

MISSOURI CIRCUIT COURT
 TWENTY-SECOND JUDICIAL CIRCUIT
 CITY OF ST. LOUIS

MEGAN ELLYIA GREEN

Plaintiff,

v.

CITY OF SAINT LOUIS, MISSOURI, and
 NICHOLAS MANASCO, CLIFF SOMMER,
 BENNIE BLACKMON, DANIEL CORA,
 JOSEPH CALABRO, LANCE COATS,
 JOSHUA BECHERER, MATT TESREAU,
 MICHAEL FLATLEY, JOSEPH BUSO,
 JON LONG, TIMOTHY BOYCE, and
 LT. COL. LAWRENCE O'TOOLE, in their
 individual capacities and

Defendants.

JURY TRIAL DEMANDED

PETITION

On September 15, 2017, hundreds of citizens converged in the Central West End neighborhood of St. Louis to peacefully exercise their Constitutional right to protest. At approximately 9:30 PM, Megan Ellyia Green (“Ms. Green”), a duly elected Alderman for the City of St. Louis, encountered a mass of St. Louis police officers indiscriminately firing tear gas at peaceful protestors. Ms. Green took refuge in a synagogue where she experienced the terror of officers pounding on the doors and threatening the occupants. After 1.5 hours, she was able to safely leave the synagogue and attempt to get to her car to leave the area. As she attempted to leave, an armored police vehicle did a drive-by, firing tear gas canisters at random people on the street. Ms. Green has witnessed St. Louis police use this drive-by tactic before, in 2014 during the Michael Brown protests, which was the basis for St. Louis police entering into a Consent Decree promising not to do the exact actions that injured Ms. Green four years later. **Ms. Green shall**

donate any money she may receive to the 25-Year Managed Racial Equity Fund that the Ferguson Commission, or similar fund, recommended as an action item for the City of St. Louis, and which, to date, the City has failed to pursue.

JURISDICTION AND VENUE

1. Defendants Manasco, Sommer, Blackmon, Cora, Calabro, Coats, Becherer, Tesreau, Flatley, Busso, Long, Boyce, and O'Toole were employed as police officers with the SLMPD.

2. Plaintiff is a resident of the City of St. Louis.

3. Venue is proper in the Circuit Court of the City of St. Louis because all acts complained of occurred within the City of St. Louis.

4. Plaintiff demands a trial by jury.

5. Plaintiff previously brought these claims in federal court, and these claims were dismissed without prejudice on September 1, 2023. Accordingly, this petition is timely filed.

PARTIES

6. Defendant the City of St. Louis, Missouri (hereinafter, "City of St. Louis") is a first-class city, and a political subdivision of the State of Missouri duly organized under the Constitution of Missouri.

7. The St. Louis Metropolitan Police Department ("SLMPD") is an instrumentality of the City of St. Louis, Missouri organized and controlled pursuant to the Statutes of the State of Missouri.

8. The Public Facilities Protection Corporation of the City of St. Louis insures the SLMPD.

9. Nicholas Manasco was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. Manasco is also one of the few SWAT officers trained and authorized to deploy chemical munitions from the BEAR. He is sued in his individual capacity.

10. Cliff Sommer was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

11. Bennie Blackmon was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

12. Daniel Cora was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

13. Joseph Calabro was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

14. Lance Coats was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

15. Joshua Becherer was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

16. Matt Tesreau was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

17. Michael Flatley was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

18. Joseph Busso was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

19. Jon Long was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of

September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

20. Timothy Boyce was at all relevant times a police officer with the SLMPD. During the event described in this Complaint on the evening of September 15, 2017 and the morning of September 16, 2017, he was a member of the SWAT team that operated the BEAR from which officers deployed pepper spray at Plaintiff. He is sued in his individual capacity.

21. The Defendant Officers¹ unlawfully used chemical munitions against Plaintiff.

22. Defendant Lawrence O'Toole was employed as a Lt. Colonel with the SLMPD during the events of September 15, 2017, as detailed in this Complaint. On that date, he was the acting Chief of Police and, along with Charlene Deeken, was responsible for all management and direction of the SLMPD. Defendant O'Toole knew or should have known that there was no legal justification to use force against Plaintiff. Defendant O'Toole is a department head and is covered by Article VIII, Section 5 of the Charter of the City of St. Louis. Defendant O'Toole is sued in his individual capacity.

