

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

GREGORY MOAK

*** CIVIL ACTION NO.:**

VERSUS

*** JUDGE:**

**CITY OF HOMER,
HOMER CHIEF OF POLICE
VAN MCDANIEL, OFFICER
ARNOLD STEVENS, OFFICER TED
ROBINSON, UNNAMED OFFICER
AND THE HOMER POLICE
DEPARTMENT**

*** DEMAND FOR TRIAL BY JURY**

COMPLAINT FOR DAMAGES

The Complaint of GREGORY MOAK, petitioner herein, respectfully represents:

1.

Petitioner brings this action to recover from Defendants compensatory damages, punitive damages, reasonable attorney's fees, judicial interest, and all costs and expenses incurred in these proceedings, pursuant to 42 United States Code, Sections 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and other applicable statutes and constitutional provisions, based upon the following:

PARTIES

2.

The Petitioner in this proceeding is:

- (A) GREGORY MOAK, a person of lawful age who is a resident and domiciliary of the Athens, State of Louisiana, Parish of Claiborne.

3.

Made defendants herein are the following:

- (A) THE CITY OF HOMER, a municipality organized under the laws of the State of Louisiana, which can be served through the Mayor, Dr. Xanthe Y. Seals;
- (B) CHIEF OF POLICE VAN MCDANIEL, a person of lawful age who is a resident and domiciliary of the State of Louisiana, who at all times relevant was acting under color of State law as an employee of the Homer Police Department;
- (C) OFFICER ARNOLD STEVENS, a person of lawful age who is a resident and domiciliary of the State of Louisiana, who at all times relevant was acting under color of State law as an employee of the Homer Police Department;
- (D) OFFICER TED ROBINSON, a person of lawful age who is a resident and domiciliary of the State of Louisiana, who at all times relevant was acting under color of State law as an employee of the Homer Police Department; and
- (E) UNNAMED OFFICER, a person of lawful age who is a resident and domiciliary of the State of Louisiana, who at all times relevant was acting under color of State law as an employee of the Homer Police Department.

JURISDICTION AND VENUE

4.

This civil action seeks substantial damages against defendants for committing, and conspiring to commit, acts, under color of law, which deprived Petitioner of rights secured under the Constitution and laws of the United States of America, thus depriving Petitioner of liberty and property without due process of the law or equal protection of the laws, as guaranteed to Petitioner by the Fourth and Fourteenth Amendments to the United States Constitution and various other statutes and constitutional provisions.

This Court has jurisdiction pursuant to 42 United States Code, Sections 1983 and 1988 and 28 United States Code, Sections 1331 and 1343.

Jurisdiction of this Court is further invoked pursuant to 28 United States Code, Section 1367, in its exercise of supplemental jurisdiction over any claims arising under the law of the State of Louisiana that are related to the claims in this action within the original jurisdiction of this Court such that the state law claims form a part of the same case or controversy under Article III of the United States Constitution.

5.

Venue is proper in this district and division pursuant to 28 United States Code, Section 1391 (b), as all events described herein occurred in Homer, Louisiana.

STATEMENT OF THE FACTS

6.

Defendant, CITY OF HOMER, is a municipality and political subdivision of the State of Louisiana and at all material times herein the CITY OF HOMER had authority over its officers, its policies, procedures, customs, hiring practices, training procedures and all other relevant operational practices.

7.

The City of Homer Police Department was at all times herein the employer of POLICE CHIEF VAN MCDANIEL, OFFICER ARNOLD STEVENS, OFFICER TED ROBINSON and an UNNAMED OFFICER who are named defendants herein.

8.

On or about December 5, 2022, Petitioner, Gregory Moak, was trying to leave the home of an old acquaintance when he was stopped in the driveway by Officer Arnold Stevens.

9.

Petitioner believes this incident was captured by video but the Homer Police Department has refused to release said video to Plaintiff despite his request..

10.

The video will show that Petitioner fully complied with the orders of Officer Stevens but questioned why he was being stopped.

11.

Officer Stevens suspected the Petitioner had committed a theft and was in possession of illegal narcotics.

12.

Mr. Moak complied with Officer Stevens request to put his hands behind his back. Mr. Moak was placed in the back seat of Officer Stevens' patrol vehicle.

13.

Officers Stevens called for backup and Police Chief Van McDaniel, Officer Ted Robinson and an Unnamed Officer arrived on the scene.

14.

Officer Stevens goes to his patrol vehicle and pulls Petitioner out of the vehicle.

15.

The officers, without any cause, immediately accused Petitioner of theft and possessing illegal narcotics.

16.

Mr. Moak denied the false allegations and complied with all commands directed toward him.

17.

Petitioner was viciously thrown to the ground when his answers to questions the officers asked him were not to their satisfaction.

18.

Petitioner was defenseless lying on his stomach, face to the ground with his hands handcuffed behind his back.

