

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Anthony Promvongsa,

Civil Action No: _____

Plaintiff,

v.

Joe Joswiak; Tim Gaul; Dan Brouillet;
Troy Appel; Nathan Grimmus;
Worthington Police Department; City of
Worthington Buffalo Ridge Drug Task
Force; all individuals being sued in their
individual and official capacity.

COMPLAINT

Jury Trial Demanded

Defendants.

Plaintiff Anthony Promvongsa, by his undersigned attorneys of record alleges:

STATEMENT OF CLAIMS

1. Plaintiff seeks money damages and equitable relief from Defendants for violating his constitutional rights, and injunctive relief to prevent injury to himself in the future. He also brings forward supplemental claims for violations of Minnesota state law.

2. Plaintiff was the victim of excessive force by Defendants Joe Joswiak and Tim Gaul in violation of the Fourth Amendment to the U.S. Constitution and Minnesota state tort laws.

3. Plaintiff brings suit under 42 U.S.C. § 1983.

4. Plaintiff has served notice of his state law claims in compliance with Minn. Stat § 466.05.

JURISDICTION

5. This Court has jurisdiction over the claims in this Complaint pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights), 28 U.S.C. § 2201 (declaratory relief), and 42 U.S.C. §§ 1981, 1983, and 1988.

6. This Court has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1367.

7. This action arises under the United States Constitution as applied to state and/or local authorities through 42 U.S.C. § 1983.

VENUE

8. Venue is proper in this district based on 28 U.S.C. § 1391(b), as Defendants are residents of this district and the acts or occurrences giving rise to these claims occurred in this district.

PARTIES

9. Plaintiff Anthony Promvongsa resides in Worthington, MN. Plaintiff is a Laotian male and a member of a protected class. He was 21 years old at the time of the incidents described in this Complaint.

10. Defendants are all, upon information and belief, Minnesota municipal entities and/or individual members of law enforcement agencies, in an appointed or elected capacity.

11. Defendant City of Worthington operates the Worthington Police Department (WPD), a law enforcement agency, and is a municipality capable of being sued under Minnesota law. The city is the legal entity responsible for the WPD. Plaintiff bases all

applicable and appropriate claims as to Defendant City of Worthington and the WPD on the doctrines of respondeat superior or vicarious liability, and municipal liability pursuant to *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978).

12. Defendant Buffalo Ridge Drug Task Force (BRDTF) is a multi-county task force of which the WPD is a member. Plaintiff bases all applicable and appropriate claims as to Defendant BRDTF on the doctrines of respondeat superior or vicarious liability, and municipal liability pursuant to *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978).

13. Defendant Troy Appel was, at all times relevant, the Chief of Police of the WPD. He is sued in his personal, official, and individual capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law.

14. Defendant Nathan Grimmus was, at all times relevant, the commander of the BRDTF. He is sued in his personal, official, and individual capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law.

15. Defendant Tim Gaul was, at all times relevant, an officer in the WPD. He is sued in his personal, official, and individual capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law.

16. Defendant Joe Joswiak was, at all times relevant, an officer in the WPD assigned to the BRDTF. He is sued in his personal, official, and individual capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law.

17. Defendant Dan Brouillet was, at all times relevant, an officer in the WPD. He is sued in his personal, official, and individual capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law.

18. All Defendant law enforcement officers, agents and/or employees were, at all times relevant to this Complaint, working as on or off duty licensed Minnesota peace officers acting under color of state law and within the scope and course of their official duties and employment as officers.

FACTS

19. On or about July 28, 2016, Plaintiff was driving in Worthington, Minnesota, headed to an orientation to obtain his GED.

20. While driving on a residential street, Plaintiff came up behind a slower moving car which he learned later was being driven by off-duty Worthington police officer, Colby Palmersheim. Mark Riley, who is also a Worthington police officer and was off duty at the time, was sitting in the front passenger seat. The car was not marked in any way as a police vehicle.

21. Plaintiff attempted to pass Officer Palmersheim's car.

22. Upon information and belief, Officer Palmersheim sped up to 30 mph to prevent Plaintiff from passing him.

23. Officer Palmersheim stopped his car in the road and exited the vehicle with a gun in his hand. Officer Riley also exited the car, and both officers stood in the road preventing Plaintiff from passing them.

24. Plaintiff was scared and asked the officers to let him pass, but they continued to block his path.

25. Plaintiff pulled into a driveway and turned around to get away from the officers because they would not move out of his way or explain why they were stopping him from driving forward.

