

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KEITH HUDSON,)

Plaintiff,)

v.)

Cause No.)

KANSAS CITY, MISSOURI BOARD)

OF POLICE COMMISSIONERS,)

Serve: Mark Thompson)

1125 Locust Street)

Kansas City, Missouri 64106)

MARK THOMPSON,)

Serve: 1125 Locust Street)

Kansas City, Missouri 64106)

KARL ZOBRIST,)

Serve: 1125 Locust Street)

Kansas City, Missouri 64106)

JAMES WILSON,)

Serve: 1125 Locust Street)

Kansas City, Missouri 64106)

PATRICK MCINERNEY,)

Serve: 1125 Locust Street)

Kansas City, Missouri 64106)

MARK FUNKHOUSER,)

Serve: City Hall, 29th floor)

414 E. 12th Street)

Kansas City, Missouri 64106)

and)

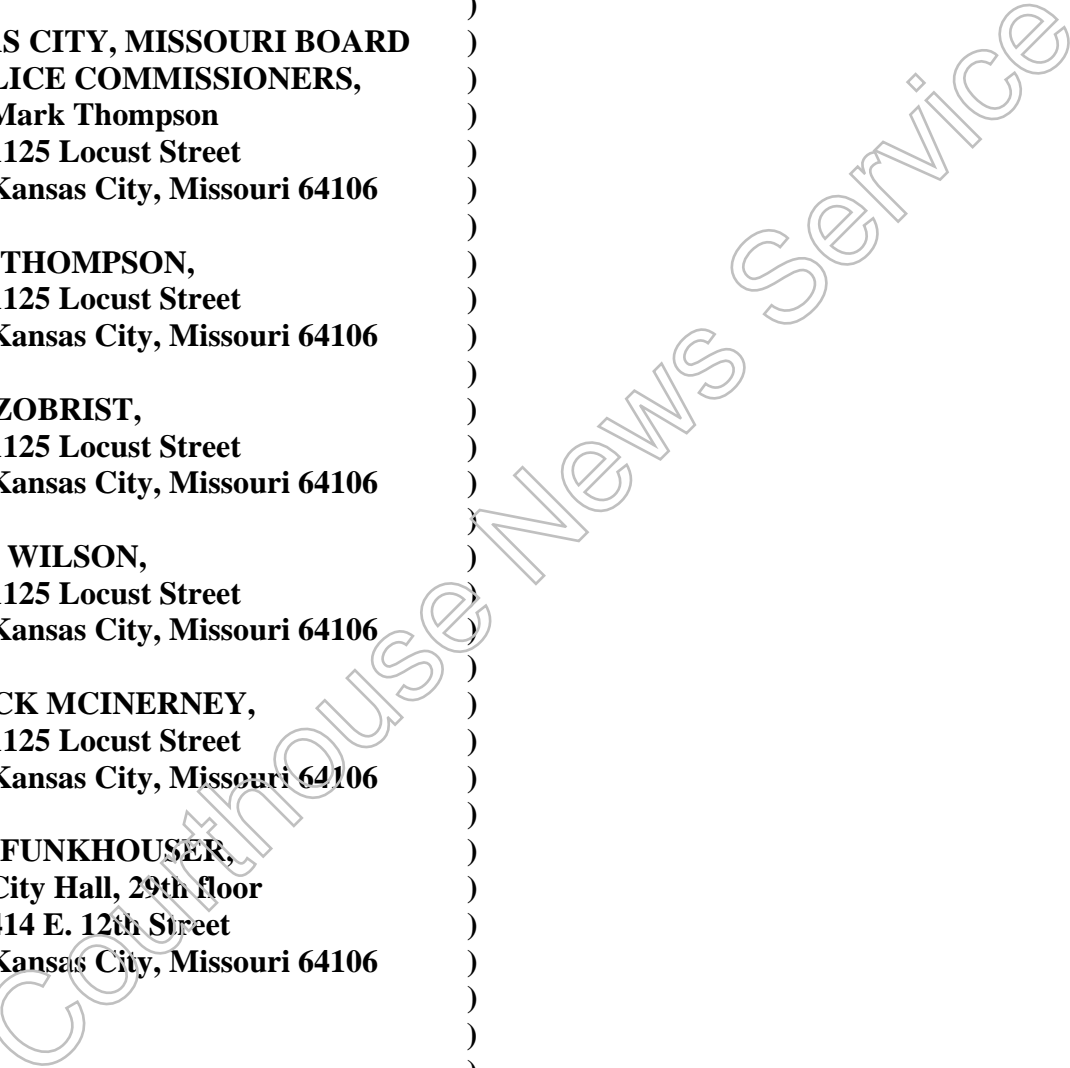
KYLE YRIGOLLEN,)

Serve: Kansas City Police Department)

1125 Locust Street)

Kansas City, Missouri 64106)

Defendants.)



