

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE**

Mariah R. Smith vs. City of Wauwatosa et al

**Electronic Filing
Notice**

Case No. 2023CV006625

Class Code: Unclassified

CITY OF WAUWATOSA
7725 W NORTH AVE.
MILWAUKEE WI 53213

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City Clerk's Office

FILED

09-01-2023

Anna Maria Hodges

Clerk of Circuit Court

2023CV006625

Honorable Lindsey Grady-
23

Branch 23

9-7-23

3:23pm

Carol M. Smith

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If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4140.

Milwaukee County Circuit Court
Date: September 1, 2023

FILED
09-01-2023
Anna Maria Hodges
Clerk of Circuit Court
2023CV006625
Honorable Lindsey Grady-
23
Branch 23

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

MARIAH R. SMITH,


Plaintiff,

v.

CITY OF WAUWATOSA,
7725 W North Ave.
Wauwatosa, WI 53213,

CAPTAIN LUKE VETTER,
1700 North 116th Street
Wauwatosa, WI 53226,

LIEUTENANT JEFFREY FARINA,
1700 North 116th Street
Wauwatosa, WI 53226,

POLICE OFFICER BENJAMIN ZIEGLER,
1700 North 116th Street
Wauwatosa, WI 53226,

ABC DEFENDANTS, the fictitious name for
unknown corporations or entities,

and

DEF INSURANCE COS., the fictitious name for
unknown insurance companies,

Defendants.

Case No.:

SUMMONS

Unclassified – 30703
Personal Injury Other - 30107

THE STATE OF WISCONSIN

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, WI 53233, and to GINGRAS, THOMSEN & WACHS, LLP plaintiff's attorneys, whose address is 219 N. Milwaukee Street, Suite 520, Milwaukee, WI 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee this 1st day of September, 2023.

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

By: Electronically signed by Attorney Mark L. Thomsen
Mark L. Thomsen
State Bar No. 01018839

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STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
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MARIAH R. SMITH,


Plaintiff,

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CITY OF WAUWATOSA,
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Wauwatosa, WI 53213,

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ABC DEFENDANTS, the fictitious name for
unknown corporations or entities,

and

DEF INSURANCE COS., the fictitious name for
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Defendants.

Case No.:

COMPLAINT

Unclassified – 30703
Personal Injury Other - 30107

NOW COMES Plaintiff, Mariah R. Smith, by her attorneys, the law firm of Gingras, Thomsen & Wachs, LLP, by Attorney Mark L. Thomsen, and submits this complaint against the above-named Defendants, alleges and shows the Court as follows:

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights to be free of excessive force under the laws as secured by the Fourth and Fourteenth Amendments of the United States Constitution.

II. THE PARTIES

A. Plaintiff

2. Plaintiff Mariah Smith (hereinafter "Ms. Smith"), whose date of birth is [REDACTED] was [REDACTED] years old and at all times relevant hereto, was an adult resident of the State of Wisconsin and resides at [REDACTED] Ms. Smith suffered injuries on September 5, 2020, as a result of the defendant's unlawful conduct as alleged herein. At all material times hereto, Ms. Smith was entitled to all rights and privileges granted by the United States Constitution. Ms. Smith is African American.

B. Defendants

3. Defendant City of Wauwatosa (hereinafter "Wauwatosa"), with the offices of its executive at 7725 West North Avenue, Wauwatosa 53213, is and was at all times a Municipal Corporation organized under the laws of the State of Wisconsin. Wauwatosa established, operated and maintained Wauwatosa Police Department (hereinafter "WPD") at all times material hereto; Wauwatosa is ultimately responsible for the training, supervising, and discipline of WPD employees and the creation and implementation of its policies and procedures through its Chief of

Police, and had ultimate control and authority over WPD and all Defendants, and pursuant to Wis. Stat. § 895.46, is obligated to indemnify all Defendants in this action.

4. Defendant Luke Vetter (hereinafter “Cpt. Vetter”) is an adult citizen of the State of Wisconsin and a resident of the State of Wisconsin. At the time, Defendant Cpt. Vetter was a lieutenant with WPD at all times relevant to this action and was acting under color of law and within the scope of his employment with the WPD or Wauwatosa at all times relevant hereto.