26. Upon information and belief, Officer Riley used his personal cell phone to call Defendant Joe Joswiak and told him to stop Plaintiff for a driving violation.

27. Upon information and belief, neither Riley nor Palmersheim called the WPD to report any incident or unlawful behavior.

28. Upon information and belief, Defendant Joswiak was driving an unmarked police car because he was currently assigned to the BRDTF.

29. As a BRDTF officer, Defendant Joswiak's duties do not include enforcing traffic violations.

30. Upon information and belief, Defendant Joswiak observed Plaintiff driving on 9th Avenue, and trailed Plaintiff for approximately half a mile.

31. Defendant Tim Gaul, who was on duty for the Worthington Police Department, received a call from dispatch and drove to the area.

32. Upon information and belief, as Defendant Gaul drove to the area, his dash cam video and microphone were activated.

33. Defendant Gaul saw Plaintiff driving in the opposite direction on 9th Street. He activated his squad car lights and turned his car around to initiate a traffic stop. At this

point, Plaintiff saw the lights of Defendant Joswiak's car in his rear view mirror. At no point had Defendant Joswiak activated a siren.

34. Plaintiff immediately pulled over for Defendant Gaul.

35. Defendant Joswiak strode quickly toward Plaintiff's car, passing Defendant Gaul, with his gun drawn.

36. Defendant Joswiak yelled, "Get the fuck out of the car, motherfucker. Show me your fucking hands."

37. Before Plaintiff had time to comprehend what was happening and comply with Defendant Joswiak's commands, Defendant Joswiak pulled open Plaintiff's door. Defendant Joswiak pointed his loaded weapon at Plaintiff.

38. Defendant Gaul walked around the back of Plaintiff's car to the passenger side. At no time did Defendant Gaul unholster his weapon; however, upon information and belief, Defendant Gaul did turn off the microphone on his dash cam.

39. Defendant Joswiak grabbed Plaintiff by the shoulders to pull him out of the car. However, Plaintiff was still in his seatbelt and could not be pulled out.

40. Apparently, frustrated that the seatbelt was stopping Plaintiff from exiting the car, Defendant Joswiak kned Plaintiff three times.

41. Plaintiff's cries of pain can be heard on the dash cam video until Defendant Gaul appears to mute the microphone.

42. Defendant Gaul remained on the passenger side of the car and failed to prevent Defendant Joswiak's assault on Plaintiff or to intervene in any way to protect Plaintiff.

43. Upon information and belief, Defendant Dan Brouillet arrived on the scene during Defendant Joswiak's assault on Plaintiff, witnessed the same, and similarly failed to prevent Joswiak's assault.

44. Plaintiff's seatbelt came off during Defendant Joswiak's assault, but this did not slow down Defendant Joswiak's brutal attack.

45. Defendant Joswiak kneed Plaintiff again and, after kneeing him, punched Plaintiff knocking him back toward the passenger seat.

46. Defendant Joswiak grabbed Plaintiff and pulled him halfway out of the car.

47. As Plaintiff was forced halfway out, Defendant Joswiak squeezed Plaintiff's neck and placed his elbow hard on Plaintiff's back.

48. Defendant Joswiak then delivered four straight punches to the back of Plaintiff's head and neck, causing Plaintiff to come out of one of his shoes.

49. Defendant Joswiak used his elbow to deliver a strong blow to the back of Plaintiff's head, causing Plaintiff's other shoe to come off.

50. At this point, Defendant Gaul walked around Plaintiff's car to assist Defendant Joswiak.

51. The two officers grabbed Plaintiff's arms and Defendant Joswiak attempted to push Plaintiff's neck straight down without letting his arms lower, causing more pain.

52. Once Plaintiff managed to get one knee on the ground, Defendant Joswiak placed his knee on Plaintiff's neck.

53. At the same time, Defendant Gaul pulled Plaintiff's right arm high above his head, causing pain.

54. Plaintiff's raised his feet off the ground to try to relieve the pressure on his back and alleviate the pain Defendants Joswiak and Gaul were causing him.

55. The assault lasted approximately 45 seconds.

56. After Plaintiff was handcuffed, Defendant Gaul made him stand and allowed him to slip his shoes back on.

57. Plaintiff was placed in the back of Defendant Gaul's squad car. Once in the car, a separate microphone captured noises inside the squad.

58. On the microphone, Plaintiff can be heard crying from the pain he was experiencing.

59. After Plaintiff was placed into the squad car, Defendants Gaul, Joswiak, and Brouillet searched his car before talking amongst themselves. It is unclear what Defendants were searching for, but they recovered no weapons of any kind.