23. Plaintiff is resident of the City of St. Louis and was an elected Alderman at the time of the instant matter. She currently serves as the elected President of the St. Louis Board of Alderman.

FACTS

A. Backdrop of Stockley Verdict

24. On Friday, September 15, 2017, after a four-day bench trial, a Missouri Circuit Court Judge acquitted Officer Jason Stockley of the first-degree murder of Anthony Lamar Smith.

¹ "Defendant Officers" refers to the officers listed in paragraphs 9-20.

25. This acquittal shocked many in the St. Louis community, as an audio recording submitted into evidence in the trial captured Officer Stockley saying, “we’re killing this motherfucker, don’t you know” in reference to Mr. Smith.

26. Further, evidence showed that during the incident Officer Stockley was in possession of an assault rifle that had not been issued to him by the SLMPD.

27. In addition, Officer Stockley claimed to find a gun in Mr. Smith’s car after he killed Mr. Smith.

28. Only Officer Stockley’s DNA was found on the gun, leading many, including the Circuit Attorney of the City of St. Louis, to believe that Stockley planted the gun on Mr. Smith after Mr. Smith’s death, in an effort to justify the killing.

29. At trial, Officer Stockley’s partner did not testify in Stockley’s defense. Rather, the partner invoked his Fifth Amendment right against self-incrimination.²

B. Protests Begin After the Verdict

30. Following the announcement of the Stockley Verdict, public protests began at multiple locations in St. Louis and surrounding communities.

31. To many in the St. Louis community, Officer Stockley’s acquittal was yet another example of white St. Louis-area police officers killing African-American citizens with impunity.

32. Further, in the view of the protestors, the acquittal further supported their view that the American criminal justice system does not believe that Black lives matter.

² See Joel Currier, *Partner of Ex-St. Louis Cop Charged with Murder is Given Immunity, Ordered to Testify*, St. Louis Post-Dispatch, Jul 27, 2016, available at http://www.stltoday.com/news/local/crime-and-courts/partner-of-ex-st-louis-cop-charged-with-murder-is/article_b85140b8-3744-55fb-83ee-3d9474cc70b3.html.

33. In response to the protests, St. Louis Metropolitan police officers amassed at several protests wearing military-like tactical dress, helmets, batons, and full-body riot shields and carrying chemicals, such as tear gas, skunk, inert smoke, pepper gas, pepper pellets, xylol bromide, and/or similar substances (collectively, “chemical agents”).

C. The September 15, 2017 Protest

34. On September 15, 2017, at around 7:00 PM, Ms. Green went to the Central West End neighborhood of St. Louis to join a group of nearly 1,000 citizens to protest the Stockley Carr and LeRoy Campbell acquittal.

35. Ms. Green has been active in protests in support of the Black Lives Matter movement since 2014.

36. Upon arriving, Ms. Green participated in the march that started in the Central West End. After the march, she traveled south on Lake Avenue and saw buses of riot police officers coming in from both directions. The SLMPD officers blocked the whole intersection at Waterman Street and Lake Avenue.

37. In every direction Ms. Green looked, she saw SLMPD officers in riot gear. The officers did not allow Ms. Green or other citizens any viable means to egress and disperse from the area.

38. Ms. Green then encountered police near the intersection of Lake and Waterman Street stretching to Kingshighway near Central Reform Congregation (“the Synagogue”).

39. Ms. Green entered the Synagogue around 9:30 PM and 10:00 PM to avoid tear gas that SLMPD was indiscriminately firing.

40. Approximately 100 to 150 people also sought refuge in the Synagogue.

41. While inside, Ms. Green could hear SLMPD officers banging on the door and yelling. She could also see clouds of tear gas and that the Synagogue entrance was surrounded by SLMPD officers.

42. Ms. Green and the others stayed inside the Central Reform Congregation for at least an hour because SLMPD officers had surrounded the Synagogue. The people inside felt threatened by the police who were lying in wait.

