

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

PETER WILSON and JEFFREY GEORGE, <i>Plaintiffs and Counter-Claim Defendants,</i> Vs. INDIRA SHEUMAKER, <i>Defendant, and Counter-Claim Plaintiff.</i>	Case No: LACL153354 ANSWER, AFFIRMATIVE DEFENSES, and COUNTER-CLAIM
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COMES NOW, Defendant and Counter-Claimant, Indira Sheumaker and hereby submits the following Answer to the Petition of the Plaintiffs:

INTRODUCTION

1. Paragraph 1 is denied in that the Defendant Sheumaker committed wrongs against the Plaintiffs on July 1st, 2020 at the Iowa State Capitol in Des Moines, Polk County, IA.
2. Paragraph 2 is denied.

PARTIES AND JURISDICTION

3. Paragraph 3 is neither admitted nor denied for lack of information.
4. Paragraph 4 is neither admitted nor denied for lack of information.
5. Paragraph 5 is neither admitted nor denied for lack of information.
6. Paragraph 6 is admitted.
7. Paragraph 7 is neither admitted nor denied for lack of information.
8. Paragraph 8 is neither admitted nor denied for lack of information.
9. Paragraph 9 is neither admitted nor denied for lack of information.
10. Paragraph 10 is neither admitted nor denied for lack of information.

11. Paragraph 11 is admitted.

12. Paragraph 12 is denied.

13. Paragraph 13 is admitted and Defendant Sheumaker joins in the request for a jury trial.

BACKGROUND

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied in that the peaceful protest was “purportedly peaceful” and strongly denied in the characterization of “Domestic Terrorism”. All other allegations made in the paragraph are further denied.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied regarding Defendant Sheumaker.

20. The allegations in paragraphs 20-24 do not make any allegations regarding Defendant Sheumaker and therefore do not require a response.

COUNT II: ASSAULT & BATTERY BY INDIRA DIXON SHEUMAKER

21. Paragraph 25 is denied.

22. Paragraph 26 is denied.

23. Paragraph 27 is denied.

24. Paragraph 28 is denied.

25. Paragraph 29 is denied.

26. Paragraph 30 is denied regarding the factual basis regarding the offense Defendant Sheumaker provided as a result of a plea agreement in FECR339604 is the same factual basis of the allegations made by Plaintiffs in their petition.

27. The allegations in paragraphs 31-50 do not make any allegations regarding Defendant and Counterclaimant Sheumaker and therefore do not require a response.

AFFIRMATIVE DEFENSES

28. The Plaintiffs have failed to state a claim upon which relief can be granted.

29. This lawsuit is a clear SLAPP lawsuit designed to chill free speech and Defendant Sheumaker's First Amendment rights.

30. Defendant Sheumaker was acting in self-defense.

31. Defendant Sheumaker was acting in self-defense of others.

32. Plaintiffs' damages do not exceed the jurisdictional limits of small claims court.

33. Plaintiffs' claims are barred by the doctrine of laches.

34. Plaintiffs' claims are barred by a failure to mitigate damages.

35. Plaintiffs' claims are barred by the doctrine of in pari delicto.

36. Plaintiffs' claims for punitive damages are vague and subject the Defendants to possible multiple punishments for the alleged same wrong and therefore, if allowed, would violate the Defendants' due process rights as guaranteed by the Federal and State Constitutions.

37. Plaintiffs' claim is barred by the doctrine of assumption of risk.

38. Plaintiffs' claim is barred by the doctrine of accord and satisfaction.

39. Plaintiffs' claim is barred by the Fireman's Rule, as originally articulated in *Pottebaum v. Hinds*, 347 N.W.2d 642 (Iowa 1984) and subsequent case law.

40. Any allegations of Plaintiffs' Petition directed to this Defendant which are not specifically admitted herein are denied.

41. The damages, if any, sustained by the Plaintiffs in this matter were proximately caused by the actions of others, which were superseding, intervening causes of all of Plaintiffs' damages.