60. Defendant Gaul transported Plaintiff to the Nobles County jail.

61. During the drive, Plaintiff informed Defendant Gaul that his neck "didn't feel right."

62. Defendant Gaul asked if his neck was bleeding and, when Plaintiff responded that his neck was not bleeding, Defendant Gaul continued to drive to the jail.

63. As Defendant Gaul got close to the police station, he pulled the squad car over to the side of the road to question Plaintiff and check his license. Upon information and belief, this is the first time any of the officers involved checked Plaintiff's driving status.

64. When Plaintiff mentioned that he was in pain, Defendant Gaul said, “I know,” but kept asking him questions for another minute before continuing along.

65. Plaintiff was brought to Nobles County Jail before being brought to the hospital.

66. Officer Palmersheim and Defendant Joswiak both wrote reports alleging Plaintiff committed the offense of reckless driving. Upon information and belief, Defendant Brouillet neglected to write a report.

Violations of Policy

67. Upon information and belief, Defendants Joswiak, Gaul, and Brouillet failed to fill out Use of Force reports.

68. This oversight is normal practice or custom for officers in the WPD and BRDTF, and upon information and belief, neither department disciplines officers for failing to document their use of force. WPD and BRDTF do not take seriously the excessive force used by its officers despite the widespread community concerns expressed by lawyers, nurses and by the public. Use of Force reports are also a well-established best practice for police departments.

69. Upon information and belief, neither the City of Worthington, the WPD, nor the BRDTF have conducted any investigation into Plaintiff’s assault, despite their awareness of it and despite such after-incident investigations being best practice for police departments.

Excessive Force violation

70. On July 28, 2016, Plaintiff had a clearly-established constitutional right to be free from excessive force.

71. Plaintiff did not pose any threat to Defendant Joswiak, other officers, or civilians. Indeed, Defendant Joswiak testified under oath that he beat Plaintiff only because Plaintiff did not comply with his orders.

72. Defendant Joswiak knew or reasonably should have known of the danger he placed Plaintiff into by his assault.

73. Defendant Gaul pulled Plaintiff's arms back in a dangerous manner and he knew or reasonably should have known that such an action could result in pain and harm to Plaintiff.

74. The actions of Defendants Joswiak and Gaul constituted clear excessive force.

75. Defendants Gaul and Brouillet had an obligation to stop Defendant Joswiak during his attack on Plaintiff, yet they did nothing to intercede.

76. Upon information and belief, the WPD, BRDTF, and their employees have been sued before for excessive force violations, and the WPD and BRDTF failed to investigate or take corrective action to prevent these excessive force violations from happening again.

77. Defendants' actions deprived Plaintiff of his right to be free from excessive force and they were motivated by an unconstitutional enforced policy, pattern of practice, or custom by the WPD and BRDTF. The WPD and BRDTF do not enforce their

excessive force policies, they do not properly document incidents of force, they do not investigate allegations of excessive force, and they engage in a policy, pattern of practice, or custom of failing to reprimand or discipline any officer for excessive force.

Defendants' failure to address excessive force by WPD and BRDTF officers amounted to tacit approval of the use of excessive force.

78. All Defendants were state actors acting under color of state law.

Injunctive Relief

79. As a result of the excessive force to which he was subjected, Plaintiff felt violated and degraded. Defendants violently attacked Plaintiff without any justifiable legal cause. Plaintiff fears that he could experience similar arbitrary and unjustifiable attacks by Defendant agencies and individuals in the future. Plaintiff continues to live and work in the Worthington community. He is also concerned that police will target him because he reported the incident and has now commenced a lawsuit.

COUNT I

42 U.S.C. § 1983 (Fourth Amendment – Excessive Force) Defendants Gaul and Joswiak

80. All previous paragraphs are incorporated herein by reference as though fully set forth.

81. Plaintiff makes a claim under 42 USC § 1983 for violation of the Fourth Amendment of the U.S. Constitution.

82. The Fourth Amendment does not permit Defendants to use excessive force. "The right to be free from excessive force in the context of an arrest is clearly established

under the Fourth Amendment.” *Small v. McCrystal*, 708 F.3d 997, 1005 (8th Cir. 2013) (citation omitted).

83. “We analyze the excessive force claims of pretrial detainees under an objective reasonableness standard.” *Ryan v. Armstrong*, 850 F.3d 419, 427 (8th Cir. 2017). *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473 (2015).

