

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

00-72284

BRADFORD ERVING,

Plaintiff,

Wayne Cty. Circ. Case No: 00-013709-NO
Wayne Cty. Circ. Judge Susan Borman

-vs-

CITY OF DETROIT, a municipal corporation, BARRY HAYWARD, City of Detroit Police Officer, TERRY WILCOX, City of Detroit Police Officer, JOSEPH NEHS, City of Detroit Police Officer, SERGEANT JAMES FLEMING, City of Detroit Police Supervisor, SERGEANT DEBORAH MCCREARY, City of Detroit Police Supervisor, City of Detroit Police Supervisors JOHN AND JANE DOES (1-5),

LAWRENCE P. ZATKOFF
MAGISTRATE JUDGE SCHEER

Defendants.

LAWRENCE NATHANIEL RADDEN (P39839)
Attorney for Plaintiff
8443 Grand River, Second Floor
Detroit, MI 48204
(313) 895-7416

KRYSTAL A. CRITTENDON (P49981)
Attorney for Defendant City of Detroit
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

U.S. DISTRICT COURT OF MICHIGAN
00 MAY 18 P 3:41
FILED

NOTICE OF REMOVAL OF CIVIL ACTION

The Defendant, **CITY OF DETROIT**, hereby removes this action to this Court pursuant to 28 U.S.C. Sections 1441 and 1443(2) and says that:

1. This action was commenced on or about April 28, 2000, in the Circuit Court

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for the Third Judicial Circuit of Michigan and is now pending in that Court.

2. On or about May 1, 2000, Defendant, CITY OF DETROIT, received a copy of the Summons and Complaint which are attached hereto.

3. According to the allegations of the Complaint, the amount in controversy exceeds \$25, 000.00.

4. The Plaintiff alleges in the Complaint that at all pertinent times, he was a resident of the City of Detroit, Wayne County, Michigan.

5. This is a civil action in which Plaintiff seeks monetary relief for the alleged misconduct of the Defendants which is alleged to have resulted in the deprivation of certain rights protected by provisions of the United States and Michigan Constitutions. Defendant City of Detroit removes the action to this Court, invoking the Court's federal jurisdiction, because the Plaintiffs base the action, in part, on the United States Constitution and 42 U.S.C. Section 1983.

6. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. Section 1331 and 1343, and the action is removable to this Court pursuant to 28 U.S.C. Sections 1441(a) and 1443(2). The entire action is removable pursuant to those provisions and the Court's pendent jurisdiction.

7. Copies of all process, pleadings and orders served upon the Defendant in this action is attached.

8. This Notice is filed within thirty days after service of a Summons and a copy of the Complaint on Defendant CITY OF DETROIT.

9. Defendants **BARRY HAYWARD, TERRY WILCOX, JOSEPH NEHS, SERGEANT JAMES FLEMING, SERGEANT DEBORAH MCCREARY and City of Detroit**

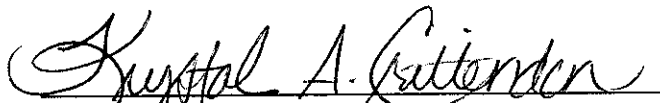
Police Supervisors JOHN AND JANE DOES (1-5) are either unserved as of the date of filing of this Notice of Removal, or have not requested legal representation from the City of Detroit Law Department.

10. Should Defendants named in paragraph nine (9) receive service of a Summons and Complaint and request representation, they shall timely concur in the removal of this action and such concurrence shall be filed with this Court.

11. The undersigned has prepared a written notice of the removal of this action, addressed to counsel for the Plaintiffs and to the Clerk of the Court from which this action is being removed. Promptly after filing this Notice of Removal of Civil Action, the undersigned will cause copies of that written notice to be filed with the Clerk of the Court from which this action is being removed and mailed by first class mail to counsel for the Plaintiffs.

WHEREFORE the above named Defendant removes this action to this Court.

Respectfully submitted,



KRYSTAL A. CRITTENDON (P49981)
Assistant Corporation Counsel
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

DATED: May 16, 2000

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

JURY TRIAL
THIS DATE: APR 28 2000
BY: _____

BRADFORD ERVING,

Plaintiff,

v

CITY OF DETROIT, a municipal corporation,
BARRY HAYWARD, City of Detroit Police Officer,
TERRY WILCOX, City of Detroit Police Officer,
JOSEPH NEHS, City of Detroit Police Officer,
SERGEANT JAMES FLEMING, City of Detroit Supervisor,
SERGEANT DEBORAH MCCREARY, City of Detroit Supervisor,
CITY OF DETROIT POLICE OFFICER SUPERVISORS
JOHN AND JANE DOES (1-5),

Defendants.

