



DISTRICT COURT
FILED

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

JUN 13 2016

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

- 1) CODY ROBERT MATHEWS,

Plaintiff,
- vs.
- 1) CITY OF OWASSO, a municipal
corporation, ex rel. OWASSO POLICE
DEPARTMENT and OWASSO JAIL;
- 2) MICHAEL DENTON, individually and
in his official capacity,
- 3) ANDREW EUBANKS, individually and
in his official capacity,
- 4) JOHN DOES 1-5, individually and in their
official capacity,
- Defendants.

CJ-2016-02196

Linda Morrissey

ATTORNEY LIEN CLAIMED

JURY TRIAL DEMANDED

PETITION

COMES NOW Plaintiff, CODY ROBERT MATHEWS, by and through his Attorney,
S. THOMAS SAWYER, for his causes of action against Defendants alleges and states as
follows:

PARTIES, JURISDICTION AND VENUE

- 1. Plaintiff Cody Robert Mathews (hereinafter "Mathews") is an individual residing in Tulsa County, Oklahoma.
- 2. Defendant City of Owasso (hereinafter "City") is a municipal corporation within the State of Oklahoma with its situs in County of Tulsa County, State of Oklahoma.
- 3. Defendant City is liable for the actions of its employees and the employees of its various departments as alleged herein.
- 4. Defendant Owasso Police Department is a department of the City of Owasso.
- 5. Defendant Owasso Jail is a department of the City of Owasso.

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6. Defendant Michael Denton (hereinafter "Denton") was at all relevant times a police officer employed by the City of Owasso Police Department. He is being sued both individually and in his official capacity.

7. Defendant Andrew Eubanks (hereinafter "Eubanks") was at all relevant times a police officer employed by the City of Owasso Police Department. He is being sued both individually and in his official capacity.

8. Defendants John Does 1-5 were at all relevant times police officers and jail personnel employed by the City of Owasso Police Department and/or Jail Department. They are being sued both individually and in their officer capacity.

9. The individual Defendant were involved in unnecessary, unreasonable and/or excessive force, including, but not limited to assault and battery of Mathews and the failing to provide Mathews with immediate and proper medical attention for the injuries Mathews suffered at the hands of Defendants while Mathews was in custody in the Owasso Jail.

10. Defendant City's, one of the Defendants, situs is in Tulsa County, thus jurisdiction and venue is proper in Tulsa County.

STATE REMEDIES UNDER THE OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT FOR STATE AND FEDERALLY PROTECTED RIGHTS ARE INADEQUATE

11. With Mathews' monetary damages in excess of \$200,000.00, State remedies under the Oklahoma Governmental Tort Claims Act (OGTCA) are inadequate to redress the injuries he suffered as a result of Defendants' violation of his State and Federally constitutionally protected rights.

COMPLIANCE WITH OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT

12. Pursuant to the Oklahoma Governmental Tort Claims Act (hereinafter "OGTCA"), and as required by 51 O.S. § 151, seq., Mathews' attorney, S. Thomas Sawyer,

notified the City of Mathews' claim by way of a letter dated December 14, 2015, in which contained Mathews' Notice of Tort Claim to the City.

13. By letter dated January 11, 2016, Sherry Bishop, Assistant City Manager for the City, denied Mathew's Oklahoma Governmental Tort Claim.

STATEMENT OF FACTS

14. On June 14, 2015, Mathews was driving an alleged stolen truck in the City of Tulsa, Tulsa County.

15. Tulsa Police Department officers attempted to stop Mathews.

16. Mathews did not stop and police began to chase Mathews.

17. The chase went on into the City of Owasso, where Denton and Eubanks joined in the chase.

18. The chase came to an end in a field in Nowata County where the vehicle Mathews was driving became stuck in the mud, with the vehicle not being able to move any further.

19. Police officers from multiple jurisdictions were on the scene.

20. The police officers were trying to figure out how to safely extricate Mathews out of the vehicle.

21. At this time, police officers were able to see Mathews in the vehicle, *inter alia*, through the driver's side window.

22. Eubanks attempted to break out the driver's side window of the truck by hitting the window with his baton. The window completely shattered and the officer's view into the truck was obscured. Only a small corner of the window was knocked out.

23. Without being able to clearly see inside the vehicle, Denton repeatedly jammed the barrel of a loaded shotgun through that small opening, striking Mathews multiple times in the head,

neck and torso with end of the barrel.

