defendants issued legal process to place plaintiff under arrest.

79. Defendants arrested plaintiff in order to obtain a collateral objective outside the legitimate ends of the legal process.

80. Defendants acted with intent to do harm to plaintiff, without excuse or justification.

81. As a result of the foregoing, plaintiff sustained, inter alia, loss of liberty, emotional distress, embarrassment and humiliation, lost earnings and deprivation of his constitutional rights.

82. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

## **EIGHTH CAUSE OF ACTION**

### **Failure to Intervene**

83. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 82 with the same force and effect as if more fully set forth at length herein.

84. Defendants had an affirmative duty to intervene on behalf of plaintiff, whose constitutional rights were being violated in their presence by other officers.

85. Defendants failed to intervene to prevent the unlawful conduct described herein.

86. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, he was put in fear of his safety, and he was humiliated and subject to other physical constraints.

87. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.