00-013709 ND 4/28/00
JDG: SUSAN D BORMAN
ERVING BRADFORD
VS
DETROIT CITY OF

LAWRENCE NATHANIEL RADDEN, (P39839)
Attorney for Plaintiff
8443 Grand River, Second Floor
Detroit, MI 48204
(313) 895-7416

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. MCR 2.113

COMPLAINT AND JURY DEMAND

Plaintiff states for his complaint and demand for jury trial, as follows:

Introduction

1. This action arises under 42 USC 1983 and other State of Michigan Torts out of an incident occurring on Thursday, May 1, 1997, at approximately 3:10 a.m., where Defendant Barry Hayward, a City of Detroit Police Officer, Badge # 1004, who resides at 19151 Waltham, in the City of Detroit, Wayne County, State of Michigan did shoot and attempt to kill Plaintiff, Bradford Erving, unnecessarily, unreasonably and without justification in violation of the Fourth Amendment, and the fleeing felon rule, as articulated in Tennessee v Garner, 471 US 1, 85 L Ed 2d 1, 105 S. Ct. 1694 (1985).

2. Defendant Barry Hayward, shot Plaintiff four or more times with his department issued Glock 40 cal. pistol, thereby causing Erving very serious and permanent injury, such as paralysis of his legs and lower body, which legs are dead, useless and immobile binding him to a wheelchair.

Jurisdiction and Parties

3. Plaintiff is a resident of the City of Detroit, Wayne County, State of Michigan.
4. Defendant Barry Hayward, is a City of Detroit Police Officer, Badge # 1004 who resides at 19151 Waltham, in the City of Detroit, Wayne County, State of Michigan, who shot, attempted to kill and paralyzed Plaintiff.
5. Defendant Terry Wilcox, is a City of Detroit Police Officer, Badge # 1531, who arrived at the scene and refused to render medical assistance to plaintiff.
6. Defendant Joseph Nehs, is a City of Detroit Police Officer, Badge # 3501, who arrived at the scene and refused to render medical assistance to plaintiff.
Defendant Sergeant James Fleming, is a City of Detroit Police Supervisor, Badge # S-175, who arrived at the scene and denied immediate medical assistance to plaintiff.
8. Defendant Sergeant Deborah McCreary, is a City of Detroit Police Supervisor, who arrived at the scene and denied immediate medical assistance to plaintiff.
9. The City of Detroit is also liable because of its policies, practices, and customs that proximately caused plaintiff's respective injuries.

10. At all material times, Defendant City of Detroit, a municipal corporation employed the following police officers:
 - a. Barry Hayward, Badge # 1004;
 - b. Terry Wilcox, Badge # 1531;
 - c. Joseph Nehs, Badge # 3501;
 - d. Sergeant James Fleming, Badge # S-175, and
 - e. Sergeant Deborah McCreary.
11. When the events alleged in this complaint occurred, the aforementioned individual Defendant police officer and City of Detroit Police Officer Supervisors were acting within the scope of their respective employment and under color of law.
12. The incident complained of occurred in the City of Detroit, Wayne County, State of Michigan.
13. The event producing the original injury occurred in the City of Detroit, Wayne County, Michigan.
14. The amount in controversy exceeds \$25,000, exclusive of interest and costs.

Count-I
Assault and Battery

15. Plaintiffs incorporate by reference the preceding paragraphs to establish liability against the individual police officer, Defendant Barry Hayward.
16. Defendant Barry Hayward, made an intentional and unlawful threat to do bodily injury to Plaintiff because plaintiff had broken into his home.
17. The threat to Plaintiff was made under circumstances that created in him a well-founded fear of imminent peril.

