

DC-22-05728

CAUSE NO. _____

VINCENT DOYLE, BRANDON
SAENZ AND DAVID MCKEE,

Plaintiffs,

v.

COMBINED SYSTEMS, INC. AND
PENN ARM,

Defendants.

§ IN THE DISTRICT COURT
§
§ 193rd
§
§
§ _____ JUDICIAL DISTRICT
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§
§
§ OF DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND

COME NOW, Plaintiffs Vincent Doyle, Brandon Saenz, and David McKee and bring this civil action against Combined Systems, Inc. and Penn Arm, a division of Combined Systems, Inc., and for cause would show the Honorable Court as follows:

I. PARTIES

1. Plaintiff, Vincent Doyle is a citizen and a resident of Atlanta, Georgia.
2. Plaintiff, Brandon Saenz is a citizen and a resident of Tyler, Texas.
3. Plaintiff, David McKee is a resident of Arlington, Texas.
4. Defendant Combined Systems, Inc. ("Combined Systems"), is the manufacturer and seller of the 40mm single shot launcher compact ("40mm Launcher"). Defendant Combined System is a qualified product seller within the meaning of 15 U.S.C. § 7903(6). Defendant Combined System may be served through its registered agent, John R. Watson, 385 Holly Trail East, Holly Lake Ranch, Texas 75765.

5. Defendant Penn Arm ("Penn"), a division of Combined Systems that sells the 40mm Launcher, may be served through its registered agent, John R. Watson, 385 Holly Trail East, Holly Lake Ranch, Texas 75765.

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court as the matters in controversy occurred in Dallas County, Texas, and because the damages sought, exclusive of interest and cost, are within the jurisdictional limits of this Court.

7. Venue is proper in Dallas County, Texas because all or a substantial part of the events giving rise to Plaintiffs' claims occurred and arose in Dallas County, Texas.

8. Plaintiffs seek monetary relief over \$1,000,000 and a demand for judgment for all the other relief to which the parties deem themselves entitled.

III. DISCOVERY LEVEL

9. Plaintiffs intend to conduct discovery in this matter pursuant to the Level Three Discovery Plan.

IV. INTRODUCTION

10. In the wake of the brutal and unjustified May 25, 2020, killing of George Floyd by police officers in Minneapolis, Minnesota, hundreds of thousands of Americans took to public streets and forums to protest police brutality and racial inequality. Dallas was no exception, with peaceful protests occurring across the city for at least one hundred straight days beginning May 29, 2020 and continuing throughout the remainder of 2020 (collectively referred to as the "2020 Protests"). Undeterred by the fact that police officers' use of excessive force was the very subject of these demonstrations, City of Dallas Police Department ("Dallas Police" or "DPD") officers repeatedly used extreme and lethal force against these crowds, targeting peaceful, non-threatening protesters and bystanders with 40mm Launchers, tear gas, smoke bombs, flash-

bangs, Pepper Balls, mace, and what are known as “kinetic impact projectiles,” or “KIPs.” And without regard to the ongoing global pandemic involving respiratory disease COVID-19, police have tear-gassed and smoke-bombed protesters, many of whom may have already been infected with COVID-19, making them more likely to suffer simply because they exercised their First Amendment rights.

11. Kinetic impact projectiles, which include so-called “rubber bullets” or “sponge bullets,” are often used by American police forces to control crowds. The manufacturers, distributors, and sellers of these projectiles—and the police departments that use them against their own citizens—praise these bullets as being “nonlethal” or “less lethal.” They are not. In fact, these KIPs kill approximately three percent of all people they strike. In order to continue profiting from the sale of 40mm Launchers, the Defendants chose to disregard the unreasonable risks the 40mm Launcher posed on innocent citizens.