84. “Circumstances relevant to the reasonableness of the officer’s conduct include ‘the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.’” *Brown v. City of Golden Valley*, 574 F.3d 491, 496 (8th Cir. 2009) (citation omitted).

85. The individual Defendants’ use of force against Plaintiff was not reasonable under the circumstances, and was excessive.

86. Wherefore, as a direct and proximate result of the actions of Defendants Gaul and Joswiak, Plaintiff has suffered damages in an amount in excess of \$100,000.00.

COUNT II

42 U.S.C. § 1983 (Monell) City of Worthington, Worthington Police Department, Buffalo Ridge Drug Task Force, Defendants Appel and Grimmus

87. All previous paragraphs are incorporated herein by reference as though fully set forth.

88. Municipal bodies are liable for constitutional violations under 42 U.S.C. § 1983 when execution of its official policy or custom deprives an individual of its rights protected under the Constitution. *Monell*, 436 U.S. at 694-95.

89. Such municipal liability exists where a city fails to properly train, supervise, and discipline its employees amounting in a deliberate indifference to one's constitutional rights. *See City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989); *Patzner v. Burkett*, 779 F.2d 1363, 1367 (8th Cir. 1985); *Wellington v. Daniels*, 717 F.2d 932, 936 (4th Cir. 1983).

90. At all times relevant, Defendant City of Worthington, the WPD, and Defendant BRDTF had a duty to properly train, supervise, and discipline their employees and agents.

91. Defendants breached that duty, in part, by:
- a. Improperly training, authorizing, encouraging or directing officers on proper use of force.
 - b. Failing to investigate allegations of excessive force.
 - c. Failing to discipline officers for violations of policy related to excessive force.

92. The policy, pattern of practice, or custom of condoned misconduct is tacitly or overtly sanctioned, as evidenced by the conduct of Defendants Joswiak, Gaul, and Brouillet and the Defendant entities' failure to train, supervise, investigate, and discipline any of the officers involved in this incident amounting in a deliberate indifference to Plaintiff's constitutional rights.

93. This unconstitutional behavior of officers is carried out pursuant to a policy, pattern of practice, or custom, whether formal or informal, which violates the constitutional rights of persons situated such as the Plaintiff.

94. Defendants Troy Appel and Nathan Grimmus failed to take sufficient remedial actions to end this policy, pattern of practice, or custom within the WPD and BRDTF.

95. The condoning of misconduct, and the failure to end this policy, pattern of practice, or custom was a proximate cause to the injuries suffered by Plaintiff.

96. Wherefore, as a direct and proximate cause of the actions of the Defendants, Plaintiff has suffered damages in an amount in excess of one hundred thousand dollars (\$100,000.00).

COUNT III
42 U.S.C. § 1983 (Fourth Amendment – Duty to Intervene)
Defendants Gaul and Brouillet

97. All previous paragraphs are incorporated herein by reference as though fully set forth.

98. Plaintiff brings this claim under 42 USC § 1983 for violation of the Fourth Amendment of the U.S. Constitution.

99. Defendant Joswiak's use of force against Plaintiff was excessive.

100. Defendants Gaul and Brouillet had a duty to intervene and protect Plaintiff but failed to do so in violation of *Putman v. Gerloff*, 639 F.2d 415 (8th Cir. 1981).

101. Wherefore, as a direct and proximate result of Defendant Gaul's and Brouillet's actions, Plaintiff has suffered damages in an amount in excess of \$100,000.00.

COUNT IV
Intentional Torts: Assault, Battery, False Arrest, False Imprisonment, Intentional
Infliction of Emotional Distress
against Individually-named Defendants

102. All previous paragraphs are incorporated herein by reference as though fully set forth.

103. All of the individual Defendants named in this Complaint are employees, deputies and/or agents of municipalities.

104. All acts of the individual Defendants alleged above were conducted within the scope of the Defendants' employment or duties.

105. The actions of the individual Defendants were willful, malicious and in violation of the known rights of Plaintiff.

106. On July 28, 2016, Defendant Joswiak committed assault and battery upon Plaintiff when he intentionally pointed his loaded gun at Plaintiff, and inflicted bodily harm by kneeling, punching, and elbowing Plaintiff several times, as well as forcibly dragging Plaintiff out of his car.

107. On July 28, 2016, Defendant Gaul committed assault and battery upon Plaintiff by intentionally inflicting or attempting to inflict bodily harm when he pulled Plaintiff's right arm high above his head to put handcuffs on him, causing pain.