43. The symbolism of citizens seeking refuge in a synagogue while out of control government actors pursued them was not lost on Ms. Green.

44. When the SLMPD officers who had been surrounding the Synagogue dispersed, Ms. Green and approximately ten other protesters exited the Synagogue. Ms. Green had decided to head home because the protests were done, because she did not feel safe due to aggressive action of the SLMPD, and because the SLMPD had made it known that they did not want protestors in the area. She and the others attempted to reach their vehicles and go home.

45. Ms. Green and others walked south on Kingshighway. As they neared the Chase Park Plaza, a line of SLMPD officers approached.

46. Ms. Green peacefully approached the police and asked for permission for her and the others to cross the police line in order to reach their vehicle located at Euclid and Laclede.

47. The police granted Ms. Green and others permission to cross the police line.

48. As Ms. Green and the others crossed the police line to return to their vehicles, several SLMPD officers began to make mocking statements toward Ms. Green.

49. After crossing the police line, Ms. Green turned left onto Lindell Boulevard.

50. Before reaching her nearby parked vehicle, Ms. Green saw an armored SLMPD truck ("BEAR") speed around the corner from Euclid onto Lindell, where Ms. Green and others were walking.

51. The City of St. Louis has confirmed that only SWAT team members operated the BEAR from which officers deployed pepper spray at Plaintiff. City employees have testified that up to 15 officers can fit inside the BEAR.

52. The City of St. Louis has confirmed that Defendants Nicholas Manasco, Cliff Sommer, Joseph Calabro, Daniel Cora, Bennie Blackmon, Lance Coats, Joshua Becherer, Matt Tesreau, Michael Flatley, Joseph Busso, Jon Long, and Timothy Boyce were all on duty members of SWAT on the night and at the location at issue in this matter.

53. The City of St. Louis has confirmed that Defendants Cliff Sommer, Joseph Calabro, Daniel Cora, and Bennie Blackmon were in the BEAR at the time that the police deployed chemical munitions at Plaintiff.

54. At the time, there were only three members of SWAT trained and authorized to deploy chemical munitions from the BEAR. The City has affirmatively stated that two of these officers were not on the BEAR. Defendant Manasco was not one of these two officers. As Defendant Manasco was the only member of SWAT who was trained and authorized to deploy chemical munitions who could have been in the BEAR, he must have been in the BEAR at the time at issue in this matter. When specifically asked to refute this allegation, the City did not deny that Manasco was in the BEAR.

55. Through discovery in other matters, Plaintiff has been able to identify many SWAT members who were *not* in the BEAR from which officers deployed pepper spray at Plaintiff.

56. The only SWAT members who are not seen walking the streets of St. Louis while the BEAR was deployed who have not yet been identified are Defendants Lance Coats, Joshua Becherer, Matt Tesreau, Michael Flatley, Joseph Busso, Jon Long, and Timothy Boyce. It is reasonable to infer that these officers were in the BEAR. When specifically asked to refute this allegation, the did could not deny that the officers were on the BEAR.

57. Having seen a similar SLMPD BEAR indiscriminately fire tear gas in 2014 (the incident that predicated the *Templeton* lawsuit described above), Ms. Green yelled to the other innocent people near her to take cover.

58. Ms. Green and others tried to take cover near the theater on Lindell.

59. The BEAR passed Ms. Green once without incident and then stopped at the corner of Lindell and Kingshighway.

60. Ms. Green and others quickly crossed Lindell to get closer to their vehicles and get to safety.

61. After Ms. Green crossed Lindell, the BEAR made a U-turn and returned to Ms. Green's location. The SLMPD BEAR then began to indiscriminately disperse tear gas.

62. Ms. Green heard no warning from the BEAR that tear gas was being deployed.

63. Ms. Green was not committing a crime at the time tear gas was deployed.

64. Ms. Green did not see any crimes committed nor any threat to an officer's safety at the time tear gas was deployed.

65. The tear gas worked as intended as Ms. Green began to feel excruciating pain. Her eyes began to burn. Mucus ran from her nose. Her breathing became labored. These reactions persisted for several months.