12. Plaintiffs Vincent Doyle and Brandon Saenz are Black Americans and residents of Georgia and Texas. During the period from May 30 to June 1, 2020, these Plaintiffs each peaceably attempted to exercise their First Amendment rights by participating in the 2020 Protests for reforming policing tactics and resolving racial injustice in Dallas. Plaintiff David McKee, also a Texas resident, did not directly participate in the May 30, 2020, Protests but was simply in the area to observe these historic demonstrations and, in McKee’s case, to capture the moment by photographing the events. That weekend, each of these Plaintiffs became victims of the very same unjustified and horrific police brutality the ongoing 2020 Protests opposed. Specifically, Plaintiffs were all seriously injured when Dallas Police officers, unprovoked, shot them with so-called “less lethal” rubber or sponge bullet KIPs from the 40mm Launcher. Over the course of three days in Dallas, Plaintiff Doyle’s cheek was shattered, Plaintiff Saenz

permanently lost his left eye after being shot in the eye, and Plaintiff McKee, who was shot in the groin area, had to undergo emergency surgery to his left testicle. Many other people were also severely injured by these “less lethal” bullets in Dallas during those three days, including a young woman who was shot in the forehead while walking home from a grocery store.

13. This is a civil action for monetary relief for injuries Plaintiffs sustained as a result of the acts and omissions of Defendants Combined Systems and Penn. These Defendants violated the law against deceptive trade practices by intentionally marketing its weapons to police departments, specifically the Dallas Police Department, as less lethal all the while knowing that the 40mm Launchers is a dangerous weapon. The Defendants’ website touts Penn Arms as setting the standard for less-lethal launchers worldwide for over 20 years. Although advertised as less lethal, and having a minimum safe range 33 ft., this is contradicted by the fact that the 40mm Launcher is marketed by the Defendants as being a “point-of-impact” direct fire round that is most commonly used by tactical teams in situations where greater accuracy and deliverable energy is desired for the incapacitation of an aggressive, non-complaint subject at longer distances. The Defendants further represented on its website that extensive testing was done on the 40mm Launcher to ensure that the round is less lethal when fired within the optimal energy range knowing that not to be the truth.

V. STATEMENT OF FACTS

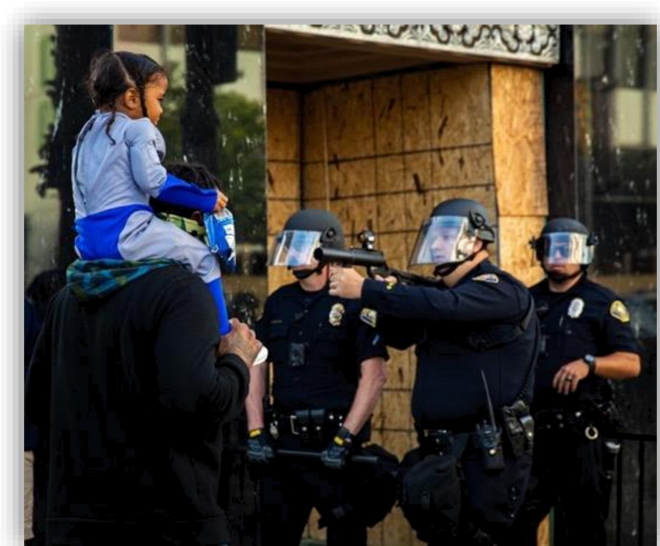
George Floyd’s senseless death at the hands of a Minneapolis police officer in May 2020 again ignites nationwide protests against police brutality.

14. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

15. On Monday, May 25, 2020, an unarmed Black man named George Floyd was murdered by an officer of the Minneapolis Police Department. The events of Mr. Floyd’s arrest

and murder were captured on video by multiple bystanders as well as individual officers' body cameras. The videos depicted Mr. Floyd pinned on the street, face down and increasingly unresponsive, while Minneapolis police officer Derek Chauvin knelt on Mr. Floyd's upper back and neck, two officers held him down, and another stood by. All four officers were fired by the Minneapolis PD, and nationwide protests erupted in response to this police brutality. After days of continual protesting, Chauvin was charged with third degree murder. The other three Minneapolis police officers were then charged with aiding and abetting Mr. Floyd's murder, and Chauvin's charge was upgraded to second degree murder after an independent autopsy report confirmed that Chauvin was the cause of Mr. Floyd's death.