24. Denton also struck Nowata Police Officer Cheyenne Lee with the barrel of his shotgun while Officer Lee was attempting to pull Mathews out of the vehicle through the open passenger door, as Officer Lee testified at at Denton's criminal preliminary hearing.

25. A police officer from another jurisdiction tried to stop Denton and pulled him away from the vehicle.

26. Officers opened the driver's door and Nowata Police Officer Michael Bright was able to pull Mathews out of the vehicle and take him to the ground.

27. Mathews landed face down on the ground, Officer Bright was on top of him with Officer Bright's knee on Mathews' back. At this point, Officer Bright was in control of Mathews and had him subdued, as Officer Bright testified at Denton's criminal preliminary hearing.

28. While Officer Bright was handcuffing Mathews and while Mathews was subdued, Denton unnecessarily re-inserted himself back into the action and repeatedly struck Mathews in the head, neck and shoulders with the butt of his shotgun.

29. Upon information and belief, Denton yelled "light the motherf-----r up" at this time.

30. Also while Officer Bright was handcuffing Mathews and while Mathews was subdued, Eubanks deployed his Taser between Mathews' shoulder blades and repeatedly drive stunned Mathews with his Taser.

31. After Mathews is handcuffed and subdued, Eubanks kicked Mathews.

32. Denton and Eubanks were was obviously out of control.

33. All of these actions were caught on multiple video/audio recordings.

34. Denton's and Eubanks' actions constituted unreasonable, unnecessary, and excessive force against Mathews and resulted in both bodily injuries and emotional distress to

Mathews.

35. Upon information and belief, after Mathews' arrest, Denton, Eubanks, and/or other officers took Mathews to the City of Owasso jail.

36. Even though Mathews was injured from being repeatedly hit with a shotgun and unnecessarily Tased, Owasso Police Department officers and Owasso Jail personnel did not provide any medical care to Mathews after he was arrested and placed in the Owasso Jail.

37. Owasso Police Department Policy OPS 01.01 Use of Force and Weapons defines excessive force as:

Physical force that exceeds the degree permitted by law or the policies and guidelines of the Owasso Police Department. The use of excessive force shall be presumed when a police officer continues to apply physical force to a person who has been rendered incapable of resisting arrest or is no longer posing a threat to the officer(s) or other persons.

38. Pursuant to policy, Defendant officers' actions constituted unreasonable, unnecessary, and excessive force against Mathews and resulted in both bodily injuries and emotional distress to Mathews.

39. After the assault and batter, Mathews was bleeding and suffering from other injuries as a direct result of the unreasonable, unnecessary, and excessive force.

40. Defendants ignored Mathews' visible, bleeding injuries and failed to provide Mathews with immediate medical attention.

41. Mathews did not receive any medical attention at any time he was in Owasso police custody and in the Owasso jail.

42. Mathews suffered numerous injuries, due to Defendants' unnecessary, unreasonable and excessive force, and Defendants' failure to provide immediate medical attention.

43. Mathews suffered severe humiliation and emotional distress due to his abusive, demeaning, and humiliating treatment by Defendants.

44. These actions amounted to a violation of the Mathews' civil rights pursuant to State and Federal Constitutions and laws of the State of Oklahoma and the United States.

45. Oklahoma State Bureau of Investigation conducted an investigation into Denton's actions.

46. Criminal charges were filed against Denton in Nowata County, one of which is assault and battery with a deadly weapon, and are currently pending.

47. Denton has been accused and found to have used unnecessary, unreasonable, and excessive force multiple times in the past.

48. Despite this knowledge of Denton's previous actions, Defendant City continued to employ Denton as a police officer, continued to place him in the field, and continued assigned him tasks in which he had contact with people in similar situations as Mathews.

CLAIMS FOR RELIEF

49. This action arises under the Fourth and Fourteen Amendments to the United States Constitution; under federal law, specifically, 42 U.S.C. § 1983 and § 1988, under the State of Oklahoma Constitution Art., 2 § 30 to be free from excessive, unnecessary, and unreasonable force and under the State of Oklahoma Constitution Art. 2 § 9 to be free from cruel and unusual punishment, by a municipal policing and jail entity, under the Oklahoma Government Tort Claim Act, 51 O.S. § 151, et. seq., and under Oklahoma state/common law for assault and battery, and vicarious liability.

