

COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

TOI-ALLYSON KOLOWENA : **CASE NO. 2024 CV 01659**
719 Xenia Avenue :
Dayton, OH 45410 : **JUDGE E. GERALD PARKER**

Plaintiff :
v. :

ELYZABETH MCDONALD : **FIRST AMENDED**
Dayton Police Department : **COMPLAINT AND JURY DEMAND**
335 W. 3rd Street, Suite 100 :
Dayton, OH 45402 :

Please serve: :
Barbara Doseck :
Dayton City Attorney :
101 W. 3rd Street, 3rd Fl. :
Dayton, Ohio 45402 :

And :

JORDAN FADER :
Dayton Police Department :
335 W. 3rd Street, Suite 100 :
Dayton, OH 45402 :

Please serve: :
Barbara Doseck :
Dayton City Attorney :
101 W. 3rd Street, 3rd Fl. :
Dayton, Ohio 45402 :

And :

RILEY BROWN :
Dayton Police Department :
335 W. 3rd Street, Suite 100 :
Dayton, OH 45402 :

Please serve: :
Barbara Doseck :
Dayton City Attorney :
101 W. 3rd Street, 3rd Fl. :

Dayton, Ohio 45402 :

And :

DORIAN MERCER :
Dayton Police Department :
335 W. 3rd Street, Suite 100 :
Dayton, OH 45402 :

Please serve: :
Barbara Doseck :
Dayton City Attorney :
101 W. 3rd Street, 3rd Fl. :
Dayton, Ohio 45402 :

And :

John and Jane Does :
(Names & addresses currently unknown) :

And :

ABC Corporations :
(Names & addresses currently unknown) :

Defendants. :

This case is about the unlawful and excessive use of force and malicious prosecution of a citizen, the injuries it caused to her and the charges to cover the bad actions of the Police Officers involved.

PARTIES

1. Toi-Allyson Kolowena (“Kolowena” or “Plaintiff”) is, and at all times relevant was, a citizen of Butler County, Ohio.
2. Defendant Elyzabeth McDonald (“McDonald”) was, at all times relevant, a Police Officer for the City of Dayton. While on duty, McDonald committed unlawful acts against Plaintiff, as described in this Complaint.

3. Defendant Jordan Fader (“Fader”) was, at all times relevant, a Police Officer for the City of Dayton. While on duty, Fader committed unlawful acts against Plaintiff, as described in this Complaint.
4. Defendant Riley Brown (“Brown”) was at all times relevant, a Police Officer for the City of Dayton. While on duty, Brown committed unlawful acts against Plaintiff, as described in this Complaint.
5. Defendant Dorian Mercer (“Mercer”) was, at all times relevant, a Police Officer for the City of Dayton. While on duty, Mercer committed unlawful acts against Plaintiff, as described in this Complaint.

JURISDICTION

6. Jurisdiction in this Court is proper.
7. The events that are the subject of this Complaint occurred in Montgomery County, Ohio.
8. The Court has pendent jurisdiction over the federal claim delineated herein.
9. The amount in controversy exceeds \$15,000 (fifteen thousand dollars).

FACTS

10. On April 23, 2022, at approximately 9:50 p.m., Plaintiff’s minor sister requested the Police respond to 1032 Danner Avenue in Dayton, Ohio.
11. Defendants McDonald, Fader, and Brown, all on-duty members of the Dayton Police Department, responded to the scene.
12. Plaintiff Kolowena was present at the location.
13. Defendants placed the minor under arrest.
14. As clearly shown on recorded footage, Defendants were clearly aggressive and elevated in their engagement with the minor and others on the scene.

15. Plaintiff produced her cell phone and began recording the incident.
16. Plaintiff had an absolute right to record the incident.
17. Defendant Brown became angry at Plaintiff for recording the incident, which was lawfully within her rights.
18. In violation of Plaintiff's rights and in expression of his anger of her exercising her rights, Defendants Brown, and Mercer suddenly and without justification violently grabbed Plaintiff to physically restrain her.
19. As Defendants Brown and Mercer violently grabbed Plaintiff, Officers McDonald and Faber joined in the attack.
20. Defendants Brown, Mercer, McDonald and Faber, still without any legal justification and despite the fact Plaintiff had committed no criminal offense used their combined weight and force and threw Plaintiff to the ground pinning her under their bodies.
21. Plaintiff immediately suffered extreme pain and abrasions as a direct result of the battery by Defendants.
22. Defendants use of force against Plaintiff was clearly excessive and unnecessary and caused Plaintiff physical injuries.
23. None of the Defendants attempted to deescalate the situation and prevent each other from committing the battery on Plaintiff.
24. In an attempt to cover up their illegal conduct, Plaintiff was charged with jailable offenses of misconduct at an emergency and obstruction of official business by Defendants.
25. Both charges carry the possibility of jail time.