16. Undeterred by the fact that police excessive force was the very subject of these nationwide demonstrations, videos, photos, and reports of police brutality on massive scales at these protests arose in the weeks immediately following Mr. Floyd's death. Here in Dallas, City of Dallas Police Department officers repeatedly used extreme and lethal force against these crowds during the 2020 Protests, targeting peaceful, non-threatening protesters with tear gas, smoke bombs, flash-bangs, Pepper Balls, mace, and ammunition that are known as "kinetic impact projectiles," or "KIPs." And even amid a pandemic respiratory disease, police tear-gassed and smoke-bombed protesters, many of whom may have already been infected with Covid-19, making them more likely to suffer simply because they exercised their First Amendment rights.



Photo, Richard Grant, depicting police officers aiming a riot-control device towards protesters in Long Beach, California.¹

17. Kinetic impact projectiles, which include so-called “rubber bullets” or “sponge bullets,” are often used by American police forces to control crowds. The manufacturers, distributors, and sellers of these projectiles—and the police departments that use them against their own citizens—praise these bullets as being “nonlethal” or “less lethal.” They are not. In fact, the fatality, morbidity, and significant risks of injuries from KIPs have been well documented. Regardless, in cities across the country, including Dallas, police departments have attempted to quell participation in the 2020 Protests by firing KIPs into crowds, even though five decades of evidence shows such weapons can disable, disfigure, and even kill.²

18. For instance, in Minneapolis, free-lance photographer Linda Tirado was shot in the eye with a “rubber bullet.” “I was aiming my next shot, put my camera down for a second,

¹ Richard Grant, @RichardGrant88, TWITTER (June 1, 2020, 1:28 p.m.), <https://twitter.com/richardgrant88/status/1267523353289474048?s=20>.

² Liz Szabo, *Police using rubber bullets on protestors that can blind, maim or kill*, CNN.COM (June 3, 2020 at 3:54 a.m.), <https://www.cnn.com/2020/06/03/health/rubber-bullet-effects-kaiser-partner/index.html>; Rohini J. Haar, Vincent Iacopino, Nikhil Ranadive, Madhavi Dandu, Sheri D. Weiser, Abstract: *Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: a Systematic Review* (Dec. 5, 2017), <https://bmjopen.bmj.com/content/7/12/e018154>.

and then my face exploded,” Tirado told *The New York Times* after she was released from the hospital. “I immediately felt blood and was screaming, ‘I am press! I am press!’”³ Tirado, a career photojournalist, is now permanently blinded in one eye.⁴



Photo, Linda Tirado, depicting Ms. Tirado’s injuries in Minneapolis (May 30, 2020).⁵

19. In Louisville, Kentucky, a television reporter was hit by a pepper ball on live television by an officer who appeared to be aiming at her, causing her to exclaim on the air: “I am getting shot! I’m getting shot!”⁶ A protesting grandmother who was struck with a rubber bullet between her eyes in La Mesa, California, landed in the intensive care unit.⁷ And in Los Angeles, police shot Marine Corps veteran C.J. Montano in the head with “rubber bullets,”

³ Frances Robles, *A Reporter’s Cry on Live TV: ‘I’m Getting Shot! I’m Getting Shot!’*, NEW YORK TIMES.COM (May 30, 2020, last updated June 4, 2020), <https://www.nytimes.com/2020/05/30/us/minneapolis-protests-press.html>.

⁴ Linda Tirado, *Police Blinded Me in One Eye. I Can Still See Why My Country’s on Fire*, THE NEW REPUBLIC (June 4, 2020), <https://newrepublic.com/article/158001/police-blinded-one-eye-can-still-see-countrys-fire>.