50. While Defendant police officers and other jail personnel were acting in the scope of their employment and under color of state law, they used brutality, unnecessary, unreasonable,

and excessive force against Mathews, as well as ignoring the injuries Mathews suffered at the hands of Defendants and failing to provide Mathews with immediate and appropriate medical care.

51. This use of brutality, unnecessary, unreasonable, and excessive force, and failing to immediately address Mathews injuries caused Mathews emotional distress, as well as bodily injury, and pain and suffering, and damages in excess of \$200,000.00.

52. This action is also brought against Defendant City for its failure to properly train and supervise Defendant officers and other employees in determining what appropriate force is, when appropriate force is needed, when to intervene to stop or prevent brutality, unreasonable force and excessive force, when to provide medical care, and its establishment of policies, procedures, practices, and customs regarding arrests and arrestees being held in the Owasso Jail, and for vicarious liability for the tortious conduct by the Defendant officers and other personnel.

COUNT ONE

**Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983
(Failure to Implement Appropriate Policies, Customs, and Practices)**

53. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

54. Defendant City, failed to adopt and implement policies, customs, training, and/or practices designed to prevent Police Department officers and other employees from using or allowing brutality, excessive force, unreasonable force and unwarranted force when arresting suspects, and from failing to provide appropriate medical care to suspects being held in the Owasso Jail.

55. Defendant City's failure to adequately train and supervise its officers and other employees on the above amounts to a deliberate indifference to Mathews' right to be free from

excessive and unwarranted force under the Fourth and Fourteen Amendments to the United States Constitution, as well as the right to be free from excessive, unnecessary, and unreasonable force under the State of Oklahoma Constitution Art., 2 § 30 and cruel and unusual punishment under the Eighth Amendment of the United States Constitution and the State of Oklahoma Constitution Art. 2 § 9 by a municipal policing and jail entity.

56. The widespread and longstanding nature of these acts indicate that Defendant City must have known about and failed to stop such acts and omissions, thus impliedly authorizing the officers' and other personnel's actions and inactions.

57. As a result of this deliberate indifference to Mathews' constitutional rights, Mathews suffered bodily injury, including head injury, swelling and bruising in different parts of his head and body, and emotional and psychological trauma, and pain and suffering.

58. In committing the acts complained of herein, Defendants acted under color of state law to deprive Mathews of his constitutionally protected rights, including the right to be free from excessive and unwarranted force and abuse both physical and psychological, as well as to be free from cruel and unusual punishment.

59. As a direct and proximate cause of Defendant's actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT TWO

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (Use of Unwarranted and Excessive Force and Cruel and Unusual Punishment)

60. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

61. Policy OPS 01.01 defines excessive force.

62. Despite Policy OPS 01.01, Defendant City adopted policies, procedures, practices, and/or customs within the Police Department which allowed the use of brutality, unwarranted force, unnecessary force, and unreasonable force, when other more reasonable and less drastic methods were available.

63. Defendant Police Department and its officers failed to intervene to prevent the use of excessive force in the incident involving Mathews on June 14, 2015, for which there exists liability pursuant to § 1983.

64. The actions of Defendant officers, other personnel and City amount to deliberate indifference to Mathews' rights to be free from brutality, excessive force and unwarranted force under the Fourth and Fourteen Amendments to the United States Constitution, the right to be free from brutality, excessive force, unnecessary force, and unreasonable force by a municipal policing entity under the State of Oklahoma Constitution Art., 2 § 30, the right to be free from cruel and unusual punishment by a municipal jail under the Eighth Amendment of the United States Constitution and the State of Oklahoma Constitution Art. 2 § 9 and the laws of the State of Oklahoma and United States.

65. As a result of the deliberate indifference to Mathews' constitutional rights by Defendant City and officers and other personnel, Mathews has suffered bodily and personal injuries, as well as psychological abuse, and pain and suffering.

66. As a direct and proximate cause of Defendants' actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT THREE
Oklahoma Governmental Tort Claims Act - 51 O.S. § 151 et. seq.
(Negligence)

67. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

68. Defendants owed Mathews a duty to exercise reasonable care as a reasonably prudent law enforcement officer and jail personnel at all times of the aforementioned incidents.

69. Each Defendant breached said duty in committing the acts and/or omissions herein.

70. As a direct and proximate cause of Defendants' actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT FOUR
Oklahoma Government Tort Claim Act - 51 O.S. § 151 et. seq
(Negligent Hiring/Training/Supervision)

71. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

72. Defendant City owed Mathews a duty to exercise reasonable care with respect to hiring, training, and supervision at all the times of the aforementioned incidents.

