

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Joseph Gray,

Plaintiff,

vs.

City of Detroit, a municipal corporation,
Eric O'Neil, James Pearce, R.C. Buffington,
David Levalley, Anthony Lyons, Chad Bristol,
Gaylon Porter, and Blake Johnson,
jointly and severally,

Defendants.

Samuel Posner (P-19025)
1400 Penobscot Building
Detroit, Michigan 48226
(313) 965-7784

Jerry L. Ashford (P-47402)
City of Detroit Law Department
1650 First National Building
Detroit, Michigan 48226
(313) 224-4550

03-73510

VICTORIA A. ROBERTS

MAGISTRATE JUDGE R. STEVEN WHALEN

FILED
2003 SEP 12 PM 3:58
U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. §§1441 and 1443(2), Defendant City of Detroit removes this civil action predicated upon the following:

1. On August 12, 2003, Plaintiff commenced this action in the Third Judicial Circuit of Michigan. This action is now pending before that court.
2. On August 28, 2003, Plaintiff served a summons and copy of the complaint upon Defendant.
3. On information and belief, Plaintiff has not served any other defendant named in this matter. The information upon which this belief is based includes:
 - a. Defendants Eric O'Neil, James Pearce, R.C. Buffington, David Levalley,

Anthony Lyons, Chad Bristol, Gaylon Porter, and Blake Johnson are not presently represented by this office.

b. Plaintiff alleges Defendants Eric O'Neil, James Pearce, R.C. Buffington, David Levalley, Anthony Lyons, Chad Bristol, Gaylon Porter, and Blake Johnson are now, or were at the time of the incident underlying this action, employed by the City of Detroit as police officers. In accordance with standard procedure, when city employees, including its police officers, receive civil process arising from some manner of employment related act or omission, the employee reports to the City of Detroit Law Department. There the employee presents the summons and complaint received. A search of Law Department records reflects Defendants Eric O'Neil, James Pearce, R.C. Buffington, David Levalley, Anthony Lyons, Chad Bristol, Gaylon Porter, and Blake Johnson have neither reported nor presented any Summons or copies of the Complaint in this matter.

c. In accordance with standard procedure, when served, Defendants Eric O'Neil, James Pearce, R.C. Buffington, David Levalley, Anthony Lyons, Chad Bristol, Gaylon Porter, and Blake Johnson are expected to report to the City of Detroit Law Department, present the summons and complaint received. In the ordinary course of operations, this office would then undertake their representation. It is the undersign's design and intent that each defendant represented by this office, whether now or in the future, will join, at the appropriate time in the removal of this action.

4. Plaintiff's Complaint alleges he resided in Wayne County, Michigan at all relevant times.

5. This is a civil action in which Plaintiff seeks monetary relief for alleged misconduct by Defendants allegedly arising from a deprivation of certain constitutionally guaranteed rights. Because Plaintiff bases this action in part on the United States Constitution and 42 U.S.C. §1983, Defendants remove this action to this Court, invoking the Court's federal question jurisdiction.

6. In accordance with 28 U.S.C. §§1331 and 1334, this Court has original jurisdiction of this civil action. In accordance with 28 U.S.C. §§1441(a) and 1443(2), and this Court's pendent jurisdiction, it is removed in its entirety to this Court.

7. Copies of all process, pleadings, and orders served upon Defendants in this matter are attached.

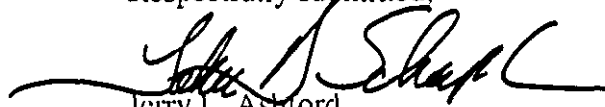
8. This notice is filed within thirty days after service of Summons and a copy of the

Complaint upon each defendant served.

9. The undersigned has prepared a written notice of the removal of this action. Such notice has been provided to both counsel for Plaintiff and the clerk of the court from which this matter is removed. Promptly after filing this Notice of Removal of Civil Action, the undersigned will file a copy with the clerk of the court from which this action is removed, and provide, by first class mail, a copy to Plaintiff's counsel.

Predicated upon the authorities cited and the facts presented above, Defendant City of Detroit removes this action to this court.

