

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRITTANY L. OSBERRY
910 LELAND AVE.
LIMA, OHIO 45805

Plaintiff,

-vs.-

ZANE SLUSHER
117 E. MARKET ST.
LIMA, OHIO 45801

AND

AARON MONTGOMERY
117 E. MARKET ST.
LIMA, OHIO 45801

AND

MARK FRYSSINGER
117 E. MARKET ST.
LIMA, OHIO 45801

AND

KEVIN MARTIN
117 E. MARKET ST.
LIMA, OHIO 45801

Defendants.

CASE NO. _____

JUDGE:

COMPLAINT AND JURY DEMAND

Plaintiff, Brittany L. Osberry, for her Complaint against Defendants Kevin Martin in his official capacity as Chief of Lima Police Department, Officer Zane Slusher in both his official and individual capacity, Officer Aaron Montgomery in both his official and individual capacity, and Officer Mark Frysinger in both his official and individual capacity, alleges as follows:

SUMMARY OF ACTION

1. This is a civil action seeking monetary damages against the Lima Police Department, and Officers who were employed by the Lima Police Department, and at all times relevant were acting in their individual capacity or in their official capacity and within the scope of employment, for committing acts under the color of law, which deprived Plaintiff Brittany L. Osberry of rights secured under the U.S. Constitution and Federal Statutes; and for refusing to prevent such deprivations and denials to Plaintiff. Plaintiff alleges that Officer Zane Slusher, Officer Aaron Montgomery, and Officer Mark Frysinger, intentionally, recklessly, or with reckless disregard for Plaintiff's safety, caused Plaintiff injury, in violation of her constitutional rights.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988 and the Fourth and Fourteenth Amendments to the United States Constitution, The Court has Jurisdiction of the action under 42 U.S.C. § 1983, 28 U.S.C. § 1343 and 28 U.S.C. § 1331.
3. Venue is proper within this division, as Plaintiff and all named Defendants reside within this judicial district, and the events or admissions giving rise to Plaintiff's claims occurred within this judicial district.

PARTIES

4. Plaintiff, Brittany L. Osberry, at all times relevant, was a citizen of the United States, State of Ohio, County of Allen, hereinafter "Plaintiff."
5. Defendant Kevin Martin, in his official capacity as Chief of the Lima Police Department, at all times relevant is a unit of government, organized under the laws of the State of Ohio (hereinafter "Martin").
6. Defendant, Zane Slusher, in his individual and official capacity, and at all times relevant, is an employee of the Allen County Sherriff's Office and a citizen of the State of Ohio, County of Allen, acting under the color of law (hereinafter "Slusher").
7. Defendant, Aaron Montgomery, in his individual and official capacity, and at all times relevant, is an employee of the Allen County Sherriff's Office and a citizen of the State of Ohio, County of Allen, acting under the color of law (hereinafter "Montgomery").
8. Defendant, Mark Frysinger, in his individual and official capacity, and at all times relevant, is an employee of the Allen County Sherriff's Office and a citizen of the State of Ohio, County of Allen, acting under the color of law (hereinafter "Frysinger").

FACTS

9. On Wednesday, August 10, 2016, Defendants Slusher, Montgomery, and Frysinger, were on duty police officers, acting in their individual and official capacity, under the color of law, for Defendant Martin.
10. On that same date, Plaintiff drove to 516 South Pine Street, Lima, Ohio, at approximately 6:00pm to pick up her friend's minor children from that residence.
11. As Plaintiff entered the driveway of the house located at 516 South Pine Street Defendant Frysinger and Defendant Montgomery approached her vehicle.
12. Defendant Frysinger approached Plaintiff's vehicle with his duty sidearm drawn, and reached into the open window of her vehicle.
13. Plaintiff expressed to Defendant Frysinger and Defendant Montgomery that she was at the house to pick up the minor children.

14. Defendant Frysinger forcefully removed Plaintiff from her vehicle.
15. Defendant Frysinger and Defendant Montgomery threw Plaintiff against the side of her vehicle.
16. Defendant Frysinger and Defendant Montgomery forcefully placed Plaintiff under arrest.
17. Plaintiff repeatedly stated that she was pregnant.
18. Defendant Slusher approached the vehicle as Defendant Frysinger and Defendant Montgomery has restrained Plaintiff, with his LPD issued X26 Taser and tased Plaintiff in the stomach.
19. Defendants, Slusher, Frysinger, and Montgomery, were specifically taught by Defendant Martin to file certain types of criminal charges against citizens who are injured while in police custody, such as resisting arrest. Defendants, Slusher, Frysinger, and Montgomery, are instructed by Defendant Martin to include a resisting arrest charge in any criminal complaint against any citizen who is injured during an arrest or search.
20. Defendants, Slusher, Frysinger, and Montgomery, were taught by Defendant Martin to withhold audio and video evidence from criminal defendants that may indicate officers used excessive force or intentionally caused injury to criminal defendants.
21. Defendants, Slusher, Frysinger, and Montgomery, were taught by Defendant Martin to overwhelm and intimidate suspects, regardless of the level of probable cause, and to over respond to and escalate casual interactions with citizens to allow officers to use excessive and abusive force.
22. Defendants are also taught by Defendant Martin to encourage this behavior among and between other officers while carrying out their duties in both their official and individual capacities.
23. Plaintiff was arrested by Defendants Slusher, Montgomery, and Frysinger and charged with resisting arrest, obstructing official business, and disorderly conduct, despite any evidence of this in the cruiser dash cam video or audio, and the civilian

captured video, and in accordance with the direction and training of Defendant Martin.

