

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON**

SEAN DAVIS	:	
	:	
Plaintiff,	:	Civil Action No. _____
	:	
v.	:	COMPLAINT
	:	42 U.S.C. §1983
	:	
CITY OF COVINGTON, MICHAEL LUSARDI, And DOES 1-10	:	
	:	
Defendants.	:	DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, Sean Davis, by and through undersigned counsel, and files this Complaint and states as follows:

NATURE OF THE ACTION

1. This Complaint alleges violations of the constitutional rights of Plaintiff, SEAN DAVIS, by Defendants CITY OF COVINGTON POLICE OFFICER MICHAEL LUSARDI, CITY OF COVINGTON, and DOES 1-10, and seeks remedies pursuant to Title 42, United States Code, sections 1983 and 1988, as well as violations of the State of Ohio.

2. Without justification or cause, Defendant MICHAEL LUSARDI (hereinafter “Defendant LUSARDI) released a police canine on SEAN DAVIS, which bit into his arm. While officers were on top of DAVIS, the police canine bit into his arm and body several more times, causing serious injury.

IDENTIFICATION OF PARTIES

3. At all times material to this Complaint, Plaintiff SEAN DAVIS was a resident of YYY County, Kentucky.
4. At all times material to this Complaint, Defendant LUSARDI was a CITY OF COVINGTON police officer. In committing the acts and omissions alleged in this Complaint, Defendant LUSARDI was acting under color of law and within the course and scope of his employment as an officer of the CITY OF COVINGTON Police Department. Defendant LUSARDI is sued in his individual and official capacity.
5. On information and belief, Defendant CITY OF COVINGTON is a municipal corporation that owns, operates, and governs the CITY OF COVINGTON Police Department and its employees pursuant to the laws of the State of Kentucky.
6. At all times material to this Complaint, Defendant CITY OF COVINGTON and CITY OF COVINGTON Police Department were responsible for the employment, training, supervision and discipline of Defendant LUSARDI.
7. Plaintiff is ignorant of the true names and capacities of Defendants DOES 1-10, and therefore sues these defendants by fictitious names. Plaintiff is informed and believes and thereon alleges that each defendant so named is responsible in some manner for the injuries and damages suffered by Plaintiff as described in this Complaint. Plaintiff will amend his Complaint to state the true names and capacities of Defendants DOES 1 through 10 when they have been ascertained. Any reference in this Complaint to “Defendants” also refers to Defendants DOES 1-10.
8. Each defendant sued in this complaint acted as the agent or employee of every other defendant, and in perpetrating the wrongful conduct detailed in this Complaint, acted

within the scope of such agency and employment, or ratified the acts of the others.

JURISDICTION, AND VENUE

9. Jurisdiction is conferred upon the United States District Court by Title 28, United States Code, sections 1331, 1343 and 1367(a).
10. Venue is proper in Eastern District of Kentucky, Northern Division at Covington pursuant to 28 U.S.C. §1391(b)(1) because Defendants resides in this district, pursuant to 28 U.S.C. §1391(b)(1) because a substantial part of the events or omissions giving rise to the claim that led to the injuries occurred in this district, and pursuant to 28 U.S.C. §1391(b)(3) because Defendants are subject to personal jurisdiction of this Court.

FACTS GIVING RISE TO THE COMPLAINT

11. On June 8, 2022, SEAN DAVIS was asleep in a hammock in a wooded area near 1564 Water Street. Defendant LUSARDI and other CITY OF COVINGTON police officers were called out to the wooded area on reports that his voice sounded like someone the caller had a restraining order against.
12. Without cause or justification, Defendant LUSARDI released a police canine on the sleeping Plaintiff, which latched onto his arm. Plaintiff was then taken to the ground, and while officers were on top of him, the canine continued to bite Plaintiff DAVIS causing serious injury and severe pain in his arm and shoulder.
13. Plaintiff DAVIS was then handcuffed and detained before Defendant LUSARDI determined Plaintiff DAVIS was not the suspect he was searching for.
14. Plaintiff DAVIS was taken to St. Elizabeth Hospital for treatment of multiple dog bite lacerations. Plaintiff DAVIS was diagnosed with injury of biceps brachii

muscle and injury of triceps due to dog bite on his left arm. He was given an opioid for pain relief before undergoing multiple laceration suture repairs. The wounds have not completely healed, and it appears as though the injuries and scarring to Plaintiff DAVIS are permanent.