18. Defendant had the apparent ability to carry out the act if not prevented.
19. The act was not prevented, and Defendant willfully and intentionally shot Plaintiff several times with his department issued Glock 40 cal. pistol..
20. As a direct and proximate result of Defendant's assault and battery of Plaintiff , suffered injury and damage, past, present and future, including the following:
 - a. pain, suffering, and emotional distress;
 - b. humiliation, mortification, and embarrassment;
 - c. medical expense;
 - d. lost earning capacity;
 - e. the necessity that he undergo multiple surgeries;
 - f. permanent disability including being paralyzed,
 - g. posttraumatic stress disorder, and
 - h. other injuries and damages and consequences that are found to be related to the assault and battery that develop or manifest themselves during the course of discovery and trial.
21. PLAINTIFFS REQUEST that this court enter judgment against Defendant in whatever amount he is entitled, together with interest, costs, reasonable attorney fees, and whatever else the court deems just under the circumstances.

Count II
Fourth Amendment Violations
Individual Liability

22. Plaintiff incorporates by reference the preceding paragraphs to establish liability against Police Officer Barry Hayward for the use of excessive force.
23. Count II, arises under the Fourth and Fourteenth Amendments, of the United States Constitution, through 42 USC 1983.

24. Defendant Police Officer Barry Hayward willfully and intentionally shot Plaintiff several times, which force was excessive in effectuating the arrest of plaintiff.
25. The Fourth Amendment to the United States Constitution guarantees each citizen the right to be secure in their persons . . . against unreasonable searches and seizures.
26. A police officer may use force to carry out his duties, but may not use more force than necessary in the performance of his duties.
27. Defendant Police Officer Barry Hayward's use of force was not objectively reasonable in light of the circumstances, at the time defendant shot plaintiff, Graham v Conner, 490 US 386, 109 S Ct 1865, 104 L Ed 2d 443 (1989).
28. In considering whether or not police officer Hayward acted in a reasonable manner a jury must consider the severity of the crime at issue, whether plaintiff posed an immediate threat to the officer's safety or others, and whether the plaintiff actively resisted arrest or attempted to flee.
29. While burglary is a serious crime an officer cannot reasonably believe that plaintiff in this case, a young, short, slightly built unarmed boy-posed any threat. See Tennessee v Garner, 471 US 1, 85 L Ed 2d 1, 105 S. Ct. 1694 (1985).
30. The US Supreme Court determined it is unconstitutional to use deadly force to prevent the escape of an unarmed suspected felon who does not pose a serious threat of death or physical injury to the officer or another.

31. Defendant Hayward attempted to execute plaintiff because he broke into his house.
32. Defendant Hayward fired several shots at plaintiff even after plaintiff was down and unable to flee.
33. Defendant Hayward even pulled plaintiff around to the back of his house and beat plaintiff about the face and body.
34. Defendant Hayward refused to provide immediate medical attention to plaintiff despite plaintiff's obvious need for medical attention.
35. As a direct and proximate result of Defendant Hayward's shooting of Plaintiff, Plaintiff suffered injury and damage, past, present and future, including the following:
 - a. pain, suffering, and emotional distress;
 - b. humiliation, mortification, and embarrassment;
 - c. medical expense;
 - d. lost earning capacity;
 - e. the necessity that he undergo multiple surgeries;
 - f. permanent disability including being paralyzed,
 - g. posttraumatic stress disorder, and
 - h. other injuries and damages and consequences that are found to be related to the assault and battery that develop or manifest themselves during the course of discovery and trial.
36. PLAINTIFFS REQUEST that this court enter judgment against Defendants in an amount consistent with the damages sustained and in excess of the jurisdictional limits of at least Five Million Dollars, \$ 5,000,000.00.

Count III
Fourth and Fourteenth Amendment Violations
Individual Liability for Deliberate Indifference

37. Plaintiffs incorporate by reference the preceding paragraphs to establish liability against the individual police officers.
38. Count III, arises under the Fourth and Fourteenth Amendments, of the United States Constitution, through 42 USC 1983.
39. The individual Defendant police officer Barry Hayward, Badge # 1004, had a state of mind and made a conscious choice for the purpose of causing harm with knowledge that that choice would probably result in harm to plaintiff.
40. The individual Defendant police officers Terry Wilcox, Badge # 1531, Joseph Nehs, Badge # 3501, Sergeant James Fleming, Badge # S-175, and Sergeant Deborah McCreary were acting under color of state law, and is responsible for Plaintiff's being taken into police custody, how he was treated while in the custodial care of the City of Detroit Police Department including not allowing him to receive immediate medical care.
41. Plaintiff's constitutionally protected rights, were violated, such as: (a) his right to liberty protected in both the substantive component of the Due Process Clause of the Fourteenth Amendment that includes personal safety, freedom from captivity, a right to medical care, (b) Fourth Amendment freedom from unreasonable searches and seizures, and (c) his right to fair and equal treatment,

as guaranteed and protected by the Equal Protection Clause of the Fourteenth Amendment.