19.

The officers wanted Mr. Moak to confess to possessing illegal narcotics and committing a theft of tire rims..

20.

When Petitioner refused to confess to the crimes of which he was accused the officers commence attacking Mr. Moak.

21.

Officer Stevens suspected Petitioner had illegal narcotics in his mouth to justify his unlawful, violent behavior; however, no illegal narcotics were ever found.

22.

Officers beat Mr. Moak brutally; at one point an officer pulls out his taser and points it at Mr. Moaks's face and head, causing extreme fear for Mr. Moak.

23.

After Mr. Moak was forced to the ground and subdued by all four officers, he was tased beyond belief. Mr. Moak heard screams from the officers to spit out the illegal narcotics in his mouth but he couldn't because there were no illegal narcotics in his mouth.

24.

Mr. Moak was arrested and booked for Resisting an Officer, Theft and Entering and Remaining After Being Forbidden.

25.

All charges levied against Mr. Moak regarding the incident described herein have since been dismissed except for the Entering and Remaining After Being Forbidden charge.

26.

The beating Mr. Moak suffered was so severe that he thought he was seconds from dying. The officers believing Petitioner was guilty took their frustrations out on him when he refused to confess. The brutality was so severe that the yard of whom this incident took place shouted at the officers “ No, No, No, ya’ll are not going to kill this white boy in my yard,” when she heard and saw the officers were going to get two more tasers to use on Mr. Moak.

27.

Petitioner, at all times relevant, complied with the orders of Officer Stevens, Police Chief Van McDaniel, Officer Ted Robinson and the Unnamed Officer.

28.

The brutal attack against Petitioner by the officers was unexpected, without the consent of plaintiff, without warning, intentional and without any statutory authority whatsoever.

29.

The use of physical force by Police Chief Van McDaniel and the Officers as described hereinabove and perpetrated upon Petitioner was most certainly without lawful or just cause, was extreme, was outrageous, was clearly excessive, and was certainly in violation of any reasonable police standards, policies and training, including a failure to exercise reasonable restraint and

refrain from deliberately inflicting serious bodily injuries on Petitioner who sustained substantial and permanent bodily harm.

30.

The attack on Petitioner was so violent that a concerned citizen who witnessed it immediately went to the Homer Police Department Chaplain to state his displeasure of what he saw and that someone should immediately check on Petitioner. This concerned citizen was frightful that Petitioner might die and that his family should be contacted so that they could check on him.

31.

As a result of the injuries that Petitioner sustained as a consequence of the violent physical brutality visited upon him by the officers, Petitioner suffered not only extreme physical pain and suffering, but he has also suffered from and continues to suffer from severe mental pain, mental anguish and extreme emotional distress and impotency.

32.

At all times relevant to this complaint, Police Chief Van McDaniel, Officer Arnold Stevens, officer Ted Robinson and an Unnamed Officer acted under color of state law and of the statutes, customs, and ordinances of the State of Louisiana, and the City of Homer.

COUNT ONE

EXCESSIVE USE OF FORCE AND PHYSICAL BRUTALITY

33.

Plaintiff re-alleges paragraphs (1) through (32) as though fully set forth herein.

34.

Acting under color of law and pursuant to official policy or custom, Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer knowingly, recklessly, and with deliberate indifference and callous disregard for Petitioner's constitutional, civil and statutory rights, as well as his safety and well being, violently kicked, punched and tased Petitioner excessively causing substantial physical injuries and thereby depriving him of his rights to due process and equal protection of the laws, in direct violation of the Fourth and Fourteenth Amendments of the Constitution of the United States of America, 42 United States Code, Sections 1983 and 1988, and Article 1 Section 2 and 5 of the Constitution of the State of Louisiana.

35.

As a result of the December 5, 2022, incident more fully described hereinabove, Petitioner suffered severe and serious injuries. The violent trauma perpetrated by Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer upon Petitioner resulted in significant scarring to Petitioner's head and face, extreme pain, injury, emotional distress and other injuries.

36.

The constitutional deprivations referred to hereinabove render Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer, the City of Homer and liable to Petitioner for substantial compensatory damages, attorney's fees and costs of this action sufficient to remedy the damage to Mr. Moak and for additional punitive damages.

COUNT TWO

STATE LAW CLAIMS

37.

The pendent jurisdiction of this Court is invoked for all claims arising under laws of the State of Louisiana.

38.

Plaintiff repeats and re-alleges each and every allegation in paragraphs (1) through (36) of this Complaint as though fully set forth herein.

39.

Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer were acting within the course and scope of their employment with THE HOMER POLICE DEPARTMENT at all material times herein, and accordingly, the CITY OF HOMER are vicariously liable for the above described conduct of their employees and for the consequences thereof resulting in severe injuries to Petitioner and substantially arising therefrom.

40.