⁵ See Linda Tirado, @killermartinis, Twitter (May 30, 2020, 1:32 a.m.), <https://twitter.com/KillerMartinis/status/1266618525600399361?s=20>.

⁶ Frances Robles, *supra* n. 3.

⁷ Niala Charles, *Grandmother Hit in Head With LMPD ‘Less Lethal’ Projectile Remains in ICU*, NBC SAN DIEGO.COM (May 31, 2020, last updated June 4, 2020, 11:40 a.m.), https://www.nbcsandiego.com/news/local/grandmother-hit-with-rubber-bullet-remains-in-icu/2337061/?amp&__twitter_impression=true.

despite him having his hands in the air.⁸ In an interview from his hospital bed, Montano confirmed that the ammunition has caused brain bleeding.⁹

20. In the immediate days after Mr. Floyd's death, federal courts in several cities, including Portland, Denver,¹⁰ and Oakland¹¹ began issuing injunctive relief to prohibit police forces from using so-called "less lethal" crowd control tactics on peaceful protesters, such as rubber bullets and tear gas.

Dallas Police responded to the 2020 Protests with unjustified violence, turning peaceful First Amendment protests into massive, dangerous conflicts with civilians.

21. The first Dallas protest in the aftermath of Mr. Floyd's death was on May 29, 2020. On that day for hundreds of days after, peaceful protestors gathered in downtown Dallas to demonstrate against police brutality and racial inequality. Although a small minority of individuals present at the scene of the first weekend of protests engaged in destructive activity, including property destruction, those individuals' behavior was profoundly overshadowed by the thousands of otherwise non-violent, non-threatening demonstrators who peaceably exercised their First Amendment rights. Nonetheless, during the 2020 Protests the Dallas Police Department and other law enforcement departments, at the Dallas PD's and Former Chief Hall's invitation, directed extreme riot control tactics towards entire groups of protesters posing no

⁸ See @LowkeySinistra, TWITTER (May 31, 2020, 10:03 a.m.), <https://twitter.com/LowkeySinistra/status/1267109420955086848>.

⁹ See video of C.J.'s Montano's interview with ABC7, @LowkeySinistra, TWITTER (June 2, 2020), <https://twitter.com/i/status/1268022557061480449>.

¹⁰ See Alta Spells and Madeline Holcombe, *Temporary restraining order prohibits Denver Police from using chemical agents or projectiles against peaceful protesters without supervisor approval*, CNN.com (June 6, 2020 at 5:37 a.m.), <https://www.cnn.com/2020/06/06/us/denver-police-restraining-order-protesters-chemicals-projectiles/index.html>; Nicole Chavez, *Portland is the latest city to suspend the use of tear gas on protesters*, CNN.com (June 6, 2020 at 9:18 p.m.), <https://www.cnn.com/2020/06/06/us/portland-police-tear-gas-protests/index.html>.

¹¹ Andre Torrez, *Judge orders preliminary injunction against Oakland police over crowd control policy*, KVTU.COM (July 29, 2020), <https://www.ktvu.com/news/judge-orders-preliminary-injunction-against-oakland-police-over-crowd-control-policy>.

harm to officers or anyone. Dressed in riot gear and driving armored vehicles, Dallas Police—like police in other cities in 2020—deployed riot control devices against ordinary citizens and journalists alike, without regard to whether the circumstances justified it, and without regard or competence for shooting this “less lethal” weaponry that was everything but less lethal as represented by the Defendants.



Photo, Central Track, depicting protesters marching through Downtown Dallas on June 6, 2020.¹²

22. During the first seven days of demonstrations in Dallas triggered by the murder of George Floyd, Dallas Police officers repeatedly used extreme and lethal force against crowds, directly targeting peaceful, non-threatening protestors with KIPs, tear gas, smoke bombs, and other riot control devices that the City and Former Chief Hall praise as “less lethal.”¹³ In particular, Dallas Police used a type of KIPs called 40mm eXact iImpact extended range

¹² Central Track, @central_track, TWITTER (June 6, 2020, 6:53 p.m.), https://twitter.com/Central_Track/status/1269417106203951104?s=20.

