

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TIMOTHY SIMONSON, v. JOHN FORMISANO And THE CITY OF NEWARK	: : Plaintiff, : Civil Action No. : : : JURY TRIAL DEMANDED : : Defendants. : :
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PLAINTIFF'S COMPLAINT

NOW COMES Timothy Simonson, complaining of Defendants John Formisano and the City of Newark, and for cause would show the Honorable Court as follows:

1. On July 14, 2019, Timothy Simonson was shot multiple times and severely injured by John Formisano, a Newark Police Department Lieutenant.
2. This is an action brought by the Plaintiff against Defendant, the City of Newark and their agent and servant, former police Lieutenant John Formisano Dean for his use of excessive force under the color of state law in violation of Plaintiff's rights under the Fourth Amendment of the United States Constitution secured pursuant to 42 U.S.C. § 1983.
3. Plaintiff alleges that the City of Newark failed to properly train, supervise, screen, discipline, transfer, counsel or otherwise properly equip and control officers

including those who are known, or who should have been known, to engage in the use of excessive force and/or deadly force and those known to be a danger to themselves or to the community.

4. Newark had a duty, but failed to implement and/or enforce training, policies, practices and procedures for the Newark Police Department that respected Plaintiff's constitutional rights.
5. Defendant City's failure to adequately supervise, discipline, and train Defendant Formisano, failure to implement the necessary policies and procedures, and affirmative implementation of unconstitutional policies caused Plaintiff's unwarranted and excruciating physical and mental anguish and death.
6. For these civil rights violations and other causes of action discussed herein, Plaintiff seeks redress and compensation for damages.

PARTIES

7. Plaintiff, Timothy Simonson, is an adult individual and a resident of the state of New Jersey.
8. Defendant John Formisano was at all relevant times a police officer with the Newark Police Department.
9. Defendant the City of Newark is a municipality duly organized and existing under the laws of the state of New Jersey. Defendant Newark is responsible for the funding, budget, policies, operation, and oversight of the Newark Police

Department. Newark may be served via the Law Department at City Hall Room 316, Newark, NJ 07102.

JURISDICTION AND VENUE

10. Jurisdiction exists in this Honorable Court pursuant to 28 U.S.C. §§ 1331 and 1343 as this action is brought pursuant to 42 U.S.C. § 1983 to redress a deprivation of the Fourth Amendment rights of Timothy Simonson. Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1337 to adjudicate pendent state law claims.
11. Venue is proper in this Honorable Court as Defendants' constitutional violations and intentional torts and otherwise violative conduct occurred within the District of New Jersey.

THE SHOOTING OF TIMOTHY SIMONSON

12. On Sunday July 14, 2019, Tim Simonson was at the home of his girlfriend Christie Solaro in Morris County, New Jersey.
13. Tim and Christie retired to the bedroom at approximately 9:30 p.m.
14. Around 11:30 p.m., Tim and Christie were alerted to a flashlight shining around the yard.
15. Christie got up to see what was going on.

16. The flashlight was a police issued flashlight being held by Newark Police Department Lt. John Formisano.
17. Formisano was wearing his police uniform and carrying his service weapon.
18. Christie encountered Formisano out front of the house where he shot her multiple times.
19. Formisano then kicked open the front door to the home and proceeded to shoot Tim Simonson seven times with police issued hollow-tip bullets.
20. Formisano left Simonson on the floor in a pool of blood, struggling for life as he exited the home.
21. Formisano then shot Christie again, killing her before fleeing the scene.
22. In the meantime, Tim Simonson, with a shattered femur, crawled to the living room and called 911.
23. Tim's call to 911 lasted more than an hour as a SWAT team was assembled to respond to the residence.
24. The entirety of the time, Tim was bleeding out and Christie's children were crying from their bedroom.
25. After more than an hour of pain and agony, Tim was rescued and taken to Morristown Medical Center.
26. Tim underwent emergency surgery to save his life and his leg.

27. As a result of the shooting, Tim suffered severe physical and mental injuries requiring an extended hospital stay, lengthy physical therapy, and psychiatric counseling.
28. Formisano was captured the morning after the shooting 30 miles away in Livingston, New Jersey.
29. Formisano was charged with murder and related charges.
30. After his arrest he was held at two separate mental health facilities, the Anne Klein Psychiatric Facility in Trenton and the psychiatric unit of St. Clare's Hospital in Boonton.
31. He has pled not guilty by reason of insanity.
32. Upon information and belief, Formisano's deteriorating mental state was a cause of concern among fellow officers prior to the shooting.
33. Prior to the shooting, the Newark Police Department knew that Formisano had made statements indicating his intent to injure himself and others.
34. In particular, Formisano had exhibited suicidal behavior and expressed self-injurious thoughts while in the presence of fellow officers.

