

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

KELVIN FRANKLIN

PLAINTIFF

v.

Cause No.: 4:23-CV-165-SA-JMV

CITY OF INDIANOLA, MISSISSIPPI, CHIEF
RONALD SAMPSON, In His Individual and
Official Capacity, OFFICER GREG CAPERS,
In His Individual and Official Capacity, and
JOHN DOES 1-5, In Their Individual and
Official Capacities

DEFENDANTS

COMPLAINT

(Jury Trial Demanded)

COMES NOW, Plaintiff Kelvin Franklin (hereinafter "Plaintiff"), by counsel, and files this his *Complaint* against City of Indianola, Mississippi, Chief Ronald Sampson, in his individual and official capacity, Officer Greg Capers, in his individual and official capacity, and John Does 1-5, in their individual and official capacities to recover actual and punitive damages for the Defendants violation of the Plaintiff's Fourth (4th) Amendment right to be free from excessive force, Fourteenth (14th) Amendment rights to substantive due process without intentional exposure to known danger, and all other claims made actionable pursuant to 42 U.S.C. §1983 and also the common law right to be free from actions of city law enforcement evincing reckless disregard for the Plaintiff made actionable pursuant to the Mississippi Tort Claims Act ("MTCA"), and Mississippi common law and would show unto the Honorable Court the following, to wit:

PARTIES

1. **Plaintiff** is an adult resident citizen of Sunflower County, Mississippi, residing in Sunflower County, Mississippi.

2. **City of Indianola, Mississippi (hereinafter “Defendant City”)** is a city entity that may be served with process by service on Kaneilia Williams, City Clerk, at 101 Front Street, Indianola, MS 38751.
3. **Defendant Chief Ronald Sampson (hereinafter “Defendant Chief”)**, employed with the City of Indianola, MS, is an adult resident citizen of Sunflower County, Mississippi, and he may be served with process at his place of employment, at 300 Second Street, Indianola, MS 38751.
4. **Defendant Officer Greg Capers (hereinafter “Defendant Officer Capers”)**, employed with the City of Indianola, MS, is an adult resident citizen of Sunflower County, Mississippi, and he may be served with process at his place of employment, at 300 Second Street, Indianola, MS 38751.
5. **Defendant Officer John Does 1-5 (hereinafter “Defendant Does”)**, whose identities are presently unknown, are employed with the City of Indianola, MS, are adult resident citizens of Mississippi, and they may be served with process at their place of employment, at 300 Second Street, Indianola, MS 38751.

JURISDICTION and VENUE

6. This action is being brought pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(a)(3) and 42 U.S.C. §1983 and includes any and all state law claims plead herein below for which jurisdiction and venue are attached thereto, specifically, but not limited to Title 11, Chapter 46, known as the Mississippi Tort Claims Act.
7. Venue is proper in the Northern District of Mississippi, pursuant to 28 U.S.C. §1391 since a substantial part of the events and omissions giving rise to this claim occurred in this judicial district.

FACTS

8. At all relevant times, the actions involved in this case are the result of official policy of Defendant City of Indianola, either of the City's implemented policy, or the City's gross negligence or reckless disregard in failing to supervise its employees through their designee chief of police, or the chief's gross negligence or reckless disregard in the training and monitoring of his officers.
9. This is a claim for negligence and excessive force filed by Plaintiff that caused significant injuries to them as a result of the actions of Defendant Officer Capers on December 30th, 2022. Defendants breached their duty to monitor, care for, and provide necessary safety to civilians, by deliberately aimed a firearm at Plaintiff and tased him while detained in handcuffs. These actions established a willful and wanton indifference to Plaintiff's physical and mental welfare, violating their constitutional rights under the 4th and 14th Amendments.
10. On or about December 30th, 2022, around 7:46p.m., Plaintiff (an active military member – Staff Sergeant), was on his way home from Camp Shelby to Indianola, MS with his fiancé's cousin.
11. Once Plaintiff arrived to the residence, he exited the vehicle but forgot to get his parking decal from inside of the vehicle. At this time, Plaintiff tried to stop the car so that he could retrieve his parking decal from inside.
12. As Plaintiff was attempting to retrieve his items from the vehicle, his fiancé misjudged the circumstances and called 911. This dispatcher was yet another relative of Plaintiff's fiancé, who then directed Defendant Officer Capers to the residence.

