

FILED by *W* D.C.  
FEB 25 1998  
CARLOS JUENKE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

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INTAKE  
FEB 09 1998  
CARLOS JUENKE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

DARNELL MITCHELL,  
Plaintiff

No. 97-6695-CIV-MOORE

v.

Magistrate Judge Turnoff

CITY OF HALLANDALE and  
MARSHA ROADEN,  
Defendants

AMENDED COMPLAINT

Plaintiff sues Defendants City of Hallandale ("the City") and Marsha Roaden ("Officer Roaden") and alleges:

1. This action consists of four claims: Count I, an action under U.S.C., Title 42, § 1983 against Officer Roaden in her individual capacity; Count II, an action under U.S.C., Title 42, § 1983 against the City; and Counts III and IV, state law tort claims against the City under U.S.C., Title 28, § 1367.

2. At times material, Officer Roaden was in the City's employ as a police officer since 1985.

3. On May 6, 1996, Plaintiff was innocently bicycling through a residential area in the City of Hallandale when he was violently attacked by a gang of young men who struck him with rocks and bottles and tried to steal his bicycle.

4. Fearing for his safety, Plaintiff brandished a folded pocket knife at his attackers, abandoned his bicycle, and ran to the front yard of a nearby house.

5. Officer Roaden was flagged down by a citizen who pointed

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out Plaintiff and briefly told Officer Roaden what happened, including the fact that Plaintiff warded off his attackers with a knife.

6. Officer Roaden radioed the police dispatcher that she was responding to "a possible signal zero suspect with a knife." This broadcast was overheard by a number of nearby police units who then radioed that they would be responding. Officer Roaden thus knew that backup officers were on the way and their arrival was imminent.

7. Officer Roaden confronted Plaintiff without waiting for backup. She drove to the yard where Plaintiff stood, stepped out of her squad car, drew her gun - a loaded .40 calibre Glock 23 semiautomatic pistol with a round chambered - and pointed it at Plaintiff. The Glock had no manual safety to be thumbed off prior to firing. With a round in the chamber, it was ready to fire simply by lightly pressing the trigger.

8. Plaintiff was empty-handed, having put the folded knife back in his pocket prior to Officer Roaden's arrival. He posed no threat.

9. Officer Roaden ordered Plaintiff to lie face down on the ground and Plaintiff complied.

10. As Plaintiff lay prone, Officer Roaden kneeled on his back, then handcuffed his left wrist and pulled it into the small of his back. Officer Roaden then shifted her knee so that it

immobilized Plaintiff's cuffed left hand in the small of his back. While thus precariously perched, Officer Roaden then used both her hands – the right one still training the gun on Plaintiff – to pull Plaintiff's right arm and wrist behind his back to complete the handcuffing. Not unexpectedly, the gun fired, causing a bullet to pass through Plaintiff's right buttock and thigh.

11. At least two backup officers arrived at the scene while Officer Roaden was handcuffing Plaintiff or within a few seconds.

12. Plaintiff was taken to the hospital in police custody. He received treatment and was released without criminal charges.

13. When the City hired Officer Roaden in 1985, she used a .357 revolver as her duty weapon. Some years later, Officer Roaden made a transition to semiautomatic sidearms and ultimately to the Glock 23 that was used in Plaintiff's apprehension.

14. Officer Roaden purchased and used the Glock pursuant to a written firearms policy adopted by the City. Known as PRO ["procedural order"] 510, the policy authorized officers to use .40 caliber Glock sidearms.

15. PRO 510 also stated an intention "to establish controls over the types of weapons carried by HALLANDALE Police Officers [e.o.] and to enumerate guidelines for the proper use and training requirements associated to their use." However, PRO 510 set forth no proper use and training requirements specific to the Glock or indeed to any sidearm.

16. Both the City and Officer Roaden knew, or should have known, of operating features of the Glock that made it much more dangerous than other sidearms. Chief among these is that the Glock is designed to be fired by simply applying light trigger pressure. To this purpose, the Glock is not equipped with a manual safety that must be thumbed off before the gun will fire. Instead, the Glock has a trigger safety, located in the trigger guard, which requires two-tenths of an inch of travel to take up slack and activate the trigger. Another five-tenths of an inch of travel releases the trigger and fires the gun. In addition to the short trigger travel, the trigger force is very light, being factory-set in the range of five to seven pounds. This is much less pressure than required to fire a typical revolver.