24. During the criminal case in the Lima Municipal Court, Case Nos 16 CRB 02468-A4, 16 CRB 02468-B4, 16 CRB 02468-C4, and 16 CRB 02468-D4, Plaintiff was wrongfully detained, at the direction and training of Defendant Martin, to cover up the abuse and intentional and/or reckless assault and harm caused by the other Defendants.
25. Plaintiff was further denied medical treatment for her tasing, in the stomach, and medical treatment for her in utero child, by Defendant Martin.
26. During the criminal litigation between Plaintiff and the State of Ohio, Defendant Martin specifically, both by policy and direction, withheld audio and video evidence crucial to Plaintiff's defense in that criminal action, and only disclosed said audio and video evidence after Plaintiff provided the department with a copy of a civilian captured video of the incident.
27. All charges against Plaintiff were dismissed at the State's request.

**FIRST CAUSE OF ACTION - VIOLATION OF CONSTITUTIONAL RIGHTS UNDER
42 U.S.C. 1983**

28. Plaintiff incorporates the previous paragraphs as if fully rewritten herein.
29. Defendants Slusher, Montgomery, and Frysinger intentionally and/or recklessly assaulted Plaintiff, where they knew or should have known that such acts created a likelihood of great bodily harm, in violation of Plaintiff's constitutional rights to liberty and equal protection under the law, and her right to be free from the use of excessive force.
30. Defendants Slusher, Montgomery, and Frysinger acted under color of state law and caused great bodily harm to Plaintiff by depriving Plaintiff of her right to liberty and equal protection under the law, and her right to be free from the use of excessive force, in violation of the Due Process clauses of the Fourth and Fourteenth Amendments to the U.S. Constitution, and in violation of 42 U.S.C. § 1983.

31. Defendants Slusher, Montgomery, and Frysinger were trained by Defendant Martin to single Plaintiff out and treat her differently than other similarly situated citizens without a rational basis, putting Plaintiff in a class of one, in violation of her Fourteenth Amendment rights.
32. Defendants unreasonably seized Plaintiff by using physical force and a show of authority, causing Plaintiff to submit to Defendants' physical force and show of authority, in violation of Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.
33. Defendants violated Plaintiff's substantive and procedural due process right, guaranteed to Plaintiff under the Fourteenth Amendment.

SECOND CAUSE OF ACTION - ASSAULT

34. Plaintiff incorporates the previous paragraphs as if fully rewritten herein.
35. Defendants Slusher, Montgomery, and Frysinger acted with intent to cause imminent harmful physical contact with Plaintiff.
36. Defendants Slusher, Montgomery, and Frysinger placed Plaintiff in imminent fear of harmful contact, and Plaintiff's imminent fear was reasonable.
37. Defendants Slusher, Montgomery, and Frysinger caused harmful and offensive contact to Plaintiff, to which Plaintiff did not consent.
38. Defendants Slusher, Montgomery, and Frysinger are liable for the damages and harm caused to Plaintiff, including but not limited to:
 - a. Severe injuries;
 - b. The injuries sustained by Plaintiff have caused her pain and suffering, both physically and emotionally;
 - c. The injuries sustained by Plaintiff have caused her to suffer medical expenses in an amount yet to be determined;

THIRD CAUSE OF ACTION- FAILURE TO TRAIN

39. Plaintiff incorporates the previous paragraphs as if fully rewritten herein.

40. Defendant Martin was the employer of Defendants Slusher, Montgomery, and Frysinger.
41. Defendants Slusher, Montgomery, and Frysinger, at the behest and training of Martin, engaged in deliberately indifferent conduct that caused injury to Plaintiff.
42. Defendants Slusher, Montgomery, and Frysinger's deliberate indifference created a substantial risk of death or great bodily harm, and deprived Plaintiff of her right to be free from illegal search and seizure and her right to life and liberty in violation of the Due Process clauses of the Fourth and Fourteenth Amendments to the U.S. Constitution.
43. The acts and/or omissions of Defendants Slusher, Montgomery, and Frysinger proximately resulted in the injuries and the damages to Plaintiff as plead herein, including but not limited to.
 - a. Severe injuries;
 - b. The injuries sustained by Plaintiff caused her pain and suffering, both physically and emotionally;
 - c. The injuries sustained by the Plaintiff has caused her to suffer medical expenses in an amount yet to be determined;

STATEMENT OF INCORPORATION

44. All facts in all causes of action are reincorporated in all other causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, as follows:

- A. Plaintiff demands compensatory damages in an amount to exceed \$80,000.00;
- B. Plaintiff demands punitive damages in an amount to exceed \$80,000.00;

- C. Plaintiff demands prejudgment and post judgment interest at the statutory rate;
- D. Plaintiff demands his costs of their action to include reasonable attorney fees;
or
- E. Plaintiff demands such other and further relief to which he may be entitled at
equity or by law; and
- F. Any other equitable remedy this Court deems just and fair.

JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues presented herein.

Respectfully Submitted,

HUFFMAN, KELLEY
BROCK, & GOTTSCHALK, LLC
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Lima, Ohio 45801
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