The CITY OF HOMER is liable, jointly, severally and in solido with Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer for the wrongs complained of herein by virtue of encouraging, aiding, abetting, counseling, negligently continuing the employment of and condoning the commission of the above described acts of Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer and further, by a complete dereliction in the duty owed to the general public by the CITY OF HOMER to establish proper policies for screening, hiring, training, supervising and disciplining officers such as Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer.

41.

At all times relevant the defendants acted negligently, intentionally and/or recklessly when they violated the constitutional, civil and statutory rights of Petitioner in the non-exclusive particulars:

- (A) By using excessive and unnecessary force against Petitioner;
- (B) By failing to take the necessary precautions and steps to avoid the occurrence of the type of incident that occurred in this case on December 5, 2022;
- (C) By failing to provide proper instruction and training to Police Chief Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer;
- (D) By failing to utilize proper training skills and techniques in training Police Chief
- (E) Van McDaniel, Officer Arnold Stevens, Officer Ted Robinson and an Unnamed Officer;
- (F) By acting outrageously and with deliberate indifference to the constitutional, civil and statutory rights of Petitioner on December 5, 2022;
- (G) By maliciously violating and interfering with the constitutional, civil and statutory rights of Petitioner on December 5, 2022;
- (H) By maliciously violating and interfering with the constitutional, civil and statutory rights of Petitioner on December 5, 2022;
- (G) By negligently violating and interfering with the constitutional, civil and statutory rights of Petitioner on December 5, 2022;
- (H) By intentionally inflicting extreme physical pain, mental and emotional distress on Petitioner on December 5, 2022;
- (I) By intentionally and maliciously inflicting severe mental, physical and emotional distress on Petitioner on December 5, 2022;

- (J) By assaulting and battering Petitioner on December 5, 2022.
- (K) By committing gross negligence;
- (L) By subjecting Petitioner to cruel, extreme and inhumane treatment and punishment on December 5, 2022; and
- (M) And by any other negligent, grossly negligent, reckless, malicious, and intentional conduct and violations of the law to be shown at trial.

42.

Petitioner further alleges that the actions of the defendants referenced with particularity hereinabove were the proximate cause and cause in fact of the injuries and damages sustained by Petitioner as referenced hereinabove and hereinbelow.

43.

As a consequence of the actions of the defendants described more fully hereinabove, Petitioner has sustained substantial damages for which he is entitled to be compensated as provided for by Louisiana Civil Code Article 2315 as follows and in all amounts to be proven at the trial of this case:

- (A) Physical pain and suffering, past, present and future;
- (B) Mental pain, emotional pain, distress and suffering, embarrassment, humiliation, grief and mental anguish, past, present and future;
- (C) Loss of enjoyment of life, past, present and future;
- (D) Medical expenses, psychological/counseling services and other professional services, past, present and future;
- (E) Permanent facial scarring, past, present and future;
- (F) Loss Wages; and

(G) Physical disability and facial numbness, past, present and future.

44.

Petitioner shows that it will be necessary for him to employ expert witnesses to testify at the trial of this case and that all expert witness fees should be fixed and taxed as costs and the defendants should be condemned jointly, severally and in solido to pay for the same.

REQUEST FOR TRIAL BY JURY

45.

Petitioner requests a trial by jury as to all issues set forth hereinabove to the extent permitted by law.

WHEREFORE, Petitioner, GREGORY MOAK, prays that after due proceedings had that there be Judgment rendered herein in favor of GREGORY MOAK, and against THE CITY OF HOMER, OFFICER ARNOLD STEVENS, OFFICER TED ROBINSON, and the UNNAMED OFFICER, in the following particulars:

- I. Petitioner be awarded substantial compensatory damages and substantial punitive damages as described with particularity hereinabove;
 - II. Petitioner be awarded legal interest on all damages awarded to him as a result of these proceedings from date of judicial demand until paid;
 - III. Petitioner be awarded all costs of this litigation, including all expert witness fees and other related costs of this litigation;
 - IV. Petitioner be awarded reasonable attorney's fees;
 - V. Petitioner be allowed a trial by jury for all demands made by him hereinabove;
- and,

VI. For such other relief against the defendants as this Court deems necessary, just, proper and equitable considering the premises.

Respectfully submitted by:

BY: /s/Rickey K. Swift
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PLEASE SERVE
CITY OF HOMER
Through the Mayor,
Dr. Xanthe Y. Seals
400 E. Main Street
Homer, La 71040

CHIEF OF POLICE VAN MCDANIEL
Through the Homer Police Department,
420 E. Main Street
Homer, La 71040

OFFICER ARNOLD STEVENS
Through the Homer Police Department,
420 E. Main Street
Homer, La 71040

OFFICER TED ROBINSON
Through the Homer Police Department,
420 E. Main Street
Homer, La 71040

UNNAMED OFFICER,
Through the Homer Police Department,
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