

**IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OKLAHOMA**

(1) Ms. Kisha Evans, individually and as next friend)	
of TME, and (2) TME, a minor child.)	
)	
Plaintiffs,)	Case No. 08-CV-547-JHP-SAJ
)	
v.)	
)	
(1) City of Tulsa, (2) Stephen Boyes, (3) Timothy)	Jury Trial Requested
Pike, and (4) David Hale,)	
)	
Defendants.)	

COMPLAINT

For their Complaint against the Defendants, Plaintiffs state as follows:

I. Parties, Venue and Jurisdiction

1. Plaintiffs are individuals residing in Tulsa, Oklahoma. Plaintiffs' race is black. Plaintiff TME is the minor child of Plaintiff Kisha Evans.
2. Defendant City of Tulsa is a municipality located within the State of Oklahoma. Defendants Boyes, Pike and Hale are individuals employed by the City of Tulsa as police officers. Each of these individual Defendants are white males.
3. The events which give rise to this suit took place within Tulsa County, Oklahoma.
4. The actions of the Defendants were taken under color of law, each police officer purporting to have been acting as a Tulsa Police Officer in an official capacity for the City of Tulsa. The individual Defendants are sued in their individual and official capacities.
5. The City of Tulsa has ratified the actions of the individual Defendants as they pertain to the interactions of each of these individuals with Plaintiff TME. This ratification is manifested through the City of Tulsa's complete failure to punish

these officers, the City of Tulsa's history of condoning this type of activity by Tulsa Police Officers, as well as through the retaliatory attempt to seek the prosecution of TME using knowingly false statements following the beating at issue.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b). All defendants reside within this judicial district, a substantial part of the events and omissions giving rise to these claims occurred in this judicial district, and all defendants can be found within this judicial district.
7. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This case arises from multiple violations of the Plaintiffs' constitutional rights including, but not limited to, use of clearly excessive force, the use of cruel, unusual and excessive punishment, denial of due process and violations of the Plaintiffs' equal protections under the law.
8. In addition to the claims for violation of Plaintiffs' constitutional claims, this Court has supplemental jurisdiction over the state law claims asserted for wrongful arrest, abuse of process, intentional infliction of severe emotional distress, and various acts of negligence pursuant to 28 U.S.C. § 1367.

II. General Allegations

9. On April 12, 2008, TME was sixteen years old. TME had no history of violence, criminal conduct, or even misbehavior at school. TME was a well-behaved, quiet, modest, and cordial young man dressed neatly for a date with friends.

10. On the evening of April 12, 2008, after watching a movie with his friends, TME started walking home. Nothing about his appearance or demeanor gave rise to even the slightest legitimate cause to believe he was doing something improper.
11. His route home took him through the parking lot near the Cobblestone Apartments on Memorial Drive. As he passed this parking lot, TME was called by one or several police officers. These officers were on bicycles. The calls from the officers were angry and aggressive, seeking to detain TME for no apparent (legitimate) reason. It was later determined that the officers involved were Defendants Boyes, Pike and Hale.
12. Despite the fact that these officers had no probable cause to stop, detain or question TME, TME cooperatively approached the officers and answered their questions.
13. After TME answered all questions asked of him, the Defendants turned away from TME and began to whisper among themselves – apparently ridiculing TME.
14. Once it became apparent that the Defendants had no more questions for TME, TME slowly turned to walk down the sidewalk. TME did not run or make any sudden or fast movements.
15. Before he had taken two full steps, and with his back to the Defendants, TME was tackled to the concrete by Defendants Boyes, Pike and Hale. None of these individuals were provoked in any manner, and none bothered to engage in a less aggressive means of obtaining compliance from TME (such as simply saying: “stop” or “come back here”).