5. Defendant Jeffrey Farina (hereinafter “Lt. Farina”) is an adult citizen of the State of Wisconsin and a resident of the State of Wisconsin. At the time, Defendant Lt. Farina was a lieutenant with WPD at all times relevant to this action and was acting under color of law and within the scope of his employment with the WPD or Wauwatosa at all times relevant hereto.

6. Defendant Benjamin Ziegler (hereinafter “Ofc. Ziegler”) is an adult citizen of the State of Wisconsin and a resident of the State of Wisconsin. At the time, Defendant Ofc. Ziegler was an officer with WPD at all times relevant to this action and was acting under color of law and within the scope of his employment with the WPD or Wauwatosa at all times relevant hereto.

7. That at the present time, the defendants, ABC Defendants, are the fictitious name for unknown persons, corporations or entities, duly organized and existing under and by virtue of the laws of the State of Wisconsin or any other state; that on information and belief, ABC Defendants who acted under color of law and within the scope of the WPD or Wauwatosa at all times relevant hereto and used unreasonable or excessive force against the plaintiff; that ABC Defendants are proper defendants herein and are directly liable to the plaintiff for all of the plaintiff's injuries and damages as set forth herein; that pursuant to Wis. Stat. sec. 807.12, ABC Defendants are being inserted in place of the real and proper defendants, which as soon as their identity is ascertained will be substituted in place of ABC Defendants.

8. That at the present time, the defendants, DEF Insurance Cos. (hereinafter “DEF Ins.”) are the fictitious name for unknown insurance companies, the identity and location of which is unknown, that are engaged in the business of writing and selling liability insurance; that upon information and belief prior to the date of this incident, September 5, 2020, DEF Ins. issued a policy or policies of liability insurance to the defendants, ABC Defendants, their agents, servants and/or employees, for claims such as those hereafter set forth; that said policy or policies of insurance were in full force and effect at the time of the incident described below; that in said contract(s) of insurance, DEF Ins. reserved the right to settle or adjust any claims arising hereunder and to defend any lawsuits instituted by virtue of any such claims and have a direct interest in this litigation; that DEF Ins. are proper defendants herein and are directly liable to the plaintiffs for all of the plaintiff’s injuries and damages as set forth herein; that pursuant to Wis. Stat. sec. 807.12, DEF Ins. are being inserted in place of the real and proper insurance company defendants, which as soon as their identity is ascertained will be substituted in place of DEF Insurers.

III. FACTUAL ALLEGATIONS

9. Ms. Smith was born and raised in Milwaukee, Wisconsin.

10. Ms. Smith attended grade school in Wauwatosa and is a 2010 graduate of Wauwatosa West High school.

11. Ms. Smith attended University of Wisconsin - Whitewater to study early childhood education and attended University of Wisconsin – Milwaukee for one semester in 2012 to study kinesiology.

12. Ms. Smith returned to continue her education in early childhood education when she matriculated at Milwaukee Area Technical College in 2020.

13. On Saturday, September 5, 2020, at 11:29 p.m., Ms. Smith was a passenger in a vehicle driven by Ms. Katelyn Harvey (hereinafter “Ms. Harvey”).

14. Ms. Harvey was also transporting Mr. Brandon Wilborn.

15. Ms. Harvey was one of a number of vehicles driving in a caravan on Highway 100 in Wauwatosa.

16. Ms. Harvey noticed that police officers blocked Highway 100 and turned left on North Avenue and drove west.

17. Ms. Harvey then took a U-turn at 114th street near a Denny’s restaurant and drove east.

18. Ms. Harvey then turned right to head south on Highway 100.

19. Ms. Harvey’s vehicle was stopped by WPD officers at N. Mayfair Road and Ms. Smith got out of the vehicle.

20. Ms. Smith was running southbound on N. Mayfair Road when, Cpt. Vetter yelled to Ms. Smith, “Get the fuck on the ground!”

21. Cpt. Vetter moved toward Ms. Smith and violently grabbed her, slammed her head against the vehicle, and took her to the ground.

22. After Ms. Smith was on the ground and handcuffed, Cpt. Vetter and/or ABC Defendants lifted and slammed Ms. Smith’s face into the ground and struck his knee against Ms. Smith’s left knee.