73. Each Defendant breached said duty in allowing the acts and/or omissions herein to be committed.

74. Defendant City knew or should have known of its employee's propensities and those such actions and inactions would create an undue risk of harm to others.

75. Defendant City continued to place Denton in situations were he could harm others despite knowing Denton has already done so in the past.

76. As a direct and proximate cause of Defendant's actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological

distress, and pain and suffering in excess of \$200,000.00

COUNT FIVE
Oklahoma State/Common Law
(Defendant Denton – Assault and Battery)

77. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

78. Defendant Denton's actions placed Mathews in fear or apprehension of harmful or offensive touching.

79. Defendant Denton knowingly, wantonly, intentionally, and with reckless disregard for Mathews' rights caused harmful/offensive contact with Mathews by repeatedly striking Mathews in the head, neck and torso with the barrel of his shotgun and then with the butt of his shotgun after Mathews had been subdued.

80. Mathews did not, in any manner, at any time, consent to the unreasonable and unwarranted apprehension of fear of injury or the actual touching of his person by Denton.

81. Denton breached a duty of care owed to Mathews to not assault and batter him or cause him any physical harm or injury.

82. As a direct and proximate cause of Denton's actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT SIX
Oklahoma State/Common Law
(Defendant Eubanks – Assault and Battery)

83. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

84. Defendant Eubanks' actions placed Mathews in fear or apprehension of harmful

or offensive touching.

85. Defendant Eubanks knowingly, wantonly, intentionally, and with reckless disregard for Mathews' rights caused harmful/offensive contact with Mathews by repeatedly Tasing Mathews after Mathews had been subdued.

86. Defendant Eubanks knowingly, wantonly, intentionally, and with reckless disregard for Mathews' rights caused harmful/offensive contact with Mathews by kicking Mathews after Mathews had been subdued and handcuffed.

87. Mathews did not, in any manner, at any time, consent to the unreasonable and unwarranted apprehension of fear of injury or the actual touching of his person by Eubanks.

88. Eubanks breached a duty of care owed to Mathews to not assault and batter him or cause him any physical harm or injury.

89. As a direct and proximate cause of Eubanks' actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT SEVEN

**Oklahoma Government Tort Claim Act – 51 O.S. § 151 et. Seq.
(Vicarious Liability)**

90. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

91. At all times during the incidents herein, Defendant officers and jail personnel were Defendant City employees.

92. At all times during the incidents herein, Defendant officers and jail personnel were on duty and acting within the scope of their employment.

93. Defendant City, through its Police Department and Jail Department, was

responsible for hiring, training and supervising its officers and other personnel.

94. Defendant City was responsible for: establishing and implementing policies, practices, procedures, and customs used by its police officers and other personnel employed by Defendant City regarding arrests and incarceration of suspects, and the use of force; hire, train, suspend of police officers and other personnel; and for enforcing Owasso Police Department Jail Department regulations, ensuring that officers and other jail personnel obey the Oklahoma and United States Constitutions and laws of the State of Oklahoma and the United States, and that all citizens' Constitutional rights were to be respected.

95. Defendant City is vicariously liable for the tortious and intentional conduct by Defendant officers and other personnel, as undertaken in their capacity as employees, and/or agents of Defendant City, within the course and scope of their employment as described herein.

96. As a direct and proximate cause of Defendants' actions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

COUNT SEVEN
Violation of Oklahoma Constitution Art. 2 § 30 and Art 2 § 9
("Washington/Bosh" type claim)

97. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

98. Mathews makes a claim for excessive force under Art. 2 § 30 and for cruel and unusual punishment under Art 2 § 9 of the Constitution of the State of Oklahoma.

99. Regardless of what the OGTCA immunizes, the Okla. Const. Art. 2 § 30 and § 9 protects citizens from being physically abused by the employees of state and local entities that operate police department and city jail facilities, and such protection includes legal liability for

the conduct alleged herein.

100. City municipal police department and jail liability extends when an employee's conduct is an assault and battery of excessive force and cruel and unusual punishment if the conduct also occurs within one's scope of employment, under the theory of respondeat superior, as one acts within the scope of employment if engaged in work assigned, or if doing what is proper, necessary and usual to accomplish the work assigned, or doing that which is customary within the particular trade or business, such as a police department and jail department of a municipality as alleged in this case.

