

FILED

02-02-2021

John Barrett

Clerk of Circuit Court

2021CV000638

Honorable Carl Ashley-33

Branch 33

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

F.K.,
by Guardian Ad Litem,
Atty. William F. Sulton,
219 N Milwaukee St, Ste 520,
Milwaukee, WI 53202,

Plaintiff,

Wisconsin Department of Health
Services,
1 West Wilson Street, Room 651,
Madison, WI 53703,

Involuntary Plaintiff,

vs.

JAMES COLLINS,
749 West State Street,
Milwaukee, WI 53233,

FABIAN GARCIA,
749 West State Street,
Milwaukee, WI 53233,

ANTONIO DORSEY,
749 West State Street,
Milwaukee, WI 53233,

EMILY MARKERT,
749 West State Street,
Milwaukee, WI 53233,

DAVID PASZKIEWICZ,
749 West State Street,
Milwaukee, WI 53233,

and

CITY OF MILWAUKEE,
c/o Jim Owczarski,
200 E Wells St, Rm 205,
Milwaukee, WI 53202,

Defendants.

Case No.: 2020CV00____

Case Codes
Unclassified – 30703
Personal Injury Other –
30107

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 901 North 9th Street, Milwaukee, Wisconsin 53233, and to Attorney William F. Sulton, Plaintiff's attorney, whose address is GINGRAS THOMSEN & WACHS LLP, 219 North Milwaukee Street, Suite 520, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at the law office of GINGRAS THOMSEN & WACHS LLP in Milwaukee, Wisconsin, on this 2nd day of February, 2021.

*Electronically signed by
Attorney William F. Sulton*

MARK L. THOMSEN (SBN 1018839)
WILLIAM F. SULTON (SBN 1070600)

GINGRAS THOMSEN & WACHS LLP
219 N Milwaukee St Ste 520
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414-935-5490 (direct)
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Attorneys for Plaintiff F.K.

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COMPLAINT

NOW COMES F.K., by her guardian ad litem, Attorney William F. Sulton, and the law firm of GINGRAS THOMSEN & WACHS LLP, by Attorneys Mark L. Thomsen and William F. Sulton, and alleges as follows:

INTRODUCTION

1. On November 12, 2018 four-year-old F.K. was sleeping in the backseat of a minivan when her mother, the driver of the van, was arrested by City of Milwaukee police officers.

2. Despite being told by the adult driver that there was a child sleeping in backseat, the officers towed the car with F.K. still inside.

3. F.K. was taken to a City of Milwaukee tow lot and left overnight in freezing temperatures. The temperature was around 25 degrees Fahrenheit at midnight with a wind chill of 14 degrees. The temperature dropped to as low as 19 degrees Fahrenheit with a wind child of 5 degrees Fahrenheit at 7:00 a.m. When F.K. was found, at approximately 7:39 a.m., the temperature was 22 degrees Fahrenheit with a wind chill of 9 degrees.

4. Since at least the Seventh Circuit's decision in *White v. Rochford*, 592 F.2d 381 (7th Cir. 1979), the law has been clearly established that police officers violate a child's constitutional rights when they abandon children traveling in a car following the arrest of adult drivers. Any reasonable police officer would have known of this clearly established precedent.

THE PARTIES

5. Plaintiff F.K. is a minor who, following the arrest of her mother, was abandoned in the back of her mother's van, taken to a tow lot, and left overnight. F.K. was born on July 4, 2014 and was only four-years-old at the time. She resides in the City and County of Milwaukee with her great-aunt, Bunnita Gant, who is F.K.'s current legal custodian.

6. Involuntary Plaintiff Wisconsin Department of Health Services ("DHS") is a governmental agency, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with offices located at 1 West Wilson Street, Room 651, Madison, Wisconsin 53707. On information and belief, DHS has paid medical and related expenses on behalf of F.K. as a result of injuries she sustained from being left overnight in a van, alone, in freezing temperatures, and crying her for her mother for hours, which is the subject of this lawsuit. DHS may have a subrogation interest herein with respect to its payments pursuant to Wis. Stat. § 49.89 subject, however, to all limitations on the exercise of that right imposed by federal and state law. By reason of any such payments, DHS is hereby joined as an involuntary plaintiff pursuant to Wis. Stat. §§ 49.89 and 803.03.

