

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Scott Sheeley,

Plaintiff,

COMPLAINT AND JURY DEMAND

v.

City of Austin, Minnesota;
Chad Norman, individually and
in his capacity as a police officer for
the City of Austin; Kevin Sederquest,
individually and in his capacity as
a police officer for the City of Austin;
Gold Cross Ambulance Service,

Defendants.

INTRODUCTION

In response to a 911 call seeking medical assistance because Plaintiff Scott Sheeley was suffering a seizure, City of Austin Police Officers and Gold Cross Ambulance Service paramedics went to Sheeley's home on a "Sick Cared For" assignment. Instead of providing medical care, police officers, with the assistance of ambulance paramedics, violently restrained Sheeley, depressing his ability to breathe, and repeatedly shocked him with a TASER gun. Ambulance paramedics then administered drugs to Sheeley that further depressed his ability to breathe, sending him into respiratory arrest and cardiac arrest. As a result, Sheeley suffered physical and emotional injuries, including permanent brain damage.

PARTIES

1. Plaintiff is an individual currently residing in Vadnais Heights, MN.
2. Defendant City of Austin is a Minnesota City, a political subdivision of the State of Minnesota, which includes a Police Department operating at 201 First Street Northeast, Austin, MN 55912.
3. Defendant Chad Norman was, at all times relevant to this Complaint, a police officer for the City of Austin residing at 1218 Fourth Avenue Southeast, Austin, MN 55912.
4. Defendant Kevin Sederquest was, at all times relevant to this Complaint, a police officer for the City of Austin residing at 2306 Tenth Avenue Southwest, Austin, MN 55912.
5. Defendant Gold Cross Ambulance Service is a Minnesota nonprofit corporation, with a registered office address of 200 First Street SE, Rochester, MN 55905.

JURISDICTION

6. Plaintiff brings this case, in part, under 42 U.S.C. §§1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution.
7. This Court has original jurisdiction over Plaintiff's claims under 28 U.S.C. §1343(3) and 28 U.S.C. §1331.
8. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367.

COLOR OF STATE LAW

9. At all times relevant to this Complaint, Defendant Police Officers Norman and Sederquest were in uniform and acting within the scope of their employment and under color of the laws, statutes, ordinances, policies, customs and usages of the State of Minnesota and its political subdivisions, including the City of Austin.
10. At all times relevant to this Complaint, Defendant City of Austin's responsible parties acted under color of that laws, statutes, ordinances, policies, customs and usages of the State of Minnesota and the City of Austin.

FACTS

11. On November 16, 2011, Plaintiff suffered a seizure in his home.
12. At that time, Plaintiff and his brother resided in a home in Austin, MN.
13. Plaintiff's brother, Dustin Sheeley heard a loud crash in the basement area of the home.
14. When Dustin Sheeley went to investigate, he found Plaintiff passed out on his back with his eyes rolled to the back of his head.
15. Dustin Sheeley called 911 for medical help because he believed that his brother was having a grand mal seizure. He told the dispatcher that he believed his brother was having a seizure and needed medical assistance. Dustin Sheeley had been trained as a medic in the United States Army.
16. During the emergency call, Plaintiff got up and started moving around. He was agitated and kept banging into things, like he was trying to get out of box.
17. To prevent injury, Dustin Sheeley restrained his brother during the 911 call.

Plaintiff is a small man, weighing only about one hundred and forty pounds. Dustin Sheeley repeatedly tried to get Plaintiff to respond to his voice by saying his name. Plaintiff was unable to respond verbally.

18. During his seizure, Plaintiff urinated on himself several times. Dustin Sheeley helped Plaintiff remove his wet pants, intending to help him put on dry pants.

19. Two Austin police officers, Defendants Norman and Sederquest, responded to Dustin Sheeley's 911 call for medical assistance, along with two paramedics. When they came downstairs, Dustin Sheeley was holding Plaintiff with one arm. Dustin let go of Plaintiff when the police and paramedics came downstairs. Plaintiff took the pants his brother had taken off of him and swung the pants at his brother once as his brother moved away from him.