Respectfully submitted,



Jerry L. Ashford
City of Detroit Law Department
1650 First National Building
Detroit, Michigan 48226
(313) 224-4550

DATED: 11 SEPTEMBER 2003

STATE OF MICHIGAN
THIRD CIRCUIT COURT

CASE NO.

03-326849 NO



**SUMMONS AND
RETURN OF SERVICE**

COURT
ADDRESS: 2 WOODWARD AVENUE, DETROIT, MICHIGAN 48226

COURT
TELEPHONE NO. (313) 224- 5243

THIS CASE ASSIGNED TO JUDGE: SUSAN D BORMAN

Bar Number: 11016

PLAINTIFF

DEFENDANT

GRAY JOSEPH

PL 01 VS DETROIT CITY

RECEIVED
AUG 28 2003

PLAINTIFF'S ATTORNEY

CITY OF DETROIT
LAW DEPARTMENT

SAMUEL POSNER
(F-19025)
645 GRISWOLD ST
1400 PENOBSCOT BLDG.
DETROIT, MI 48226-4105
313-965-7784

CASE FILING FEE PAID		JURY FEE PAID
ISSUED 03/12/03	THIS SUMMONS EXPIRES 11/11/03	DEPUTY COUNTY CLERK SALLY B STALLWORTH

*This summons is invalid unless served on or before its expiration date. Cathy M. Garrett - Wayne County Clerk

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

- You are being sued.
 - YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
 - If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The docket number and assigned judge of the civil/domestic relations action are:

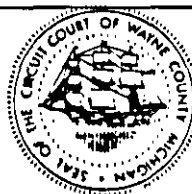
Docket no.	Judge	Bar no.

The action remains is no longer pending.

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

Date _____

Shawn Sutherland / ss
Signature of attorney/plaintiff



COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

JURY FEE PAID
THIS DATE:

BY: AUG 12 2003

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH GRAY,

Plaintiff,

v

Civil Action 03-

-NO

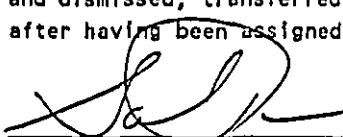
326849

CITY OF DETROIT, a municipal corporation, ERIC O'NEIL, JAMES PEARCE, R.C. BUFFINGTON, DAVID LEVALLEY, ANTHONY LYONS, CHAD BRISTOL, GAYLON PORTER, and BLAKE JOHNSON, jointly and severally,

Defendants.

POSNER, POSNER AND POSNER
By: Samuel Posner - P 19025
Attorneys for Plaintiff

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.



Attorney for Plaintiff

COMPLAINT AND DEMAND FOR JURY TRIAL

COUNT I. VIOLATION OF CIVIL RIGHTS

NOW COMES plaintiff, by and through his attorneys, Posner, Posner and Posner, and for his Complaint against the defendants herein, jointly and severally, says as follows:

1. That plaintiff is a resident of the City of Detroit, Wayne County, Michigan.

2. That the amount in controversy exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars, and that this Court has jurisdiction over the subject matter herein.

3. That the City of Detroit is a municipal corporation and operates a police department known as the Detroit Police Department.

4. That on or about 10-28-00, defendants ERIC O'NEIL, JAMES PEARCE, R.C. BUFFINGTON, DAVID LEVALLEY, ANTHONY LYONS, CHAD BRISTOL, GAYLON PORTER, and BLAKE JOHNSON, each of whom is being sued in his/her individual capacity, were police officers employed by the City of Detroit and the Detroit Police Department.

5. That at all times herein, the defendants were acting in concert and/or combination and/or conspiracy with each other and/or with other persons and/or officers.

6. That at all times herein, the defendants were acting under color of state law.

7. That at all times herein, the defendants were acting in bad faith.

8. That on or about 10-28-00, at or around Bentler in the City of Detroit, defendant police officers, together and in combination with other officers, did then and there intentionally, wantonly, willfully, maliciously, oppressively and wrongfully stop, seach, and arrest plaintiff without probable cause, and beat, strike, kick, and assault plaintiff about his body, specifically including, but not limited to, beating him in the head, beating him until he was unconscious, beating him so badly that

hospitalization was required, handcuffing him too tightly so as to cause injury, and using mace or pepper spray or other substance on him, all causing serious and permanent injuries to plaintiff, both physical and mental injuries, and great pain and suffering as hereinafter set forth.

