

4. Pursuant to the Metropolitan Airport Authority Act, Tenn. Code Ann. § 42-4-102(a), MNAA is a public and governmental body acting as an agency and instrumentality of consolidated Nashville and Davidson County municipal government.

5. MNAA operates a Division of Public Safety tasked with, among other things, providing standard police protection services on MNAA property.

6. MNAA Division of Public Safety officers receive the same training and certifications as other Tennessee law enforcement officers.

7. MNAA Division of Public Safety is overseen by Chief of Police and Assistant Vice President David Griswold (“Chief Griswold”).

8. Officer Brian Robbins (“Officer Robbins”) is an MNAA Division of Public Safety police officer, who performs his duties at the Nashville International Airport, located in Davidson County in the Middle District of Tennessee.

9. On information and belief, Officer Robbins resides within the Middle District of Tennessee.

10. Officer Jerry Lovell (“Officer Lovell”) is an MNAA Division of Public Safety police officer, who performs his duties at the Nashville International Airport, located in Davidson County in the Middle District of Tennessee.

11. On information and belief, Officer Lovell resides within the Middle District of Tennessee.

12. Sergeant D. Engstrom (“Sergeant Engstrom”) is an MNAA Division of Public Safety police officer, who performs his duties at the Nashville International Airport, located in Davidson County in the Middle District of Tennessee.

13. On information and belief, Sergeant Engstrom has supervisory authority over Officers Robbins and Lovell.

14. On information and belief, Sergeant Engstrom resides within the Middle District of Tennessee.

15. Officer Robbins, Officer Lovell, and Sergeant Engstrom are sued for damages in their individual capacities.

16. Defendant Marlene “Doe” (“Marlene”) is an employee of the Hertz Corporation (“Hertz”) a Delaware corporation headquartered in Estero, Florida. Hertz is registered in Tennessee as a foreign corporation.

17. Marlene works at a car rental kiosk in the Nashville International Airport (the “BNA kiosk”) owned and operated by Hertz, located in Davidson County, Tennessee in the Middle District of Tennessee.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff’s claims occurred in this District.

JURY DEMAND

19. Mr. Tarter requests a jury trial on the issues and claims set forth in this Complaint.

FACTS

Mr. Tarter Arrives in Nashville

20. On Friday August 16, 2019, Mr. Tarter flew to Nashville International Airport in order to attend a wedding in Nashville.

21. Mr. Tarter’s flight arrived in Nashville after midnight, and the airport’s rental car kiosks were already closed for the evening. Mr. Tarter took an Uber to his hotel, planning to return to the airport in the early afternoon to rent a vehicle for his trip.

Mr. Tarter Attempts to Rent a Car from Hertz

22. After sleeping, Mr. Tarter took an Uber back to Nashville International Airport, arriving at 12:22 p.m.

23. Mr. Tarter has a rewards membership with Hertz, so renting a car from Hertz during his stay in Nashville was his ideal choice.

24. Two women were working for the Hertz kiosk that afternoon, a black woman named Dre and a white woman named Marlene.

25. As there was a short line, Mr. Tarter checked the Avis line and rates before returning to the Hertz kiosk line.

26. After waiting his turn in line, Mr. Tarter was served by the white Hertz kiosk employee, Marlene.

27. Mr. Tarter provided Marlene his Hertz rewards membership number, his Pennsylvania drivers license, his United States passport, and his Bank of Missouri credit card, which was also the card on file with his Hertz rewards membership.

28. The Bank of Missouri credit card used by Mr. Tarter is a black card.

29. Generally, black credit cards are indicative of a higher credit limit and viewed as a sign of prestige and wealth.

30. Mr. Tarter declined insurance coverage, explaining he had just purchased a new vehicle and had obtained a comprehensive insurance policy through Nationwide Insurance.

31. Mr. Tarter pulled up his insurance card from the Nationwide Insurance application on his phone and showed it to Marlene.

32. Mr. Tarter offered to email the insurance card to Marlene, who responded that it was not necessary.

33. Marlene then studied Mr. Tarter's credit card for at least five minutes.

Officer Robbins Arrives Under False Pretenses

34. While scrutinizing Mr. Tarter's credit card, Marlene began to make small talk with her coworker Dre about food trucks.