7. James Collins ("Ofc. Collins") was a police officer with the City of Milwaukee. At all times relevant to the claims in this complaint, Ofc. Collins was acting under color of law and within the scope of his employment as a police officer for the City of Milwaukee. He is being sued in his individual capacity.

8. Fabian Garcia (“Ofc. Garcia”) is a police officer with the City of Milwaukee. At all times relevant to the claims in this complaint, Ofc. Garcia was acting under color of law and within the scope of his employment as a police officer for the City of Milwaukee. He is being sued in his individual capacity.

9. Antonio Dorsey (“Ofc. Dorsey”) is a police officer with the City of Milwaukee. At all times relevant to the claims in this complaint, Ofc. Dorsey was acting under color of law and within the scope of his employment as a police officer for the City of Milwaukee. He is being sued in his individual capacity.

10. Emily Markert (“Ofc. Markert”) is a police officer with the City of Milwaukee. At all times relevant to the claims in this complaint, Ofc. Markert was acting under color of law and within the scope of her employment as a police officer for the City of Milwaukee. She is being sued in her individual capacity.

11. David Paszkiewicz (“Sgt. Paszkiewicz”) is a police sergeant with the City of Milwaukee. Sgt. Paszkiewicz was responsible for the oversight and supervision of Officers Collins, Garcia, Dorsey and Markert. At all times relevant to the claims in this complaint, Sgt. Paszkiewicz was acting under color of law and within the scope of his employment as a police sergeant for the City of Milwaukee. He is being sued in his individual capacity.

12. City of Milwaukee (or “the City”) is a municipal entity in the State of Wisconsin. Acting through its Police Department, the City is responsible for the training, supervision, and discipline of its officers, including the defendant officers in this case; adopting, implementing, and enforcing policies and practices; and

ensuring that the treatment of people complies with the United States Constitution and other federal, state and local laws. The City is liable for the harm alleged herein, and pursuant to Wis. Stat. § 895.46(1)(a), the City is required to pay or indemnify all judgments, including compensatory and punitive damages, attorney's fees and costs that may be awarded against its officials, employees, and agents.

JURISDICTION AND VENUE

13. On March 13, 2019 F.K. served a written Notice of Injuries, Claims, and an Itemized Statement of the relief sought pursuant to Wis. Stat. § 893.80. (Exhibit 1.) All conditions precedent to filing this lawsuit have been met and occurred.

14. This Court has jurisdiction over the claims and Parties pursuant to Wis. Stat. §§ 801.04(1), 801.04(2) and 801.05(1).

15. Venue in this Court is proper pursuant to Wis. Stat. §§ 801.50(2)(a) and (c).

FACTS

16. On November 12, 2018, at approximately 10:22 p.m., City of Milwaukee police officers Collins, Garcia, Dorsey, Markert and Sgt. Paszkiewicz went to 3900 West Forest Home Avenue in the City of Milwaukee.

17. The officers were investigating a parked minivan. The van's registration plates were suspended due to emissions.

18. F.K., T.M. (F.K.'s sister), Blair Springfield ("Springfield") (F.K.'s mother) and Sheltrina Hall ("Hall") (F.K.'s aunt) were in the van.

19. F.K. was sleeping in the van's backseat.

20. Springfield was arrested on suspicion of operating while intoxicated.

21. Ofc. Collins called for a tow truck.

22. Hall, who was holding T.M., told Ofc. Collins and other officers that there was another child asleep in the backseat.

23. Ofc. Collins, Ofc. Garcia, and the other officers did not inspect the van in violation of Standard Operating Procedure Section 610.05(B): failure to thoroughly search a vehicle prior to a tow. (*See, e.g.*, Exhibits 2 and 3.)

24. Ofc. Collins and other officers did not active their body worn cameras in violation of Standard Operating Procedure Section 747.25(C)(2)(d)(5): failure to activate body worn camera throughout an investigative contact. (*See, e.g.*, Exhibit 2.)

25. Ofc. Collins was "charged" and "found guilty" of "failure to thoroughly search a vehicle prior to tow" and "failure to activate Body Worn Camera throughout an investigative contact." (Exhibit 2.)