16. TME is a modestly sized young man who weighed approximately 145 pounds at the time. Each of the Defendants outweighed TME substantially.
17. Once on the ground, two of the Defendants held TME down on the pavement in the street while another repeatedly punched TME in and around his face.
18. Not only did TME not attempt to resist, to strike or otherwise to injure the Defendants, but TME was physically incapable of doing so. TME was literally pinned to the pavement with two officers kneeling on his arms while he was savagely beaten.
19. During the ruthless beating, TME repeatedly cried: "I'm down, I'm down." In response, the Defendants angrily yelled at TME, commanding: "take that mother fucker."
20. TME suffered the obvious pain and extreme emotional distress as one would expect for a victim of the type of criminal misconduct engaged in by Defendants.
21. Subsequent to the beating, the Defendants contacted TME's mother, Ms. Kisha Evans. Ms. Evans later took her son to the doctor. The results of x-rays and CT scans revealed that the beating was so severe as to cause a "blow-out" fracture of TME's eye socket and bleeding from TME's ear. TME continues to suffer from partial losses of both vision and hearing. Both conditions are expected to be permanent. At least one surgery will be necessary to partially correct the damage done to the eye socket.
22. This type of conduct, including the use of clearly excessive force and of racial discrimination by its police officers, is known to the City of Tulsa and condoned or ratified.

23. On information and belief, the Mayor was advised of the City of Tulsa's history of dealing with such conduct involving white police officers and black citizens when she took office. Despite this knowledge, the Mayor re-appointed Ron Palmer as the Chief of Police, a former Chief who has testified (in the Black Officer Suit) that he failed in his "mandate" to correct racial problems in the Tulsa Police Department. The Mayor was also specifically advised of TME's beating with the expectation that she would call for some relief. However, the Mayor's response was to do nothing until after TME contacted a lawyer. Even then, the reaction from the Mayor has been nothing more than the standard ninety (90) day delay during which time no genuine investigation is believed to be ongoing.
24. Additionally, white officers such as the Defendants are protected from severe punishment when they engage in beatings of black individuals. Officer Paul Downs (a white male), for example, hand-cuffed, maced, and beat a black woman and her child in the street after pulling them over with absolutely no probable cause. Attention was brought to this matter only because the woman and child turned out to be the wife and son of a black police officer – Officer Dwight Jackson. Downs' lied in an attempt to justify his (mis)conduct claiming that these two victims fit the description of an armed robbery suspect. When the radio call identifying the armed robbery suspects was finally disclosed, however, it was proved that the call described a white male, riding alone, in a vehicle painted an entirely different color. As the consequence of Downs' wrongful beating and macing of a black woman, and as the consequence of his fabrication of a false reason for doing so, Downs received approximately a one day suspension and was

otherwise not punished. On another occasion, Corporal Dan Fuller, Officer Dan Tedrick and Officer Kevin Staats (all white males) were all involved in an incident in which they handcuffed, beat, maced, arrested, and held in custody (for five days) a black man who was on his way to church, only to later admit they knowingly and intentionally made the arrest illegally, planted evidence and fabricated a phony police report, then conspired to cover up their actions by deliberately lying to their superiors during an investigation of their conduct. For this extraordinary misconduct, these officers received minimal suspensions, and none were terminated. In March of 2007, Officer Ian Simmons was involved in an event similar to the immediate case in which an innocent person was severely beaten, verbally harassed, arrested without probable cause, and subjected to retaliatory charges of resisting arrest to dissuade the victim from pursuing a complaint. It was only after video footage of the arrest was demanded and produced that the charges were dropped by the Tulsa District Attorney. These officers received no punishment or minimal punishment. In another incident, Tulsa Police Officers Steven Middleton, B. Bonham and Michael Eckert were involved in the arrest of several individuals from a crowd of predominantly black individuals who gathered in downtown Tulsa following a KKK rally, charging those individuals with obstructing officers, resisting arrest, and assaulting an officer. The officers used violent means of arresting these individuals, including kicking one of the arrestees repeatedly in the head while that person was on the ground. In sharp contradiction to the alleged bases for the arrests, video footage of the incident revealed (according to the Tenth Circuit Court of Appeals) that

there were “no angry threats or interchanges” and that the “crowd’s demeanor appear[ed] peaceful.”

