

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BARINE DEEZIA,

Plaintiff,

vs.

CITY OF LINCOLN, GREGORY GRAHAM,
Lincoln Police Department Officer, AARON
PETH, Lincoln Police Department Officer,
TREY WAYNE, Lincoln Police Department
Officer, ANDREW WINKLER, Lincoln Police
Department Officer, MARK MOORE, Lincoln
Police Department Officer, PATRICK
MURPHY, Lincoln Police Department Officer,
and JASON DRAGER, Lincoln Police
Department Officer.

Defendant.

Case No. _____

**COMPLAINT, JURY DEMAND, AND
DESIGNATION OF PLACE OF TRIAL**

Plaintiff, BARINE DEEZIA, by and through his undersigned attorneys, for his complaint against Defendants CITY OF LINCOLN, GREGORY GRAHAM, Lincoln Police Department Officer, AARON PETH, Lincoln Police Department Officer, TREY WAYNE, ANDREW WINKLER, Lincoln Police Department Officer, MARK MOORE, Lincoln Police Department Officer, PATRICK MURPHY, Lincoln Police Department Officer, and JASON DRAGER, Lincoln Police Department Officer, hereby alleges as follows:

INTRODUCTION

1. Plaintiff brings this suit pursuant to 42 U.S.C. § 1983 against the City of Lincoln, Nebraska, and against certain Lincoln Police Department Officers who were involved in the false arrest, use of excessive force, and false imprisonment

of the Plaintiff on or about March 20, 2016. This case is an egregious example of police misconduct, featuring multiple violations of Plaintiff's rights secured by the United States Constitution by Defendants. As a result of the Defendants' unconstitutional tactics, Plaintiff suffered broken bones and other physical injuries, damage to his reputation in the community, involuntary confinement, and anxiety and psychological trauma that continues to the present day. This suit is brought to redress the sizeable injury that Defendants inflicted upon Plaintiff by their deliberate violations of Plaintiff's rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. This suit also seeks damages against the City of Lincoln, Nebraska for its failure to properly train and supervise the officers who participated in the unconstitutional arrest, use of force, and imprisonment of Plaintiff.

2. Upon information and belief, the City of Lincoln and the Lincoln Police Department is believed to have a policy of arresting and prosecuting an individual injured as a result of use of force by law enforcement.

JURISDICTION

1. This action arises under the United States Constitution, particularly under the provisions of the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, and under federal law, particularly the Civil Rights Act, 42 U.S.C §§ 1983 and 1988.

2. This Court has jurisdiction of this cause because and by virtue of 28 U.S.C. §§ 1331, 1332, and 1343.

SUPPLEMENTAL JURISDICTION

3. Plaintiff's claim and causes of action also arise under the Nebraska Political Subdivisions Tort Claims Act as set forth in Nebraska Revised Statutes §§ 13-901 – 13-928.

4. Plaintiff served a notice of claim upon the City of Lincoln within one year of the March 20, 2016 incident giving rise to this lawsuit, namely, Thursday, April 7, 2016.

5. This Court has supplemental jurisdiction in accordance with 28 U.S.C. § 1337, as Plaintiff's state law "claims...are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

VENUE

6. The substantial number of events that give rise to this lawsuit took place in the City of Lincoln, County of Lancaster, Nebraska.

7. Defendant City of Lincoln is a governmental entity and political subdivision of the State of Nebraska that is the county seat of Lancaster County, Nebraska, and is found in the Lincoln Division of the United States District Court for the District of Nebraska.

8. Plaintiff has properly laid venue in this court in accordance with 28 U.S.C. § 1331(b).

PARTIES

9. Barine Deezia is an adult citizen of Nigeria, Africa. At all times relevant hereto has been a legal resident of Lincoln, County of Lancaster, State of Nebraska.

10. At all times relevant hereto the City of Lincoln is or has been a political subdivision under the laws of the State of Nebraska, and may be sued pursuant to Neb. Rev. Stat. § 14-101.

11. At all relevant times set forth herein, Gregory Graham, Aaron Peth, Trey Wayne, Andrew Winkler, Mark Moore, Patrick Murphy, and Jason Drager were police officers employed by the Lincoln Police Department and at all times mentioned in this complaint were acting under color of law and color of their authority as such police officers of the Lincoln Police Department. The Defendants are sued both individually and in their official capacity.