26. Ofc. Garcia was "charged" and "found guilty" of "failure to thoroughly search a vehicle prior to tow" and "failure to conduct a prompt, thorough, impartial and careful investigation." (Exhibit 3.)

27. The officers recklessly and deliberately allowed the van to be towed to a tow lot, and four year old F.K. along with it.

28. The next day, November 13, 2018 at approximately 7:39 a.m., Brandon Bennett (“Bennett”) was working in an adjacent lot, it was “cold,” and he heard F.K. “screaming ‘I want my mommy!’” (Exhibit 4.)

29. Kenny Morton (“Morton”) and Robert Santiago (“Santiago”) were working in the tow lot when Bennett got their attention. Morton and Santiago were able to locate F.K. by listening to her “crying.” It was “cold,” and Morton unlocked the van and drove F.K. to his office.

30. On November 13, 2018 at approximately 8:01 a.m., tow lot personnel contacted the City of Milwaukee police department and spoke with Sergeant Richard Hoffman (“Sgt. Hoffman”). Hoffman was told at this time that four year old F.K. was found in the van.

31. As a result of the officers’ unlawful misconduct, four year old F.K. was left inside the vehicle overnight in freezing weather conditions. She was taken was taken to Aurora St. Luke’s Emergency Department and treated for her injuries, including the trauma from waking up alone, cold, and crying for “mama” for hours.

FIRST CLAIM FOR RELIEF
Unlawful Seizure - Violation of Fourth Amendment

32. F.K. incorporates here all other paragraphs in this complaint.

33. The Fourth Amendment to the U.S. Constitution prohibits unreasonable seizures.

34. By taking F.K. to the City of Milwaukee's tow lot without reasonable suspicion or probable cause of any criminal wrongdoing on the part of F.K., Defendants unlawfully seized F.K.

35. As a result of Defendants' conduct, F.K. suffered physical pain and suffering, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

SECOND CLAIM FOR RELIEF
Deprivation of Due Process – Violation of Fourteenth Amendment

36. F.K. incorporates here all other paragraphs in this complaint.

37. The Fourteenth Amendment to the U.S. Constitution prohibits deprivations of liberty without due process of law.

38. By taking F.K. to the City of Milwaukee's tow lot and leaving her there overnight in freezing conditions, Defendants unlawfully deprived F.K. of her liberty interests without due process of law and constitutes conscious shocking misbehavior.

39. As a result of Defendants' conduct, F.K. suffered physical pain and suffering, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

THIRD CLAIM FOR RELIEF
Negligence – Violation of Wisconsin Law

40. F.K. incorporates here all other paragraphs in this complaint.

41. Defendants were under a duty to exercise ministerial care commensurate with the foreseeable risk of danger of failing to search a van for

passenger in violation of Standard Operating Procedure 610.05(B)—failure to thoroughly search a vehicle prior to a tow—following an arrest, especially an arrest late at night in freezing temperatures.

42. Defendants breached their ministerial duties and failed to exercise care as a matter of law commensurate with the reasonably foreseeable risk of danger to a child sleeping in the backseat of a van by:

- a. failing to exercise reasonable care to search the van prior permitting the van to be towed to the City of Milwaukee's tow lot;
- b. telling the tow truck driver not to search the van; and
- c. ignoring Hall when she stated that there was another child in the van.

43. As a result of Defendants' conduct, F.K. suffered physical pain and suffering, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

44. On March 13, 2018 Defendants Ofc. Collins, Ofc. Garcia, Ofc. Dorsey, Ofc. Markert, Sgt. Paszkiewicz and City of Milwaukee were served with a Notice of Injuries, Claims, and an Itemized Statement of the relief sought pursuant to Wis. Stat. § 893.80 dated March 13, 2019. The City has failed to pay a penny to F.K. in violation of to Wisconsin law.

RELIEF REQUESTED

45. Wherefore, F.K. respectfully requests that this Court promptly enter judgment for her and against each defendant, jointly and severally, and provide the following relief.