9. That said officers used excessive, unreasonable and unnecessary force when no such force was justified.

10. Further, that defendant officers had both the duty and the power to prevent or aid in the prevention of the commission of said wrongful acts against the plaintiff, and prevent the violation of his civil and constitutional rights, but neglected or refused to do so.

11. That plaintiff was arrested without probable cause, that defendant O'Neil did prepare a false investigator's report/request for warrant in order to cover up the improper beating of the plaintiff and violation of plaintiff's civil rights, but that the warrant request was denied by the Wayne County Prosecuting Attorney who wrote his conclusion that there was no probable cause to arrest or tackle the plaintiff.

12. That plaintiff had a right to be protected from intentional, wanton, willful, malicious, purposeful, deliberate, grossly negligent, recklessly indifferent, and wrongful conduct by the said police officers and governmental defendant which conduct resulted in physical and mental injuries to the plaintiff and in violation of plaintiff's civil rights.

13. Defendants had a duty toward the plaintiff under the United States Constitution and the federal civil rights laws,

specifically including 42 USC § 1983, to refrain from acting or failing to act so as to violate plaintiff's civil rights.

14. Each of the individual defendants breached those duties to the plaintiff and violated plaintiff's civil rights by the acts and omissions and failures to act, as pled herein.

15. That it was the policy, practice, custom and usage of defendant City to encourage violations of the civil rights of persons by its conduct and inaction which was grossly negligent and/or deliberately indifferent to the civil rights of persons and to constitutional violations by its officers, which conduct and inaction included, but is not limited to:

- (a) Failure to correct unconstitutional conditions and practices.
- (b) Failure to completely and properly investigate all prior complaints of police violence against prisoners and citizens.
- (c) Failure to promulgate and enforce regulations regarding the proper treatment of prisoners and citizens by officers, and for the intervention by officers who witness the mistreatment of persons at the hands of other officers and have the power to prevent same.
- (d) Failure to take proper disciplinary action against officers who had mistreated prisoners and/or citizens.
- (e) Allowing a pervasive and established pattern of constitutional violations to become a de facto policy by failing to take action against same or to prevent same.
- (f) Inadequate, grossly inadequate, or non-existent training and supervision of officers, including training and supervision with regard to the use of excessive force.
- (g) Failing to give adequate and proper psychological tests to prospective officers.
- (h) Failing to give periodic adequate and proper psychological tests to officers in order to relieve officers found to be psychologically unfit or give them adequate treatment.

- (i) Failing to adequately and properly investigate the employment history, background and fitness of persons it hired as officers.
- (j) Failing to promulgate, follow, and enforce regulations concerning checking the employment history, background, and fitness, and psychological fitness of persons being hired as officers.
- (k) Retaining persons as officers even after their negative employment history, background, and/or fitness for duty was discovered and/or should have been discovered.

16. That the policy, practice, custom and usage of defendant City, and its conduct and inaction, was a proximate cause of the violation of plaintiff's civil rights and of the injuries and damages to the plaintiff.

17. That the plaintiff had a right to be protected from the wrongful conduct by defendant City which conduct resulted in injuries and damages to the plaintiff.

18. That plaintiff had the following rights, privileges and/or immunities, among others, guaranteed her under the United States Constitution and laws of the United States:

- (a) the right to due process of law;
- (b) the freedom from illegal and/or unreasonable seizure of his person;
- (c) the freedom from arbitrary and unreasonable interference by the police;
- (d) the freedom from unnecessary force;
- (e) the freedom to be secure in one's person and one's home;
- (f) the freedom from being unlawfully assaulted and/or beaten;
- (g) the freedom from unnecessary suffering;

- (h) the freedom from unnecessary and wanton infliction of pain;
- (i) the freedom from cruel and unusual punishment;
- (j) the right to equal protection of the laws; and
- (k) the right to liberty.

19. That by reason of the wrongful conduct by defendants, plaintiff was deprived of the rights, privileges and/or immunities guaranteed him by the United States Constitution and laws as set forth above.