26. Due to the nature of the wrongful charges, Plaintiff was jailed and required to post a bond in order to be released.
27. Plaintiff, aware that she had done nothing wrong and that her rights were violated, retained legal counsel to fight the wrongful charges.
28. Despite being aware that the charges were not justifiable nor justified, Defendants pursued the criminal charges against Plaintiff.
29. Defendants could have instructed the prosecutor's office to dismiss the meritless charges against Plaintiff but failed to do so.
30. Plaintiff rejected attempts to resolve the criminal charges by "taking a plea" or agreeing to any charges.
31. On August 9, 2023, after a trial to a jury of Plaintiff's peers on the criminal charges, Plaintiff was found Not Guilty of the charges.
32. Having used excessive and unnecessary force on Plaintiff and filing false charges against Plaintiff, none of the Defendants appeared at trial to testify under oath about their actions.
33. In what appears to be further attempts to cover up their actions, Defendants provided contradictory recitations of facts in the investigation report about the incident involving Plaintiff and her minor sister.
34. Due to Defendants' actions, Plaintiff suffered severe and permanent physical pain and injuries and was diagnosed with a concussion, closed head injury, knee sprains and contusions.
35. Due to Defendants' actions, Plaintiff lost her job.
36. Due to Defendants' actions, Plaintiff suffered anger, humiliation, embarrassment and severe emotional distress and Defendants are liable for all such harm.

37. Due to the nature of Defendants' actions, Defendants are not entitled to immunity under Ohio law.

COUNT ONE

EXCESSIVE FORCE

38. Plaintiff incorporates by reference the allegations above, as if fully restated herein.

39. Defendants individually and collectively used more force than necessary against Plaintiff as described in this complaint.

40. The use of force described in this Complaint constitutes the unlawful excessive use of force.

41. Defendants excessive use of force against Plaintiff was unnecessary, wanton, and malicious and completely without legal or factual justification.

42. As the proximate and direct result of Defendants' wrongful and malicious conduct, Plaintiff suffered severe and permanent physical and emotional harm.

43. As a direct and proximate result of Defendants' actions, Plaintiff suffered anger, humiliation, embarrassment, and severe emotional distress.

44. Defendants are liable for all such harm.

COUNT TWO

INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

45. Plaintiff incorporates by reference the allegations above, as if fully restated herein.

46. Defendants' actions were wanton and malicious.

47. Defendants' conduct was extreme and outrageous.

48. Defendants acted with specific purpose to cause Plaintiff to suffer emotional and physical harm.

49. Defendants' conduct had the actual effect of causing Plaintiff to suffer severe emotional distress from their battery upon her through the pursuit of the baseless criminal charges.

50. As a direct and proximate result of Defendants' actions, Plaintiff suffered severe emotional distress.

COUNT THREE

MALICIOUS PROSECUTION

51. Plaintiff incorporates by reference the allegations above, as if fully restated herein.

52. Defendants maliciously instituted and pursued false criminal charges against Plaintiff to cover up for the unlawful arrest and the excessive use of force on Plaintiff.

53. The charges for which Plaintiff was arrested were false and were not based upon probable cause that Plaintiff committed any offense.

54. All charges were dismissed in Plaintiff's favor.

55. As the proximate and direct result of Defendants' conduct, Plaintiff suffered compensable harm.

56. Defendants are liable for all such harm.

COUNT FOUR

CONSPIRACY

57. Plaintiff incorporates by reference the allegations above, as if fully restated herein.

58. Defendants Officers worked together with each other to injure Plaintiff.

59. The Prosecutor's office became an unwitting coconspirator of Defendants' unlawful conduct.

60. Defendants worked together to deprive Plaintiff of her right to be free from excessive force and to be subjected to malicious prosecution.

61. Defendants worked together to intentionally inflict emotional distress upon Plaintiff.

62. The malicious combination of the Defendants constitutes an actionable conspiracy.

63. Plaintiff suffered actual harm as a result of Defendants' actions.

COUNT FIVE

VIOLATION OF 42 USC sec. 1983

64. Plaintiff incorporates by reference each of the allegations above, as if fully restated herein.

65. Defendants, under the color of state law and the authority of their positions, intentionally and purposely deprived Plaintiff of her Fourth Amendment Constitutional right to be free from Unlawful Seizure, as alleged herein.

66. Defendants, under the color of state law and the authority of their positions, intentionally and purposely deprived Plaintiff of her Fourth Amendment Constitutional Right to be free from Excessive Force, as alleged herein.

67. Pursuant to 42 U.S.C. sec. 1983, Defendants are liable to Plaintiff as a result of Defendants' actions.

COUNT SIX

68. Plaintiff incorporates by reference each of the allegations above, as if fully restated herein.

69. Defendants John and Jane Does and ABC Corporations are as yet unidentified parties whose actions or inactions contributed to the injury suffered by Plaintiff as alleged in this Complaint or otherwise have a legal interest in the action.

70. The currently unidentified John and Jane Does and ABC Corporations are liable to Plaintiff for her injuries.

CONCLUSION

Wherefore, Plaintiff prays for the Court to do the following:

1. Enter Judgment for Plaintiff against Defendants;
2. Award compensatory damages to Plaintiff in an amount greater than twenty-five thousand dollars (\$25,000);
3. Award punitive damages to Plaintiff in an amount greater than twenty-five thousand dollars (\$25,000);
4. Award attorney's fees to Plaintiff; and,
5. Such other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Fanon A. Rucker
Fanon A. Rucker (0066880)
The Cochran Firm - Ohio
527 Linton Street
Cincinnati, Ohio 45219
Phone: (513) 381-4878
Fax: (513) 672-0814
Email: frucker@cochranohio.com
Attorney for Plaintiff

JURY DEMAND

Plaintiff Toi Kolowena, by and through counsel hereby demands a trial by jury on all issues triable to a jury.

/s/ Fanon A. Rucker
Fanon A. Rucker (0066880)
The Cochran Firm - Ohio



CERTIFICATE OF SERVICE

TO THE CLERK: Please serve all Defendants by certified mail, return receipts requested.