- a. Compensatory damages in an amount determined by a jury;
- b. Punitive damages in an amount determined by a jury;
- c. Attorneys' fees and experts' fees pursuant to 42 U.S.C. § 1988;
- d. Taxable costs and disbursements; and
- e. Such other and further relief as the Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

46. F.K. hereby demands a trial by jury of twelve persons.

Dated at the law office of GINGRAS THOMSEN & WACHS LLP in Milwaukee, Wisconsin, on this 2nd day of February, 2021.

*Electronically signed by
Attorney William F. Sulton*

MARK L. THOMSEN (SBN 1018839)
WILLIAM F. SULTON (SBN 1070600)

GINGRAS THOMSEN & WACHS LLP
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wsulton@gtwlawyers.com

Attorneys for Plaintiff F.K.

**NOTICE OF INJURY AND CLAIM
PURSUANT TO WISCONSIN STATUTE SEC. 893.80**

TO:

Jim Owczarski

City of Milwaukee City Clerk
Room 205
200 W Wells Street
Milwaukee, WI 53202

PO James Collins

City of Milwaukee Police Department
3006 S 27th Street
Milwaukee, WI 53215

PO Fabian Garcia

City of Milwaukee Police Department
3006 S 27th Street
Milwaukee, WI 53215

Sgt. David Paszkiewicz

City of Milwaukee Police Department
3006 S 27th Street
Milwaukee, WI 53215

PO Antonio Dorsey

City of Milwaukee Police Department
3006 S 27th Street
Milwaukee, WI 53215

PO Emily Markert

City of Milwaukee Police Department
3006 S 27th Street
Milwaukee, WI 53215

NAME AND ADDRESS OF CLAIMANT:



DATE AND TIME OF EVENT GIVING RISE TO CLAIM:

November 13, 2018

LOCATION OF EVENT GIVING RISE TO CLAIM:

3900 West Forest Home Avenue
Milwaukee, WI

CIRCUMSTANCES OF EVENT GIVING RISE TO CLAIM:

On November 12, 2018, at approximately 10:22 p.m., City of Milwaukee Police Officers Fabian Garcia, Antonio Dorsey, Emily Markert, James Collins, and Sergeant David Paszkiewicz went to 3900 West Forest Home Avenue in the City of Milwaukee. The officers were investigating a parked minivan with Wisconsin license plate ADC2147. The van's registration plates were suspended due to emissions. F[REDACTED] K[REDACTED] Tyleaah McKay ([REDACTED] sister), Blair Springfield ([REDACTED] mother) and Sheltrina Hall ([REDACTED] aunt) were in the car. [REDACTED] was sleeping in the van's backseat. Springfield was arrested on suspicion of operating while intoxicated. Collins called for a tow truck. The officers allowed the van to be towed, and [REDACTED] along with it.

On November 13, 2018, at approximately 8:01 a.m., tow lot personnel contacted the City of Milwaukee police department and spoke with Sergeant Richard Hoffman. Hoffman was told on scene that [REDACTED] was in the still in van. The van was presumably towed as evidence against Springfield.

As a result of the officers' misconduct, [REDACTED] was left inside the vehicle overnight with cold weather conditions. The officers had an absolute ministerial duty to search the car for the safety and well being of [REDACTED] and others concern. The officer grossly failed to complete that duty.

ITEMIZED STATEMENT OF RELIEF SOUGHT:

The claimant is aware that Wisconsin law favors the interests of the government, regardless of the outrageousness of the conduct of its employees, over its citizens by capping [REDACTED] damages and losses under state law at \$50,000. The City should immediately pay [REDACTED] \$50,000 subject to Court approval.

Dated at the law offices of Gingras Cates & Wachs LLP in Milwaukee, Wisconsin, on this 13th day of March, 2019.



WILLIAM F. SULTON
State Bar No. 1070600

Gingras Cates & Wachs LLP
Suite 330
219 N Milwaukee Street
Milwaukee, WI 53202
414-935-5490
wsulton@gcwlawyers.com

Attorneys for F [REDACTED] K [REDACTED]

**Milwaukee Police Department**

Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Alfonso Morales

Chief of Police

(414) 933-4444

PERSONNEL ORDER 2019 - 122

September 20, 2019

RECEIVED**SEP 25 2019****FIRE AND POLICE COMMISSION**

RE: DISCIPLINARY ACTION

POLICE OFFICER JAMES P. COLLINS (010239), Sixth District, charged with violation of department Code of Conduct as follows:

Core Value 1.00 – Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to Body Worn Camera (BWC), Section 747.25(C)(2)(d)(5): Failure to activate the Body Worn Camera throughout an investigative contact.