42. Plaintiff's constitutional rights were deprived when he was denied medical treatment, while under Defendants' custodial control.
43. The individual Defendant police officers Barry Hayward, Badge # 1004, Terry Wilcox, Badge # 1531, Joseph Nehs, Badge # 3501, Sergeant James Fleming, Badge # S-175, and Sergeant Deborah McCreary, were also acting in concert with one another, by their conduct, and showed intentional, outrageous, and reckless disregard and indifference for Plaintiff's constitutional rights amounted to callous, reckless or deliberate indifference to the constitutional rights of plaintiff..
44. The individual Defendant police officers Barry Hayward, Badge # 1004, Terry Wilcox, Badge # 1531, Joseph Nehs, Badge # 3501, Sergeant James Fleming, Badge # S-175, and Sergeant Deborah McCreary had a duty and an obligation to see that the law was reasonably enforced.
45. The actions of the officers who were present and stood by while fellow officers illegally denied plaintiff immediate medical treatment, showed deliberate indifference to Plaintiff's serious medical needs and was a deprivation of his constitutionally protected rights, and represented an excessive risk to Plaintiff's health or well-being

46. As a direct and proximate result of the individual Defendant police officers Barry Hayward, Badge # 1004, Terry Wilcox, Badge # 1531, Joseph Nehs, Badge # 3501, Sergeant James Fleming, Badge # S-175, and Sergeant Deborah McCreary conduct, Plaintiff sustained physical and emotional injury.
47. PLAINTIFFS REQUEST that this court enter judgment against Defendants in an amount consistent with the damages sustained and in excess of the jurisdictional limit of Twenty-five Thousand dollars (\$25,000.00).

Count IV

City of Detroit And Supervisory Police Officers John and Jane Does (1-5).

48. Plaintiffs incorporate by reference the preceding paragraphs to establish liability against the supervisory police officers.
49. When the events alleged in this complaint occurred, the aforementioned individual Defendant police officers, and City of Detroit Police Officer Supervisors John and Jane Does (1-5), were acting within the scope of their respective employment and under color of law.
50. The City of Detroit is responsible for the acts and omissions of the aforementioned City of Detroit Police Officers and City of Detroit Supervisors, John and Jane Does (1-5), which conduct amounted to callous, reckless or deliberate indifference to the constitutional rights of plaintiff.
51. The City of Detroit Police Officer Supervisors, John and Jane Does (1-5), failed to adequately train, supervise or control the individual officers.

52. The aforementioned City of Detroit Police Officer Supervisors, John and Jane Does (1-5), had a duty to instruct their subordinates, adequately train, supervise or control the individual officers.
53. Defendant police officer supervisors, were in a special custodial relationship with Plaintiff giving rise to affirmative duties on their part to secure constitutionally protected rights, which were (a) his right to liberty protected in both the substantive component of the Due Process Clause of the Fourteenth Amendment that includes personal safety, freedom from captivity, a right to medical care, (b) Fourth Amendment freedom from unreasonable searches and seizures, and (c) his right to fair and equal treatment, as guaranteed and protected by the Equal Protection Clause of the Fourteenth Amendment.
54. Defendant police officer supervisors, John and Jane Does (1-5), were negligent in their failure to train and supervise the subordinate individual police officers in detaining, arresting or providing immediate medical treatment, showed deliberate indifference to Plaintiff's serious medical needs and was a deprivation of his constitutionally protected rights.
55. Defendant police officer supervisors, John and Jane Does (1-5), in disregard of an excessive risk to Plaintiff's health or well-being failed to instruct their subordinates, or adequately train, supervise or control the individual officers.

56. Plaintiff sustained physical and emotional injury, loss of freedom, and other constitutionally protected rights.
57. PLAINTIFFS REQUEST that this court enter judgment against Defendants in an amount consistent with the damages sustained and in excess of the jurisdictional limit of Twenty-five Thousand dollars (\$25,000.00).

