

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIDNEY CLIETT, JR., JOHN DOE
I and JOHN DOE II, on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

THE CITY OF PHILADELPHIA,
POLICE COMMISSIONER
GREGORE SAMBOR, in both
his individual and
official capacity,
and UNKNOWN POLICE
OFFICERS of the City of
Philadelphia, in their
individual and official
capacities,

Defendants.

Civil Action No. 85-1846

COMPLAINT-CLASS ACTION

Preliminary Statement

Plaintiffs on behalf of themselves and all others similarly situated seek to enjoin defendants' Operation Cold Turkey which deprives plaintiffs and the class they represent of rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution. Further, plaintiffs on behalf of themselves and all others similarly situated seek damages as a result of the injuries inflicted by defendants' policy of searching and seizing individuals solely because plaintiffs and the class they represent reside in or are passing through areas targeted by defendants.

Jurisdiction

1. As plaintiffs seek to vindicate rights protected by the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, this Court has jurisdiction of this civil action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Pursuant to 28 U.S.C. §§ 2201 and 2202 this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

Parties

2. Plaintiff, SIDNEY CLIETT, JR., is a citizen of the United States who presently resides in the City of Philadelphia.

3. Plaintiff, JOHN DOE I, is a citizen of the United States, and a resident of the City of Philadelphia who was subjected to an unconstitutional search as a result of defendants' Operation Cold Turkey. When that search failed to discover illegal drugs defendants pursuant to their Operation Cold Turkey charged him with disorderly conduct. Fearing retaliation in his pending criminal prosecution plaintiff has moved this Court to allow him to proceed in pseudonym.

4. Plaintiff, JOHN DOE II, is a citizen of the United States, and a resident of the City of Philadelphia who was subjected to an unconstitutional search as a result of defendants' Operation Cold Turkey. As a result of that search plaintiff was discovered to possess a small quantity of marijuana. Fearing retaliation in his pending criminal prosecution plaintiff has moved this Court to allow him to proceed in pseudonym.

5. Defendant, THE CITY OF PHILADELPHIA, is an incorporated municipality and may be served with process by serving Barbara Mather, Esq., City Solicitor for the city of Philadelphia at 1500 Municipal Services Building, Philadelphia Pennsylvania, 19102.

6. Defendant, GREGORE SAMBOR, is police commissioner of Philadelphia Department of Police, and is sued both in his official and individual capacity. Service may be effectuated on Defendant Sambor at the Police Administration Building, 8th and Race Streets, Philadelphia, Pennsylvania 19106.

7. Defendants, UNKNOWN POLICE OFFICERS, are employees of the Philadelphia Police Department, sued in their official and individual capacities, who carried out Operation Cold Turkey thereby violating Plaintiffs constitutional rights. Service will be effectuated as soon as discovery reveals their identities.

Class Action Allegations

8. Plaintiffs bring this suit on their own behalf and on behalf of the class of all other individuals who have been or will be deprived of their constitutional right to be free from unreasonable search and seizure as a result of defendants' Operation Cold Turkey. The individual plaintiffs sue on their own behalf and as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure. Prerequisites of Rule 23(a), 23(b)(2) and (b)(3) are satisfied. The class which as of the present time already consists of 1000 individuals is so numerous as to make joinder of all of its members impracticable. Plaintiffs are adequate representatives of the class because they

were and are subject to defendants' Cold Turkey Policy. It is the existence of this policy, which provides for search and seizure of persons without individualized suspicion based either on probable or reasonable cause, that gives rise to questions of law and fact common to all class members. Moreover concerning damages maintenance of a class is clearly in the interests of these individuals as many if not all are economically unable to retain private counsel. Further there is no pending litigation concerning these issues which would be disrupted by maintaining this action as a class. Moreover this is the appropriate forum for this litigation. Finally to the extent that management of this action as a class will pose difficulties the fact that Plaintiffs are represented by two experienced civil rights litigators with the backing of the American Civil Liberties Union should substantially reduce the burdens on the court and litigants.

FACTS

9. On or before Wednesday, March 27, 1985, Police Commissioner Gregore Sambor issued directives to officers of the Philadelphia Police Department to detain and search any persons within designated areas of the city for the purpose of determining whether such persons were in illegal possession of drugs. Individuals discovered in possession of such drugs were thereafter to be arrested. Individuals not in possession of such drugs were to be released or charged either with disorderly conduct or obstructing passage.

10. Detention and searches were authorized under the Police

Commissioner's directive based solely on the presence of an individual within a designated area.