ALLEGATIONS OF FACT

12. Prior to moving to Lincoln, Nebraska, USA in 2010, Plaintiff was a resident of Nigeria. Plaintiff moved to the United States to further his education and to pursue increased economic opportunities.

13. In 2015, Plaintiff graduated from Doane College in Nebraska with a degree in Computer Information Systems Management. Plaintiff is currently pursuing his Masters in Business Administration with an emphasis in Risk Management and Cyber Security through Concordia University Nebraska.

14. Plaintiff owns and operates two businesses within Lincoln, Nebraska: African Home Food Supply and www.bankerhires.com, where he screens applicants for high-level IT positions.

15. Plaintiff has profound respect for law enforcement personnel, as many of his family members have served or continue to serve in law enforcement in Nigeria and elsewhere. Plaintiff's father, Deezia Deezia, served as a Police Officer in River State from 1977-2012 and was killed in the line of duty. Plaintiff's Uncle, Nyiyaa Yogo, and sister, Bariyaa Deezia, are currently serving as police officers in Nigeria.

16. Prior to this incident, Plaintiff had never been involved in any violent confrontations with police or been charged with resisting arrest, assaulting an officer, obstructing a peace officer, or similar crimes.

17. At or around 2 AM on Sunday, March 20, 2016, Plaintiff and three friends were walking east bound on "O" street and approaching the intersection of N. 14th & "O" streets when they encountered Officers Peth, Graham, Winkler, and Moore, armed and in uniform. Officers Peth and Graham asked Plaintiff and his friends which bar they had been drinking at, stating they believed that one of the members of their group, Nyakiam Domach, nicknamed "Bullet", had been served too much alcohol and that they were going to write that bar a ticket for over-serving.

18. Plaintiff informed the officers that that "Bullet" did not drink at any bar since arriving downtown. They also said she was fine and the last time that she had drunk alcohol was at a housewarming party before coming downtown.

19. Officers continued to question Plaintiff for several minutes, asking similar questions. Plaintiff and his friends answered these questions to the best of their ability in a polite, peaceful, and respectful manner.

20. At or about 2:02 AM on March 20, 2016, Plaintiff and his friends crossed “O” street headed North towards Jimmy John’s restaurant en route to their vehicle to head home. Officers Peth, Graham, and Winkler immediately followed Plaintiff and his friends across the street.

21. Once they crossed the street, the Officers continued to question Plaintiff and his friends regarding what bar they had been drinking at. At this time, Plaintiff informed Elizabeth Grayer that she did not have to talk to the Police. Officer Peth asked Plaintiff, “What did you say?” to which he responded, “I told her that she doesn’t have to talk to you if she doesn’t want to”. Officer Peth immediately pushed Plaintiff in the chest, to which Plaintiff responded “You have no right to touch me.” Officers Peth & Graham then grabbed him forcefully, slammed plaintiff into the window of the Jimmy John’s restaurant under the “free smells” sign. As Plaintiff struggled to maintain his balance, Officers Trey Wayne, Andrew Winkler, Mark Moore, Patrick Murphy, and Jason Drager began applying force to Plaintiff. Before applying force, none of these officers informed the Defendant that he was under arrest or announced that they were uniformed police officers.

22. Officer Trey Wayne performed an “inside takedown” on Plaintiff, causing him to forcefully strike his head on the brick sidewalk and lose consciousness. While Plaintiff was limp and unconscious, multiple Officers began hitting

Plaintiff forcefully in the back and shoulder blade area as well as administering holds to Plaintiff's arms and legs, and continued to administer corporal punishment to Plaintiff's unconscious body until he regained consciousness. Even after Plaintiff was restrained in handcuffs and unconscious, Police Officers remained on top of him, administering corporal punishment.

23. Elizabeth Grayer, an adult, African-American female with Plaintiff at the time of the violent incident, was threatened with mace and arrest by Officer Graham for asking the officers to "Please Stop". At no point did she move to intervene, obstruct, threaten the officers, or do anything that would warrant such a threat.

24. Maalobari Maalou, nicknamed "Mandus", an adult Nigerian male with Plaintiff at the time of the incident, was also threatened with mace and arrest for asking the officers why they were using such excessive force. Similar to Ms. Grayer, at no point did Mandus move to intervene, obstruct, threaten the officers, or do anything that would warrant such a threat.