Count V
City of Detroit

58. Plaintiffs incorporate by reference the preceding paragraphs.
59. Count V, arises under the Fourth and Fourteenth Amendments, through 42 USC 1983 and fact Defendant City of Detroit, a municipal corporation, authorized, tolerated, ratified, permitted, or acquiesced in the creation of policies, practices, and customs, establishing a de facto policy of deliberate indifference to individuals such as Plaintiff.
60. Plaintiff's constitutionally protected rights, which are (a) his right to liberty protected in both the substantive component of the Due Process Clause of the Fourteenth Amendment that includes personal safety, freedom from captivity, a right to medical care, (b) Fourth Amendment freedom from unreasonable searches and seizures, and (c) his right to fair and equal treatment, as guaranteed and protected by the Equal Protection Clause of the Fourteenth Amendment.
61. Defendant City of Detroit, allowed a custom, policy and practice to develop allowing subordinate individual police officers to use excessive force, shooting fleeing felons, which shows a deliberate indifference to the rights of plaintiff.

62. Defendant City of Detroit, a municipal corporation failed to adequately train, supervise or control the individual officers and police officer supervisors that they must provide immediate medical treatment to a person shot in the middle of committing a crime.
63. The aforementioned Defendant police-officers and supervisors were acting under color of state law, when they took Plaintiff into physical police custody, not allowing his transfer by medical personnel to the hospital or medical treatment.
64. As a direct and proximate result of these policies, practices, and customs, Plaintiff was deprived of his constitutionally protected rights.
65. PLAINTIFFS REQUEST that this court enter judgment against Defendants in an amount consistent with the damages sustained and in excess of the jurisdictional limit of Twenty-five Thousand dollars (\$25,000.00).

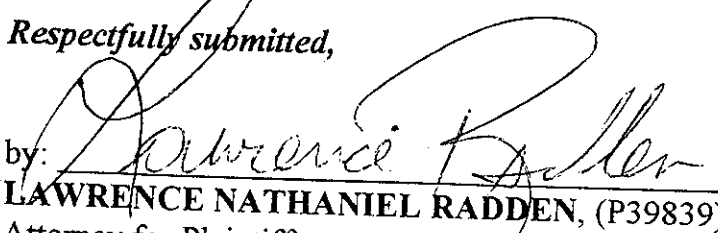
COUNT VI
Gross Negligence Only
City of Detroit Police Officers:

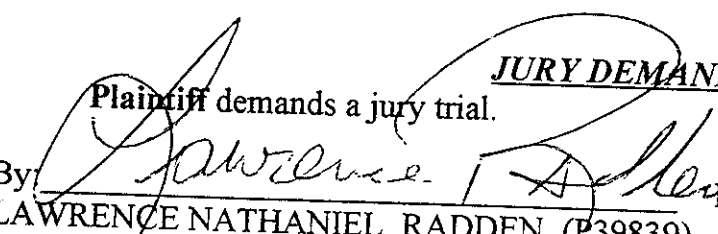
66. Plaintiff incorporates by reference the preceding paragraphs.
67. M.C.L. § 691.1407(2)(c); provides: Police Officers and lower-level government officials qualified-immunity, from liability if their conduct does not amount to gross negligence.
68. Gross negligence is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

69. The individual Defendant police officers Barry Hayward, Badge # 1004, Terry Wilcox, Badge # 1531, Joseph Nehs, Badge # 3501, Sergeant James Fleming, Badge # S-175, and Sergeant Deborah McCreary were acting within the scope of their employment, and had knowledge that the situation regarding Plaintiff required the exercise of ordinary care and diligence to avert his being further injured, and deprived of his civil rights, including medical attention, where instead, they caused him greater injury.
70. The Defendant police officers engaged in conduct so reckless as to demonstrate a substantial lack of concern for whether an injury would result.
71. Defendant police officers were deliberately indifferent, grossly negligent, and/or reckless.
72. Plaintiff may establish gross negligence as an additional burden to establishing the intentional tort of assault and battery.
73. Recklessness that creates a risk that a battery may result may afford a distinct cause of action, and where there is a duty of protection there may be liability. Prosser & Keeton, Torts (5th ed.), §§ 9, 132, pp. 41, 1063; 6 Am.Jur.2d, Assault and Battery, § 128, p. 108.

74. WHEREFORE, Plaintiff demands judgment against the officers,
in excess of \$25,000.00, plus interest and costs; and demand
further relief as this Court may deem just, proper and equitable.