¹³ Lauren Silverman, *Dallas Police To Try 'Sponge Guns' To Help Avoid Deadly Shootings*, KERA News.org (Apr. 28, 2016), <https://www.keranews.org/post/dallas-police-try-sponge-guns-help-avoid-deadly-shootings>.

“sponge” bullets—often referred to as “rubber bullets”—against protestors, bystanders, and journalists in order to suppress their First Amendment rights, without regard to the constitutional limits on the use of force:



Photo, Shane McCormick, depicting sponge/rubber bullet that struck Dallas photographer Shane McCormick and tear gas canister fired nearby at protests in Dallas, Texas on May 30, 2020.

23. Most upsettingly, Dallas Police used these weapons to assert and show their dominance over protestors and the citizens of Dallas seeking to exercise their First Amendment rights and the journalists and photojournalists who are covering these events. Former Chief Hall even defended her decision to shoot protestors with tear gas—a chemical weapon banned in war¹⁴ but nonetheless used against peaceful American civilians by their own governments and in their own cities—during the 2020 Protests in Dallas. Hundreds of reports of peaceful protestors, journalists covering protests, and bystanders bleeding and suffering from unwarranted levels of police force threaten to chill participation in ongoing demonstrations in Dallas. Not even the fact that protestors may have been unknowingly infected with the

¹⁴ Matt Field, *Why is tear gas banned in war but not from peaceful protests?*, BULLETIN OF THE ATOMIC SCIENTISTS (June 4, 2020), <https://thebulletin.org/2020/06/why-is-tear-gas-banned-in-war-but-not-from-peaceful-protests/>.

pandemic respiratory disease COVID-19 deterred police from tear gassing and smoke bombing protesters, making it very possible that many people exercising their First Amendment rights could suffer more severe COVID-19 symptoms aggravated by tear gas and smoke bombs if they became infected or were asymptomatic to the disease at the time.¹⁵

24. Countless non-threatening people present at the first weekend of 2020 Protests in Dallas from May 30 to June 1, 2020, suffered and continue suffer from injuries caused by 40mm Launcher and other less lethal weapons manufactured by the Defendants.

On May 30, 2020, Plaintiffs Vincent Doyle, Brandon Saenz, and David McKee are injured by the 40mm Launcher.

25. **Plaintiff Vincent Doyle.** Plaintiff Vincent Doyle, an aspiring photojournalist, went to downtown Dallas to film and photograph the protests on May 30, 2020.¹⁶ When he arrived and headed to the area near Bank of America, Mr. Doyle said the event was entirely peaceful, with approximately 100 to 200 people kneeling and chanting together. Suddenly, officers told the crowd to disperse and began indiscriminately firing tear gas at the crowd. Mr. Doyle stepped behind police to load more film into his camera, where he had a chance to observe officers' response to what was happening. Instead of expressing concern for citizens' safety, some officers were eating pizza and laughing together. Meanwhile, Mr. Doyle saw protesters being tear gassed, who then frantically tried to alleviate the symptoms and burning of the chemicals by pouring milk in their eyes. He also witnessed people experiencing homelessness who were shot with rubber bullets along with the protesters, as others tried to give aide to them.

¹⁵ Lisa Song, *Tear Gas is Way More Dangerous Than Police Let On—Especially During the Coronavirus Pandemic*, PROPUBLICA.ORG (June 4, 2020, 12:25 p.m.), <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic>.

¹⁶ See Vincent Doyle interview with Dallas Weekly News (@dallasweekly), INSTAGRAM, <https://www.instagram.com/p/CBCNvDupZ09/> (last visited June 9, 2020).

