

FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

08 MAR 24 PM 3:44

MICHAEL JACKSON
c/o Gerhardstein & Branch, Co. LPA
617 Vine Street Suite 1409
Cincinnati, OH 45202

Case No. **1:08 CV 203** *MW*

Judge **J. BARRETT**

Plaintiff,

v.

Magistrate Judge

HAMILTON COUNTY, OHIO
138 E. Court Street,
Cincinnati, OH 45202,

COMPLAINT AND JURY DEMAND

and

SERGEANT MICHELLE MOORE,
*individually and in her official capacity as an
employee of Hamilton County*
Hamilton County Sheriff's Office
1000 Sycamore St.
Cincinnati, OH 45202,

and

SHERIFF SIMON L. LEIS, Jr., *individually
and in his official capacity as an employee of
Hamilton County*
Hamilton County Sheriff's Office
1000 Sycamore St,
Cincinnati, OH 45202,

Defendants.

I. PRELIMINARY STATEMENT

1. This case challenges the gratuitous and excessive force used against Michael Jackson while he was incarcerated at the Hamilton County Justice Center. On August 10,

2007, Michael Jackson was removed from his cell in a callous fashion, verbally abused, and placed in a restraint chair. While Mr. Jackson was in this vulnerable position and fully compliant, the Defendant Corrections Officer fired pepper bullets into Mr. Jackson's chest at point blank range without provocation or reason. This use of excessive and gratuitous force was captured on video tape. The plaintiff seeks compensation for his injuries and hopes through this lawsuit to ensure that no other prisoners are subject to such humiliating, terrifying, painful attacks.

II. JURISDICTION

2. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(3) and 1343(4).

III. PARTIES

3. Plaintiff Jackson was at all times relevant to this action, a resident of Hamilton County, Ohio.
4. Defendant Hamilton County is a unit of local government organized under the laws of the State of Ohio.
5. Defendant Michele Moore was at all times relevant to this action, an employee of Hamilton County, Ohio, assigned as a correction officer in the Hamilton County Justice Center. Defendant Moore is sued in her individual and in her official capacities.
6. Defendant Leis was at all times relevant to this action, Sheriff of Hamilton County, Ohio. Defendant Leis is sued in his individual and official capacities.

IV. ADMINISTRATIVE EXHAUSTION

7. Plaintiff is not incarcerated. Accordingly, he is not subject to any of the provisions of the Prison Litigation Reform Act, including its administrative exhaustion requirement.

V. STATEMENT OF FACTS

8. From March 22, 2007 until December 20, 2007, plaintiff was housed at the Hamilton County Jail on misdemeanor charges.
9. From April 8, 2007, until August 10, 2007, plaintiff was housed in administrative segregation.
10. While in administrative segregation, the plaintiff was locked alone in his cell for 23 hours per day.
11. On August 10, 2007, an eight-member Correctional Emergency Response Team (CERT) was deployed to extract inmates, including plaintiff, from their individual administrative segregation cells.
12. Defendant Michelle Moore was a member of the CERT Team.
13. Many of the actions by the CERT Team were captured via hand held video camera.
14. When the CERT members reached Mr. Jackson's cell they fired four rounds of pepper ball chemical ammunition into Mr. Jackson's cell. Chemical pepper spray was also released into his cell via an "MK9 Fogger".
15. The door to Mr. Jackson's cell was forced open by CERT members.
16. The CERT members then cuffed, shackled, and carried Mr. Jackson out of his cell.
17. Mr. Jackson was then placed in a restraint chair.

18. Mr. Jackson was restrained in the chair and fully compliant with CERT members when, without justification, Defendant Moore fired three rounds of pepper bullets into Mr. Jackson's chest at point blank range.
19. Defendant Moore and the other CERT Team members verbally provoked, cursed, verbally harassed, and gave confusing and contradictory instructions to the inmates including plaintiff as the inmates were extracted from their cells.
20. Defendant Moore acted negligently, intentionally, recklessly, knowingly and with deliberate indifference to the safety and rights of plaintiff Jackson when she discharged the pepper balls at point blank range.
21. Defendant Moore acted willfully, callously and maliciously toward plaintiff Jackson when she discharged the pepper balls at point blank range.
22. These defendants operated the HCJC pursuant to policies, practices or customs which were the moving force behind the excessive force imposed on Mr. Jackson.
23. Defendant Leis, in his official and individual capacity as the Sheriff of Hamilton County, did act and became responsible for the excessive and gratuitous force used against Michael Jackson when he failed to discipline Defendant Moore following this incident, ratified her conduct and failed to properly train CERT members in appropriate cell extraction, restraint, and use of force techniques.
24. Hamilton County has also ratified the conduct of Defendant Moore and is liable for failing to properly train its employees in appropriate cell extraction, restraint, and use of force techniques.

25. As a result of the gratuitous and excessive force, Mr. Jackson suffered bruises and contusions across his chest. His skin was burned due to the chemical irritant in the pepper bullets. Mr. Jackson was also terrified as the weapon was discharged at him.

VI. CAUSE OF ACTION - 42 U.S.C. § 1983

26. The defendants, by using and ratifying the use of excessive and gratuitous force against Mr. Jackson while acting under the color of state law, subjected Mr. Jackson to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

VII. JURY DEMAND

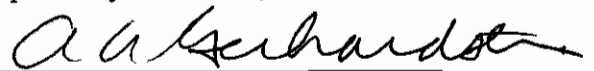
27. Plaintiff hereby demands a trial by jury of all issues triable by a jury.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff demands that this Court:

- A. Award compensatory damages against defendants in an amount to be shown at trial;
- B. Award punitive damages against the individual defendants (not the County) in an amount to be shown at trial;
- C. Award plaintiff reasonable attorney's fees, costs, and disbursements;
- D. Grant plaintiff such additional relief as the Court deems just and proper.

Respectfully submitted,



Alphonse A. Gerhardstein (0032053)
Trial Attorney for Plaintiffs

Jennifer L. Branch (0038893)
Attorney for Plaintiffs
Gerhardstein & Branch, Co. LPA
1409 Enquirer Building
617 Vine Street
Cincinnati, Ohio 45202
(513) 621-9100
(513) 345-5543
agerhardstein@gbfirm.com
jbranch@gbfirm.com
www.gbfirm.com