25. Plaintiff was cited for failing resisting arrest and obstructing a peace officer. On November 10, 2016, a jury returned a unanimous verdict of "not guilty" to these charges within an hour.

26. At Plaintiff's criminal trial, seven police officers testified under oath that at no point in time did they inform the Plaintiff that he was "under arrest".

27. At Plaintiff's criminal trial, testimony and evidence clearly showed that the Police Officers initiated any and all physical force, and that prior to the

Officer(s) initiating physical force, Plaintiff had not thrown any punches, acted aggressively, made any threats, or physically impeded their investigation.

28. At Plaintiff's criminal trial, video evidence was introduced showing that Officer Graham's body camera was turned on and recorded the Officers' initial encounter with Plaintiff in front of Brother's Bar at the intersection of N. 14th & "O" street. Officer Graham's body camera was then turned off, only being turned back on to record after Plaintiff had been knocked unconscious.

29. At Plaintiff's criminal trial, testimony and video evidence was produced that Officers Murphy and Winkler also were issued body cameras. Similar to Officer Graham's, these cameras were not recording until after the Plaintiff had been knocked unconscious.

30. At Plaintiff's criminal trial, video evidence from Lincoln street cameras showed conclusively that the officers initiated the physical confrontation.

31. At Plaintiff's criminal trial, Officer Graham testified that at the point Officers initiated force against Plaintiff, there was no longer a concern about the safety or well being of Ms. Domach, but that the Officers continued asking questions in order to pursue a tavern violation.

32. Plaintiff regained consciousness handcuffed and laying face down in a pool of his own blood, and was experiencing excruciating pain, nausea, anxiety, dizziness, headaches, and both physical and mental distress as a result of the Officers unreasonable and excessive corporal punishment.

33. Plaintiff was handcuffed to the bed in the ambulance and his freedom of movement was restricted while en route to Bryan West Hospital.

34. While at Bryan West Hospital, Plaintiff was handcuffed to the bed, his freedom of movement was restricted, and Plaintiff was not free to leave.

35. X-rays taken at Bryan LGH hospital indicated that Plaintiff had suffered a fractured left scapula as a result of the unreasonable and excessive corporal punishment inflicted by the Officers. In addition to a broken scapula, Plaintiff suffered cuts, bruises, scrapes, and contusions as a result of the unreasonable and excessive corporal punishment inflicted by the Officers.

36. The force that defendants used in seizing, body-slamming, choking, and beating Plaintiff was excessive and unreasonable under the facts at hand, as well as clearly established law of the Fourth and Fourteenth Amendments to the United States Constitution. Violent force was not necessary or reasonable.

37. Plaintiff neither consented, invited, nor provoked the use of force by Defendants or to the confinement to the ambulance, hospital, or jail caused by Defendants.

38. The Defendants inflicted severe pain upon Plaintiff.

39. The Defendants falsely imprisoned Plaintiff.

40. The Defendants inflicted severe emotional distress as the direct result of the bodily injuries and false imprisonment inflicted upon him by Defendants.

41. Defendants have caused Plaintiff to suffer lost income in an amount of at least \$25,000-\$30,000 or more.

42. Defendants have caused Plaintiff to incur medical bills in the amount of

_____.

43. Plaintiff's injuries were incurred as a direct and proximate result of the excessive use of force by Defendants, and Defendants have refused to pay these medical bills.

44. Defendants have caused Plaintiff to suffer permanent injuries and impairment. The nature and extent of the permanent impairment is unknown at this time, but will be proven at trial.

**CLAIM I: INFILCTION OF EXCESSIVE, UNREASONABLE FORCE IN
VIOLATION OF U.S. CONST. AMEND. IV AND XIV, THROUGH
42 U.S.C. § 1983**

45. Plaintiff incorporates the allegations set forth in Paragraphs 1-44 as if fully set forth herein.

46. Defendants Gregory Graham, Aaron Peth, Trey Wayne, Andrew Winkler, Mark Moore, Patrick Murphy, and Jason Drager, jointly and severally, in their individual capacities, under color of law as Lincoln police officers, violated plaintiff's clearly established right to be free from infliction of excessive, unreasonable force under the Fourth and Fourteenth Amendments to the United States Constitution, protected through 42 U.S.C. § 1983.