101. When the act is one which is 'fairly and naturally incident to the business, and is done while the servant was engaged upon the master's business and be done, although mistakenly or ill advised, with a view to further the master's interest, or from some impulse of emotion which naturally grew out of or was incident to the attempt to perform the master's business.' An employee's act is within the scope of employment if it is incident to some service being performed for the employer or arises out of an emotional response to actions being taken for the employer.

102. A private cause of action exists for citizens to recover for excessive force under the provisions of the Oklahoma Constitution Art. 2 § 30 and for cruel and unusual punishment under the provisions of the Oklahoma Constitution Art. 2 § 9 and the Eighth Amendment of the United States Constitution -- despite the provisions of the OGTC.

103. Mathews' cause of action exists in spite of the OGTC for the reason that such a cause of action exists for persons who were not already incarcerated inmates, because they have significantly broader rights.

104. The Oklahoma Constitution Art. 2 § 30 applies to citizens who are seized --

arrestees and pre-incarcerated detainees as was the situation with the Mathews as alleged herein.

105. The Oklahoma Constitution Art 2 § 30 provides a private cause of action for excessive force, notwithstanding the requirements and limitations of the OGTCOA, as alleged herein.

106. The State of Oklahoma recognizes the application of the doctrine of respondeat superior to the OGTCOA and in the context of law enforcement, has taken pains to point out that a municipality is liable for the tortious acts of police officers and other personnel committed within the scope of employment as defined by the OGTCOA.

107. A claim for excessive force under the Oklahoma Constitution Art 2 § 30 does not arise from the OGTCOA, therefore there is no reason why the doctrine of respondeat superior should not apply to hold employers, like City of Owasso liable for their employees' violations of a Mathews' rights under Oklahoma Constitution Art. 2 § 30 where the employees act within the scope of their employment as the officers did as alleged herein.

108. The Oklahoma Constitution Art. 2 § 30 provides a private cause of action for excessive force, notwithstanding the limitations of the Oklahoma Governmental Tort Claims Act.

109. Defendant officers' and other personnel's actions and inactions, as described herein, violated Mathews' constitutionally protect rights to be free from the use of excessive force and to be free from cruel and unusual punishment under the Oklahoma Constitution Art. 2, § 30 and § 9, and the Eighth Amendment under the United States Constitution.

110. As a direct and proximate cause of Defendant officers' and other personnel's actions and inactions, Mathews suffered damages in the form of physical and psychological injuries, emotional and psychological distress, and pain and suffering in excess of \$200,000.00

PUNITIVE DAMAGES

111. Mathews incorporates herein by reference, as if fully set forth herein, the allegations and averments of aforementioned paragraphs.

112. Mathews is entitled to punitive damages on his claims brought pursuant to 42 U.S.C. § 1983 as Defendants' conduct, acts and omissions alleged herein constitute reckless or callous indifference to Mathews' federally protected rights.

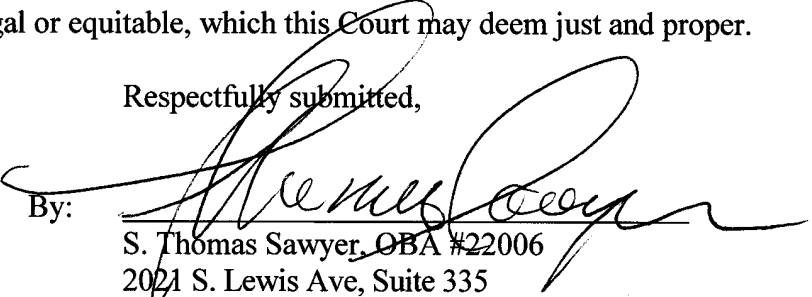
113. Mathews is entitled to punitive damages on his state law tort claims as Defendants' conduct, acts and omissions alleged herein constitute reckless disregard for Mathews' rights.

CONCLUSION

WHEREFORE, premises considered, Plaintiff Cody Robert Mathews, prays judgment against Defendants on all causes of action asserted herein for damages in excess of \$200,000.00 and all other damages for which he is entitled to recover, including, but not limited to, punitive damages, together with the reasonable expenses incurred in this litigation, including reasonable attorney fees, pursuant to 42 U.S.C. § 1983 (b) and (c), and other state laws, and any other further and general relief, either legal or equitable, which this Court may deem just and proper.

Respectfully submitted,

By:


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