COMPLAINT

Comes now Plaintiff Keith Hudson, by and through undersigned counsel, pursuant to the Federal Rules of Civil Procedure, and for his causes of action against Defendants Kansas City, Missouri Board of Police Commissioners and Kyle Yrigollen, respectfully states as follows:

Parties

1. Plaintiff Keith Hudson is a resident of Jackson County, Missouri.
2. Defendant Kansas City, Missouri Board of Police Commissioners (the “Board”) is charged with responsibility over the Kansas City, Missouri Police Department (the “KCPD”) and employs Officer Kyle Yrigollen. The Board, via its agents, servants, and/or employees, supervised, managed, and controlled members of the KCPD including Officer Kyle Yrigollen.
3. Defendant Commissioner Mark Thompson is President of the Board and is a proper party to this lawsuit in his official capacity under 42 U.S.C. § 1983.
4. Defendant Commissioner Karl Zobrist is Vice-President of the Board and is a proper party to this lawsuit in his official capacity under 42 U.S.C. § 1983.
5. Defendant Commissioner James Wilson is Treasurer of the Board and is a proper party to this lawsuit in his official capacity under 42 U.S.C. § 1983.
6. Defendant Commissioner Patrick McInerney is a Member of the Board and is a proper party to this lawsuit in his official capacity under 42 U.S.C. § 1983.
7. Defendant Mayor Mark Funkhouser is a Member of the Board and is a proper party to this lawsuit in his official capacity under 42 U.S.C. § 1983.
8. Defendant Officer Kyle Yrigollen is and was at all times stated herein a police officer employed by the KCPD.

Jurisdiction

9. This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) in that all parties to this action reside in the federal judicial district of the Western District of Missouri and the events giving rise to the claims asserted herein occurred within the Western District of Missouri.

General Allegations

11. This is a civil rights lawsuit brought by Plaintiff, a victim of police brutality. This cause of action arises out of Defendants' deprivation of Plaintiff's federal and state constitutional and statutory rights. Plaintiff seeks recovery under federal statute, including but not limited to 42 U.S.C. §§ 1983 and 1985, and Missouri common law because, among other things, Defendants deprived him of his constitutional and statutory rights while acting under the color of law.

12. At all relevant times, the Board employed Officer Yrigollen and had the ability to control and direct his conduct.

13. Each of the acts alleged herein against Defendants were committed by them individually, or their agents, servants, and/or employees, while acting under the color of law with approval and knowledge of their superiors.

14. At or about 2:11 a.m. on September 15, 2008, Plaintiff was walking by himself on 38th Street in Jackson County, Missouri.

15. Without reasonable cause or suspicion of criminal activity, Officer Yrigollen stopped and interrogated Plaintiff.

16. After speaking with Officer Yrigollen, Plaintiff began to walk away from the police vehicle.

17. Without provocation or cause, Officer Yrigollen began to chase and threaten Plaintiff.

18. Plaintiff, facing away from Officer Yrigollen, immediately stopped, dropped to his knees, and placed his hands in the air.

19. Plaintiff then turned his head to look towards Officer Yrigollen and was immediately struck in the left eye by a taser that was fired by Officer Yrigollen.

20. These actions caused serious personal injuries to Plaintiff's left eye, which was later surgically removed.

21. Plaintiff was never charged with and/or convicted of any crimes related to this incident.

22. Plaintiff at all times mentioned herein was unarmed and posed no threat to Officer Yrigollen or others.

23. Officer Yrigollen's use of force was unreasonable in light of the facts and circumstances.

24. This followed an incident in August 2008 where Plaintiff was assaulted by another member of the KCPD police force. This assault also resulted in bodily injuries to Plaintiff.

25. The use of force against Plaintiff was a result of the policy, practice, and custom of the Board and its failure to adequately supervise, train, and discipline law enforcement officers in the use of force.