47. The Supreme Court has stated that, "the severity of the crime at issue" is one of the facts that must be analyzed in determining whether the use of force was reasonable. *See Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989). In the instant case the "crime" at issue was over-serving of alcohol by a bar, a crime not capable of being committed by the Plaintiff.

48. The officers' use of force was not objectively reasonable under the circumstances, as Plaintiff was not suspected of committing a crime, was

unarmed, did not instigate violence, did not pose a threat to the safety of the officers or others, and was not attempting to evade arrest. Officers continued to follow and harass Plaintiff to issue a tavern violation. Therefore, Defendants do not enjoy the protection of qualified immunity.

49. Plaintiff suffered lacerations to his face, a broken scapula, and other physical injuries as a result of the excessive, unreasonable force used by the officers.

50. As a result of the physical injuries from the use of excessive force, Plaintiff has suffered and continues to suffer severe mental anguish and ongoing pain and suffering.

51. As a result of the excessive, unreasonable force used by the Officers, Plaintiff has suffered permanent injuries and impairment.

**CLAIM II: FALSE ARREST IN VIOLATION OF U.S. CONST. AMEND. IV
AND XIV, THROUGH 42 U.S.C. § 1983**

52. Plaintiff incorporates the allegations set forth in Paragraphs 1-51 as if fully set forth herein.

53. "A citizen who is arrested without probable cause can bring a civil action against the officer under 42 USC § 1983 for false arrest. A false arrest is a violation of the Fourth Amendment right against unreasonable seizure of persons." *Proving Probable Cause: Allocating the Burden of Proof in False Arrest Claims Under § 1983*, 73 U. Chi. L.Rev. 347, 347-48 (2006).

54. Defendants Gregory Graham, Aaron Peth, Trey Wayne, Andrew Winkler, Mark Moore, Patrick Murphy, and Jason Drager, jointly and severally, in their individual capacities, under color of law as Lincoln police officers, violated

plaintiff's clearly established right to be free from arrest without probable cause under the Fourth and Fourteenth Amendments to the United States Constitution, protected through 42 U.S.C. § 1983.

55. "Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to lead a person of reasonable caution to believe that the suspect has committed or is committing a crime." *Brinegar v. United States*, 338 U.S. 160, 175–76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

56. Officers are "entitled to qualified immunity if they arrest a suspect under the mistaken belief that they have probable cause to do so, provided that the mistake is objectively reasonable"—that is, officers are not liable if they had "arguable probable cause" to make the arrest. *Amrine v. Brooks*, 522 F.3d 823, 832 (8th Cir.2008).

57. As previously stated, the facts and circumstances leading to the questioning and harassment of Plaintiff concerned a "crime" not capable of being committed by Plaintiff. Additionally, Defendants were not acting pursuant to a facially valid warrant or in response to a complaint they had received regarding possible criminal conduct by the Defendant. Therefore, the Defendants lacked "arguable probable cause" and are therefore not protected by qualified immunity as their mistake was not objectively reasonable under the circumstances.

58. As a result of the false arrest of Plaintiff by Defendants, Plaintiff suffered and continues to suffer physical injuries, mental anguish, pain and suffering, shame, humiliation, *inter alia*.

**CLAIM III: FALSE IMPRISONMENT IN VIOLATION OF U.S. CONST. AMEND.
IV AND XIV, THROUGH 42 U.S.C. § 1983**

59. Plaintiff incorporates the allegations set forth in Paragraphs 1-58 as if fully set forth herein.

60. "A false imprisonment consists in the unlawful restraint against his will of an individual's personal liberty and any intentional conduct that results in the placing of a person in a position where he cannot exercise his will in going where he may lawfully go." *Huskinson v. Vanderheiden*, 197 Neb. 739, 742, 251 N.W.2d 144, 146 (1977)

61. Defendants Gregory Graham, Aaron Peth, Trey Wayne, Andrew Winkler, Mark Moore, Patrick Murphy, and Jason Drager, jointly and severally, in their individual capacities, under color of law as Lincoln police officers, violated plaintiff's clearly established right to be free from false imprisonment under the Fourth and Fourteenth Amendments to the United States Constitution, protected through 42 U.S.C. § 1983.