17. Due to its light trigger pull, short trigger travel, and lack of manual safety, a Glock with a round in the chamber will fire with only light trigger pressure, and thus is unforgiving of careless handling and requires a high level of training, preparedness, and safe tactical use. Due to this unique mode of action, adequate initial training is required for one who is taking up the Glock for the first time in place of another sidearm.

18. In the course of her duties it was very likely that Officer Roaden would be confronted with situations where she would use her Glock to apprehend a subject, and that such situations would be stressful, demanding a high level of preparedness.

Consequently, there was an obvious need for the City to provide Officer Roaden with adequate initial and recurrent safety and tactical training in firearms. There was an equally obvious need for the City to provide Officer Roaden with adequate initial and recurrent training specific to the Glock when she made the transition to its use, due to its unique mode of action as stated above.

19. Despite the facial intent of PRO 510 to establish firearms training requirements, in reality the City did not provide Officer Roaden with adequate initial and recurrent training in firearms safety and tactics since hiring her as a police officer in 1985, other than routine range qualifying. The City also failed to provide Officer Roaden with adequate safety and tactical training specific to the Glock, other than routine range qualifying. Further, the City failed to provide Officer Roaden with recurrent training in the Glock to keep her skills and preparedness at the high level required of a law enforcement officer.

20. Such training should have included proper procedures to be followed; should have created awareness that unintended firearm discharges involving the Glock foreseeable; should have included transition training when Officer Roaden took up the Glock in place of her previous sidearm; and should have included recurrent training to keep Officer Roaden's skills and preparedness at the level required of a law enforcement officer who would be confronted

with stressful, demanding situations.

21. In addition, there was an obvious need for the City to train Officer Roaden adequately in handcuffing procedures, in view of the likelihood that in the course of her duties she would be handcuffing subjects. Such training should have created awareness that handcuffing a subject is a two-handed operation and that handcuffing a subject while holding him at gunpoint is a hazardous operation that presents a clear danger of an unintended discharge and must be avoided when reasonable alternatives exist.

I. Marsha Roaden: Civil Rights Violation

Plaintiff sues MARSHA ROADEN and alleges:

22. Plaintiff readopts the allegations contained in Paragraphs 1 through 21 above.

23. This is an action for damages and attorney's fees under U.S.C. Title 42, §§ 1983, 1988 against Roaden in her individual capacity.

24. Roaden acted under color of Florida law.

25. Plaintiff enjoyed Fourth Amendment freedom from the unreasonable seizure of his person.

26. Officer Roaden acted in an unreasonable manner that was likely to injure Plaintiff. In the first place, she unreasonably attempted to apprehend Plaintiff at gunpoint when she knew backup officers would be arriving within seconds. In the second place, Officer Roaden unreasonably continued to train her gun on Plaintiff

- with a round chambered and ready to fire without having to thumb off a safety - while using both her hands to maneuver Plaintiff's wrists into the handcuffs, all the while kneeling on Plaintiff from behind to immobilize him.

27. Plaintiff's gunshot wound resulted from Officer Roaden's intentional use of a gun and handcuffs to terminate his movements and was a Fourth Amendment seizure. It was also an unreasonable seizure because, as shown above, it was done in such a manner as was likely to cause needless injury to Plaintiff. Officer Roaden thus violated Plaintiff's Fourth Amendment right against an unreasonable seizure of his person.

28. As a result, Plaintiff suffered the unlawful seizure of his person, bodily injury and impairment, physical and mental pain and suffering which are continuing and will be suffered in the future, and costs of hospitalization and medical treatment.

## II. City of Hallandale: Civil Rights Violation

Plaintiff sues the City of Hallandale and alleges:

29. Plaintiff readopts the allegations contained in Paragraphs 1 through 21 above.

30. This is an action for damages and attorney's fees under U.S.C. Title 42, §§ 1983, 1988 against the City of Hallandale.