Respectfully submitted,

by:  Dated: _____
LAWRENCE NATHANIEL RADDEN, (P39839)
Attorney for Plaintiff
8443 Grand River, Second Floor
Detroit, MI 48204
(313) 895-7416

JURY DEMAND
Plaintiff demands a jury trial.
By:  Dated: April _____
LAWRENCE NATHANIEL RADDEN, (P39839)
Attorney for Plaintiffs

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRADFORD ERVING,

Plaintiff,

00-013709 NO 4/28/00
JDG: SUSAN D BORMAN
ERVING BRADFORD
VS
DETROIT CITY OF :

-VS-

CITY OF DETROIT, a municipal corporation, BARRY HAYWARD, City of Detroit Police Officer, TERRY WILCOX, City of Detroit Police Officer, JOSEPH NEHS, City of Detroit Police Officer, SERGEANT JAMES FLEMING, City of Detroit Police Supervisor, SERGEANT DEBORAH MCCREARY, City of Detroit Police Supervisor, City of Detroit Police Supervisors JOHN AND JANE DOES (1-5),

Defendants.

LAWRENCE NATHANIEL RADDEN (P39839)
Attorney for Plaintiff
8443 Grand River, Second Floor
Detroit, MI 48204
(313) 895-7416

KRYSTAL A. CRITTENDON (P49981)
Attorney for Defendant City of Detroit
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

FILED
MAY 16 PM 4:20
CLERK OF COURT

**DEFENDANT CITY OF DETROIT'S
ANSWER TO COMPLAINT, RELIANCE ON JURY DEMAND
and NOTICE OF SPECIAL AND AFFIRMATIVE DEFENSES**

NOW COMES the Defendant, CITY OF DETROIT, by and through its attorney, KRYSTAL A. CRITTENDON, and for its Answer to Complaint, Reliance on Jury

Demand and Notice of Special and Affirmative Defenses, states as follows:

1. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
2. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

Jurisdiction and Parties

3. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
4. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
5. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
6. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
7. **OMITTED FROM PLAINTIFF'S COMPLAINT.**
8. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
9. The paragraph thereof corresponding hereto is denied.
10. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
11. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
12. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
13. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
14. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

Count I
Assault and Battery

15. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.

16. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
17. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
18. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

19. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

20. Defendant neither admits nor denies but leaves Plaintiff to proof thereof, including those allegations of injuries contained in subparagraphs a-h.

21. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Count II
FOURTH AMENDMENT VIOLATIONS
Individual Liability

22. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.

23. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

24. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

25. The paragraph thereof corresponding hereto is admitted.

26. The paragraph thereof corresponding hereto is admitted.

27. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

28. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

29. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

30. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

31. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

32. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

33. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

34. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

35. Defendant neither admits nor denies but leaves Plaintiff to proof thereof, including those allegations of injuries contained in subparagraphs a-h.

36. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Count III

***FOURTH and FOURTEENTH AMENDMENT VIOLATIONS
Individual Liability for Deliberate Indifference***

37. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.

38. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

39. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

40. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

41. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

42. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

43. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

44. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

45. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

46. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

47. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Count IV
City of Detroit and Supervisory Police Officers John and Jane Does (1-5).

48. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.

49. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

50. The paragraph thereof corresponding hereto is denied.

51. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

52. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

53. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

54. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

55. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

56. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.

57. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Count V
City of Detroit

58. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.

59. The paragraph thereof corresponding hereto is denied.

60. The paragraph thereof corresponding hereto is denied.

61. The paragraph thereof corresponding hereto is denied.

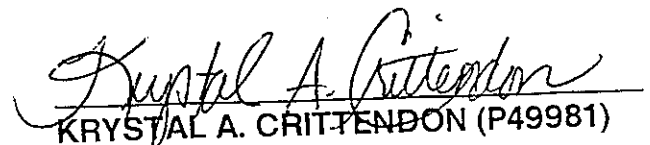
62. The paragraph thereof corresponding hereto is denied.