15. Plaintiff suffered physical and emotional injuries from the attack, and was diagnosed with acute stress/PTSD due to nightmares, avoidance of going outside or near dogs, and intrusive thoughts of being attacked.

STATEMENT OF DAMAGES

16. As a direct and proximate result of Defendants' acts, Plaintiff DAVIS was unlawfully seized and subject to unreasonable force without probable cause or reasonable suspicion.
17. As a direct and proximate result of Defendants' acts, Plaintiff DAVIS underwent care at a trauma center for treatment of dog bite wounds.
18. Plaintiff incurred medical expenses for incident related medical treatment.
19. Plaintiff's claim for general damages includes claims for pain, suffering, humiliation, and emotional distress in amounts to be determined according to proof.
20. Plaintiff DAVIS has and may continue to have in the future, damages for permanent injuries, permanent scarring and/or other physical disfigurement and/or disability in an amount to be determined according to proof.
21. Defendant LUSARDI's acts were intentional, willful, malicious, reckless and in conscious disregard of Plaintiff's protected rights. As such, Plaintiff DAVIS is entitled to an award of punitive damages against him.

FIRST CLAIM FOR RELIEF

42 U.S.C. §1983

**Fourth Amendment Violations:
Unreasonable Force, Unlawful
Seizure
(Against Defendant LUSARDI)**

22. Plaintiff realleges and incorporates by reference claims contained in paragraphs 1 through 21 as though fully set forth herein this claim for relief.
23. Defendant LUSARDI acted under color of law in violating Plaintiff DAVIS's rights protected by the Fourth Amendment to the United States Constitution. These actions included the unreasonable and excessive use of force against Plaintiff DAVIS, unlawful seizure of Plaintiff DAVIS's person, and unlawful detainment lacking probable cause, each violation independently and all violations jointly causing Plaintiff DAVIS's injuries.
24. As a direct and proximate result of Defendant LUSARDI's actions and omissions, Plaintiff DAVIS was deprived of his rights and privileges under the Fourth Amendment to the United States Constitution.
25. Defendant LUSARDI acted with malice and oppression by intentionally releasing the police canine to bite Plaintiff DAVIS without justification, seriously injuring him. Defendant's conduct was intended to harm Plaintiff and/or was carried out with a conscious disregard to Plaintiff DAVIS's rights or safety.
26. Plaintiff was asleep and posed no immediate threat to the safety of Defendant LUSARDI or others, could not actively resist arrest or attempt to evade arrest by flight, and was erroneously being sought for the crime of disobeying a restraining order, all equaling excessive force. Plaintiff therefore is entitled to recover exemplary damages from this defendant.

27. Defendant LUSARDI violated Plaintiff's constitutional civil rights by multiple actions, including, *inter alia*:

- (a) Arresting or seizing Plaintiff without reasonable cause to believe he had committed, was committing, or was about to commit a crime;
- (b) Searched Plaintiff's person or his property without a warrant or reasonable cause;
- (c) Used excessive force upon his person;
- (d) Failed to provide Plaintiff with needed medical attention on the scene; and
- (e) Conspired with others to violate 1 or more of Plaintiff's civil rights.

WHEREFORE, Plaintiff seeks relief as set forth below.

SECOND CLAIM FOR RELIEF

42 U.S.C. §1983

Supervisor Liability, Monell

**(Against CITY OF COVINGTON
and DOES 1-10)**

28. Plaintiff realleges and incorporates by reference claims contained in paragraphs 1 through 27 as though fully set forth herein this claim for relief.