13. Upon the arrival of Defendant Officer Capers, Plaintiff informed him that he was only there to retrieve his bag because he was heading back to Camp Shelby as soon as possible.
14. Furthermore, Mr. Franklin informed Defendant Officer Capers and Doe that he was carrying a firearm. Defendant Officer Doe took possession of Plaintiff's firearm, but Plaintiff was still denied permission to leave. Instead, he was placed in handcuffs by Officer Doe.
15. Suddenly, Defendant Officer Capers withdrew his firearm and directed it towards Plaintiff. Plaintiff stated "why would you want to shoot me. I haven't done anything for you to shoot me." Defendant Officer Capers put the gun back in his holster and grabbed his taser.
16. While Plaintiff was detained in handcuffs, Defendant Officer Capers tased him three to four times on the false pretense of resisting arrest, despite Mr. Franklin already being detained. Defendant Officer Capers also choked Plaintiff while he was detained in handcuffs. The incident was recorded by body camera footage and a personal recording.
17. At all times relevant herein, Mr. Franklin alerted Defendant Officers Capers and Doe that he was experiencing pain and only had use of one kidney.
18. Mr. Franklin and his condition was deliberately ignored, and he was transported to the Sunflower County Jail where paramedics evaluated him but no treatment was administered.
19. Mr. Franklin was released from jail the following day, and he went to Forrest General Hospital where he learned that his kidney was dehydrated. As a result of the

subject misconduct of the aforementioned officers, Mr. Franklin sustained injuries and damages.

20. Based upon information and belief, Defendant Officer Capers was an employee of Defendant City, at the time of the subject incident.

21. At all times herein, Defendant Chief was the commanding officer through the entire incident and responsible for the actions and/or omissions of the aforementioned officer.

22. The injuries endured by Plaintiff could have been avoided if Defendants would have acquired the adequate training on how to provide proper assistance and care. However, as a result of the Defendants' deliberate indifference, reckless disregard and gross negligence, Plaintiff sustained injuries and damages.

COUNT ONE

(Violation of 4th and 14th Amendment Rights under 42 U.S.C. §1983 and 28 U.S.C. §1343 et al.)

23. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

24. Plaintiff would show unto the Court that the Defendants, with reckless disregard for Plaintiff's rights, took actions to deprive Plaintiff of his 4th and 14th Amendment rights.

25. Plaintiff suffered damages as a result of the aforementioned conduct as set heretofore and/or hereinafter that resulted in Plaintiff's injuries.

COUNT TWO

(Excessive Force)

26. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

27. Plaintiff would show unto the Court that the Defendants took actions to deprive Plaintiff of his 4th Amendment protection against excessive force.

COUNT THREE
(Negligent/Intentional Infliction of Emotional Distress/ Bystander's Claim)

28. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

29. Plaintiff claims that he suffered serious emotional distress as a result of being tased while detained in handcuffs, with a firearm aimed towards him by Defendant Officer Capers. Plaintiff also suffered trauma to the neck, right hand, stomach, and body as a whole of Kelvin Franklin by Officer Capers.

30. The conduct of Defendant Capers was a substantial factor in causing Plaintiff's serious emotional distress, including, but not limited to: anguish, fright, horror, nervousness, post-traumatic stress disorder, anxiety, shock, humiliation, and shame that an ordinary, reasonable person would be unable with which to cope.

COUNT FOUR
(Reckless Endangerment)

31. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

32. Plaintiff would show unto the Court the Defendants took actions that recklessly endangered the safety and well-being of Plaintiff.

COUNT FIVE
(Civil Assault and Battery)

33. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

34. Defendants are liable for civil assault and battery. Plaintiff alleges that Defendant Officer Capers intentionally, with reckless disregard and/or negligently inflicted extreme emotional distress upon their minds, spirits, and bodies by tasing and choking Plaintiff while he was detained in handcuffs. Defendants have caused the

Plaintiff to suffer from emotional problems and mental anxiety as well as bodily pain and suffering.

35. The reprehensible acts of the Defendants demonstrate grossly negligent, oppressive and reckless conduct.

36. As a direct and proximate result of aforementioned Defendants' negligent, grossly negligent, reckless, and/or intentional acts and omissions, Plaintiff sustained the damages set forth herein and all damages that will be proved at trial hereon.

**COUNT SIX
(Abuse of Process)**

37. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

38. Defendants intentionally misused the legal process by tasing Plaintiff while, he was detained in handcuffs.

39. The elements of malice or ulterior motive should be inferred from the Defendant Officer Capers' willful abuse of process.

40. If such inference fails, malice specifically exists in that Defendant Officer Capers acted with malice and conscious disregard for the rights of Plaintiff in that their ulterior purpose in misusing the legal process was to severely harm Plaintiff while not executing their lawful duties to actually serve and protect Plaintiff and other similarly stated individuals.