20. The two Austin police officers started to yell at Plaintiff. Defendant Norman took hold of Plaintiff by his neck, and along with Defendant Sederquest shoved him to his knees on the floor so that he was kneeling with his face in a chair, and restrained him there. The officers handcuffed him. Defendants Norman and Sederquest pressed down on Plaintiff with each officer pushing a knee on his back while he was in handcuffs, causing his head to be pressed against the back cushion of the chair, all while he was still convulsing. Dustin Sheeley yelled to the police officers and paramedics that his brother was having a seizure.

21. The two police officers kept yelling at Plaintiff, while Plaintiff continued to shake and convulse in the chair. Then another police officer arrived on the scene and restrained Dustin Sheeley against the wall.

22. Defendant Norman pulled out an electronic control device (“TASER” gun).

Dustin Sheeley yelled at him, "Don't TASER him, he is having a seizure."

23. More officers arrived on the scene and continued to restrain both Dustin Sheeley and Plaintiff.

24. Defendant Gold Cross Ambulance Paramedic Emily Anderson assisted Defendants Norman and Sederquest to restrain Plaintiff and removed the red-colored top part of the TASER gun that was being held by Officer Norman.

25. Dustin Sheeley continued yelling for the officer not to use the TASER on Plaintiff because he was having a seizure.

26. Defendant Officer Norman shocked Plaintiff with the TASER at least four times after he was restrained in the chair and after he was handcuffed. The shocks from Norman's TASER injured Plaintiff and left wounds on his shoulder, back and under his left armpit.

27. The manner of restraint of Plaintiff by Defendants Norman and Sederquest caused Plaintiff to suffer respiratory distress.

28. After Plaintiff had been restrained face-down in the chair and handcuffed, and after he had been repeatedly shocked, Emily Anderson injected Plaintiff with the drugs Haldol and Ativan.

29. Haldol is another name for the drug Haloperidol. Published side effects of Haldol include sudden death and seizures. Haldol can depress respirations.

30. Ativan is another name for the drug Lorazepam. Ativan also can depress respirations. Published warnings included in the medication insert for Ativan

include that the most important risk associated with the use of Ativan injection for adults in status epilepticus is respiratory depression. The warning states that airway patency must be assured and respiration monitored closely, with ventilator support given as required.

31. Under accepted standards of medical care, a person who is suffering a seizure should not have their respiration restricted physically, and medicine that depresses respirations should be used cautiously and with consideration of other factors that affect breathing.

32. After being restrained and after being injected with Haldol and Ativan, Plaintiff stopped shaking in the chair, and stopped moving while he was still face down in the chair cushion and handcuffed.

33. As a result of being improperly restrained, in particular after concurrently having received Ativan and Haldol, the Plaintiff suffered respiratory arrest and ceased breathing.

34. As a result of the respiratory arrest, Plaintiff suffered cardiac arrest.

35. All of the officers were much bigger than Plaintiff.

36. Plaintiff did not speak during the time the police officers were present.

37. As a result of having suffered a seizure, Plaintiff was at times convulsing and at times suffering a confused post-ictal state. Plaintiff was unable to respond to verbal commands of the police officers. Rather than being violently restrained, Plaintiff should have been treated with calming behavior.

38. Plaintiff did not have a weapon, which the police officers could readily see

because he was naked from the waist down and wore only a shirt.

39. Plaintiff was not suspected of having committed a crime.

40. Defendant Norman and Defendant Sederquest were aware that the 911 call had been designated a "Sick Cared For" call because Plaintiff was suffering a seizure.

41. Defendant Gold Cross Ambulance's employee Emily Anderson was aware that the 911 call had been made because Plaintiff was suffering a seizure.

42. Plaintiff did not attempt to flee Defendant Officers.

43. Defendant Officer Norman and Officer Leif began administering CPR in an attempt to revive Plaintiff from cardiac arrest and respiratory arrest.

44. After Defendant Officers started giving Plaintiff CPR, another police officer pushed Dustin Sheeley up the stairs. Dustin Sheeley informed the officers that he was a medic and knew how to do CPR, but the officer pushed Dustin upstairs anyway.

45. Paramedic Jessica Bird administered Narcan in an effort to revive Plaintiff. Narcan is another name for the drug Naloxone.

