

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1) NANCY ELIZABETH KEMP,)	
)	
Plaintiff,)	Case No.: CIV-24-99-G
)	
v.)	
)	
1) PRESTON COX, in his individual)	ATTORNEY LIEN CLAIMED
capacity,)	
2) TIM TIPTON, in his individual capacity,)	JURY TRIAL DEMANDED
3) STATE OF OKLAHOMA, ex rel.)	
DEPARTMENT OF PUBLIC SAFETY,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, the Plaintiff, Nancy Elizabeth Kemp, and for her Complaint against Defendants, Preston Cox and Tim Tipton, alleges and states as follows:

PARTIES

1. Plaintiff Nancy Elizabeth Kemp is an individual and a resident of Logan County, Oklahoma.

2. Defendant Preston Cox (“Cox” or Defendant Cox”) was at all times an Oklahoma Highway Patrol (“OHP”) State Trooper employed by the Oklahoma Department of Public Safety and at all relevant times a resident of the State of Oklahoma. Defendant Cox is being sued in his individual capacity for his personal involvement and participation in the violation of Plaintiff’s rights, while acting under the color of State law, as set forth herein. At all times pertinent, Cox was acting within the scope of his employment as an OHP State Trooper.

3. Defendant Tim Tipton (“Tipton” or “Defendant Tipton”) was at all pertinent times the Commissioner of the Oklahoma Highway Patrol (“OHP”) employed by the Oklahoma Department of Public Safety and at all relevant times a resident of the State of Oklahoma. Defendant Tipton is responsible for the training and supervision of OHP employees as well as the policies, practices, and/or customs in place for OHP. Mr. Tipton is being sued in his individual capacity under the theory of supervisory liability.

4. The Oklahoma Department of Public Safety (“DPS”) is an Oklahoma State agency. OHP operates under the purview and supervision of DPS. Plaintiff’s claims against Defendant State of Oklahoma, ex rel. Department of Public Safety are brought under the Oklahoma Governmental Tort Claims Act (“GTCA”), which is the exclusive method of bringing tort claims against the state of Oklahoma.

JURISDICTION AND VENUE

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C § 1343 to secure protection of and to redress deprivations of rights secured by the Fourth Amendment to the United States Constitution as enforced by 42 U.S.C. § 1983, which provides for the protection of all persons in their civil rights and the redress of deprivation of rights under the color of law.

6. This Court also has original jurisdiction under 28 U.S.C. § 1331 to resolve a controversy arising under the Constitution and laws of the United States, particularly the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

7. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367, since the claims form part of the same case or controversy arising under the United States Constitution and federal law.

8. The acts complained of herein occurred in Logan County, Oklahoma, which is also where the Plaintiff resides. Jurisdiction and venue are thus proper under 28 U.S.C. §§ 116(a) and 1391(b).

FACTUAL BACKGROUND

9. On the evening of May 11, 2022, OHP Trooper Preston Cox pulled over Plaintiff Nancy Kemp on highway 1-35 for alleged misuse of her car's high beam lights.

10. After pulling Ms. Kemp over, Defendant Cox approached her vehicle and directed a fearful Ms. Kemp to sit in his patrol vehicle. Ms. Kemp explained to Defendant Cox that she was uncomfortable with this, yet he insisted to her that "This is how we do things; it makes it easier and go faster."

11. While walking to Defendant Cox's vehicle, Ms. Kemp began typing a text message to her daughter, informing her that she had just been pulled over. As they both entered Defendant Cox's patrol vehicle, Defendant Cox became extremely aggressive and angry towards Ms. Kemp, yelling at her for sending the text message.

12. Ms. Kemp, a 68 year old weighing 135 pounds, reported to Officer Cox that she had consumed only one tequila-based mixed drink before leaving her son's residence, where she had spent the evening helping him plant flowers.

13. Notably, Trooper Cox placed Ms. Kemp in the front seat of his patrol vehicle while questioning her and running her driver's license, a decision that suggests he did not perceive her as a threat at the time.

14. Ms. Kemp posed no immediate threat to Defendant Cox (or anyone else), but her small stature and age caused her to feel nervous during the encounter, as she was alone with him in his car on a dark highway.

15. As Trooper Cox continued his questioning, he placed his patrol vehicle in reverse with no clear explanation to Ms. Kemp.

16. Trooper Cox's placing his vehicle in reverse startled Plaintiff Kemp. She expressed that she preferred to wait outside of his car and, in a state of fear, attempted to exit the patrol vehicle in a non-threatening manner.

17. Trooper Cox responded to this reaction with unnecessary and excessive force, violently grabbing Ms. Kemp by the hair and forcefully striking her head and face against the dashboard of his vehicle twice.

18. Following this initial and unnecessary act of aggression, Officer Cox quickly dove from his driver's seat towards Ms. Kemp, hand cuffing her, then tackling her out of his vehicle and onto the ground.

19. Upon information and belief, Trooper Cox then engaged in a brutal attack on a cuffed and defenseless Ms. Kemp, where he stomped on her foot, and used his elbow, fists and knees to assault her in the face, ribs, arms and wrists.

20. These unwarranted and egregious uses of force persisted for several minutes, resulting in Ms. Kemp suffering severe injuries and bruises to her entire body.