42. Defendant Sheumkaer reserves the ability to allege additional affirmative defenses as this matter proceeds.

WHEREFORE, the Defendant, Indira Dixon Sheumaker hereby requests the Court Dismiss the action of the Plaintiffs.

COUNTERCLAIM OF INDIRA DIXON SHEUMAKER

PARTIES

1. Plaintiff and Counterclaim Defendant Peter Wilson, hereinafter referred to as "Wilson", for the purposes of this action, is an individual living in Polk County, Iowa, and a police officer with the City of Des Moines, IA.
2. Plaintiff and Counterclaim Defendant Jeffrey George, hereinafter referred to as "George", for the purposes of this action, is an individual living in Polk County, Iowa, and a police officer with the City of Des Moines, IA.
3. Defendant and Counterclaim Plaintiff Indira Sheumaker, hereinafter referred to as "Sheumaker" is an individual living in Polk County, IA.

BACKGROUND FACTS

4. Black Americans and other people of color have long experienced disproportionate use of force and other abuses by law enforcement officers. Black Americans are disproportionately arrested for offenses committed at the same rates by black and white people. They also make up a disproportionately high percentage of people confined in America's jails and prisons.
5. In Iowa, these racial disparities are among the worst in the country. A black person in Iowa is seven times more likely to be arrested for drugs than a white person, although the two groups use at equal rates.¹ This is the fifth-worst disparity in the country. While only three percent of Iowans are black, twenty-six percent of prison inmates in Iowa are black. A black person in Iowa is 11 times more likely to be incarcerated than a white person.² This is the third-worst disparity in the country.
6. On May 25, 2020, George Floyd, a 46-year old Black man, was killed by Minneapolis, Minnesota police officer Derek Chauvin. The nation watched cell phone video footage that spread quickly across traditional and social media of Derek Chauvin cruelly and senselessly pressing his knee into Mr. Floyd's neck, obstructing his breathing for nearly 9 minutes. Spontaneous protests emerged and grew across the country, including in Des Moines, Iowa, to voice outrage

¹ American Civil Liberties Union, A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, at 64 (2020), available at <https://www.aclu.org/report/tale-two-countriesracially-targeted-arrests-era-marijuana-reform>.

² The Sentencing Project, State-by-State Data: Black/White Disparity, <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=BWR>

and despair at police violence against Black people, and to call for dramatic change to policing in America.

7. In the days that followed, organizations and individuals supporting the Black Lives Matter movement in Des Moines organized demonstrations, vigils, and protests calling for police reform and racial justice more broadly. The vast majority of protests and protesters were peaceful.
8. Des Moines BLM emerged early as the leader of the Black Lives Matter movement in Des Moines. Des Moines BLM's protests were well-organized, and expressly non-violent.
9. The activism of Des Moines BLM has been a catalyst to drive important reforms in Des Moines and in the State of Iowa, including the adoption of a city ordinance banning racial profiling, state legislation prohibiting law enforcement from using chokeholds in many circumstances, and the adoption of an executive order restoring voting rights to most people convicted of felony offenses.
10. Many of the protests organized by Des Moines BLM and others were held inside Iowa State Capitol, where protesters could reach an audience of both state and local policymakers, including legislators, the Governor, and local police.
11. On July 1, 2020, Des Moines BLM organized a day-time protest at the State Capitol to end lifetime disenfranchisement of Iowans with felony convictions. As was the case with a daytime protest held at the Capitol the day before, clergy and families, including children, attended, and protesters did not expect or desire to experience a confrontation with local or state police.

12. Des Moines Police Department officers, including Wilson and George, came to the protest with warrants to arrest individuals they suspected of engaging in damage of a police vehicle at a prior protest held at a Hy-Vee store. As they pulled those individuals out of the crowd of lawfully-protesting Des Moines BLM supporters in order to arrest them, police offered no explanation of their actions, causing alarm and confusion among the crowd of protesters.
13. In the chaos, Des Moines Police Department officers arrested over 17 protesters in addition to the people that they arrived up with warrants to arrest.