35. Dre consulted a calendar in another part of the Hertz kiosk and then returned to the client she was serving.

36. On information and belief, Dre or Marlene signaled some sort of silent alarm at this time.

37. Marlene printed out Mr. Tarter's paperwork and began highlighting certain provisions while explaining the terms of the reservation, as Hertz agents typically do when a customer rents a car from them.

38. As Marlene was explaining the terms, a white man, Officer Robbins, appeared on the left side of Mr. Tarter, stating "Hello, sir, how are you?"

39. Mr. Tarter replied, "Hello, how can I help you?"

40. Officer Robbins asked Mr. Tarter if he knew why Officer Robbins had approached him.

41. Mr. Tarter replied that he did not.

42. Officer Robbins stated: "Your credit card came back as fraud."

43. Mr. Tarter was highly alarmed by this because he had called his banks and credit card companies to inform them of his travels, as was his custom.

44. Mr. Tarter explained this to Officer Robbins.

45. Mr. Tarter was also confused because he has a fraud alert set on his credit report through the credit bureau.

46. Mr. Tarter reached for his cellular phone in order to call his credit card company.

47. Officer Robbins snatched Mr. Tarter's phone from him.

48. Officer Robbins asked Mr. Tarter who he was calling and if he had someone waiting outside for him.

49. Mr. Tarter explained that he was trying to call the credit card company because he was very concerned that he paid monthly for the fraud alert and was now being told that his card was reported as fraudulent.

Everything About Mr. Tarter's Credit Card is Normal and Marlene Admits to Not Processing the Transaction and Profiling Mr. Tarter

50. At this time, Officer Lovell and Sergeant Engstrom, both also white, arrived.

51. Officer Robbins, Officer Lovell, and Sergeant Engstrom (collectively, the "Three Officers") began discussing their suspicions that a black man would have "that black thing."

52. The Three Officers at all times strangely referred to the black credit card as "that black thing," rather than a credit card, or even a black card.

53. The Three Officers passed around and inspected the black Bank of Missouri credit card, Mr. Tarter's Pennsylvania driver's license, and Mr. Tarter's U.S. passport.

54. Officer Robbins returned Mr. Tarter's cellular phone to him and watched closely as Mr. Tarter googled Bank of Missouri, his credit card company, and clicked on the 1-800-telephone number to call customer service.

55. Mr. Tarter turned his cellular phone to speaker phone mode so the Three Officers could listen to his call.

56. After two minutes on hold, a male Bank of Missouri customer service representative (the "Bank Representative") answered.

57. The Bank Representative followed normal scripted protocol, and then asked for the 16-digit credit card number.

58. Mr. Tarter explained that he did not have possession of the credit card, and asked for another form of verification.

59. The Bank Representative asked for Mr. Tarter's social security number, first and last name, date of birth, and home address.

60. Despite his discomfort with announcing this private information out loud for anyone in the car rental area of Nashville International Airport to hear, Mr. Tarter correctly provided all of the requested information.

61. After the Bank Representative pulled up Mr. Tarter's account, Mr. Tarter explained to the Bank Representative that he was told that his credit card was processed and came back with a fraud alert.

62. The Bank Representative explained that the credit card had a zero balance, that no monies were owed, and that in fact the card had not been processed that day.

63. Sergeant Engstrom asked Marlene to specify what was wrong with the credit card.

64. Marlene admitted that she had not "ran" or processed the credit card.

65. Marlene stated that she ran a search of the credit card, and the company in the database did not match the company appearing on the credit card, and that Mr. Tarter fit "the profile," so she assumed Mr. Tarter was committing credit card fraud.

66. The Three Officers asked the Bank Representative a series of questions to determine if the credit card's bank had recently changed or merged, or anything else that might explain a disparity in the name.

67. The Bank Representative explained that the bank providing the credit card was and always had been the Bank of Missouri.

68. Sergeant Enstrom then stated that he did not see Bank of Missouri written on the back of the credit card and asked Marlene what she had seen.

69. Marlene stated that she never looked at the "black thing."

The Three Officers Continue to Interrogate Mr. Tarter

70. Officer Lovell then asked Mr. Tarter for more proof of identity.

71. Mr. Tarter explained that the Three Officers had two forms of government photo identification in his Pennsylvania driver's license and United States passport and had spoken to the credit card company where he had correctly established the card belonged to him using his personal information.

72. The Three Officers began peppering Mr. Tarter with questions, all of which he was able to correctly and easily answer.

