

NO. 20-CI-005086

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
HON. BRIAN EDWARDS

KENNETH WALKER, III

PLAINTIFF

v.

COMMONWEALTH OF KENTUCKY, *et al.*

DEFENDANTS

**DEFENDANT SERGEANT MATTINGLY'S
COUNTERCLAIMS AGAINST PLAINTIFF KENNETH WALKER**

Defendant Sergeant Jonathan Mattingly (“Mattingly”), through his counsel, states as his Counterclaims against Plaintiff Kenneth Walker III (“Walker”) as follows:

Introduction

1. During the early morning hours of March 13, 2020, Sergeant Mattingly was assigned to a team of Officers tasked with searching Breonna Taylor’s residence on Springfield Drive. Upon arriving at Springfield Drive, the Officers approached Ms. Taylor’s door, knocked repeatedly, and announced themselves as police. They were so loud that at least one of Ms. Taylor’s neighbors came out of his apartment to see what was going on. As consistent with their training, the Officers knocked and announced repeatedly, but nobody responded to their requests for entry. After nearly a minute of repeated knocking and announcing, the Officers forced entry. As the door opened, Mattingly saw Walker standing down the hallway with his gun trained at him. At the same moment, Mattingly felt a sharp, hot pain in his leg and realized he had been shot by Walker. The shot struck Sergeant Mattingly in his femoral artery, in his upper thigh, and caused serious injury to Mattingly that required emergency medical attention.

2. Walker was subsequently charged with murder, which was later amended down to attempted murder of a police officer after it was determined that Sergeant Mattingly would not die from his wounds.

3. Walker was indicted by the grand jury for attempted murder of a police officer.

4. The Commonwealth Attorney's Office later dismissed the action against Walker without prejudice, reserving its right to prosecute Walker for his unjustified assault.

5. This is a civil action to recover for the battery, assault, and emotional distress caused by Walker.

Parties

6. Plaintiff Walker is a resident of Jefferson County, Kentucky.

7. Defendant Mattingly is an employee of Louisville Metropolitan Government, and serves as a police officer in the Louisville Metropolitan Police Department ("LMPD").

Jurisdiction and Venue

8. Jurisdiction and venue are proper due to the location of the incident, the claimed damages, and the matters in controversy. See KRS 23A.010; KRS 24A.120; KRS 452.460.

Facts

9. In March of 2020, police officers petitioned for "no-knock warrants" on multiple addresses in Louisville, Kentucky, as part of an ongoing investigation into an illegal drug trafficking operation. One of the dwellings that was to be searched was the apartment of Breonna Taylor.

10. A Jefferson Circuit Judge signed the "no-knock warrant" on March 12, 2020. The warrant authorized LMPD to search Ms. Taylor's residence, a 2017 Dodge Charger, a 2016 Chevy

Impala, and the persons of Jamarcus Glover, Adrian Walker, and Breonna Taylor. It further authorized the officers to seize illegal drugs, paraphernalia, monies that are proceeds from drug trafficking, paperwork that may be a record of trafficking in narcotics, mail matter which might suggest financial activities related to drug trafficking, or any electronic media that might possess evidence of drug trafficking.

11. In the early morning hours of March 13, Mattingly and other LMPD officers arrived at Taylor's residence to execute the warrant. Mattingly and others approached the door of the apartment. Notwithstanding the fact that they had been issued a "no-knock" warrant, the Officers proceeded to knock several times and announce that they were police serving a search warrant.

12. Taylor and her boyfriend, Walker, were both in the apartment at the time the police executed the warrant.

13. After knocking and announcing their presence for nearly a minute, Lieutenant Hoover gave the Order to breach the door with a battering ram.

14. Meanwhile, in response to the Officers' persistent knocking and announcing, Walker got his loaded gun, approached the door, and trained his sights on the doorway.