RELEVANT FACTS TO COUNTER-CLAIM

14. During the arrest of one of the individuals with a warrant, Iowa State Patrol (hereinafter ISP) escorted this person out of the Capitol and away from the protest, without informing other protestors of the reason for the arrest.
15. Because of this lack of communication, many protestors believed the arrest to be frivolous, reactionary, and retribution for the subject matter of the protest that was occurring.
16. None of the protestors on July 1st, 2020, knew the DMPD, Wilson and George, would be arresting people for the prior Hy-Vee incident.
17. Counter-Defendants George and Wilson were among of the officers escorting this individual with a warrant out of the Capitol.
18. During the escort, protestors followed the ISP officers and the DMPD officers to the parking lot to voice their concerns about the arrest.

19. Several protestors asked George and Wilson to explain the charges and the purpose of the arrest.
20. George, apparently fed up with these questions by his constituents, decided to arrest Maté Muhammed (hereinafter “Muhammaed”), which started a scrum of several individuals.
21. George shouted “you’re going to jail” to Muhammaed and placed him in a double-armed chicken-wing lock.
22. After the double-armed chicken-wing lock, both George and Wilson took Muhammed to the ground.
23. During this arrest, Sheumaker was not engaging or yelling at George and Wilson, but was filming the matter on her cell phone.
24. When Muhammed was taken to the ground, Sheumaker was standing next to George. Someone in the scrum pushed Sheumaker, causing her to fall onto George, who then fell on Muhammed. Wilson was next to the fallen individuals.
25. Sheumaker did fall on George and pushed off him to attempt to regain her feet and gain her balance.
26. During the fall of Sheumaker on George, Wilson placed Sheumaker in a chokehold to remove her from the scrum.
27. Wilson, still with Sheumaker in a chokehold, dragged Sheumaker several feet across the ground, injuring her.
28. During this time, Sheumaker had a hold of George, to prevent Wilson from dragging her across the ground while in that chokehold.

29. Wilson then dragged Sheumaker across the grass, Sheumaker regained her footing, but Wilson then tackled Sheumaker to the ground from behind and drove his hand into her back, his elbow into her head, and placed all his weight on Sheumaker's back.
30. Other protesters attempted to grab Sheumaker's hand to pull her away from Wilson.
31. At some point, George came to assist Wilson with the assault on Sheumaker and both officers forcefully placed their weight on Sheumaker's neck and back, similar to the tactics of Officer Chauvin during the arrest that caused the death of George Floyd.
32. Another protestor then jumped on George's back and wrapped his arms around George's neck. George wrestled with this other person and arrested this person, and Wilson then drove his elbow into the back of the head, neck, and upper back of Sheumaker, restraining her.
33. Sheumaker at some point was let go, and was not arrested by Wilson after the assault.
34. Sheumaker stayed in the vicinity of the arrests, and made no attempt to flee or avoid arrest.
35. Another individual grabbed Sheumaker and attempted to shield Sheumaker from the arrest of Wilson.
36. In another scrum, officers from ISP are able to arrest and handcuff Sheumaker.

37. Wilson then took custody of Sheumaker. During this time, Wilson refused to retrieve Sheumaker's shoes. Wilson also showed Sheumaker a scratch on his arm and admitted he didn't know who gave it to him, but also admitted that it wasn't Sheumaker.

COUNTER CLAIM: CAUSES OF ACTION

COUNTERCLAIM I - EXCESSIVE FORCE CIVIL RIGHTS VIOLATION UNDER 42 U.S.C § 1983 VIOLATION OF 8th and 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION

38. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth herein.