FAILURES OF THE NEWARK POLICE DEPARTMENT

Inadequate Supervision of John Formisano

35. On February 25, 2020, counsel for Plaintiff filed an OPRA request with the City of Newark seeking, in part: "Any and all documents and materials relating to

complaints made against Newark Police Department employee John Formisano;” and, “Any and all documents and materials relating to investigations of Newark Police Department employee John Formisano.”

36. The City of Newark refused to produce any materials responsive to this request.
37. Nonetheless, the limited material that is discoverable in the public domain indicates that John Formisano was accused of serious misconduct just four years after becoming a police officer.
38. State civil service records indicate that Formisano was suspended for 35 days, evidence of serious misconduct.
39. That Formisano was actually disciplined is particularly stark and raises questions about his fitness for duty in light of the Newark Police Department was notorious for its consistent and systemic failure to properly supervise officers.
40. Indeed, following litigation brought by the ACLU of New Jersey which identified 418 serious police abuse cases that went uncorrected between 2008 and 2010 alone, the City of Newark entered into a consent decree placing the Newark Police Department under federal oversight.
41. Despite federal oversight, Newark remains ill equipped to supervise its officers.
42. While most professional departments like Philadelphia, New York, Chicago, and Los Angeles have automatic mechanisms for the review of officer behavior, Newark does not.

43. These mechanisms are designed to identify problematic officers and provide retraining and review mechanisms to prevent inappropriate conduct by officers.
44. According to an analysis conducted by NJ.com's force report, for conduct between the years of 2012 and 2016, an automatic review mechanism would have triggered review for hundreds of officers.
45. During that time period, Chicago's review mechanism would have flagged 432 Newark police officers for review.
46. New York City's review mechanism would have flagged 374 Newark officers for review.
47. Los Angeles' system would have flagged 49 officers.
48. Newark's lack of review mechanisms created a culture of impunity where officers believed they were above the law.
49. Based on the limited publicly available information, John Formisano was reported for his use of force at least two times between 2012 and 2016.
50. It is likely that the full personnel and internal affairs file will reveal significantly more instances of potential misconduct.
51. Newark's failure to supervise John Formisano was not limited to his use of force or allegations of misconduct, the City also failed to intervene when Formisano's deteriorating mental health created an obvious risk that he would harm himself or others.

52. As noted *supra*, following the shooting Formisano was held in mental health facilities for months due to his deteriorated mental health.
53. Additionally, Formisano has entered a plea of not guilty by reason of insanity in the criminal proceedings related to this matter
54. Upon information and belief, Formisano's deteriorating mental state was a cause of concern among fellow officers prior to the shooting.
55. Prior to the shooting, the Newark Police Department knew that Formisano had made numerous statements indicating his intent to injure himself and others.
56. In particular, Formisano had exhibited suicidal behavior and expressed self-injurious thoughts while in the presence of fellow officers.
57. Despite expressing suicidal ideations, Newark failed to take any steps to remove Formisano from duty, reclaim his service weapon, or otherwise protect the public from the very real threat of a mentally unstable man with full police powers and a firearm.
58. This failure is unsurprising given the Newark Police Department's lack of any policy of any kind related to officers exhibiting obvious mental health issues.

Lack of Mental Health Reporting Policies and Periodic Evaluations

59. The Newark Police Department requires all new applicants to be evaluated by a psychologist for mental fitness, recognizing a stable and healthy mental makeup

is not only critical to the duties of a police officer but central to their ability to keep communities safe.

60. However, after an officer completes the initial screening, they are never again subject to a mental health assessment or check-up no matter how long they are on the force, except for a mandatory review following a discharge.

61. This means that John Formisano went 24 years without a mental health evaluation, from the time he was hired until his mental breakdown and subsequent shooting of Tim and Christie.

62. The Newark Police Department does not have any policies requiring periodic mental health screenings.

63. The Newark Police Department does not have any policies requiring a mental health evaluation for an officer who expresses the desire to harm themselves or others.

64. The Newark Police Department does not have any policies requiring officers to report when they are aware of a fellow officer's deteriorating mental health or desire to harm themselves or others.

65. Upon information and belief, the Newark Police Department does not provide any mental health resources to its officers.