Core Value 1.00 – Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to Towing of Vehicles, Section 610.05(B): Failure to thoroughly search a vehicle prior to a tow.

The charges having been substantiated, he is found guilty as charged and the penalty adjudged appropriate by the Chief of Police is as follows:

Failure to activate the Body Worn Camera throughout an investigative contact.

Five (5) day suspension without pay.

Failure to thoroughly search a vehicle prior to a tow.

Discharge from the department.

PERSONNEL ORDER 2019-122

-2-

September 20, 2019

The Chief hereby orders that POLICE OFFICER JAMES P. COLLINS be suspended for five (5) days relative to the above-referenced charge.

The Chief further orders that the discharge from the department be held in abeyance for two (2) years, contingent upon the terms outlined in the Last Chance Agreement, entered into by POLICE OFFICER JAMES P. COLLINS on September 19, 2019. The Chief further orders that in lieu of the discharge from the department, POLICE OFFICER JAMES P. COLLINS be suspended for thirty (30) working days relative to the above-referenced charge.

The Chief further orders that the total thirty-five (35) day suspension is to be served during the following periods: October 6, 2019 through October 12, 2019; November 10, 2019 through November 14, 2019; December 8, 2019 through December 14, 2019; January 5, 2020 through January 18, 2020; and January 31, 2020 through February 13, 2020.

A handwritten signature in black ink, appearing to read 'Alfonso Morales', is positioned above the printed name and title.

ALFONSO MORALES
CHIEF OF POLICE

AM:rls
(18-0280)



Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Alfonso Morales
Chief of Police

(414) 933-4444

PERSONNEL ORDER 2019 - 123

September 20, 2019

RE: DISCIPLINARY ACTION

POLICE OFFICER FABIAN GARCIA (022611), Sixth District, charged with violation of department Code of Conduct as follows:

Core Value 1.00 – Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to Towing of Vehicles, Section 610.05(B): Failure to thoroughly search a vehicle prior to a tow.

Core Value 1.00 – Competence, referencing Guiding Principle 1.04: Failure to conduct a prompt, thorough, impartial and careful investigation.

The charges having been substantiated, he is found guilty as charged and the penalty adjudged appropriate by the Chief of Police is as follows:

Failure to thoroughly search a vehicle prior to a tow.

Five (5) day suspension without pay.

Failure to conduct a prompt, thorough, impartial and careful investigation.

Five (5) day suspension without pay.

It is hereby ordered that POLICE OFFICER FABIAN GARCIA be suspended for a total of ten (10) working days without pay. If not appealed, said suspension shall be served during the following period: November 11, 2019 through November 22, 2019.

A handwritten signature in dark ink, appearing to read 'Alfonso Morales', is written over a light background.

ALFONSO MORALES
CHIEF OF POLICE

DPW OPERATIONS
FLEET FORESTRY PARKING SANITATION

Incident Report

EXHIBIT**4**Today's Date: 11/13/18Name: Brandon BennettTitle: city LaborerIncident Location: Lincoln / self - HelpIncident Date/Time: 11/13/18 - ~~7:30 AM~~ 7:30 AM

Truck #: _____

Other employees/witnesses: _____

Supervisor Notified: Dispatch ☒ Approximate Time: 7:39 AM911 or MPD/MFD Called: ☐ Approximate Time: _____

Nature of Incident: I was in the back when I heard a little girl screaming "I want my mommy!" I used the 2 way radio to call up front, to tell them what I was seeing and if they could call the tow lot and let them know that it was a child back here screaming and cold. I then called dispatch and told them and at that time I was told to call the police. I then used the radio again to call up front and asked them did they call the tow lot and were they coming to the back. As I was about to call the police I seen a truck rushing back there, they (tow lot) ^{People} picked the girl up and drove to the front with her.

cc: Director of Operations
Section Manager
Safety7/20/2017
LD