108. Defendant Gaul, without probable cause or articulated suspicion, handcuffed and put Plaintiff in his squad car before ever asking Plaintiff to confirm his identity and the legality of his Minnesota ID card.

109. Defendant Gaul falsely imprisoned Plaintiff in his squad car while he and Defendants Joswiak and Brouillet searched his vehicle. Plaintiff's false imprisonment continued as Defendant Gaul transported Plaintiff to the Nobles County Jail, pulling his squad car over just before reaching the jail to further question Plaintiff. It was not until Defendant Gaul was inside the perimeter of the Nobles County Jail when he verified Plaintiff's Minnesota ID.

110. At all times, Plaintiff knew he was imprisoned by Defendant Gaul.

111. Defendants' conduct was intentional and done through the assertion of legal authority over Plaintiff.

112. Defendants' extreme and outrageous conduct intentionally or recklessly caused severe emotional distress to Plaintiff.

113. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff has suffered damages in an amount in excess of \$100,000.00.

COUNT V

**Negligence: Negligent Hiring, Negligent Retention, Negligent Supervision,
Negligent Infliction of Emotional Distress
against City of Worthington, Worthington Police Department, Buffalo Ridge
Drug Task Force, Defendants Gaul and Brouillet**

114. All previous paragraphs are incorporated herein by reference as though fully set forth.

115. All of the individual Defendants named in this Complaint are employees, deputies and/or agents of municipalities.

116. All acts of the individual Defendants alleged above were conducted within the scope of the Defendants' employment or duties.

117. Defendants City of Worthington, the WPD, and the BRDTF owed a duty of care to Plaintiff to exercise reasonable care in hiring, retaining, and supervising its employees.

118. Defendants City of Worthington, the WPD, and the BRDTF knew or should have known of Defendant Joswiak's, Gaul's, and Brouillet's dangerous character based on prior complaints of excessive force violations and/or background checks including psychological evaluations.

119. Defendants City of Worthington, the WPD, and the BRDTF breached their duty of care to Plaintiff by failing to properly supervise, provide training, and take remedial measures, such as discharge or reassignment, against their employees to ensure the safety of Plaintiff.

120. Defendants Gaul and Brouillet are superior officers to Defendant Joswiak. Each owed Plaintiff a duty of care to properly supervise Defendant Joswiak.

121. Defendants Gaul and Brouillet breached their duty of care by not properly supervising Officer Joswiak in the incident with Plaintiff.

122. As a result of Defendants' negligent acts, Plaintiff reasonably feared for his safety and has suffered severe emotional distress.

123. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff has suffered damages in an amount in excess of \$100,000.00.

DECLARATORY RELIEF

124. This suit involves an actual controversy within the Court's jurisdiction and the Court may declare the rights of Plaintiff under the Constitution and laws of the United

States and the laws of Minnesota and grant such relief as necessary and proper. Plaintiff seeks declaratory relief on his behalf.

125. Plaintiff seeks declaratory judgment that Defendants' policies, pattern of practices, customs, lack of supervision, failure to train, acts, and omissions described herein violate the Fourth Amendment to the U.S. Constitution and constitute excessive force in violation of Minnesota state law.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against the Defendants, and grant the following:

A. Enter a declaratory judgment on behalf of Plaintiff that Defendants' policies, pattern of practices, customs, lack of supervision, failure to train, acts, and omissions, described herein, constituted excessive force in violation of the Fourth Amendment and in violation of Minnesota state law;

B. Enter judgment on behalf of Plaintiff against Defendants for reasonable actual damages sufficient to compensate him for the violation of his Fourth Amendment rights and rights under Minnesota state law;

C. Permanently enjoin and prohibit Defendants from interfering with Plaintiff's constitutional rights. Specifically, to enjoin Defendants from:

- a. Retaliating against Plaintiff or his family for bringing this lawsuit; and
- b. Subjecting Plaintiff to excessive force in the future.

D. Order Defendants to pay punitive and other exemplary damages based on 42 U.S.C. § 1983 claims;

E. Order Defendants to pay Plaintiff's attorneys' fees and costs as authorized by 42 U.S.C. §1988; pre-judgement interest and any other relief deemed necessary and proper;

F. For leave to amend Complaint to include a claim for punitive damages under state law; and

G. Grant all other and additional relief to which Plaintiff may be entitled.

Dated: November 15, 2017

By: s/Jen Cornell

Jen L. Cornell (Reg. No. 0391007)

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