Count I: 42 U.S.C. § 1983, Excessive Use of Force

26. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth herein.

27. As described herein, Defendants used excessive force against Plaintiff without provocation and without legitimate justification.

28. At all times described herein, Officer Yrigollen was acting in his capacity as an officer of the KCPD and was acting in the course and scope of his employment and for the benefit of his employer, the KCPD and the Board.

29. Officer Yrigollen, without provocation or just cause and with no imminent threat of serious bodily harm or death to himself or others, assaulted and battered Plaintiff and tasered Plaintiff in his left eye.

30. The use of force by Officer Yrigollen against Plaintiff was unreasonable, wholly unnecessary, and unjustified. Officer Yrigollen did not have probable cause or reasonable suspicion to believe that Plaintiff posed any threat of serious physical harm to himself or others.

31. As a result of this unreasonable use of force, Plaintiff suffered serve pain and injury and ultimately the loss of his left eye.

32. Officer Yrigollen's actions, all taken under the color of law, were intentional and carried out with willful indifference to Plaintiff's constitutional rights.

33. The actions described herein were willful, wanton, and malicious and exhibited a reckless indifference and conscious disregard for the safety, well-being, and rights of others justifying an award of punitive damages.

34. The actions described herein were undertaken pursuant to the policy and practices of Defendants in that:

a. As a matter of public policy and practice, the Board undertakes inadequate internal affairs investigations such that KCPD officers are encouraged to believe that their

actions will not be subject to scrutiny which in turn encourages a pattern of future abuse as those that affected Plaintiff;

b. As a matter of public policy and practice, the Board encourages the very type of misconduct at issue here by failing to adequately train, supervise, and control its officers, as well as hiring and retaining officers without adequate background checks and with deliberate indifference to the fact that such individuals are not qualified to be officers due to lack of experience and training or violent and reckless tendencies;

c. As a matter of public policy and practice, the Board facilitated the type of misconduct at issue here by failing to adequately punish and discipline prior instances of misconduct thereby leading KCPD officers to believe that their actions would never be scrutinized or that they would not be held accountable for their actions and essentially encourages future abuse such as those which befell Plaintiff;

d. The Board's policy makers and KCPD employees are aware of and condone and facilitate by their inaction a "code of silence" within the KCPD by which officers fail to report misconduct by other officers such as the misconduct at issue in this case;

e. Generally, as a matter of widespread practice, KCPD officers abuse citizens in a similar manner on a frequent basis, yet the Board makes findings of wrongdoing in a disproportionately small number of cases; and

f. The Board has failed to remedy the patterns of abuse described herein despite actual or constructive knowledge thereby causing the types of injuries alleged herein.

35. Officer Yrigollen's actions, performed in the course and scope of his employment and under color of law, resulted in Plaintiff suffering personal and emotional injuries as described herein and deprived Plaintiff of his constitutional rights to be free from bodily harm,

secure in his person, to be free from unreasonable seizure of his person and property, and to be secure from excessive force, all in violation of his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983.

36. Officer Yrigollen's actions were willful, wanton, and malicious and exhibited a reckless indifference or conscious disregard to the safety, well-being, and rights of others, justifying an award of punitive damages against Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000.00, for his costs and attorneys fees, for punitive damages, and for such other relief as the Court deems just under the premises.

Count II: 42 U.S.C. § 1983, Failure to Supervise, Discipline, and Control

37. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth herein.

38. The Board, acting through the KCPD and Officer Yrigollen, has adopted policies, practices, and customs which were either inadequate to protect the rights vested to Plaintiff under the United States and Missouri constitutions and statutes or actively promoted the deprivation of these rights by the KCPD.

39. The policies and practices of the Board in question are as follows:

a. As a matter of public policy and practice, the Board undertakes inadequate internal affairs investigations such that KCPD officers are encouraged to believe that their actions will not be subject to scrutiny which in turn encourages a pattern of future abuse as those that affected Plaintiff;

b. As a matter of public policy and practice, the Board encourages the very type of misconduct at issue here by failing to adequately train, supervise, and control its officers,

as well as hiring and retaining officers without adequate background checks and with deliberate indifference to the fact that such individuals are not qualified to be officers due to lack of experience and training or violent and reckless tendencies;