31. The City acted under color of Florida law.

32. Plaintiff enjoyed Fourth Amendment freedom from the unreasonable seizure of his person.

33. The City of Hallandale violated Plaintiff's Fourth Amendment rights by training deficiencies that reflected deliberate indifference to Plaintiff's rights. As alleged above, there was an obvious need to provide adequate training to Officer Roaden in firearms safety and particularly in her Glock pistol, due to its unique mode of action when compared with Officer Roaden's previous duty weapons, and due to the likelihood that in the course of her duties Officer Roaden would be confronted with situations where she would utilize the Glock to apprehend a suspect. Moreover, there was an obvious need to adequately train Officer Roaden in handcuffing procedures, specifically, that it is an unsafe procedure to attempt to handcuff a subject with both hands while holding the subject at gunpoint with a Glock having a round in the chamber.

34. The described training deficiencies constituted deliberate indifference by the City to Plaintiff's constitutional rights, and were likely to and did violate Plaintiff's constitutional rights.

35. As a result, Plaintiff suffered the unlawful seizure of his person, bodily injury and impairment, physical and mental pain and suffering which are continuing and will be suffered in the future, and costs of hospitalization and medical treatment.

### III. City of Hallandale: Battery

Plaintiff sues the City of Hallandale and alleges:

36. Plaintiff readopts the allegations contained in Paragraphs 1 through 21 above.



37. This is a state law tort claim under U.S.C., Title 28, § 1367.

38. All conditions precedent have occurred or the conditions have been performed.

39. Officer Roaden acted in the course of employment and the City is vicariously liable for her actions in the course of employment.

40. The City touched or struck Plaintiff. The touching or striking was intentional on the part of the City, was unconsented to by Plaintiff and was offensive and harmful to him.

41. As a result, Plaintiff suffered bodily injury and impairment, physical and mental pain and suffering which are continuing and will be suffered in the future, and costs of hospitalization and medical treatment.

#### IV. City of Hallandale: Negligence

Plaintiff sues the City of Hallandale and alleges:

42. Plaintiff readopts the allegations contained in Paragraphs 1 through 21 above.

43. This is a state law tort claim under U.S.C., Title 28, § 1367.

44. All conditions precedent have occurred or the conditions have been performed.

45. Officer Roaden acted in the course of employment and the City is vicariously liable for her actions in the course of

employment.

46. When the City apprehended Plaintiff at gunpoint, it completely deprived him of his freedom of action and therefore assumed a duty to protect him against foreseeable harm. The City negligently breached that duty by authorizing Roaden to equip herself with a dangerous firearm while failing to adequately train her in its safe use, as detailed above. The City also negligently breached its duty of care toward Plaintiff by Officer Roaden's negligent attempt to handcuff Plaintiff without holstering her firearm.

47. As a result, Plaintiff suffered bodily injury and impairment, physical and mental pain and suffering which are continuing and will be suffered in the future, and costs of hospitalization and medical treatment.

#### Conclusion

48. Based on the foregoing, Plaintiff demands trial by jury and judgment for the following relief:

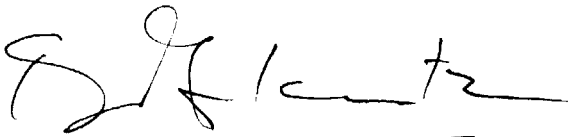
49. As to Count I, judgment for damages and an attorney's fee and costs against Marsha Roaden in her individual capacity under U.S.C., Title 42, §§ 1983, 1988.

50. As to Count II, judgment for damages and an attorney's fee and costs against the City of Hallandale under U.S.C., Title 42, §§ 1983, 1988.

51. As to Counts III and IV, judgment for damages against the City of Hallandale under U.S.C., Title 28, § 1367.

Plaintiff's undersigned counsel certify that a true copy hereof was furnished by mail to Richard Kane, City Attorney for Hallandale, counsel for Defendants, 400 S. Federal Highway, Hallandale FL 33009, attention Joseph C. Murphy, Assistant City Attorney, on February 5, 1998.

DAVID J. GLANTZ, P.A.  
Attorney for Plaintiff  
290 N.W. 165th Street, P-300  
Miami, FL 33169-6457  
Telephone (305) 947-4876  
Fax (305) 354-7915



David J. Glantz  
Fla. Bar No. 504238

STEVEN RUDIN, P.A.  
Attorney for Plaintiff  
9130 S. Dadeland Blvd, #1510  
Miami, FL 33156  
Telephone (305) 670-1800  
Fax (305) 6704827



Steven Rudin  
Fla. Bar No. 352160