25. Were such actions to happen in any other context, they would readily be condemned as intolerable (and cowardly) criminal acts. Yet, despite the extraordinarily heinous nature of these actions, the Tulsa police officers involved have largely gone without punishment, or without significant punishment. Indeed, the City of Tulsa chain of command routinely supports this type of misconduct as appropriate, sending a clear message to police officers that when they put their uniform on, they are beyond the law.

26. In short, the City of Tulsa has a history of condoning and ratifying misconduct, especially when it is engaged in by white officers against black citizens. Evidence of this fact can be found in reviewing the similar characteristics of the above-described events. The theme which emerges from a review of these known cases involves: (1) an overt and unauthorized act of brutality; (2) followed by bogus charges of resisting arrest or assaulting the officers involved; (3) followed by no (or patently insufficient) corrective measures by City of Tulsa policy makers -- even when there is video tape to prove the falsity of the bases for the brutality.¹ The recurrence of this theme sends a clear message to City of Tulsa police officers that they are essentially free to violate basic constitutional protections under color of law.

¹ These are just a few examples that received attention because of the existence of video tape or other extraordinary circumstances to prove the falsity of the explanations of the police.

27. In this particular case, Ms. Evans made complaints to the Mayor and the Internal Affairs Division of the Tulsa Police Department. Instead of investigating the Defendant officers, retaliatory charges were pursued against TME falsely claiming, just as in the cases described above, that TME resisted arrest.² This prosecution was wrongful, and clearly in retaliation for the complaint by Plaintiff's.

III. Specific Counts

28. Defendants' actions constitute an unnecessary and unreasonable use of excessive force against TME, in violation of TME's constitutional rights. This use of force was excessive by any standard, including by any objective standard. The vicious attack was entirely without justification or provocation, and was not undertaken for any legitimate purpose.

29. Defendants' actions constitute an unlawful arrest of TME, without any probable cause or proper justification. In fact, the Defendants fabricated reasons for the arrest after the fact of the beating, yet still failed to justify the initial arrest. Defendants clearly singled TME out for foul treatment because he is black.

30. Defendants' actions were discriminatory in violation of TME's due process and equal protection rights. Defendants discriminated against TME because he is black.

² The mere suggestion that a modestly built (145 pound), 16 year old boy, resisted arrest such that he had to be held to the ground and beaten until the bones of his eye socket shattered is preposterous, and the fact of fabrication is self-evident. Ultimately, the charges were dropped because they were entirely unsupported, but not until the last minute before trial. The Defendants attempted to take full advantage of their false police report to punish TME.

31. The actions at issue also constitute the state law torts of intentional infliction of severe emotional distress, false arrest, abuse of process, and negligent hiring, training and supervision of the individual Defendants. TME did in fact suffer extreme emotional distress as the result of the utterly intolerable conduct by the Defendants.
32. Finally, Defendants' actions constitute unlawful retaliation against both Plaintiffs in response to the Plaintiffs' reporting of the unconstitutional activities of the Defendants. Like the other constitutional violations, this retaliation constitutes a violation of the Civil Rights Act.
33. Both Plaintiffs have been severely damaged by the actions of the Defendants. Ms. Evans' damages included the costs incurred for all necessary and proper treatment of her son.
34. The actions or omissions of these Defendants were willful and wanton, and the type of conduct which would naturally lead to severe damages such as those at issue in this suit. At the very least, the Defendants' conduct was reckless, and undertaken with utter disregard for the rights and well-being of Plaintiffs. The Defendants' conduct was such that punitive damages should be awarded against the individuals involved as a means of punishing these individuals for their misconduct.

IV. Prayer for Relief

For their causes of action, Plaintiffs seek a judgment against all Defendants for actual and punitive damages, for all costs, expenses and attorney fees involved in this litigation, and for such other relief as this Court deems just and proper.

Respectfully submitted,

Capron & Edwards

/s/ Stephen J. Capron

Stephen J. Capron, OBA# 18350
Michael J. Edwards, OBA #2644
406 South Boulder Ave., Suite 400
Tulsa, Oklahoma 74103
(918) 398-7600 – Telephone
(918) 398-7602 – Facsimile
sjc@capronedwards.com
Attorneys for Plaintiffs

ATTORNEY LIEN CLAIMED