20. That the wrongful conduct by defendants constituted a violation of the civil rights of plaintiff and a violation of 42 USC §1983.

21. That the defendants, acting under color of law and right, by said wrongful conduct, deprived plaintiff of the civil rights guaranteed him by 42 USC §1983, of the laws of the United States in effect at the time of the injuries inflicted upon the plaintiff by said defendants, said statute reading as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, or any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

22. That as a direct and proximate result of the wrongful conduct of defendants and the violations of plaintiff's civil rights, plaintiff, as herein alleged, plaintiff sustained serious and permanent injuries to his body and person, both physical and mental injuries, including but not limited to injuries to his

head, face, eyes, neck, back, chest, ribs, arms, wrists, carpal tunnel sundrome, radial neuropathy, complete conduction block of the left radial sensory nerve at the wrist, shoulders, including separation of the acromioclavicular joint, hands, legs, knees, urinary tract, blood in the urine, unconsciousness, closed head injury/traumatic brain injury, and all sequelae thereof, memory loss, and mental, psychological and neuropsychological injuries, as well as aggravation of any and all pre-existing conditions.

23. That plaintiff's injuries are continuing and are permanent in nature.

24. That as a direct and proximate result of said wrongful conduct, plaintiff was forced to undergo, and will in the future continue to undergo medical treatment and care, was forced, and in the future will continue to be forced, to expend large sums of money and incur bills for hospital and medical treatment, and for medicines, x-rays, testing and drugs.

25. That as a direct and proximate result of said wrongful conduct, plaintiff has suffered, and will in the future continue to suffer, great pain and suffering, mental anguish, fright and shock, denial of social pleasures and enjoyments, embarrassment, and humiliation.

26. That as a direct and proximate result of the intentional, wanton, willful, malicious, and oppressive manner in which said wrongful conduct was committed, plaintiff suffered, and will in the future continue to suffer, additional great mental anguish, embarrassment, outrage, fright and shock, mortification, indignity and humiliation.

27. That as a direct and proximate result of said wrongful conduct, plaintiff has suffered, and will in the future continue to suffer, great loss of earnings and earning capacity, and that plaintiff's earning capacity has been and will in the future continue to be greatly and/or permanently impaired.

28. That as a direct and proximate result of said wrongful conduct, plaintiff incurred substantial liabilities for attorney fees.

WHEREFORE, plaintiff asks judgment for compensatory damages as well as exemplary damages for whatever amount plaintiff is found to be entitled against the defendants, jointly and severally, plus punitive damages against the individual defendants in the amount of Two Million (\$2,000,000.00) Dollars, plus actual reasonable attorney fees and costs pursuant to 42 USC § 1988, plus statutory interest, court costs and attorney fees.

COUNT II. GROSS NEGLIGENCE

1-11. Plaintiff reasserts and realleges each and every allegation set forth in ¶¶1-10 of Count I of this Complaint as if fully set forth herein.

12. The individual defendants had a duty toward plaintiff under statute and the common law to refrain from acting or failing to act with gross negligence, defined by MCLA 691.1407(2)(c) as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

13. Each of the individual defendants breached his duties to the plaintiff by his grossly negligent, reckless, wilful,

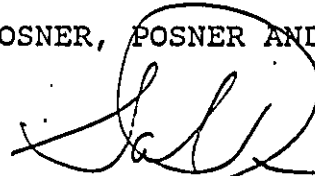
wanton and indifferent acts and failures to act, as previously pled, conduct so reckless under the particular circumstances then and there existing as to demonstrate a substantial lack of concern for whether an injury results.

14. That as a direct and proximate result of said wrongful conduct by defendants and by any other persons acting in concert with defendants, plaintiff has suffered the injuries and damages heretofore set forth in ¶¶ 22-28 of Count I of this Complaint.

WHEREFORE, plaintiff asks judgment for compensatory damages as well as exemplary damages for whatever amount plaintiff is found to be entitled, plus court costs and attorney fees, against all of the individual defendants, jointly and severally.

PLAINTIFF DEMANDS TRIAL BY JURY
AS TO ALL COUNTS OF THE COMPLAINT

POSNER, POSNER AND POSNER



By: Samuel Posner - P 19025
Attorneys for Plaintiff
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