COUNT I: EXCESSIVE FORCE
Plaintiff v. John Formisano

66. Plaintiff hereby incorporates all preceding paragraphs as if fully stated herein.
67. Plaintiff would show that Defendant Formisano's actions on the date at issue in this Complaint deprived Plaintiff of his constitutional rights, specifically his rights secured under the Fourth Amendment.
68. Plaintiff would show that Defendant Formisano failed to act as an objectively reasonable police officer would have acted in the same or similar circumstances. That is, Defendant Formisano, without legal or necessary justification or the need to do so, used excessive force as described above and caused severe and lasting physical and mental injury to Plaintiff.
69. The force used by Defendant Formisano was objectively unnecessary, excessive and unreasonable under the circumstances, as Plaintiff did not pose an immediate threat to the safety of Defendant Formisano or others. Defendant Formisano embarked on a willful, malicious, reckless and outrageous course of conduct that was intended to cause and, in fact did cause Plaintiff to suffer extreme and severe physical pain and injury, as well as mental and emotional distress, anxiety, terror and agony.
70. As a result of Defendant's conduct, Plaintiff has been forced to expend considerable resources for medical and psychological treatment. Additionally, Plaintiff has suffered lost wages and a loss of earning capacity.

WHEREFORE, Plaintiff demands judgment in his favor, and against Defendant Formisano pursuant to 42 U.S.C. § 1983, in an amount in excess of One Million Dollars (\$1,000,000.00), including interest, delay damages, costs of suit, general and specific damages, punitive and exemplary damages as provided by law, attorneys' fees, and any other remedies legally appropriate.

COUNT II: ASSAULT AND BATTERY
Plaintiff v. John Formisano

71. Plaintiff hereby incorporates all preceding paragraphs as if fully stated herein.
72. At or about the dates and places alleged herein, Defendant Formisano without provocation, warrant, necessity, or legal justification, assaulted and battered Plaintiff by pointing his Newark Police Department-issued firearm at Plaintiff and shooting him seven times thereby causing severe and lasting physical and mental injury to Plaintiff.
73. As a result of Defendant's conduct, Plaintiff has been forced to expend considerable resources for medical and psychological treatment. Additionally, Plaintiff has suffered lost wages and a loss of earning capacity.

WHEREFORE, Plaintiff demands judgment in his favor, and against Defendant Formisano, in an amount in excess of One Million Dollars (\$1,000,000.00), including interest, delay damages, costs of suit, general and specific damages, punitive and exemplary damages, and any other damages legally appropriate at the time of jury trial.

COUNT III: MUNICIPAL LIABILITY
Plaintiff v. City of Newark

74. Plaintiff hereby incorporates all preceding paragraphs as if fully stated herein.
75. The conduct of Defendant Formisano as set forth in the preceding paragraphs evinces the excessive and unreasonable use of force in violation of Plaintiff's constitutional rights.
76. The conduct set forth herein, as well as supervisory failures of the Newark Police Department demonstrates that the City of Newark failed to properly supervise officers, in particular Defendant Formisano. As a result of the supervisory, a violent and unstable Defendant Formisano was permitted to continue policing without intervention and with impunity. This supervisory failure was a moving force in the deprivation of Plaintiff's constitutional rights.
77. As a result of Defendant's conduct, Plaintiff suffered serious physical and mental injuries. He has been forced to expend considerable resources for medical and psychological treatment. Additionally, Plaintiff has suffered lost wages and a loss of earning capacity.
- WHEREFORE, Plaintiff demands judgment in his favor, and against Defendant the City of Newark pursuant to 42 U.S.C. § 1983, in an amount in excess of One Million Dollars (\$1,000,000.00), including interest, delay damages, costs of suit, general and specific damages, including both survival and wrongful death damages, exemplary damages as provided by law, attorneys' fees under U.S.C. 1985 and 1988, and any other damages legally appropriate at the time of jury trial.

COUNT IV: NEGLIGENT SUPERVISION
Plaintiff v. City of Newark

78. Plaintiff hereby incorporates all preceding paragraphs as if fully stated herein.

79. Defendant, the City of Newark knew or had reason to know of Defendant Formisano's deteriorating mental health and his unfitness and dangerous attributes. Further, the City was aware or should have been aware that Formisano's deteriorating mental health and his unfitness and dangerous attributes were likely to create a foreseeable risk of harm to others.

80. Nonetheless, the City took no action to take away Formisano's firearm and badge, let alone assist in getting him mental health treatment.

81. Despite Formisano's expressed intent to harm himself or others, the City permitted him to continue to go out every day cloaked with the authority of the state and armed with a deadly weapon.

82. The City's negligence under state law resulted in the murder of Christie Solaro and the near deadly shooting of Plaintiff.

83. As a result of Defendant's conduct, Plaintiff suffered serious physical and mental injuries. He has been forced to expend considerable resources for medical and psychological treatment. Additionally, Plaintiff has suffered lost wages and a loss of earning capacity.

WHEREFORE, Plaintiff demands judgment in his favor, and against Defendant Formisano, in an amount in excess of One Million Dollars (\$1,000,000.00), including interest, delay damages, costs of suit, general and specific damages, punitive and exemplary damages, and any other damages legally appropriate at the time of jury trial.

Respectfully submitted,

/s/ John J. Coyle

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