23. Ms. Smith’s knee was aggressively pinned to the ground while Ofc. Ziegler and/or ABC Defendants pressed their knee forcefully against the back of Ms. Smith’s neck.

24. During the entire disturbing episode, Ms. Smith screamed in pain and agony.

25. Ms. Smith was physically searched and her property was removed by Ofc. Ziegler

and/or ABC Defendant.

26. Ms. Smith was arrested, was placed in a paddy wagon and was driven to the Wauwatosa Police Station located at 1700 N. 116th Street, and ultimately issued a citation for disorderly conduct.

27. After her arrival at the WPD, Ms. Smith was booked and processed.

28. During the booking process, Ms. Smith complained of lightheadedness and requested medical attention.

29. Wauwatosa Fire Department responded and assessed Ms. Smith's by taking her vitals. Ms. Smith was cleared of any immediate medical emergencies, and eventually released.

30. A few short hours following her release from WPD, Ms. Smith went to the Froedtert Hospital Emergency Department and Trauma Center at 4:24 a.m., on September 6, 2020.

31. Ms. Smith told Dr. Paul Benz that she was attacked by WPD officers shortly before midnight and that she was kneed in the abdomen and that her head struck the ground when she was assaulted by members of the WPD.

32. Ms. Smith reported that her head was "pounding" and that she vomited prior to her arrival.

33. Ms. Smith told Dr. Benz that she had pain in her abdomen, left knee, left ankle, limited ability to open her jaw, and her ability to walk was severely limited following the assault.

34. Ms. Smith received Tylenol and ibuprofen to relieve her pain and Zofran to ameliorate her nausea.

35. Dr. Brady McIntosh ordered CT scans of Ms. Smith's chest, left knee, left hip, left pelvis, left ankle, and head.

36. The CT scans revealed no acute fractures or dislocations of the left knee, left hip,

left pelvis, head, or chest.

37. Ms. Smith was diagnosed with a concussion head injury and left leg pain, along with abrasions to her chin, and musculoskeletal pain.

38. Ms. Smith was released with orders to continue to use over the counter medication and ice for pain relief and to follow up with her primary care physician should her condition deteriorate.

39. On September 9, 2020, Ms. Smith returned to Froedtert Hospital because of pain throughout her body.

40. Ms. Smith was evaluated by PA-C Lauren Sweeney.

41. Ms. Smith reported that she had pain in her jaw, left leg, and lower left ribs following an assault by the WPD officers four days earlier.

42. Ms. Smith reported that she vomited on the same day and had an extremely painful headache.

43. Ms. Smith told PA-C Sweeney that the pain in her ribs was intermittent and occurred when she coughed.

44. Ms. Smith reported to PA-C Sweeney that the pain in her left leg was prominent when she attempted to ambulate.

45. PA-C Sweeney reviewed the CT scans from Ms. Smith's prior visit to the hospital and found that there were no fractures.

46. PA-C Sweeney noted that the ongoing headaches were secondary to post-concussion syndrome.

47. Ms. Smith requested crutches to assist with ambulation due to her leg pain.

48. PA-C Sweeney advised that Ms. Smith follow up with her primary care physician

should her pain continue and was discharged with prescriptions for hydrocodone/acetaminophen and lidocaine patch. Ms. Smith sustained damages, including, but not limited to, past medical expenses, past and future, pain, suffering, loss of enjoyment of life and emotional distress and all other damages allowed under the law.

**IV. FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS
CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS
– EXCESSIVE FORCE**

49. Plaintiff realleges and incorporates by reference the allegations of all the preceding paragraphs.

50. At all relevant times herein, the above-named Defendants were “persons” for purposes of 42 U.S.C. § 1983 and acted under color of state law to deprive Ms. Smith of her constitutional rights.

51. At all material times hereto, the Defendants used unnecessary, excessive force, including but not limited, aggressively grabbing, pulling, and pinning of Ms. Smith’s leg and neck and slamming of Ms. Smith’s head while she was detained and on the ground.

52. That at that time the Defendants used excessive force and there was no threat of death or serious bodily harm to the officers or any person in the area.

53. The Defendants’ conduct constituted excessive force without any cause or justification in violation of Ms. Smith’s Fourth Amendment Rights as incorporated by Fourteenth Amendment.