41. As a proximate result of Defendants' abuse of process, Plaintiff suffered damages.

**COUNT SEVEN
(Negligent, Grossly Negligent, and Wanton Failure in Hiring and to Monitor, Train, Supervise, and Discipline or take necessary Corrective Action on the Officer Involved)**

42. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

43. Defendants, City and Chief Sampson, were grossly negligent and/or wanton in failing to monitor the actions of the Defendant Officer Capers. They further negligently and/or wantonly failed to train the aforementioned Defendants to properly protect, investigate, and/or interrogate Plaintiff and other similarly situated individuals. Defendants negligently and/or wantonly failed to properly follow and/or apply their own city and law enforcement rules, ordinances, regulations, policies and procedures, as well as state law generally. The City of Indianola, Mississippi and Chief Sampson failed to properly supervise the actions of Defendant Officer Capers. Defendant City failed to properly supervise the actions of Defendant Officer Capers.

44. As a direct and proximate result of the Defendants' negligent, grossly negligent, reckless and/or intentional acts or omissions, the Plaintiff sustained the damages set forth herein and all damages that will be proved at trial hereon.

45. The Defendants, the City of Indianola, Mississippi and Chief Sampson were vested with the authority to hire, fire, and discipline employees of the Indianola Police Department.

46. The decision by the Defendants City and Chief Sampson to hire, train, and retain and not discipline this Officer resulted in the creation of an environment of excessive force and violence.

47. As a direct and proximate consequence of the negligent hiring, retention and failure to discipline or to take the necessary corrective action in the past, regarding officers on the force, the aforementioned Defendants are liable for the unlawful choking and tasing of Plaintiff while detained in handcuffs.

COUNT EIGHT
(Reckless Disregard for the Rights and Safety of the Plaintiffs)

48. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

49. The act(s) and/or omission(s) of the City of Indianola, Mississippi, Chief Sampson, and Officer Capers, constitute a reckless disregard for the rights and safety of the Plaintiff herein. Further, these act(s) and/or omission(s) were perpetrated with such callousness that a reasonable person can certainly conclude that these act(s) and/or omission(s) were carried out without any regard as to their effects. Therefore, the act(s) and/or omission(s) constitutes a reckless disregard for the rights and safety of the Plaintiffs as defined under Mississippi law.

50. The act(s) and/or omission(s) of the City of Indianola, Mississippi, Chief Sampson, and Officer Capers were a proximate cause as to the Plaintiff's injuries as well as the damages and losses suffered by the Plaintiff.

COUNT NINE
(Respondeat Superior)

51. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

52. Defendant Officer Capers was in the course and scope of his employment with Defendant City, at all relevant times immediately subsequent and preceding the incident in question, and therefore, Defendant City is liable for the negligence of its employee Officer Capers.

COUNT TEN
(The Common Law Tort of Outrage)

53. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

54. The Defendants' overall conduct on the date in question was so outrageous that it shocks the moral and legal conscience of the community. This outrageous conduct

resulted in Plaintiff suffering serious physical injuries. The manner, method and design of the Defendants conduct amounted to a cold, callous, premeditated abuse of legal authority.

55. As a direct and proximate consequence of the outrageous conduct of the aforementioned Defendants, the Defendants are jointly and severally liable to the Plaintiff for such outrageous conduct. Thus, Plaintiff is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission such outrageous conduct toward him.

PRAYER FOR APPROPRIATE RELIEF

Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

As a result of the intentional and/or reckless disregard and/or grossly negligent and/or other negligent acts of Defendants named herein, Plaintiff has suffered severe and permanent damages for which the Defendants should be held jointly and vicariously liable.

All Defendants are jointly and severally liable to Plaintiff for the following damages: past, present and future physical pain to Plaintiff, suffering and mental anguish and emotional anguish; and all other damages to be proved at trial.

Plaintiff brings this action against all Defendants and demands judgment and compensatory damages, as a result of the negligent and/or intentional acts enumerated herein in an amount to be determined by this Court.

The acts of Defendants enumerated herein were so grossly negligent and reckless; utterly offensive; and were committed with such utter disregard for the rights of Plaintiff and others similarly situated as to amount to willful, wanton, and/or intentional misconduct, thereby entitling Plaintiff to an award of punitive damages to be determined by the Court,

with this amount being sufficient to deter these Defendants from continuing this conduct in the future.

WHEREFORE, THE ABOVE BEING CONSIDERED, Plaintiff respectfully prays for judgment against all Defendants, compensatory damages, punitive damages, any and all damages allowed by Mississippi or federal law, pre-judgment interest, post-judgment interest, attorney's fees, Veasley type damages, and all costs of this proceeding with such final amount being at least \$500,000.00 or an aggregate sum equal to the maximum amount of recovery allowed by the Mississippi Tort Claims Act plus any recovery to be determined by a jury and allowed under any applicable state or federal law and guidelines.

THIS, the 28th day of August, 2023.

KELVIN FRANKLIN, Plaintiff

By: *s/ Carlos E. Moore*
Carlos E. Moore, MSB# 100685

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