46. Paramedic Emily Anderson administered intravenous sodium bicarbonate in an effort to revive Plaintiff from cardiac arrest.

47. Eleven minutes after Anderson gave Plaintiff Ativan and Haoldol, paramedic Jillene Pratt intubated Plaintiff.

48. Paramedic Jessica Bird administered intravenous epinephrine in an effort to revive Plaintiff from cardiac arrest.

49. Defendant Gold Cross Ambulance paramedics placed a defibrillator on Plaintiff.

50. Plaintiff regained a pulse and began breathing again.

51. When Defendant Gold Cross's paramedics removed Plaintiff from the basement, he was unconscious and unresponsive.

52. After Defendants left the basement, Dustin Sheeley went down there to clean up the blood and urine. Plaintiff had shaken so violently and so much that he skinned both knees while seizing in the chair leaving blood on the carpet.

53. A few minutes later, several detectives arrived and told Dustin Sheeley not to touch anything because it was a "crime scene." They made him again leave the basement. They said they needed to gather evidence because it was a "crime scene." They took pictures of the basement.

54. After the detectives left, Dustin Sheeley went back down to the basement and it was clear that the detectives had searched all of Plaintiff's belongings. His drawers had clearly been gone through. They even went through his lunch box.

55. Plaintiff did not threaten the safety of the officers or others, because:

- a. He was obviously unarmed;
- b. There were many police officers present;
- c. He never assaulted the officers;
- d. It was clear to the officers that he had not harmed his brother;
- e. He made no verbal threats;
- f. He was not suspected of having committed any crime.

56. The weight placed on Plaintiff's back by Defendant Officers holding him into the chair by placing their knees in his back interfered with Plaintiff's ability to breathe.

57. Defendant Officers, because of their training, were aware that each application of a TASER shock to Plaintiff inflicted great pain upon Plaintiff, who they knew was suffering a seizure.

58. Defendant City did not have a policy prohibiting repeated TASER shocking.

59. Defendant City did not have a policy prohibiting TASER shocking of medically compromised individuals.

60. Defendant City did not have a policy prohibiting TASER shocking of a handcuffed individual.

61. Defendant City did not properly train its officers in proper techniques for restraint.

62. Defendant City did not properly train its officers in proper techniques for responding to "sick cared for" calls relating to persons suffering seizures.

63. Defendant Officers Norman and Sederquest were not justified in using force against Plaintiff.

64. Use of force was not necessary in order to protect Norman, Sederquest or any other person from apparent death or great bodily harm.

65. Plaintiff did not pose an immediate threat of harm that could not be controlled through less extreme measures.

66. Defendant Officers Norman's and Sederquest's use of force was not necessary to

effect an arrest or capture, or to prevent the escape of a person officers knew or had reasonable grounds to believe had committed or attempted to commit a felony involving the use or threatened use of deadly force.

67. Defendant Norman and Sederquest acted with reckless or callous disregard of or indifference to Plaintiff's rights and safety.

68. As a result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, the following: respiratory arrest; cardiac arrest; loss of heartbeat; loss of oxygen; TASER wounds to the torso; abrasions to knees and elbows; brain injury; loss of vision; headaches; broken ribs; physical pain; continued seizure; and severe emotional anguish.

69. As a result of Defendants' conduct, Plaintiff has incurred, and continues to incur, medical expenses.

70. As a result of Defendants' conduct, Plaintiff has incurred, and continues to incur, legal expenses and attorney's fees.

COUNT I
Excessive Force
Violation of Section 1983 and Fourth Amendment
Against the Individual Defendant Officers

71. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

72. Defendant Officers Norman and Sederquest, acting under color of law, deprived Plaintiff of the rights, privileges and immunities secured by the Constitution and laws of the United States by subjecting him to excessive force under the Fourth

Amendment, in violation of 42 U.S.C. §1983 and the Fourth Amendment to the United States Constitution. Particularly:

