

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JAMAL JONES, LISA MAHONE, JOSEPH
IVY, and JANIYA IVY,

Plaintiffs,

v.

CITY OF HAMMOND, PATRICK VICARI,
CHARLES TURNER, and OTHER
UNKNOWN OFFICERS,

Defendants.

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs JAMAL JONES, LISA MAHONE, JOSEPH IVY, and JANIYA IVY, by and through their undersigned attorneys, complain against Defendants CITY OF HAMMOND, PATRICK VICARI, CHARLES TURNER, and OTHER UNKNOWN OFFICERS, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1341, 1343. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because Plaintiffs and all Defendants either reside in this district or have their principal place of business in this district, and all events giving rise to Plaintiffs' claims occurred within this district.

PARTIES

3. Jamal Jones (hereinafter, Jamal) resides within the state of Indiana and within this judicial district.

4. Lisa Mahone (hereinafter Lisa) resides within the state of Indiana and within this judicial district, and is the parent and guardian of Joseph Ivy and JaNiya Ivy.

5. Joseph Ivy (hereinafter Joseph) is a 14-year-old minor and resides within the state of Indiana and within this judicial district.

6. JaNiya Ivy (hereinafter JaNiya) is a 7-year-old minor and resides within the state of Indiana and within this judicial district.

7. The City of Hammond is a municipal corporation and public entity organized under the laws of the state of Indiana and is located within this judicial district.

8. Patrick Vicari is a police officer employed by the City of Hammond.

9. At all relevant times, Defendant Vicari was on duty and acted under color of law and within the scope of his employment.

10. Charles Turner is a police officer employed by the City of Hammond.

11. At all relevant times, Defendant Turner was on duty and acted under color of law and within the scope of his employment.

12. Defendants other unknown officers are police officers employed by the City of Hammond.

13. At all relevant times, Defendants other unknown officers were on duty and acted under color of law and within the scope of their employment.

FACTS RELEVANT TO ALL CLAIMS

14. On or about September 24, 2014, at about 3:30 p.m., Plaintiffs were traveling in a vehicle in the vicinity of 169th Street and Cline Avenue in the City of Hammond.

15. Lisa was the driver of the vehicle.

16. Jamal was seated in the front passenger seat.

17. JaNiya and Joseph were seated in the rear passenger seats.

18. Defendants Vicari and Turner, who were in uniform and driving marked City of Hammond police vehicles, activated their emergency equipment and pulled Plaintiffs' vehicle over to the side of the road.

19. Lisa pulled over to the side of the road, but the manner in which Vicari and Turner pulled over Plaintiffs' vehicle was highly aggressive and placed Plaintiffs in fear for their safety.

20. Upon approaching the vehicle, Vicari or Turner placed spike strips under the wheels of Plaintiffs' vehicle, which made Plaintiffs even more fearful for their safety.

21. Vicari and Turner demanded Lisa's identification.

22. Lisa complied and gave the officers her identification.

23. Vicari and Turner stated that they had pulled over Plaintiffs' vehicle because Lisa had not been wearing her seatbelt.

24. Lisa conceded that she had not been wearing her seatbelt and asked Vicari and Turner to issue her a ticket quickly. Lisa informed the officers that her mother was dying and that Plaintiffs were on the way to the hospital to see her before she died.

25. Rather than issuing Lisa a ticket for failure to wear a seatbelt, the officers demanded that Jamal, the passenger, provide the officers with his identification as well.

26. Vicari and Turner had no reasonable basis to believe that Jamal had committed any crime.

27. Jamal informed the officers that he did not have his driver's license but had a ticket with his information on it.¹

28. Jamal offered to write his information down for the officers, but the officers refused.

29. Because of the officers' aggressive demeanor and lack of any reasonable basis to believe that Jamal had committed any crime, Jamal and Lisa felt that they were in imminent danger.

30. The officers then ordered Jamal to get out of the vehicle.

¹ He had previously turned over his driver's license when he was stopped for not paying his insurance.