c. As a matter of public policy and practice, the Board facilitated the type of misconduct at issue here by failing to adequately punish and discipline prior instances of misconduct thereby leading KCPD officers to believe that their actions would never be scrutinized or that they would not be held accountable for their actions and essentially encourages future abuse such as those which befell Plaintiff;

d. The Board's policy makers and KCPD employees are aware of and condone and facilitate by their inaction a "code of silence" within the KCPD by which officers fail to report misconduct by other officers such as the misconduct at issue in this case;

e. Generally, as a matter of widespread practice, KCPD officers abuse citizens in a similar manner on a frequent basis, yet the Board makes findings of wrongdoing in a disproportionately small number of cases;

f. The Board has failed to remedy the patterns of abuse described herein despite actual or constructive knowledge thereby causing the types of injuries alleged herein;

g. KCPD officers are improperly trained in the use of force and routinely use excessive force far beyond what is required to reasonable control the situation;

h. As a matter of public policy and practice, use of excessive force is accepted and condoned by the Board in that it takes inadequate measures to properly train officers on the proper use of force, take inadequate steps to follow up on civilian or officer reports of excessive force, and fail to supervise the use of force by their officers and properly discipline their officers for excessive use of force; and

i. The Board failed to provide training or the means by which to use other less deadly force to affect arrests or apprehend suspected criminals.

40. The acts of Defendants described herein deprived Plaintiff of his right to be free from excessive force and unlawful and unreasonable seizures in violation of the Fourth and Fourteenth Amendments to the United States Constitution of the United States and Plaintiff is entitled to bring this action under 42 U.S.C. § 1983 for the injuries he sustained.

41. The actions of Defendants were willful, wanton, malicious, and were carried out with a complete indifference to the safety, well-being, and welfare of others, warranting the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000.00, for his costs and attorneys fees, for punitive damages, and for such other relief as the Court deems just under the premises.

Count III: Assault and Battery

42. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth herein.

43. Officer Yrigollen intentionally assaulted and battered Plaintiff as described herein.

44. As a proximate result of Defendant's assault and battery, Plaintiff's personal and emotional injuries as described herein.

45. The Board is and at all times mentioned in this Complaint was the employer of Officer Yrigollen and is liable for his acts and omissions pursuant to the doctrine of *respondeat superior*.

46. The actions of Defendants were willful, wanton, malicious, and were carried out with a complete indifference to the safety, well-being, and welfare of others, warranting the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000.00, for his costs and attorneys fees, for punitive damages, and for such other relief as the Court deems just under the premises.

Count IV: Negligent Infliction of Emotional Distress

47. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth herein.

48. Under color of law, Defendants continually and negligently inflicted emotional distress on Plaintiff.

49. Defendants had a continuing affirmative duty to perform their professional services in such a manner as not to inflict emotional distress on Plaintiff.

50. Defendants breached these duties.

51. Plaintiff suffered not only physical symptoms but also mental injuries due to Defendants' breach of duty.

52. As a result of Defendants' actions, Plaintiff suffered significant emotional distress resulting in medically significant and diagnosable conditions.

53. The actions of Defendants were willful, wanton, malicious, and were carried out with a complete indifference to the safety, well-being, and welfare of others, warranting the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000.00, for his costs and attorneys fees, for punitive damages, and for such other relief as the Court deems just under the premises.

Count V: Punitive Damages

54. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth herein.

55. Defendants' conduct as described herein was outrageous due to Defendants' evil motive or reckless indifference to the rights of others.

56. The actions of Defendants were willful, wanton, malicious, and were carried out with a complete indifference to the safety, well-being, and welfare of others, warranting the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000.00, for his costs and attorneys fees, for punitive damages, and for such other relief as the Court deems just under the premises.

Request for Jury Trial

57. Plaintiff hereby demands trial by jury on all counts and claims in this action.

PETERSON & ASSOCIATES, P.C.

/s/ Brett A. Williams

David M. Peterson #32229
Nicholas S. Clevenger #57171
Brett A. Williams #49768
Thomas H. Rolwing, Jr. #47825
801 W. 47th Street, Suite 107
Kansas City, Missouri 64112
(816) 531-4440
(816) 531-0660 FAX
baw@petersonlawfirm.com

ATTORNEYS FOR PLAINTIFF

Z:\Active Cases\Hudson, Keith (#2 9-15-08)\PLEADINGS\Complaint.doc