- a. Defendant Officers' restraint of Plaintiff was unreasonable under the circumstances because Plaintiff was suffering from a seizure, obviously unarmed, suspected of no crime, not resisting arrest, not attempting to flee, and not threatening the safety of the officers;
 - b. Defendant Officers' TASER shocking of Plaintiff was unreasonable under the circumstances because Plaintiff was suffering from a seizure, obviously unarmed, suspected of no crime, not resisting arrest, not attempting to flee, and not threatening the safety of the officers;
 - c. Defendant Officers' repeated TASER shocking of Plaintiff was unreasonable under the circumstances because they failed to stop TASER shocking Plaintiff after it was clear to them that he was unable due to his medical condition to respond to the shock treatment, because Plaintiff was already being restrained with his head in the chair cushion, and because they TASER shocked Plaintiff after he was handcuffed.
73. As a direct and proximate result of the use of excessive force, Plaintiff sustained serious and permanent personal injuries and suffered the damages described herein, and incurred medical expenses, litigation costs and attorney's fees.

COUNT II
Deliberate Indifference to Serious Medical Needs
Violation of Section 1983 – Fourteenth Amendment Substantive Due Process
Against individual Defendant Officers

74. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

75. Defendant Officers Norman and Sederquest, acting under color of law, deprived Plaintiff of the rights, privilege and immunities secured by the Constitution of the United States by acting with deliberate indifference to the serious medical needs of Plaintiff, whom they had placed in their custody, in violation of 42 U.S.C. §1983 and the due process clause of the Fourteenth Amendment to the United States Constitution.

76. Defendant Officers treated Plaintiff as a criminal suspect, instead of treating him as a person requiring medical care. Disregarding the obvious state of Plaintiff's seizure activity and post-ictal confusion, which made it impossible for Plaintiff to follow directions and which should have been treated with calming behavior, Defendant Officers physically pushed Plaintiff to his knees and held him, face-down into a cushion, handcuffed him and repeatedly TASER shocked him. Under these circumstances, the physical restraint and TASER shocking constituted deliberate indifference to a serious medical need.

77. Defendant Officers continued to TASER shock Plaintiff even after it was clear to them that the TASER shocking was not achieving any objective. The need to stop TASER shocking Plaintiff was obvious, even to a lay person. Plaintiff

remained verbally unresponsive after the first TASER shock. Plaintiff continued to convulse after the first TASER shock. Plaintiff continued to be in custody and restrained face-down in the chair, and continued to be restrained by handcuffs. Defendant Officers observed that TASER shocking Plaintiff did not lessen his convulsions, and in fact reported that Plaintiff seemed to react more strenuously after each TASER shock. In light of these facts, it was clear to Defendant Officers that continued TASER shocking of Plaintiff served no legitimate law enforcement purpose.

78. The deliberate indifference of Defendant Officers to Plaintiff's serious medical needs shocks the conscience.

79. The deliberate indifference of Defendant Officers to Plaintiff's serious medical needs shows knowledge of the risk of harm and intent to cause harm.

80. As a direct and proximate result of the Defendant Officers' deliberate indifference to Plaintiff's serious medical needs, Plaintiff suffered serious personal injuries, and the damages outlined herein, including incurring medical expenses, litigation costs and attorney's fees.

COUNT III
Public Entity Liability
Violation of Section 1983
City of Austin

81. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

82. The City and its decision makers, acting under color of law and with deliberate

indifference, gross negligence, and reckless disregard for the safety, security and constitutional and statutory rights of Plaintiff, as well as others similarly situated, maintained, enforced, tolerated, permitted, acquiesced in, and applied the following policies, practices, or customs and usages:

- a. Failure to implement protocols and train officers in the proper way to contain, treat and secure individuals such as Plaintiff who are suffering from a medical condition and present no threat to the officers at the time of engagement;
- b. Failure to adequately train, supervise, and control employees in the dangers of repeated electronic control device (“TASER”) shocks;
- c. Failure to adequately train, supervise, and control employees in the dangers of administering TASER shocks to individuals suffering seizure;
- d. Failure to adequately train, supervise, and control employees in the necessity for unimpaired breathing during restraint and custody.

83. The City of Austin’s actions under color of law deprived Plaintiff of the rights, privileges and immunities secured by the Fourth and Fourteenth Amendments to the Constitution of the United States, violating 42 U.S.C. §1983.

84. As a direct and proximate result of this conduct by the City of Austin, Plaintiff sustained serious personal injuries and suffered the damages outlined herein, as well as incurring medical expenses, litigation costs and attorney’s fees.