39. On July 1st, 2020 Counterclaim-Defendants George and Wilson attacked Counterclaim-Plaintiff Sheumaker.

40. At the time George and Wilson attacked her, Sheumaker was exercising her First Amendment Rights to protest, to record the police, and was otherwise obeying all laws. She posed no threat to Wilson and George. It was excessive for Wilson and George to use the takedown maneuvers, restraint maneuvers, and chokeholds to attempt to subdue Sheumaker.

41. In using the chokehold maneuver and excessively taking down Sheumaker, Wilson acted without lawful justification, intentionally, and with a deliberate indifference to or a reckless disregard for the natural and probable consequences of his acts, thereby violating Sheumaker's rights protected by the Eighth and Fourteenth Amendments to the United States Constitution.

42. As a result of the conduct of Wilson and George, Sheumaker suffered physical and psychological injury, and continues to suffer psychological injury.

43. Wilson and George demonstrated a deliberate indifference to and reckless disregard of Sheumaker's civil and constitutional rights.

44. Wilson's and George's actions were willful, wanton, unlawful, and in gross disregard of Sheumaker's civil rights, justifying an award of punitive damages.

45. As a result of Wilson's and George's acts and omissions, Sheumaker has in the past and will in the future suffer injuries and damages.

COUNTERCLAIM II - ASSAULT AND BATTERY

46. Plaintiff Sheumaker incorporates the preceding paragraphs by reference as if each paragraph was set forth herein.

47. Wilson and George subjected Sheumaker to contact of an insulting and provoking nature.

48. Wilson and George acted without the consent of Sheumaker.

49. Wilson's and George's intentional acts resulted in bodily contact with Sheumaker that a reasonable person would deem insulting or offensive.

50. Sheumaker suffered an injury, namely bruises, scrapes, and pain as a result of the assaults of Wilson and George.

51. Wilson's and George's actions were willful, wanton, unlawful, and in gross disregard of Sheumaker's civil rights, justifying an award of punitive damages.

52. Counter-Claimant Sheumaker hereby requests reasonable attorney fees and costs associated with prosecuting this action as Counter-Defendants' behavior was oppressive, conniving, harsh, cruel, and/or tyrannical.

53. As a result of Counter-Defendants' acts and omissions, Sheumaker has in the past and will in the future suffer injuries and damages.

QUALIFIED IMMUNITY

Counter-Claim Defendants Wilson and George were acting in their role as police officers at the time of the events alleged in their Petition and in the event alleged in the Counter-Claim. Sheumaker anticipates Wilson and George will attempt to dismiss the Counter-claim based upon Qualified Immunity. In support of Qualified Immunity not being applicable Sheumaker hereby submits the following:

54. Qualified immunity is not applicable in this case because it passes the two-step analysis required to defeat QI: 1) Sheumaker was engaged in protected activity at the time of the assault by Wilson, and therefore Wilson knew that Sheumaker's rights were established.

55. Wilson's choke-hold and subsequent assaults on Sheumaker's violated a constitutional right.

56. Wilson's choke-hold and subsequent assaults on Sheumaker were clearly established.

57. Alternatively, if Wilson and George, as Plaintiffs in this petition, are setting aside their roles as police officers, and their allegations of the actions of Sheumaker are in the context of their roles and regular citizens, then they have waived their ability to assert the defense of Qualified Immunity to the Counterclaims.

PRAYER FOR RELIEF

58. Counter-Claimant Sheumaker prays for Judgment against the aforementioned Counter-Claimant Defendants as follows:

- a. Actual, Compensatory, Consequential, and all other allowable damages against Defendant in an amount yet to be determined;
- b. Compensation for violation of their constitutional rights, mental anguish, and humiliation;
- c. Plaintiff's cost in this action, including reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
- d. Declaratory relief;
- e. Injunctive relief;
- f. An award of pre-judgment interest;
- g. Punitive damages; and
- h. Any other relief the Court deems just and equitable.

JURY DEMAND

The Plaintiff hereby demands a trial by jury in the above-captioned matter.

Respectfully submitted,

MUNDY LAW OFFICE, PC

s/ Nathan A. Mundy

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