15. When the door was breached, Mattingly looked inside to see Walker standing, with gun raised, in a shooting position.

16. Walker fired his 9 MM Glock and struck Mattingly in his thigh.

17. Having been fired at and struck, Mattingly returned fire.

18. Walker fell to the floor and hid, avoiding being hit by any bullet coming into the residence.

19. Tragically, Ms. Breonna Taylor, who had been standing by Walker, was struck by the return gunfire and died of her injuries.

20. Upon his retreat from Ms. Taylor's apartment, Walker reported to officers on the scene that Ms. Taylor had fired the gun. He later changed his story, explaining that he had fired the weapon.

COUNT I: BATTERY

21. Mattingly incorporates the preceding numbered paragraphs by reference.

22. Under Kentucky law, "a battery is any unlawful touching of the person of another, either by the aggressor, or by any substance set in motion by him or her." *Vitale v. Henchey*, 24 S.W.3d 651, 657 (Ky. 2000).

23. On March 13, 2020, Walker intended to and did commit the tort of battery when he shot Mattingly.

24. Walker's bullet struck Mattingly in his left thigh and caused serious damage to Mattingly.

25. Walker did so willingly or maliciously.

26. As a result, Defendant Mattingly is entitled to compensatory damages for the medical treatment, trauma, physical pain, and mental anguish he suffered.

27. Defendant Mattingly is also entitled to punitive damages.

COUNT II: ASSAULT

28. Defendants incorporate the preceding numbered paragraphs by reference.

29. "Assault merely requires the threat of unwanted touching of the victim." *Mellencamp v. Louisville/Jefferson Cty. Metro Gov't*, No. 3:07-CV-325-S, 2009 WL 1034216, at *7 (W.D. Ky. Apr. 16, 2009) (quoting *Andrew v. Begley*, 203 S.W.3d 165 (Ky. App. 2006)).

30. As explained above, Walker not only threatened Mattingly with an unwanted touching, but did actually strike him with a bullet from his pistol.

31. Walker did so willingly or maliciously.

32. As a result, Defendant Mattingly is entitled to compensatory damages for the medical treatment, trauma, physically pain, and mental anguish he suffered.

33. Defendant Mattingly is also entitled to punitive damages.

COUNT III: INTENTIONAL EMOTIONAL DISTRESS

34. Mattingly incorporates the preceding numbered paragraphs by reference.

35. Kentucky has adopted the Restatement's standard for this tort, also known as the tort of outrage. *Craft v. Rice*, 671 S.W.2d 247, 251 (Ky.1984) (adopting RESTATEMENT (SECOND) OF TORTS § 46 (1965)).

36. To prevail on a claim of outrageous conduct, a plaintiff must prove four elements: "(1) the wrongdoer's conduct must be intentional or reckless; (2) the conduct must be outrageous and intolerable in that it offends against generally accepted standards of decency and morality; (3) there must be a causal connection between the wrongdoer's conduct and the emotional distress; and (4) the emotional distress must be severe." *Gilbert v. Barkes*, 987 S.W.2d 772, 777 (Ky. 1999) (citations omitted).

37. Walker did intentionally shoot Mattingly or acted recklessly in firing his pistol in the direction of the Police Officers who were serving a search warrant.

38. Walker's conduct in shooting Mattingly is outrageous, intolerable, and offends all accepted standards of decency and morality.

39. Walker's conduct has caused Defendant Mattingly severe trauma, mental anguish, and emotional distress.

40. Defendant Mattingly is also entitled to punitive damages.

Request for Relief

WHEREFORE, Sergeant Mattingly, requests the following relief:

- a) A trial by jury on all issues so triable;
- b) Compensatory damages in an amount to be shown at trial;
- c) Punitive damages in an amount to be shown at trial;
- d) Costs incurred in this action and reasonable attorney's fees;
- e) Pre-judgment and post-judgment interest; and
- f) All other such relief as the Court does deem just and proper.

Respectfully submitted,

/s/ Kent Wicker

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was electronically filed with the Jefferson Circuit Court and a true and accurate copy was served via electronic mail and/or U.S. First-Class Mail, postage prepaid, on October 29, 2020 upon the following:

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