COUNT IV
Americans With Disabilities Act (ADA)
City of Austin

85. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

86. Congress enacted the Americans with Disabilities Act upon finding that “society has tended to isolate and segregate individuals with disabilities” and that such forms of discrimination are a “serious and pervasive” social problem. 42 U.S.C. §12101(a)(2).

87. The express purpose of the ADA is to provide “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1)-(2).

88. Title II of the ADA provides that “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

89. Defendant City of Austin is a public entity for purposes of the Americans with Disabilities Act, as amended.

90. Defendant City of Austin’s failure to properly train its officers in the proper occasion for, and proper manner of, restraint during a “Sick Cared For” call denied Plaintiff the benefits of law enforcement services.

91. As a result of the City of Austin’s denial to Plaintiff of the benefit of law

enforcement services, Plaintiff suffered physical and emotional harm as outlined herein.

92. As a result of the City of Austin's denial to Plaintiff of the benefit of law enforcement services, Plaintiff has incurred, and will continue to incur, medical expenses, litigation costs and attorney's fees.

COUNT V
Battery
Individual Defendant Officers

93. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

94. Defendant Norman committed battery against Plaintiff by using unjustified force, including grabbing him by the throat, restraining him and Taser shocking him repeatedly.

95. Defendant Sederquest committed battery against Plaintiff by using unjustified force, including restraining him.

96. The actions of Defendants Norman and Sederquest were outrageous, objectively unreasonable.

97. The actions of Defendants Norman and Sederquest caused Plaintiff physical harm and resulting emotional injury.

Count VI
Negligence/Malpractice
Defendant Gold Cross

98. Plaintiff realleges the allegations contained in all prior paragraphs and includes them in this count as though fully restated herein.

99. The employees of Defendant Gold Cross were negligent and failed to act within the scope of the commonly accepted standards of medical care by failing to appropriately monitor Plaintiff's breathing, by failing to advise the officers of the potential interaction between improper restraint and the respiratory depressant drugs used under the circumstances of the Plaintiff's medical status, by participating and assisting in the use of a TASER device on Plaintiff, and by failing to properly provide assistance to Plaintiff's breathing after injecting him with medications which restricted his breathing.

100. The employees of Defendant Gold Cross were at all times acting within the scope of their employment.

101. The failure by the employees of Defendant Gold Cross to comply with commonly accepted standards of medical care caused Plaintiff physical and emotional injuries as described herein.

JURY DEMAND

Plaintiff demands a trial by jury on all claims.

PRAYER FOR RELIEF

Plaintiff hereby demands that judgment be entered in his favor on all counts and prays the court to award the following relief:

1. An award of damages against Defendant City of Austin for physical injury, resultant emotional harm, and medical expenses as a result of the violation of Plaintiff's Constitutional Rights, and as a result of

- Defendant City of Austin's violation of the Americans With Disabilities Act in an amount to be proved at trial;
2. An award of damages against Defendant Gold Cross Ambulance Service for physical injury, resultant emotional harm and medical expenses as a result of its failure act reasonably and failure to act according to commonly accepted standards of medical care in an amount to be proved at trial;
 3. An award of damages against Defendant Officer Norman and Defendant Officer Sederquest for battery, and for physical injury, resultant emotional harm, and medical expenses as a result of their use of excessive force in violation of Plaintiff's rights under the Constitution of the United States in an amount to be proved at trial;
 4. An award of punitive damages against Defendant Officers Norman and Sederquest, pursuant to *Smith v. Wade*, 461 U.S. 30 (1983);
 5. An award of attorney fees against Defendant City of Austin and Defendant Officers Norman and Sederquest under 42U.S.C 1988;
 6. An award of attorney fees against Defendant City of Austin under the Americans with Disabilities Act;
 7. Such other relief as the Court deems just.

Dated: October 3, 2012

s/Leslie L. Lienemann

Leslie L. Lienemann (MN No. 230194)

Celeste E. Culberth (MN No. 228187)

1050 UBS Plaza

444 Cedar Street

St. Paul, MN 55101

(651) 290-9300 (Telephone)

(651) 290-9305 (Facsimile)

ATTORNEYS FOR PLAINTIFF