31. Jamal offered to show the officers the ticket, which had his information on it, but the officers refused.

32. Lisa called 911 and requested a supervisor, and Jamal declined to get out of the vehicle because they were in reasonable fear for their safety.

33. In full view of the officers, Jamal retrieved the ticket from his backpack and offered the ticket to the officers.

34. The officers declined to take the ticket.

35. After a minute or two for no reason, the officers drew their weapons.

36. The officers had no reasonable basis to believe that anyone in the vehicle was a threat. The vehicles' windows were clear and the officers had an unobstructed view of every person within the vehicle.

37. At no time did the officers inform any of the Plaintiffs that they were under arrest.

38. Other than informing Lisa that she would be cited for a seatbelt violation, at no time did the officers inform any of the Plaintiffs that they were under reasonable suspicion of committing a crime.

39. At no time did the officers order any of the Plaintiffs to put their hands in the air or up where they could see them.

40. The officers again ordered Jamal to exit the vehicle without any basis.

41. Jamal again declined because he feared that the officers would harm him and/or the other Plaintiffs in the vehicle.

42. Despite the fact that Jamal was not under arrest, was not reasonably suspected of committing a crime, and presented no threat to the officers, the officers decided to forcibly remove Jamal from the vehicle.

43. Vicari, Turner, or one of the other unknown officers approached the vehicle with a tool and raised the tool into an aggressive posture, placing Plaintiffs in imminent fear of physical harm.

44. The officer used the tool to smash the front passenger window of the vehicle, striking Jamal in the right shoulder and causing shards of glass to strike Jamal, Lisa, Joseph, and JaNiya.

45. Vicari, Turner, or one of the other unknown officers shot Jamal with a taser and then, individually and collectively, the officers dragged Jamal out of the vehicle and threw him to the ground.

46. The officers continued to tase Jamal while he lay on the ground, despite the fact that Jamal was not resisting in any way.

47. The officers then placed Jamal in handcuffs and placed Jamal under arrest.

48. At no point during this entire encounter did Jamal physically resist the officers in any way.

49. Jamal was charged with resisting law enforcement.

50. At no point did the officers search the vehicle or any of Plaintiffs for weapons.

51. Lisa was cited for failure to wear a seatbelt and eventually allowed to go on her way.

FACTS RELEVANT TO MONELL CLAIMS AGAINST CITY OF HAMMOND

52. Defendants Vicari and Turner have a history of using objectively unreasonable force against citizens and arresting citizens without probable cause.

53. Defendant Vicari has been named as a defendant in at least three previous lawsuits involving the use of excessive force against citizens as well as arrest without probable cause:

- A. *Stancato v. City of Hammond*, No. 07-cv-00259 (N.D. Ind.)
- B. *Gray v. City of Hammond*, No. 08-cv-00114 (N.D. Ind.)
- C. *Warner v. City of Hammond*, No. 11-cv-00458 (N.D. Ind.)

54. Similarly, Defendant Turner has been named as a defendant in at least one previous lawsuit involving the use of excessive force against citizens as well as arrest without probable cause:

- A. *Leiding v. City of Hammond*, No. 03-cv-00381 (N.D. Ind.)

55. The public documents listed above are representative examples only and do not include other internal and informal complaints filed by citizens against Vicari and Turner as well as other City police officers.

56. In addition to the above examples, there are numerous other instances of City police officers using excessive force against citizens as well as false arrests of citizens.

57. Despite this history, the City of Hammond has not disciplined Vicari or Turner or other officers and has instead promoted them to leadership positions within the police department.

58. Moreover, despite this history of unlawful conduct by City police officers, the City has failed to adequately investigate allegations of officer misconduct, has failed to adequately discipline officers for the use of excessive force, and has failed to adequately train its officers on the proper use of force.

59. The City's failure to do so is a de facto policy that encourages officers to violate the constitutional rights of citizens with impunity.

60. The City's de fact policy proximately caused the individual officers to engage in the unlawful conduct described above against Plaintiffs.