29. At all times relevant to this Complaint, it was the policy, practice and custom of CITY OF COVINGTON, acting through their policymakers and agents, to violate the Fourth Amendment to the Constitution as described in this Complaint.

30. These violations which constituted the policy of CITY OF COVINGTON and DOES 1-10, included but were not limited to, the use of unreasonable, unjustified, and/or excessive force and engaging in unlawful seizures based upon unlawful policies.

31. The failure of CITY OF COVINGTON, and to those delegated to make and enforce

policy, to discipline Defendant LUSARDI, who violated Plaintiff's Fourth Amendment rights, ratified that unconstitutional conduct and further confirmed that the violation of Plaintiff's rights represented CITY OF COVINGTON policy.

32. The policies, practices and customs of CITY OF COVINGTON, and DOES 1-10 were the moving forces behind the violation of Plaintiff's rights protected by the Fourth Amendment to the United States Constitution.

33. At all times relevant to the Complaint, the policies, practices and customs developed and maintained by CITY OF COVINGTON, and DOES 1-10, reflected a deliberate indifference to the protection of the rights guaranteed by the Fourth Amendment to the United States Constitution.

34. Defendants CITY OF COVINGTON and DOES 1-10 conspired with Defendant LUSARDI to violate 1 or more of Plaintiff's civil right.

WHEREFORE, Plaintiff seeks relief as set forth below.

THIRD CLAIM FOR RELIEF

**Negligence
(Against All Defendants)**

35. Plaintiff realleges and incorporated by reference paragraphs 1 through 34 of this Complaint as though fully set forth in this claim for relief.

36. Defendants, which includes Defendant LUSARDI, owed a duty to Plaintiff.

37. Defendants breached those duties in the acts and/or omissions alleged in this Complaint.

38. Plaintiff was injured as a result of those acts and omissions.

39. As a proximate result of that negligence, Plaintiff suffered damages, physical injuries and emotional distress.

40. Defendant LUSARDI, committed his alleged actions and negligent conduct in the course and scope of his employment.

41. Each of Defendants' conduct was a substantial factor in causing the alleged damages, including emotional distress.

WHEREFORE, Plaintiff seeks relief as set forth below.

FOURTH CLAIM FOR RELIEF

**Battery
(Against All Defendants)**

42. Plaintiff realleges and incorporates by reference paragraphs 1 through 41 of this Complaint as though fully set forth in this claim for relief.

43. Defendant LUSARDI touched Plaintiff or caused Plaintiff to be touched with the intent of harming or offending Plaintiff.

44. Plaintiff DAVIS did not consent to the conduct of Defendant LUSARDI.

45. Plaintiff DAVIS was harmed by Defendant LUSARDI's conduct.

46. A reasonable person in Plaintiff's situation would have been offended by the conduct of Defendant LUSARDI.

47. CITY OF COVINGTON employee defendant LUSARDI committed these alleged actions in the course and scope of his employment.

48. Each defendants' conduct was a substantial factor in causing the alleged harm.

49. Defendant DOES 1-10 failed to intervene to protect Plaintiff from injury and violation of his rights.

WHEREFORE, Plaintiff seeks relief as set forth below.

RELIEF REQUESTED

WHEREFORE, Plaintiff DAVIS respectfully request that this Court grant the following relief:

1. Compensatory damages, including general damages, according to proof against all defendants;
2. Special damages according to proof against all defendants;
3. Attorney fees and costs pursuant to 42 U.S.C. section 1988;
4. Statutory damages and penalties, attorney fees and costs pursuant to Federal and Kentucky state laws;
5. Punitive damages in an amount according to proof against Defendant LUSARDI;
6. Such other relief as the Court finds just and proper.

X. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff requests a jury trial.

Dated: May 12, 2023

Respectfully submitted,

BEY & ASSOCIATES, LLC

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