21. After being injured at the hands of Defendant Cox, Plaintiff Kemp was arrested and transported to the Logan County Hospital, where she was treated for several broken ribs, a broken foot, a broken nose and significant bruising to her entire face and body.

22. As a direct and proximate result of the excessive force, Plaintiff suffered injuries, including, but not limited to, significant physical injuries to her entire body, pain and suffering, and mental anguish.

CLAIM FOR RELIEF

Excessive Force (Pursuant to 42 U.S.C. § 1983) (Defendants Cox and Tipton)

A. Trooper Cox's Individual Liability

23. Paragraphs 1 through 22 are incorporated by reference, as though fully set forth herein.

24. The force used on Plaintiff by Defendant Cox was excessive and in violation of Plaintiff's rights under the Fourth Amendment of the United States Constitution. The force was not reasonable or justifiable under the circumstances.

25. At the time of the first use of force – in Trooper Cox's patrol vehicle – Plaintiff was suspected only of a nonviolent misdemeanor and posed no threat of harm to Trooper Cox or anyone else.

26. At the time of the brutal uses of force outside of the patrol vehicle, Plaintiff was suspected of a nonviolent misdemeanor, was fully compliant, subdued, not resisting,

not attempting to flee, and/or was handcuffed, and posed no threat of harm to Trooper Cox or anyone else.

27. Defendant Cox was at all times acting under the color of State law and within the scope of his employment.

28. As a direct and proximate result of the excessive force, Plaintiff suffered injuries, including, but not limited to, significant physical injuries to her head, face, arms and wrist, pain and suffering, and mental anguish.

B. Supervisory Liability (against Defendant Tipton)

29. Paragraphs 1-28 are incorporated herein by reference.

30. Commissioner Tipton held a supervisory position with OHP and was directly involved in the creation and implementation of policies, oversight, and training of OHP employees, including concerning the use of force.

31. Upon information and belief, the need of additional and different training and supervision with respect to the use of force was so obvious to Defendant Tipton that he was deliberately indifferent to the acts of OHP personnel, including but not limited to Defendant Cox. This resulted in the knowing creation of a dangerous environment for Plaintiff and all citizens who may come in contact with OHP personnel.

32. Defendant Tipton's failure to train and supervise his subordinates directly and proximately caused violations of Plaintiff's federally protected rights, which caused Plaintiff to endure physical abuse, pain, suffering, mental pain and anguish.

33. Upon information and belief, Commissioner Tipton was aware that OHP Troopers had a policy, practice, and/or custom of using unreasonably excessive force on

compliant and subdued civilians, like Ms. Kemp, who posed no threat to law enforcement officers or anyone else.

34. Upon information and belief, not only did Tipton permit these practices to continue unabated, he also personally ensured that OHP Troopers who used unreasonably excessive force went unpunished, even when OHP supervisors, such as Captains, brought reports of excessive force to Tipton's attention for review.

35. Upon information and belief, Tipton has, on at least one occasion, actually disciplined an OHP Captain who attempted to discipline a Trooper under his command for using obviously excessive force on multiple occasions throughout 2022.

36. In committing the acts complained of herein, Defendant Tipton acted under color of law to deprive Plaintiff of her constitutionally protected rights.

37. As a direct and proximate result of Defendant Tipton's failure to train and supervise, Plaintiff suffered injuries and damages as alleged herein.

**Negligent Use of Force
(GTCA)**

38. Paragraphs 1-37 are incorporated herein by reference.

39. In Oklahoma, "[a] defendant is generally said to owe a duty of care to all persons who are foreseeably endangered by his conduct with respect to all risks that make the conduct unreasonably dangerous." *Morales v. City of Oklahoma City ex rel. Oklahoma City Police Dep't*, 230 P.3d 869, 878 (Okla. 2010).

40. Because, however, the act of making an arrest necessarily involves some risk of harm to the arrestee, "a police officer has a special dispensation from the duty of ordinary care not to endanger others." *Morales*, 230 P.3d at 880.

41. In particular, "[a] police officer's duty ... is to use only such force in making an arrest as a reasonably prudent police officer would use in light of the objective circumstances confronting the officer at the time of the arrest." *Id.*

42. Here, Trooper Cox owed a duty to Plaintiff to use only such force in securing her cooperation as a reasonably prudent police officer would use in light of the objective circumstances confronting the officer at the time of the incident.

43. Trooper Cox violated and breached that duty by using objectively unreasonable and excessive force as described herein.

44. As a direct proximate result of Trooper Cox's negligence, Plaintiff suffered actual physical injuries, medical expenses, mental and physical pain and suffering and other damages and losses as described herein, entitling Plaintiff to recover compensatory and special damages in amounts to be determined at trial.

45. At all pertinent times, Trooper Cox was acting within the scope of his employment with OHP, and the State of Oklahoma, ex rel. Department of Public Safety is vicariously liable for his negligent use of force.

46. Plaintiff timely submitted a notice of a claim, pursuant to the GTCA, within one year of the incident described herein. Plaintiff timely filed her Complaint within 180 days of the denial of that claim.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff prays this Court grant the relief sought, including but not limited to actual and compensatory damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), with interest accruing from the date of filing suit, the costs of bringing this action, a reasonable attorneys' fee, along with such other relief as is deemed just and equitable

Respectfully submitted,

/s/Daniel E. Smolen
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