COUNT I

Violation of the Fourth Amendment – Excessive Force

61. This count is pled against the individual defendants on behalf of all Plaintiffs.

62. Under the Fourth and Fourteenth Amendments to the U.S. Constitution, Plaintiffs are entitled to be free from the unreasonable use of force by police officers.

63. Plaintiffs' rights under the Fourth and Fourteenth Amendments are enforceable under 42 U.S.C. § 1983.

64. Vicari, Turner, or other unknown officers' use of force in breaking the window and striking Lisa, Jamal, Joseph, and JaNiya was objectively unreasonable under the circumstances.

65. Vicari, Turner, or other unknown officers' use of force in shooting Jamal with a taser was objectively unreasonable under the circumstances.

66. The individual Defendants' actions were undertaken within the scope of their employment, while on duty, and under color of law.

67. As a result of the unjustified and excessive use of force by the individual defendants, Plaintiffs have suffered physical and emotional injuries.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against the individual defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Reasonable attorneys' fees, costs, and litigation expenses; and
- D. Any other relief this Court deems just and appropriate.

COUNT II

Violation of the Fourth Amendment – Excessive Force (*Monell*)

68. This count is pled against the City of Hammond only on behalf of all Plaintiffs.

69. The actions of the individual Defendants, as described above, was taken pursuant to the policy and practice of the City of Hammond.

70. As a matter of both policy and practice, the City of Hammond encourages, and is the moving force behind, the individual officers' objectively unreasonable use of force against citizens by hiring and retaining unqualified officers, and by failing to adequately train, supervise, and control its officers.

71. By failing to adequately investigate and discipline officers who have engaged previous instances of excessive force against citizens, the City of Hammond manifests deliberate indifference to the violations of those citizens' constitutional rights by the City's police officers.

72. The City's deliberate indifference to its officers' use of excessive force against citizens encourages officers to believe that their actions will never be scrutinized and thus encourages officers to continue using excessive force against citizens.

73. The City's failure to adequately train, supervise, and discipline its officers for their use of excessive force caused the individual defendants to use excessive force

against Plaintiffs because the officers believed that they would not be investigated or punished for doing so.

74. As a direct result of the City's policy and practice, Plaintiffs have suffered physical and emotional injury.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against the individual defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Reasonable attorneys' fees, costs, and litigation expenses; and
- D. Any other relief this Court deems just and appropriate.

COUNT III

Violation of the Fourth Amendment – False Arrest

75. This count is pled against the individual defendants on behalf of Plaintiff Jamal Jones.

76. Under the Fourth and Fourteenth Amendments to the U.S. Constitution, Jones has a right to be free from arrest without probable cause.

77. Plaintiffs' rights under the Fourth and Fourteenth Amendments are enforceable under 42 U.S.C. § 1983.

78. The individual defendants had no probable cause to believe that Jones was committing or had committed a crime at the time they placed him under arrest.

79. The individual defendants' actions were undertaken within the scope of their employment, while on duty, and under color of law.

80. As a result of his arrest and detention without probable cause by the individual defendants, Jones has suffered physical, emotional, and financial injuries.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against the individual defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Reasonable attorneys' fees, costs, and litigation expenses; and
- D. Any other relief this Court deems just and appropriate.

COUNT IV

Violation of the Fourth Amendment – False Arrest (*Monell*)

81. This count is pled against the City of Hammond only on behalf of Plaintiff Jamal Jones.

82. The actions of the individual defendants as described above were taken pursuant to the policy and practice of the City of Hammond.

83. As a matter of both policy and practice, the City of Hammond encourages, and is the moving force behind, the individual officers' arrest of citizens without probable cause by hiring and retaining unqualified officers, and by failing to adequately train, supervise, and control its officers.

84. By failing to adequately investigate and discipline officers who have engaged in previous instances of arrest of citizens without probable cause, the City of Hammond manifests deliberate indifference to the violations of those citizens' constitutional rights by the City's police officers.