63. The paragraph thereof corresponding hereto is denied.
64. The paragraph thereof corresponding hereto is denied.
65. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Count VI
Gross Negligence Only
City of Detroit Police Officers

66. Defendant incorporates by reference answers to the preceding paragraphs to defend against liability.
67. The paragraph thereof corresponding hereto is admitted.
68. The paragraph thereof corresponding hereto is admitted.
69. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
70. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
71. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
72. The paragraph thereof corresponding hereto is denied.
73. Defendant neither admits nor denies but leaves Plaintiff to proof thereof.
74. **WHEREFORE IT IS RESPECTFULLY** demanded that judgment of no cause of action be entered herein, or in the alternative, that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

Respectfully submitted,


KRISTAL A. CRITTENDON (P49981)

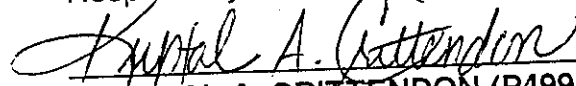
Assistant Corporation Counsel
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

DATED: May 15, 2000

RELIANCE ON JURY DEMAND

NOW COMES the Defendants, CITY OF DETROIT, by and through its attorney, KRYSTAL A. CRITTENDON, and hereby gives notice of its reliance on Plaintiff's demand for trial by jury.

Respectfully submitted,



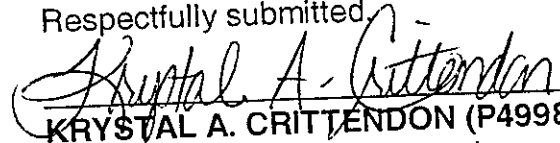
KRYSTAL A. CRITTENDON (P49981)
Assistant Corporation Counsel
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

DATED: May 15, 2000

DEMAND FOR COMPULSORY JOINDER OF ALL CLAIMS

NOW COMES the Defendant, CITY OF DETROIT, demanding that Plaintiff join any and all claims arising out of the same transaction, acts and occurrences.

Respectfully submitted,



KRYSTAL A. CRITTENDON (P49981)
Assistant Corporation Counsel
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

DATED: May 15, 2000

SPECIAL AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, CITY OF DETROIT, by its undersigned counsel and sets forth its Special and Affirmative Defenses as follows:

1. That the Defendant, CITY OF DETROIT, is governmentally immune pursuant to MCL 691-1401 et seq. for the following reasons:
 - (a) That the Defendant is a governmental agency;
 - (b) That the Defendant is entitled to immunity from tort liability when engaged in the exercise or discharge of a governmental function;
 - (c) That the allegations contained in Plaintiffs' Complaint involve activities which are governmental functions, for the reason, that they are expressly or impliedly mandated or authorized by constitution, statute, ordinance or other law;
 - (d) That the allegations contained in Plaintiffs' Complaint do not fall within any statutory or common law exception to Defendant's governmental immunity.
2. Plaintiffs have failed to set forth a cause of action upon which relief can be granted.
3. Defendant asserts as an affirmative defense that Plaintiffs have failed to mitigate damages.
4. That Defendant, CITY OF DETROIT, is or may be without jurisdiction.
5. That the statute of limitations is, or may be, a bar to Plaintiffs' claim for damages.
6. AND FURTHER, that this claim is barred for failure to exhaust statutory,

administrative and other available remedies.

7. Plaintiffs have failed to join every legal or equitable claim which arises out of the transaction or occurrence which is the subject matter of the instant action.

8. That any injury to Plaintiff was due to and caused by the negligence and/or omission of the Plaintiff to care for himself which carelessness and/or negligence and/or omissions were the proximate cause of the damage, if any, to the Plaintiff.

12. That any injury or damage suffered by Plaintiff was caused by reason of Plaintiff's wrongful acts and conduct and/or the willful resistance to a peace officer in the discharge, and/or attempt to discharge the duty of his office and not by reason or any unlawful acts or omission of this Defendant.

13. The actions of the Defendant and its employees were lawful and proper and that probable cause existed for the arrest of the Plaintiffs.

14. The actions of the Defendant and its employees in all respects were reasonable, proper and legal.

15. AND FURTHER, that if Plaintiff sustained any injury, damage, or loss, the same was solely and proximately occasioned by the carelessness, heedlessness and negligence of Plaintiff in failing to act in a reasonable, prudent manner, acting without due care and circumspection and in a manner dangerous to or likely to endanger Plaintiff's own safety, and not because of any act or omission of or chargeable to the Defendant herein.

16. Defendant City of Detroit, further affirmatively avers that the individual Defendants herein were not employed to become involved in any altercation with Plaintiff and that any altercation which may have occurred and any injuries which may have resulted therefrom, occurred while said employees were not acting within the scope of any

employment for Defendant, City of Detroit, but were exclusively acting in an individual capacity.

17. That the City of Detroit is governmentally immune from the imposition of tort liability and is not vicariously liable for the alleged tortious acts of its employees.