66. Moments later, the SLMPD BEAR also indiscriminately dispersed tear gas on the north side of Lindell on another set of unsuspecting civilians, again without warning or reason.

67. Two weeks later, in response to the deployment of chemical munitions against another set of peaceful protestors, SLMPD released a statement that read in part, “Officers deploy tactics when criminal activity arises and escalation depends on the level of aggression. [...] Pepper spray is a non-lethal tool used when unlawful behavior occurs to protect life and property.”³

68. This statement contradicts the SLMPD’s use of chemical munitions against Plaintiff. Plaintiff was not engaged in any unlawful behavior that required chemical munitions. No life or property was in danger when SLMPD tear gassed Plaintiff.

69. Ms. Green’s experience on September 15, 2017 made her fear future police retaliation for exerting her First Amendment rights of speech and assembly.

70. She is frightened of arbitrary arrest by the St. Louis Metropolitan police, as well as abuse and retaliation for engaging in expressive activity that is critical of the police.

71. For approximately six months, Plaintiff suffered from respiratory issues as a result of the illegal tear gassing.

COUNT I
Missouri State Law – Assault
(Against City and All Defendant Officers)

72. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

73. The brandishing and deployment of chemical agents for no lawful reason by Defendants caused Plaintiff to experience apprehension of immediate physical injury.

³ See Erin Heffernan, *St. Louis Faith Leaders Criticize Arrest, Pepper-Spraying of Clergyman at Protest*, St. Louis Post-Dispatch, Oct 3, 2017, available at https://www.stltoday.com/news/local/metro/st-louis-faith-leaders-criticize-arrest-pepper-spraying-of-clergyman/article_f065d923-634d-526a-8b0f-45dc443ec1cb.html.

74. Defendant City of St. Louis obtains insurance from the Public Facilities Protection

75. Corporation, a not-for-profit corporation into which the City pays funds yearly. The funds are later disbursed by the corporation to pay claims against the City.

76. Alternatively, the City's relationship with the PFPC serves as a self-insurance plan. The 2017 Comprehensive Annual Financial Report for the City of St. Louis, Missouri states "[t]he PFPC is reported as if it were part of the primary government because its sole purpose is to provide the City with a defined and funded self-insurance program for claims, judgments, and other related legal matters"

77. By possessing such insurance or self-insurance, the City has waived sovereign immunity on state claims, pursuant to § 537.610.1, RSMo.

78. As a direct result of the conduct of Defendants described herein, Plaintiff suffered damages, including physical injury, emotional trauma, great concern for her own safety, fear, apprehension, depression, anxiety, consternation and emotional distress; lost time, loss of employment opportunity, and loss of faith in society.

79. The actions of Defendants described herein were carried out in bad faith and with malice, done with actual, wanton intent to cause injury, and intentional and callously indifferent to the rights of Plaintiff, such that punitive damages should be awarded to punish Defendants and to deter them, as well as other similarly-situated individuals, from engaging in similar conduct in the future, in an amount to be determined by a jury.

80. Plaintiff shall donate any money she may receive to the 25-Year Managed Racial Equity Fund that the Ferguson Commission recommended as an action item for the City of St. Louis, and which, to date, the City has failed to pursue.

COUNT II
Missouri State Law – Battery
(Against City and All Defendant Officers)

81. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

82. During the process of being unconstitutionally tear gassed, Plaintiff suffered battery at the hands of Defendants.

83. In spraying Plaintiff with tear gas caused further intentional and offensive bodily contact.

84. Namely, Defendants' physically aggressive tactics caused intentional and offensive bodily harm to Plaintiff.

85. Corporation, a not-for-profit corporation into which the City pays funds yearly. The funds are later disbursed by the corporation to pay claims against the City.

86. Alternatively, the City's relationship with the PFPC serves as a self-insurance plan. The 2017 Comprehensive Annual Financial Report for the City of St. Louis, Missouri states "[t]he PFPC is reported as if it were part of the primary government because its sole purpose is to provide the City with a defined and funded self-insurance program for claims, judgments, and other related legal matters . . ."