85. The City's deliberate indifference to its officers' arrest of citizens without probable cause encourages officers to believe that their actions will never be scrutinized and thus encourages officers to continue arresting citizens without probable cause.

86. The City's failure to adequately train, supervise, and discipline its officers for arresting citizens without probable cause led the individual defendants to arrest Plaintiff Jones without probable cause because the officers believed that they would not be investigated or punished for doing so.

87. As a direct result of the City's policy and practice, Plaintiff Jones has suffered physical, emotional, and financial injury.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against the individual defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Reasonable attorneys' fees, costs, and litigation expenses; and
- D. Any other relief this Court deems just and appropriate.

COUNT V

State Law Assault and Battery

88. This count is pled against all defendants on behalf of all Plaintiffs.

89. The actions of the individual defendants created a reasonable apprehension of imminent harm by and constituted harmful or offensive contact with each Plaintiff.

90. The actions of the individual defendants were objectively unreasonable under the circumstances and were undertaken intentionally with malice, willfulness, and reckless indifference to the rights and safety of Plaintiffs.

91. The actions of the individual defendants were undertaken within the scope of their employment with the City of Hammond

92. The City of Hammond is liable as principal for all torts committed by its agents.

93. As a result of the actions of the individual defendants, Plaintiffs have sustained physical and emotional injuries.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against the individual defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Any other relief this Court deems just and appropriate.

COUNT VI

State Law False Arrest / False Imprisonment

94. This count is pled against all defendants on behalf of Plaintiff Jamal Jones.

95. The individual defendants did not have probable cause to believe that Jones was committing or had committed any crime.

96. The individual defendants caused Jones to be arrested and imprisoned without probable cause or legal justification.

97. The actions of the individual defendants were objectively unreasonable under the circumstances and were undertaken intentionally with malice, willfulness, and reckless indifference to the rights of Jones.

98. The actions of the individual defendants were undertaken within the scope of their employment with the City of Hammond.

99. The City of Hammond is liable as principal for all torts committed by its agents.

100. As a result of the actions of the individual defendants, Jones has sustained physical, emotional injuries, and financial injuries.

WHEREFORE, Jones prays that this Court enter judgment in his favor and against the individual Defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;

C. Any other relief this Court deems just and appropriate.

COUNT VII

State Law Intentional Infliction of Emotional Distress

101. This count is pled against all Defendants on behalf of all Plaintiffs.

102. The individual Defendants' actions were objectively extreme and outrageous under the circumstances.

103. The individual Defendants' actions were taken intentionally with malice, willfulness, and reckless indifference to the rights and safety of Plaintiffs.

104. The actions of the individual Defendants were undertaken within the scope of their employment with the City of Hammond.

105. The City of Hammond is liable as principal for all torts committed by its agents.

106. As a result of the actions of the individual Defendants, Plaintiffs have sustained severe emotional injuries.

WHEREFORE, Plaintiffs prays that this Court enter judgment in his favor and against the individual Defendants, and award damages as follows:

- A. Compensatory damages;
- B. Punitive damages as allowed by law;
- C. Any other relief this Court deems just and appropriate.

Respectfully submitted,

JAMAL JONES, LISA MAHONE,
JOSEPH IVY, and JANIYA IVY

s/Dana L. Kurtz

Attorney for Plaintiff

Electronically filed on October 6, 2014

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMAL JONES, LISA MAHONE, JOSEPH IVY and JANIYA IVY,

(b) County of Residence of First Listed Plaintiff Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Dana L. Kurtz, Kurtz Law Offices, Ltd., 32 Blaine Street, Hinsdale, IL 60521 Tele: 630.323.9444

DEFENDANTS

CITY OF HAMMOND, PATRICK VICARI, CHARLES TURNER, and OTHER UNKNOWN OFFICERS

County of Residence of First Listed Defendant Lake (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983

Brief description of cause: Excessive force, false arrest

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE: 10/06/2014, SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.