54. At all times material, the Defendants were WPD Officers acting under color of law and were acting in the scope of their employment.

55. That the described conduct of the part of the Defendants as set forth above was a cause of the plaintiff’s injuries, losses, and damages as set forth herein.

56. The Defendant, the City of Wauwatosa, is liable pursuant to Wis. Stat. § 895.46 for payment of any judgment entered against the individual employee Defendants in this action because said Defendants were acting within the scope of their employment when they committed the acts described above.

**V. SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS
CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS
– FAILURE TO INTERVENE**

57. Plaintiff realleges and incorporates by reference all the allegations in the preceding paragraphs.

58. As Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and ABC Defendants knew, Ms. Smith had committed no crime and there was no reason to suspect that she was about to commit a crime.

59. Before Ms. Smith suffered from the excessive force described above, Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and/or ABC Defendants had the opportunity to intervene and prevent all the injuries and injuries, damages, and losses that Ms. Smith suffered as a result of the unlawful conduct and excessive use of force.

60. At the moment Ms. Smith was slammed on the ground by Lt. Farina, Ms. Smith was already cooperating, and Cpt. Vetter, Ofc. Ziegler, and/or ABC Defendants could have intervened to prevent Ms. Smith from being injured and the constitutional deprivation of her rights.

61. At the moment Cpt. Vetter lifted and slammed Ms. Smith's face into the ground struck his knee against her, Ms. Smith was already cooperating and on the ground, and Lt. Farina Ofc. Ziegler, and/or ABC Defendants could have intervened to prevent Ms. Smith from being injured and the constitutional deprivation of her rights.

62. As a result of the failures by the Defendants to intervene, Ms. Smith suffered injuries, losses and damages as set forth herein.

**VI. THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS
CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS
– PUNITIVE DAMAGES**

63. Plaintiff realleges and incorporates by reference all the allegations in the preceding paragraphs.

64. That the above-described conduct of Defendants Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and/or ABC Defendants was unlawful, extreme, malicious, and/or intentional.

65. That such conduct was intended to cause Ms. Smith unnecessary personal physical, psychological, and emotional injuries.

66. That such conduct by Defendants Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and/or ABC Defendants was a cause of personal, physical, psychological, emotional and economic injuries suffered by Ms. Smith.

67. At all times material hereto, Defendants Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and/or ABC Defendant acted maliciously and/or with reckless disregarding and/or with deliberate indifference towards Ms. Smith or in an intentional disregard of her rights, such as to subject the defendants to punitive damages.

68. The Defendant, the City of Wauwatosa is liable pursuant to Wis. Stat. § 895.46 for payment of any judgment entered against their employee defendants in this action because said defendants were acting within the scope of their employment when they committed the acts described above.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, as follows:

a. Against Defendants Cpt. Vetter, Lt. Farina, Ofc. Ziegler, and ABC Defendants in their individual capacities, for compensatory damages, for the violation of Ms.

Smith's rights, as set forth above, in an amount to be determined at a trial of this matter;

b. Against Defendant Cpt. Vetter for punitive damages for the violation of Ms.

Smith's rights, as set forth above, in an amount to be determined at a trial of this matter;

c. Against Defendant Lt. Farina for punitive damages for the violation of Ms.

Smith's rights, as set forth above, in an amount to be determined at a trial of this matter;

d. Against Defendant Ofc. Ziegler for punitive damages for the violation of

Ms. Smith's rights, as set forth above, in an amount to be determined at a trial of this matter;

e. Against Defendant City of Wauwatosa for its liability pursuant to Wis. Stat.

§ 895.46 to indemnify the individual Defendants in and amount to be determined at a trial of this matter;

f. For all costs, disbursements, and actual attorneys' fees pursuant to 42

U.S.C.A. § 1988, and for such other relief as the Court deems just and equitable.

**PLAINTIFF HEREBY DEMANDS A JURY TRIAL OF THIS MATTER ON ALL
ISSUES SO TRIABLE.**

Dated at Milwaukee this 1st day of September, 2023.

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

By: Electronically signed by Attorney Mark L. Thomsen
Mark L. Thomsen
State Bar No. 01018839

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