73. Among the things Mr. Tarter explained to the Three Officers during this rapid-fire questioning session:

- a) He lives in Pennsylvania, not Davidson County, Tennessee;
- b) His bags were at the Hampton Inn where he was staying on his trip;
- c) He had flown in the previous evening, Friday August 16, 2019, with American Airlines. Mr. Tarter even provided his airline boarding pass that was still in his wallet to verify his flight information.

74. The Three Officers then asked Mr. Tarter to prove his identity by logging into the online account of every credit card in his wallet through his phone.

75. As the Three Officers reviewed Mr. Tarter's accounts to match the last four digits displayed online to the credit card in his wallet, they observed his account balances.

76. The Three Officers stepped a few feet away but were still within Mr. Tarter's earshot.

77. The Three Officers conversed with each other about how odd it was that a young black man had so much money.

78. The Three Officers suggested that Mr. Tarter may be a drug dealer or was engaged in some other nefarious conduct.

79. One of the Three Officers stated that Mr. Tarter must be an imposter.

80. The Three Officers returned and asked Mr. Tarter a few more questions about his profession and personal life.

81. At this point, Mr. Tarter had calmly and politely endured the Three Officers' interrogation for approximately forty minutes.

Mr. Tarter is Handcuffed and Detained

82. Officer Lovell asked Mr. Tarter to turn around and put his hands behind his back.

83. Mr. Tarter asked why he was being arrested, and Officer Lovell responded that he was just being detained.

84. One of the Three Officers handcuffed Mr. Tarter's wrists together behind his back.

85. The handcuffs were incredibly tight and painful.

86. Crowds of people going through Nashville International Airport on a summer Saturday had been intently watching the entire interaction, and even more attention was garnered when Mr. Tarter was handcuffed.

87. The Three Officers led Mr. Tarter to what they described as a "secure" location, but he was still in plain view of everyone using the escalator and elevator to that floor of the airport.

88. Two more white MNAA officers joined the Three Officers, surrounding Mr. Tarter.

89. As the Three Officers performed an even deeper background check on Mr. Tarter, they continued to question him about all aspects of his life, including personal matters.

90. When the Three Officers learned that Mr. Tarter owned a 2019 Jaguar, they expressed disbelief, called the dealership from which he had purchased the car, and described Mr. Tarter as a "black male" to the dealership's representative.

91. Finally, after nearly two hours in total, Mr. Tarter was released with an incident number and phone number to file a formal complaint.

92. Throughout this experience, white customers were served at the Hertz kiosk without incident.

Hertz Still Will Not Provide Mr. Tarter a Rental Car

93. Mr. Tarter returned to the Hertz kiosk to complete his transaction.

94. Marlene had left, and Mr. Tarter asked Dre for Marlene's name.

95. Dre resisted, stating, "I have nothing to do with this."

96. Dre informed Mr. Tarter that the Hertz kiosk had no cars available.

97. Mr. Tarter reported to the Thrifty car rental kiosk, and was able to rent a car using his Bank of Missouri credit card and be on his way within ten minutes.

Hertz and MNAA Investigate and Ratify Their Employees' Conduct

98. Mr. Tarter lodged formal complaints with both Hertz and MNAA, noting that he believed the false fraud allegation, subsequent interrogation, and unnecessary, painful, and embarrassing detainment were racially motivated.

99. Chief Griswold dispatched a letter to Mr. Tarter on September 16, 2019, stating that after an investigation it was determined no policies were violated and the Three Officers were exonerated of Mr. Tarter's allegations. (See Exhibit A, Chief Griswold letter).

100. Hertz Executive Customer Service employee Myesha Jones responded by email to Mr. Tarter's complaint, stating that Hertz had investigated and determined Marlene's behavior was appropriate, noting MNAA had reached the same conclusion. (See Exhibit B, Myesha Jones email).

Mr. Tarter was Severely Harmed by This Experience

101. Mr. Tarter has undergone regular counseling in an attempt to move past this traumatic experience.

102. Mr. Tarter is regularly disrupted in his efforts to perform his work multiple times per day by crying spells from the pent-up emotional turmoil.

103. Mr. Tarter now has a physical response of fear and discomfort when he sees police officers.

104. Mr. Tarter often avoids leaving his home due to the psychological impacts of this experience.

105. Mr. Tarter also continues to experience pain and numbness in his hands, arms, and shoulders as a residual effect of the incredibly tight and uncomfortable handcuffs regularly.