87. By possessing such insurance or self-insurance, the City has waived sovereign immunity on state claims, pursuant to § 537.610.1, RSMo.

88. As a direct result of the conduct of Defendants described herein, Plaintiff suffered damages, including physical injury, emotional trauma, great concern for her own safety, fear, apprehension, depression, anxiety, consternation and emotional distress; lost time, loss of employment opportunity, and loss of faith in society.

89. The actions of Defendants described herein were carried out in bad faith and with malice, done with actual, wanton intent to cause injury, and intentional and callously indifferent to the rights of Plaintiff, such that punitive damages should be awarded to punish Defendants and to deter them, as well as other similarly-situated individuals, from engaging in similar conduct in the future, in an amount to be determined by a jury.

90. The Plaintiff shall donate any money she may receive to the 25-Year Managed Racial Equity Fund that the Ferguson Commission recommended as an action item for the City of St. Louis, and which, to date, the City has failed to pursue.

COUNT III

Missouri State Law – Intentional Infliction of Emotional Distress (Against City and All Defendant Officers)

91. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

92. By assaulting Plaintiff and spraying Plaintiff with a chemical agent, Defendants committed acts that rose to the level of extreme or outrageous conduct that goes beyond the possible bounds of decency, so as to be regarded as atrocious and utterly intolerable in a civilized community.

93. Defendants' actions were intentional or, at best, reckless.

94. Such actions by Defendants have caused Plaintiff severe emotional distress that has resulted in bodily harm, as described above.

95. Defendants' sole motivation was to cause emotional distress to Plaintiff and the other people Defendants' unlawfully arrested.

96. Corporation, a not-for-profit corporation into which the City pays funds yearly. The funds are later disbursed by the corporation to pay claims against the City.

97. Alternatively, the City's relationship with the PFPC serves as a self-insurance plan. The 2017 Comprehensive Annual Financial Report for the City of St. Louis, Missouri states "[t]he PFPC is reported as if it were part of the primary government because its sole purpose is to provide the City with a defined and funded self-insurance program for claims, judgments, and other related legal matters ..."

98. By possessing such insurance or self-insurance, the City has waived sovereign immunity on state claims, pursuant to § 537.610.1, RSMo.

99. As a direct result of the conduct of Defendants described herein, Plaintiff suffered damages, including physical injury, emotional trauma, great concern for her own safety, fear, apprehension, depression, anxiety, consternation and emotional distress; lost time, loss of employment opportunity, and loss of faith in society.

100. The actions of Defendants described herein were carried out in bad faith and with malice, done with actual, wanton intent to cause injury, and intentional and callously indifferent to the rights of Plaintiff, such that punitive damages should be awarded to punish Defendants and to deter them, as well as other similarly-situated individuals, from engaging in similar conduct in the future, in an amount to be determined by a jury.

101. Plaintiff shall donate any money she may receive to the 25-Year Managed Racial Equity Fund that the Ferguson Commission recommended as an action item for the City of St. Louis, and which, to date, the City has failed to pursue.

COUNT IV
Vicarious Liability Under City Charter
(Against Defendant O'Toole)

102. Article VIII, Section 5 of the Charter of the City of St. Louis states that "[e]ach head of a department, office or division shall be responsible for the acts or omissions of officers

and employees appointed by him, and may require bonds or other securities from them to secure himself.” (Emphasis added).

103. Defendant Officers are officers and employees of the Director of Public Safety and the Chief of Police.

104. Defendant Officers were acting in the scope of their employment when they committed the offenses described in the previous Counts.

105. Accordingly, pursuant to Article VIII, Section 5, the Director of Public Safety and the Chief of Police are vicariously liable for the acts and omissions of the Defendant Officers, as described above in the previous Counts.

WHEREFORE, Plaintiff prays for judgment in favor against all Defendants for compensatory damages, punitive damages, attorneys’ fees, expenses, costs, and for any other relief this Court deems just and appropriate.

Date: October 31, 2023

Respectfully Submitted,

KHAZAEI WYRSCH LLC

/s/ Javad M. Khazaeli

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