62. As previously stated, Plaintiff was unconscious when he was placed in the ambulance and transported to the hospital. While being transported, Plaintiff was handcuffed to the bed in the ambulance as well as being handcuffed to the bed at Bryan Hospital. After leaving the hospital, Plaintiff was held at the Lancaster County jail for an additional two to three hours before being released on bail. From the time he was placed in the ambulance until his release from jail, Plaintiff was intentionally and unlawfully restrained

against his will and was placed in a position where he was unable to exercise his free will in going where he may lawfully go.

63. Defendants are not shielded by qualified immunity from the charge of false imprisonment because they lacked the requisite probable cause to arrest and detain the Plaintiff against his will.

64. Due to the false imprisonment inflicted on Plaintiff by Defendants, Plaintiff continues to suffer mental anguish, ongoing pain and suffering, permanent injuries and impairment, shame, and humiliation, not just locally but in Nigeria and elsewhere, as this incident has been reported in both local and national news outlets.

CLAIM IV: NEGLIGENCE

65. Plaintiff incorporates the allegations set forth in Paragraphs 1-56 as if fully set forth herein.

66. Defendants City of Lincoln were negligent in one or more of the following ways:

- a) Failing to implement policies, customs, and practices to prevent excessive use of force by Lincoln Police Officers;
- b) Failing to properly screen applicants applying for jobs with the Lincoln Police Department;
- c) Failing to properly train Lincoln Police Officers; and
- d) Failing to properly supervise Lincoln Police Officers in the performance of their duties.

67. Due to the negligence of Defendants Plaintiff suffered severe physical injuries, suffered loss of Constitutional rights, mental anguish, ongoing pain and suffering, and permanent injury and impairment.

PRAYER FOR RELIEF

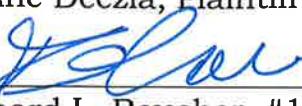
Plaintiff prays for the following relief:

- A. That this Court enter judgment, after a favorable jury verdict, in Plaintiff's favor and against each of the Defendants named herein and award sufficient compensatory damages to compensate him for his injuries;
- B. That this Court also award Plaintiff, after a favorable jury verdict, sufficient punitive damages available under federal law to punish and deter the named individual defendants for their misconduct as alleged herein;
- C. That this Court award Plaintiff attorneys fees pursuant to 42 U.S.C. 1988;
- D. That Plaintiff be awarded his costs of suit;
- E. That this Court award Plaintiff damages for lost wages;
- F. That this Court award Plaintiff damages for medical bills;
- G. That this Court award Plaintiff damages for permanent injury and impairment; and
- H. For such further and additional relief as this Court may deem equitable, just, and reasonable.

JURY DEMAND AND DESIGNATION OF PLACE OF TRIAL

Plaintiff demands that this case be tried to a jury in Lincoln, Nebraska.

Barine Deezia, Plaintiff

BY: 

Richard L. Boucher, #16202

Seth W. Morris, #25803

BOUCHER LAW FIRM

West Gate Bank Building

5555 S. 27th Street, Ste. A

Lincoln, NE 68512

T. (402) 475-3865

F. (402) 475-2326

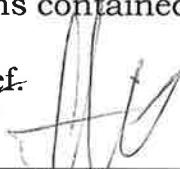
rboucher@boucherlawfirm.com

seth.morris@boucherlawfirm.com

VERIFICATION

STATE OF)
)ss.
COUNTY OF)

I, Barine Deezia, being duly sworn on oath, state that I have read the foregoing COMPLAINT and that the allegations contained therein are true and correct to the best of my knowledge and belief.



BARINE DEEZIA

Subscribed and sworn before me this 27 day of February, 2017.





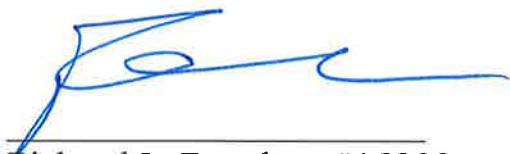
Notary Public

PRAECIPE

TO THE CLERK OF THE ABOVE COURT:

Please issue a summons in the above matter and deliver the same to Richard L. Boucher, Boucher Law Firm, West Gate Bank Building, 5555 S. 27th Street, Ste. A, Lincoln, NE 68512 in order that he may, in accordance with Nebraska Revised Statutes, serve a copy upon the Defendants' representative.

The summons, along with a copy of this complaint, shall be served upon the Defendants' representative via certified mail.



Richard L. Boucher, #16202