11. Under this policy police officers of the Philadelphia Police Department were freed from the necessity of having probable cause or even reasonable suspicion before initiating detention or searching individuals within the designated areas.

12. On March 27, 1985, Police Commissioner Gregore Sambor put this policy into effect.

13. Within a ten hour period police detained and/or searched nearly one thousand persons within designated areas of the City of Philadelphia solely because such individuals resided in or were passing through these areas.

14. As a result of Defendant's Operation Cold Turkey Plaintiff Sidney Cliett, Jr., while strolling in the neighborhood in which he lives was stopped by Defendant Unknown Police Officers. Without further explanation the police thoroughly searched his person and belongings.

15. When that search revealed that Plaintiff did not possess any drugs the police allowed him to continue on his way.

16. As a result of Defendants' Operation Cold Turkey Plaintiff John Doe I while strolling in the neighborhood in which he lives approached an area where Defendant Unknown Police Officers were then in the process of searching a number of youngsters. Concerned by the excessive use of force which the police were applying to the children Plaintiff John Doe I interrupted his passage through the neighborhood. It was at this moment that he was approached by Defendant Unknown Police Officers who asked whether he too desired to go to jail.

17. Upon informing the officers that he lived in the area he was placed under arrest. His person and belongings were thoroughly searched revealing that Plaintiff John Doe I did not possess any drugs. He was then handcuffed and transported to the police station, where he was charged with disorderly conduct.

18. Plaintiff John Doe I has experienced deep embarrassment and humiliation as a result of this public search and subsequent criminal charge.

19. As a result of Defendants' Operation Cold Turkey Plaintiff John Doe II within a block of his home was seized by Defendant Unknown Police Officers while on his way to the hospital for routine dialysis. Without further explanation the police thoroughly searched his person and belongings.

20. When that search revealed that Plaintiff John Doe II possessed a small quantity of marijuana he was arrested, handcuffed and transported to a police station.

21. Notwithstanding the fact that Plaintiff John Doe repeatedly explained that it was imperative for him to receive his dialysis as scheduled he was detained from approximately 2:30 p.m. on the 27th until 10:00 a.m. the following day. The delay in receiving his treatment inflicted severe pain on Plaintiff John Doe II.

22. Neither plaintiffs nor any of the members of the class who were detained, searched and/or subsequently arrested by defendant, Unknown Police Officers, were named in outstanding arrest warrants.

23. Neither plaintiffs nor any of the members of the class who

were detained, searched and/or subsequently arrested by defendant, Unknown Police Officers, were openly using, selling, or displaying drugs at the point at which they were detained, searched and/or arrested.

24. There was no probable cause or reasonable suspicion to stop, search or arrest any of the Plaintiffs class nor did any of them consent. There was no particularized suspicion regarding Plaintiffs, or even any particular crime under investigation.

25. Operation Cold Turkey continues to remain in effect at the present time.

Cause of Actions

26. In ordering officers of the Philadelphia Police Department to carry out Operation Cold Turkey's policy of detaining, searching and arresting individuals without probable cause or even reasonable suspicion to believe that such individuals were violating any law Defendant Police Commissioner Gregore Sambor violated rights guaranteed Plaintiffs and the class they seek to represent by 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

27. By effectuating Operation Cold Turkey thereby detaining, searching and arresting individuals without probable cause or even reasonable suspicion to believe that such individuals were violating any law Defendant Unknown Police Officers violated rights guaranteed Plaintiffs and the class they seek to represent by 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

28. The policy and actions of Defendants described herein represent and were undertaken pursuant to the policy of Defendant City of Philadelphia, which is liable therefor.

Relief

WHEREFORE, Plaintiffs and the members of the class they represent respectfully pray that this Court:

(1) Certify this case as a class action.

(2) Issue a declaratory judgment that the actions described herein deprived Plaintiffs, and the class they represent, rights guaranteed them by 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution.

(3) Issue a preliminary injunction enjoining the defendants, their agents, servants, employees, and assigns, and all persons acting in concert with them from carrying out Operation Cold Turkey.

(4) Permanently enjoin the defendants, their agents, servants, employees, and assigns, and all persons acting in concert with them from carrying out Operation Cold Turkey.

(5) Award Plaintiff and members of the class compensatory and punitive damages.

(6) Award plaintiffs reasonable costs and attorneys fees pursuant to 42 U.S.C. § 1983.

(7) Order such further and other relief as the court may deem just and proper.

Respectfully submitted,



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