CLAIMS FOR RELIEF

COUNT I
**REFUSAL OF THE RIGHT TO ENTER INTO A
CONTRACT BASED ON RACE**

(42 U.S.C. § 1981)

(against Marlene Doe)

106. Plaintiff re-alleges and re-avers the preceding paragraphs, and the preceding are incorporated herein by reference.

107. As a black man, Plaintiff is a member of a protected class.

108. Plaintiff sought to make or enforce a contract for services ordinarily provided by Hertz.

109. Plaintiff was denied the right to enter into or enjoy the benefits or privileges of the contractual relationship in that Plaintiff was deprived of services while similarly situated persons outside the protected class were not.

110. Plaintiff was treated by Marlene in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory.

111. Plaintiff's race was a but-for cause of his injury at the hands of Marlene.

COUNT II
**VIOLATION OF THE FOURTH AND FOURTEENTH
AMENDMENTS UNCONSTITUTIONAL SEARCH**

(42 U.S.C. § 1983)

(against MNAA and the Three Officers)

112. Plaintiff re-alleges and re-avers the preceding paragraphs, and the preceding are

incorporated herein by reference.

113. Defendants Robbins, Lovell, and Engstrom conducted an unreasonable warrantless, non-consensual, non-exigent search of Plaintiff's person without probable cause in violation of the Fourth Amendment to the United States Constitution.

114. Defendants exceeded the scope of a permissible *Terry* frisk search, which is constitutionally limited to situations in which police officers have a reasonable and articulable suspicion that a suspect is armed and presently dangerous.

115. Defendant lacked reasonable suspicion that criminal activity had occurred or was about to occur that would justify such a search.

116. No separate probable cause existed for the Three Officers to inspect the credit cards in Mr. Tarter's wallet and force him to log into his online accounts to verify their accuracy.

117. Plaintiff suffered injuries, including, but not limited to, violations of his constitutional rights, loss of liberty, humiliation, and emotional distress as a direct and proximate result of Defendants' illegal actions.

118. Defendants violated Plaintiff's clearly established right to be free from unreasonable searches.

119. MNAA ratified this conduct by finding the Three Officers had not violated official policy by rifling through an airport customer's personal affects and private financial information without probable cause.

120. MNAA thus has a policy, procedure, and/or custom of rifling through airport customers' personal affects and private financial information without probable cause, and is liable for the conduct of the Three Officers, who acted pursuant to this MNAA policy, procedure, and/or custom.

COUNT III
VIOLATION OF THE FOURTH AND FOURTEENTH
AMENDMENTS UNREASONABLY PROLONGED
SEIZURE

(42 U.S.C. § 1983)

(against MNAA and the Three Officers)

121. Plaintiff re-alleges and re-avers the preceding paragraphs, which are incorporated herein by reference.

122. The Fourth Amendment guards against seizures unreasonable in scope and duration.

123. The Three Officers impermissibly detained Plaintiff for longer than necessary to effectuate the purpose of the seizure, which was to determine whether Plaintiff had attempted credit card fraud at the Hertz kiosk.

124. The Three Officers continued to detain Plaintiff for at least an hour after Marlene admitted she had neither processed nor even looked at his credit card prior to notifying MNAA she suspected Mr. Tarter of fraud, and for a significant amount of time after his credit card company had confirmed his identity.

125. The Fourth Amendment prohibits detentions made solely for investigatory purposes. The Three Officers unlawfully detained Plaintiff in order to develop probable cause. Probable cause to arrest or cite Plaintiff for any offense never materialized.

126. The Three Officers lacked reasonable suspicion to enlarge the scope of the original *Terry* stop.

127. The Three Officers also exceeded the scope of this investigatory detention by failing to limit the stop to a reasonable duration using the least-intrusive investigatory means available to them.

128. Plaintiff suffered injuries, including, but not limited to, violations of his constitutional

rights, loss of liberty, humiliation, and emotional distress as a direct and proximate cause of Defendants' illegal actions.

129. The Three Officers violated Plaintiff's clearly established right to be free from unreasonably prolonged seizures.

130. MNAA ratified this conduct by finding the Three Officers had not violated official policy by forcibly detaining Mr. Tarter for two hours without probable cause.

131. Marlene explained that Mr. Tarter's card had not indicated any sort of fraud but that Mr. Tarter "fit the profile" to the Three Officers, who used this joint "profile" formed and used by Hertz and MNAA of a black man as justification to detain Mr. Tarter for more than two hours without probable cause.

132. MNAA thus has a policy, procedure, and/or custom of forcibly detaining airport customers for over two hours without probable cause, and is liable for the conduct of the Three Officers, who acted pursuant to this MNAA policy, procedure, and/or custom.

COUNT IV
**VIOLATION OF THIRTEENTH AND
FOURTEENTH AMENDMENT RIGHTS**

(42 U.S.C. § 1981)

(against MNAA and the Three Officers)

133. Plaintiff re-alleges and re-avers the preceding paragraphs, which are incorporated herein by reference.

134. Defendants, acting under color of state law, subjected Plaintiff, who is African-American to the forgoing search and seizure because of his race and ethnicity.

135. Defendants' unlawful acts and omissions denied Plaintiff equal rights under the law, including, but not limited to, Plaintiff's right to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and additionally was, instead, subjected to punishments, pains, and penalties unlike those imposed

upon white citizens.

136. Defendants acted intentionally and purposefully, without lawful justification and with a reckless disregard for the natural and probable consequences of their acts, causing specific and serious bodily, mental and emotional harm, economic injury, pain and suffering in violation of the Plaintiff's Constitutional rights as guaranteed under 42 U.S.C. § 1981 and the Thirteenth and Fourteenth Amendments to the United States Constitution.

COUNT V
FALSE IMPRISONMENT

(Tenn. Code Ann. § 39-13-302)

(against Marlene and the Three Officers)

137. Plaintiff re-alleges and re-avers the preceding paragraphs, which are incorporated herein by reference.

138. By handcuffing and detaining Plaintiff needlessly and without probable cause, the Three Officers knowingly and willfully removed and confined Plaintiff unlawfully so as to interfere substantially with Plaintiff's liberty.

139. By falsely reporting Mr. Tarter for fraud, Marlene conspired with the Three Officers and MNAA to falsely imprison Mr. Tarter.

140. The natural and anticipated outcome of Marlene's false report was the false imprisonment of Mr. Tarter by MNAA during its investigation of Marlene's false report. Therefore, Marlene is liable under Tennessee law for causing Plaintiff's false imprisonment.

COUNT VI
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Tennessee Common Law)

(against Marlene and the Three Officers)

141. Plaintiff re-alleges and re-avers the preceding paragraphs, which are incorporated herein by reference.

142. Marlene's racial profiling of Plaintiff in his attempt to rent a car and her racially

motivated, ill-considered fraud alert to the police were intentional acts.

143. The Three Officers' prolonged and unjustified search and seizure of Plaintiff solely on account of his race were intentional acts.

144. Marlene's racially motivated attempts to deny Plaintiff service and enforce her prejudice using the brute force of law enforcement were outrageous acts not tolerated by civilized society.

145. The Three Officers' prolonged and unjustified search and seizure of Plaintiff solely on account of his race were outrageous acts not tolerated by civilized society.

146. Plaintiff suffers from serious mental injuries because of each Defendant's conduct.

COUNT VII
BATTERY

(Tennessee Common Law)

(against the Three Officers)

147. Plaintiff re-alleges and re-avers the preceding paragraphs, which are incorporated herein by reference.

148. The Three Officers' needlessly handcuffing Plaintiff was an intentional act that caused an unpermitted, harmful, and offensive bodily contact.

149. As a result of the Three Officers' unpermitted, harmful, and offensive bodily contact, Plaintiff suffered damages, including, but not limited to, severe emotional trauma and continued pain and numbness in his hands, arms, and shoulders.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as so follows:

(1) Plaintiff requests that he be awarded all damages to which it may appear he is entitled by the proof submitted in this cause, including nominal damages, compensatory damages, and emotional distress damages;

(2) Plaintiff requests that he be awarded presumed damages for the violation of his rights to contract;

(3) Plaintiff requests that he be awarded punitive damages because Defendants acted with evil motive or intent or with callous indifference to Plaintiff's federally protected rights;

(4) Plaintiff requests that he be awarded reasonable expenses in this litigation, including reasonable attorney and expert fees and costs, pursuant to 42 U.S.C. § 1988;

(5) Plaintiff requests that he receive all further and general relief to which it may appear he is entitled, the interests of justice demanding it; and

(6) Plaintiff requests a trial by jury of twelve in all claims so triable.

DATED: June 18, 2020

Respectfully Submitted,

/s/ Seamus T. Kelly

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