18. That pursuant to 42 USC Section 1983, the City of Detroit is not liable for exemplary or punitive damages in any sum or at all.

19. To the extent it alleges a violation arising under the Constitution of the United States, Plaintiff's Complaint fails to state a claim against Defendant City upon which relief may be granted.

20. To the extent it alleges a violation of 42 USC 1983, Plaintiff's complaint fails to state a claim upon which relief may be granted.

WHEREFORE IT IS RESPECTFULLY demanded that judgment of no cause of action be entered herein, or in the alternative that the said cause be dismissed, with prejudice, and costs and attorney fees awarded to the Defendant.

RESERVATION OF AFFIRMATIVE DEFENSE

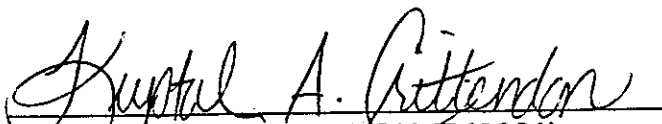
21. The Defendant in the above-entitled cause, by and through the undersigned attorney, not waiving any deficiency or omission in any pleadings heretofore or hereafter filed by any other party hereto, hereby reserves the right to assert and file any affirmative and special defense as may become known by discovery proceedings in accordance with rules and practices of this Court in such case made and provided, or otherwise.

DEMAND FOR REPLY

22. Defendant, CITY OF DETROIT, demands a reply to each and every

Affirmative Defense set forth herein.

Respectfully submitted,



KRYSTAL A. CRITTENDON (P49981)
Assistant Corporation Counsel
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3018

DATED: May 15, 2000

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRADFORD ERVING,

Plaintiff,

-VS-

00-013709 NO 4/28/00
JDB: SUSAN D BORMAN
ERVING BRADFORD
VS
DETROIT CITY OF

CITY OF DETROIT, a municipal
corporation, BARRY HAYWARD,
City of Detroit Police Officer, TERRY
WILCOX, City of Detroit Police Officer,
JOSEPH NEHS, City of Detroit Police Officer,
SERGEANT JAMES FLEMING, City of
Detroit Police Supervisor, SERGEANT
DEBORAH MCCREARY, City of Detroit
Police Supervisor, City of Detroit Police
Supervisors JOHN AND JANE DOES (1-5),

Defendants.

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
County of Wayne)

TO: LAWRENCE NATHANIEL RADDEN (P39839)
Attorney for Plaintiff
8443 Grand River, Second Floor
Detroit, MI 48204

I verify that on May 16, 2000 , I served a copy of Defendant City of Detroit's Motion for Summary Disposition, Brief in Support, Notice of Hearing, Motion Praecipe and Proof of Service upon the above-named counsel of record by enclosing the same in a sealed envelope.

According to the routine practice of the City of Detroit Law Department, items picked up by our Mail Clerk are weighed, appropriate first-class postage is affixed and the Mail Clerk mails the items on the day she/he received them if he/she receives them before 4:30 p.m., or on the following day if she/he received them later than that time.

Rosalyn Woodward
ROSALYN WOODWARD

37
MAY 16 PM 11:20
RECEIVED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRADFORD ERVING,

Plaintiff,

Wayne Cty. Circ. Case No: 00-013709-NO
Wayne Cty. Circ. Judge Susan Borman

-vs-

00-72284

CITY OF DETROIT, a municipal corporation, BARRY HAYWARD, City of Detroit Police Officer, TERRY WILCOX, City of Detroit Police Officer, JOSEPH NEHS, City of Detroit Police Officer, SERGEANT JAMES FLEMING, City of Detroit Police Supervisor, SERGEANT DEBORAH MCCREARY, City of Detroit Police Supervisor, City of Detroit Police Supervisors JOHN AND JANE DOES (1-5),

Defendants.

LAWRENCE P. ZATKOFF
MAGISTRATE JUDGE SCHEER

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
County of Wayne)

TO: CLERK OF THE COURT
United States District Court

U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT

'00 MAY 18 P 3:41

FILED

I verify that on May 17, 2000 , I served a copy of **Notice of Removal of Civil Action** by enclosing the same in a sealed envelope. According to the routine practice of the City of Detroit Law Department, items picked up by or Mail Clerk are weighed, appropriate first-class postage is affixed and the Mail Clerk mails the items on the day she/he received them if he/she receives them before 4:30 p.m., or on the following day if she/he received them later than that time.


ROSALYN WOODWARD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED