

FILED
08-27-2020
John Barrett
Clerk of Circuit Court
2020CV005094
Honorable Christopher R.
Foley-14
Branch 14

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

FRANK "NITTY" SENSABAUGH,
c/o Attorney Mark L. Thomsen,
219 N Milwaukee St, Ste 520
Milwaukee, WI 53202,

Plaintiff,

v.

MICHAEL KRZNARICH,
821 W State Street,
Milwaukee, WI 53233,

SARAH BYERS,
821 W State Street,
Milwaukee, WI 53233,

CORIE RICHARDSON,
821 W State Street,
Milwaukee, WI 53233,

BRANDON ROGERS,
821 W State Street,
Milwaukee, WI 53233,

DANIEL HUMPHREYS,
821 W State Street,
Milwaukee, WI 53233,

STEVEN HAW,
821 W State Street,
Milwaukee, WI 53233,

TRICIA CARLSON,
821 W State Street,
Milwaukee, WI 53233,

Case No.

SUMMONS

Case Code: 30106
30703 (Civil Rights)

JOHN DOES ONE THROUGH TEN,

JOHN DOES ELEVEN THROUGH TWENTY,

and

MILWAUKEE COUNTY,
c/o County Clerk George Christenson,
901 N 9th St, Rm 105,
Milwaukee, WI 53233,

Defendants.

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 Mark L. Thomsen, 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 27th day of August, 2020.

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

By: Electronically filed by Attorney Mark L. Thomsen
Mark L. Thomsen
State Bar No. 1018839
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CIVIL DIVISION

FRANK "NITTY" SENSABAUGH,
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Milwaukee, WI 53202,

Case No.

Plaintiff,

COMPLAINT

v.

Case Code: 30106
30703 (Civil Rights)

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JOHN DOES ONE THROUGH TEN,

JOHN DOES ELEVEN THROUGH TWENTY,

and

MILWAUKEE COUNTY,
c/o County Clerk George Christenson,
901 N 9th St, Rm 105,
Milwaukee, WI 53233,

NOW COMES Plaintiff Frank “Nitty” Sensabaugh, by his attorneys, the law firm Gingras, Thomsen & Wachs, LLP, by Attorneys Mark L. Thomsen and William F. Sulton, and alleges as follows:

INTRODUCTION

1. The First Amendment guarantees the right to freely hold and express personal opinions and beliefs. *See Cohen v. California*, 403 U.S. 15, 24 (1971). Organized political protest is a form of “classically political speech.” *Boos v. Barry*, 485 U.S. 312, 318 (1988).

2. It has long been clearly established that the First Amendment bars retaliation for protected speech and association. *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998). The Supreme Court “has repeatedly held that police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they simply fear possible disorder.” *Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) (citing *Cox v. Louisiana*, 379 U.S. 536, 550 (1965)).

3. On May 25, 2020, George Floyd was murdered by a Minneapolis Police Department officer. The events of Mr. Floyd’s arrest and murder were captured by cellphone video by several bystanders as well as by other officers’ body cameras. The video footage shows Mr. Floyd pinned face down on the ground and increasingly unresponsive, while the officer

unlawfully kneels on Mr. Floyd's neck, two other officers unlawfully hold him down, and another officer unlawfully stands by, all three failing to follow their constitutional obligation to intervene to stop the murder of Mr. Floyd. Nationwide protests erupted in response to another unconscionable example of unlawful police brutality that continues as a result of our collective deliberate indifference to the constitutional rights of African Americans and people of the color in the United States.

4. On June 15, 2020 more than 100,000 of our fellow citizens signed a petition to rename the Edmund Pettus bridge after Georgia Representative John Lewis. In 1965, Rep. Lewis joined hundreds of marchers on that bridge to protest racial injustice. The march was sparked by the death of Deacon Jimmie Lee Jackson, who was shot to death by a state trooper. Law enforcement officers met the peaceful marchers with Billy clubs, tear gas and other weaponry and forms of violence. The event is known as Bloody Sunday.

5. African American citizens and their allies peacefully protesting racial injustice on thoroughfares, and in other spaces, have a rich history in this country. And yet, 55 years after Bloody Sunday, Milwaukee County deputy sheriffs greeted peaceful protesters with Billy clubs, tear gas, and other weaponry and forms of violence.

6. Frank "Nitty" Sensabaugh, a well-respected Milwaukee human rights advocate known for his peaceful advocacy and protests for racial and economic justice, engaged in constitutionally protected acts of observing, recording and participating in events of public interest, including public demonstrations and in expressing his political views. Despite being brutally and unlawfully attacked by Milwaukee County deputy sheriffs on June 2, 2020, Frank Nitty continues to do so.

7. Indeed, on July 11, 2020, the Wisconsin Senate issued a proclamation “recogniz[ing] and honor[ing] Frank Sensabaugh . . . a true pillar, role model, and voice of positivity in our community, and salute him for his greatness as a leader.” (See Exhibit A.)

8. On June 2, 2020 Frank Nitty was unlawfully attacked because he was a young African American exercising his and all peoples’ First Amendment right to peacefully assemble against racist policing and violence by law enforcement officers, including Milwaukee County deputy sheriffs.

9. The June 2, 2020 racist attack was recorded by other peaceful assemblers who watched in horror as Frank Nitty was threatened with death by a deputy pointing a firearm at point blank range, singled out while white protesters were left alone, body slammed by another, and piled on by about half a dozen others, leaving him bleeding from his right elbow, hand, and wrist, and left arm. And after seeing that Frank Nitty was bleeding, a deputy bound Frank Nitty’s hands so tightly that he began to lose feeling in his hands.



10. Frank Nitty went to the hospital where he was diagnosed with lacerations with infection. He was given stitches and antibiotics. He will be scarred for the rest of his life, physically and emotionally. The County defendants never should have allowed this attack to occur.



THE PARTIES

A. Plaintiff

11. Plaintiff Frank “Nitty” Sensabaugh (“Frank Nitty”) is a well-respected Milwaukee human rights advocate known for his peaceful advocacy and protests for racial and economic justice. On June 2, 2020 he was brutally attacked by Milwaukee County deputy sheriffs. He resides and is domiciled in Milwaukee County.

B. Defendants

12. Defendant Sergeant Michael Krznarich (“Sgt. Krznarich”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Sgt. Krznarich was a Deputy Commander directing and supervising the Mobile Response Team (“MRT”) of the Milwaukee County Sheriff’s Office (“MCSO”). Sgt. Krznarich directed and supervised the MRT’s arrest team. At all times relevant to the claims in this complaint, Sgt. Krznarich was acting under color of law and within the scope of his employment with Milwaukee County.

13. Defendant Sergeant Sarah Byers (“Sgt. Byers”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Sgt. Byers was a Deputy Commander directing and supervising the MRT. At all times relevant to the claims in this complaint, Sgt. Byers was acting under color of law and within the scope of her employment with Milwaukee County.

14. Defendant Deputy Corie Richardson (“Dep. Richardson”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Dep. Richardson was a MRT member. At all times relevant to the claims in this complaint, Dep. Richardson was acting under color of law and within the scope of his employment with Milwaukee County.

15. Defendant Deputy Brandon Rogers (“Dep. Rogers”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Dep. Rogers was a MRT member and member of the arrest team. At all times relevant to the claims in this complaint, Dep. Rogers was acting under color of law and within the scope of his employment with Milwaukee County.

16. Defendant Deputy Daniel Humphreys (“Dep. Humphreys”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Dep. Humphreys was a MRT member and a member of the arrest team. At all times relevant to the claims in this complaint, Dep. Humphreys was acting under color of law and within the scope of his employment with Milwaukee County.

17. Defendant Deputy Steven Haw (“Dep. Haw”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Dep. Haw was a MRT member and a member of the arrest team. At all times relevant to the claims in this complaint, Dep. Haw was acting under color of law and within the scope of his employment with Milwaukee County.

18. Defendant Tricia Carlson (“Cpt. Carlson”) is a Milwaukee County Sheriff’s Deputy. On June 2, 2020 Cpt. Carlson was directing and supervising the MRT. At all times relevant to the claims in this complaint, Cpt. Carlson was acting under color of law and within the scope of her employment with Milwaukee County.

19. Defendants John Does One through Ten are deputy sheriffs who, on June 2, 2020, were assigned to MRT. At all times relevant to the claims in this complaint, John Does One

through Ten were acting under color of law and within the scope of their employment with Milwaukee County.

20. Defendants John Does Eleven through Twenty are deputy sheriffs who, on June 2, 2020, were assigned to MRT's arrest team. At all times relevant to the claims in this complaint, John Does Eleven through Twenty were acting under color of law and within the scope of their employment with Milwaukee County.

21. Defendant Milwaukee County with offices of its executive at 901 North 9th Street, Room 105, Milwaukee, WI 53233, is and was at all times material hereto, a municipal corporation organized under the laws of the State of Wisconsin. Milwaukee County, through its Executive and County Supervisors, established, operated and maintained the MCSO at all times material hereto. Milwaukee County is responsible for creating and implementing constitutional policies and practices; then training and supervising its officers consistent with said policies; disciplining sheriff's deputies for violating said policies to ensure that the deputies' conduct conforms with constitutional practices; thus ensuring that the treatment of all people by Milwaukee County law enforcement complies with the United States Constitution and other federal, state and local laws. Pursuant to Wis. Stat. § 895.46, Milwaukee County is obligated to indemnify all Defendants in this action.

C. Other Persons

22. Sheriff Earnell Lucas ("Sheriff Lucas") is the Milwaukee County Sheriff. Sheriff Lucas is responsible for creating and implementing constitutional policies and practices; then training and supervising its officers consistent with said policies; disciplining sheriff's deputies for violating said policies to ensure that the deputies' conduct conforms with constitutional practices;

thus ensuring that the treatment of all people by Milwaukee County law enforcement complies with the United States Constitution and other federal, state and local laws.

23. Denita Ball, Ph.D. (“Dr. Ball”) is the chief deputy sheriff, and in that capacity is responsible for the current day-to-day operation of the MCSO, including assigning deputies to the MRT and its arrest team. Dr. Ball is responsible for the current training, supervision and discipline of sheriff’s deputies; 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.

24. Molly Zillig (“Atty. Zillig”) is the chief legal and compliance officer for the MCSO, and in that capacity oversees the current policy development, professional standards and training for the MCSO. Atty. Zillig is responsible for the current training, supervision and discipline of sheriff’s deputies; 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 FACTS

25. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

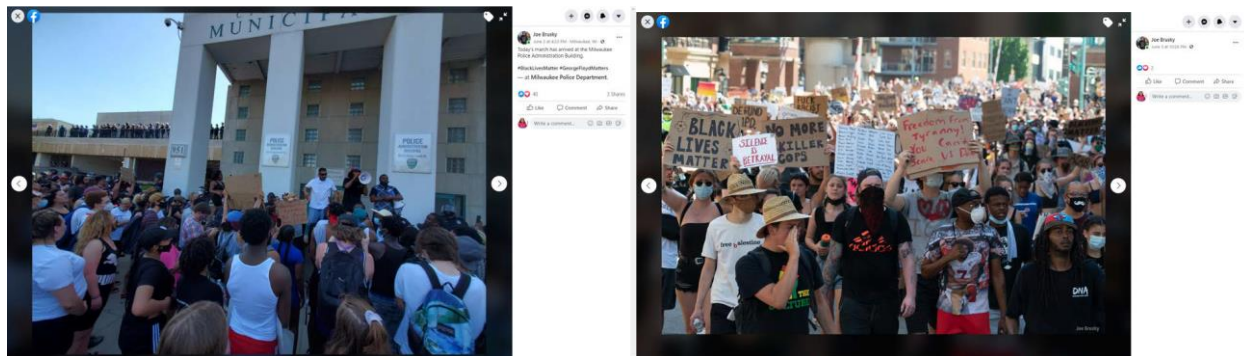
A. Background

26. Frank Nitty is a community organizer, human rights activist and Milwaukee aficionado of racial and economic justice.

27. Frank Nitty began organizing recent protests in the City and County of Milwaukee (and beyond) in response to George Floyd’s murder and the similar experiences of law

enforcement brutality and racial profiling in the City and County of Milwaukee that he and others similarly situated experience on a too often routine basis.

28. At all times, Frank Nitty and those who have marched and protested for change with him have been peaceful assemblers as has been their demonstrations.



29. While a few protesters—unconnected to Frank Nitty and his supporters—have engaged in destructive activity such events have been remote when compared to the thousands of peaceful assemblers.

B. Events of June 1, 2020

30. On June 1, 2020 Frank Nitty, along with dozens of other protesters, were walking home from a peaceful march against police violence and racism.

31. The protesters were walking near the intersection of North Port Washington Road and West Silver Spring Drive.

32. Law enforcement vehicles blocked the marchers' path.

33. As the marchers walked in between officer vehicles, they were greeted with an armored vehicle.

34. Law enforcement across the street from the tank shot tear gas at the marchers and rushed the marchers with batons.

35. Frank Nitty, and others, were severely tear gassed. Frank Nitty began coughing. The tear gas was so thick and strong that he could not open his eyes. Frank Nitty struggled with severe burning sensations in his eyes and throat for a significant period. There was nowhere for Frank Nitty to escape to as law enforcement had closed in on the protesters to augment effects of the tear gas.

36. None of the protesters, including Frank Nitty, presented a threat to law enforcement officers. The attack by law enforcement was unprovoked. Importantly, the attack breached a promise to Frank Nitty and others that law enforcement would not gas peaceful protesters and marchers.

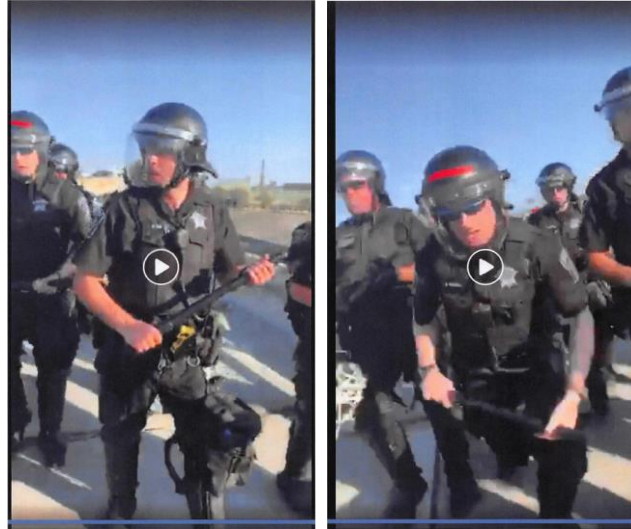
C. Events of June 2, 2020

37. Video footage of what occurred on June 2, 2020 has been widely circulated,¹ and shows that on June 2, 2020, Frank Nitty was viciously singled out, targeted and attacked by Milwaukee County deputy sheriffs for exercising his and the peoples' constitutionally guaranteed right to speak out against racial injustice and racist law enforcement practices in Milwaukee County and throughout the country.

38. At approximately 6:15 pm a group of people peacefully protesting, marched on an open ramp onto Interstate Highway 794. Deputy sheriffs had blocked only the exit ramp at West Clybourn Street.

39. Deputy sheriffs (including Defendants) met the peaceful protesters with violence, Billy clubs, rubber bullets, tear gas and other weaponry.

¹ See, e.g., <https://www.dropbox.com/s/tdhvg3w1a3cyctj/2020-06-02%2018.41.41-2.mov?dl=0>; <https://www.dropbox.com/s/qo9r74n8e4vu8xi/743793723025683-record.MOV?dl=0>



40. Sgt. Byers ordered Dep. Richardson to deploy gas canisters. Sgt. Krznarich also deployed gas canisters.

41. As the protesters and Frank Nitty moved back off the ramp, Frank Nitty was singled out.

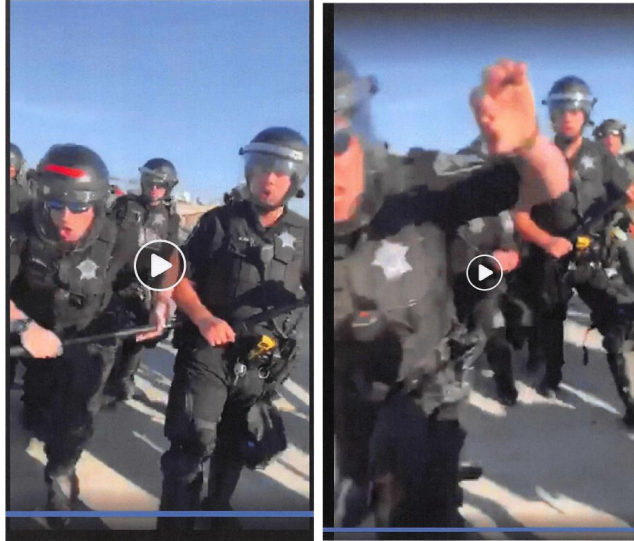
42. Sgt. Krznarich instructed Dep. Rogers to “take his arrest team and take” Frank Nitty “into custody at the earliest possibility.”

43. A deputy points a firearm at Frank Nitty.

44. A deputy points at Frank Nitty and then pushes past white protesters.

45. Deputies Humphreys, Rogers and Haw charged Frank Nitty and take him to the ground.

46. Frank Nitty is body slammed and piled on as he lay on the ground bleeding and terrified and is unlawfully arrested.



47. Dep. Humphreys hand cuffed Frank Nitty with zip ties too tightly, cutting off circulation in his hands.

48. Frank Nitty did not threaten the deputy sheriffs.

49. In fact, the video footage shows that Frank Nitty was deescalating events and protecting deputy sheriffs.

50. Frank Nitty did not resist arrest.

51. Frank Nitty was moving backwards.

52. Frank Nitty was not holding a glass bottle and was not wearing a backpack.

53. Frank Nitty was attacked because he was protesting racial injustice.

54. Frank Nitty was injured by the deputy sheriffs' unlawful conduct.

55. No deputy sheriff intervened to stop the racist and unlawful attack on Frank Nitty.

56. The constitutional guarantee of free speech requires that deputy sheriffs facilitate—not eliminate—that right.

57. Frank Nitty was unlawfully handcuffed, placed in the back of squad car and taken to hospital because of his severe injuries.

58. Frank Nitty was unlawfully taken from the hospital to a police station where he was interrogated, for exercising his constitutionally guaranteed right to oppose racially biased policing.

59. In MCSO's report, Sgt. Krznarich lied to justify his unlawful conduct when he reported that "Nitty was observed by me to be holding and swinging a glass water bottle" and "observed a busted glass bottle on the ground and Nitty's back pack, also full of busted glass, laying on the freeway where he was arrested."

60. Cpt. Carlson reviewed the report and ratified the lies and Sgt. Krznarich's unlawful conduct and the Defendants then attempted to have Frank Nitty charged with felony charges of resisting an officer causing injury. If the MCSO required its deputies to wear and use a body camera, Capt. Carlson would not have been able to so easily ratify the defendants' unlawful conduct.

61. On July 28, 2020 the District Attorney's Office declined to issue any criminal charges, putting an end to Milwaukee County defendants' criminal frame up of Frank Nitty.

62. Incredibly, the interrogating officers requested Frank Nitty's help in protecting the safety of law enforcement who had been identified online as having attacked him.

THE CLAIMS

FIRST CLAIM FOR RELIEF

Retaliatory Seizures

Violation of First Amendment

Against Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does

63. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

64. The First Amendment guarantees the right to freely hold and express personal opinions and beliefs. *See Cohen v. California*, 403 U.S. 15, 24 (1971).

65. Organized political protest is a form of “classically political speech.” *Boos v. Barry*, 485 U.S. 312, 318 (1988).

66. It has long been clearly established that the First Amendment bars retaliation for protected speech and association. *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998).

67. The Supreme Court “has repeatedly held that police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they simply fear possible disorder.” *Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) (citing *Cox v. Louisiana*, 379 U.S. 536, 550 (1965)).

68. Frank Nitty engaged in constitutionally protected acts of observing, recording and participating in events of public interest, including public demonstrations and in expressing his political view.

69. Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does retaliated against Frank Nitty for engaging in constitutionally protected activity and for the content and viewpoint of his expressions.

70. Frank Nitty reasonably fears that the continued unlawful conduct by the Defendants, including deployment of chemical agents without warning, targeted racist arrests, unlawful seizures and excessive force through the firing of flash ban grenades, less-lethal projectiles, riot baton and other means, poses a significant threat of harm to him and others as he and others continue to engage in constitutionally protected activity.

71. These unlawful acts would chill a reasonable person from continuing to engage in a constitutionally protected activity. These acts did, in fact, prevent Frank Nitty from observing, recording and continuing participation in peaceful protest on June 2, 2020.

72. Frank Nitty's First Amendment rights were violated when he was deliberately targeted during the course of his protest activities.

73. Frank Nitty reasonably fears further retaliation in the future if he continues to observe, record or participate in constitutionally protected activity.

74. As a direct result of Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does' unlawful conduct, Frank Nitty sustained damages, including, among others, physical pain and suffering, scarring, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. And to prevent further unlawful conduct, Frank Nitty seeks injunctive relief to have Milwaukee County implement and enforce constitutional policies to prevent further unlawful conduct by the Defendants.

SECOND CLAIM FOR RELIEF

Excessive Force

Violation of Fourth Amendment

Against Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does

75. Realleges and incorporates herein by reference the allegations of the preceding paragraphs

76. Frank Nitty was seized by Defendants when Defendants intentionally through the use of excessive force and unlawful arrest, chemical agent and less-lethal projectiles, terminated his freedom of movement.

77. Defendants committed these acts without forewarning and, as a result, Defendants' acts were objectively unreasonable and constituted unlawful seizures and excessive force.

78. Frank Nitty did not commit a crime.

79. Frank Nitty did not pose a threat to any Defendant or any other person.

80. Frank Nitty's Fourth Amendment rights were violated when he was deliberately targeted during the course of his lawful protests.

81. Frank Nitty reasonably fears further retaliation in the future in violation of the Fourth Amendment if he continues to observe, record or participate in constitutionally protected activity.

82. As a direct result of Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does' unlawful conduct, Frank Nitty sustained damages, including, among others, physical pain and suffering, scarring, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. And to prevent further unlawful conduct, Frank Nitty seeks injunctive relief to have Milwaukee County implement and enforce constitutional policies to prevent further unlawful conduct by the Defendants.

THIRD CLAIM FOR RELIEF

Racial Profiling

Violation of Fourteenth Amendment's Equal Protection Clause

Against Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does

83. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

84. Frank Nitty is a member of a protected class because he is an African American.

85. Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does targeted Frank Nitty because he is an African American.

86. Similarly situated white protesters were not arrested.

87. Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does treated Frank Nitty unlawfully and violently because he is an African American, violating his Fourteenth Amendment rights.

88. Frank Nitty reasonably fears further retaliation in the future in violation of the Fourteenth Amendment if he continues to observe, record or participate in constitutionally protected activity.

89. As a direct result of Defendants Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does' unlawful conduct, Frank Nitty sustained damages, including, among others, physical pain and suffering, scarring, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. And to prevent further unlawful conduct, Frank Nitty seeks injunctive relief to have Milwaukee County implement and enforce constitutional policies to prevent further unlawful conduct by the Defendants.

FOURTH CLAIM FOR RELIEF

Failure to Intervene

Violation of First, Fourth and Fourteenth Amendments

Against Krznarich, Byers, Richardson, Rogers, Humphreys, Haw, and John Does

90. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

91. At all times relevant to the claims in this complaint, Defendants had a constitutional duty and an obligation to intervene to prevent the violation of Frank Nitty's constitutional rights.

92. None of the Defendants intervened to protect Frank Nitty (except in part Deputy Rogers when he belatedly "cut off the initial zip ties" because the "first pair was too tight.")

93. Each Defendant had a reasonable opportunity to prevent the constitutional violations of Frank Nittys' rights but failed to do so.

94. During the constitutional violations described above, the Defendants stood by without intervening to prevent the constitutional violations.

95. Defendants misconduct was objectively unreasonable and was undertaken intentionally with deliberate indifference to Frank Nitty's constitutional rights.

96. As a result of Defendants' failures to intervene to prevent the violations of Frank Nitty's constitutional rights, Frank Nitty sustained damages, including, among others, physical pain and suffering, scarring, emotional pain and suffering, inconvenience, mental anguish, loss of

enjoyment of life, and other nonpecuniary losses. And to prevent further unlawful conduct, Frank Nitty seeks injunctive relief to have Milwaukee County implement and enforce constitutional policies to prevent further unlawful conduct by the Defendants.

FIFTH CLAIM FOR RELIEF

**Ratification of Violations of First, Fourth and Fourteenth Amendments
Against Carlson and Milwaukee County**

97. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

98. Cpt. Carlson was responsible for the oversight and supervision of deputy sheriffs, including Sgt. Krznarich.

99. Cpt. Carlson reviewed and approved Sgt. Krznarich's report and ratified his unconstitutional conduct.

100. As a direct result of Defendants Carlson and Milwaukee County's unlawful conduct, Frank Nitty sustained damages, including, among others, physical pain and suffering, scarring, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. And to prevent further unlawful conduct, Frank Nitty seeks injunctive relief to have Milwaukee County implement and enforce constitutional policies to prevent further unlawful conduct by the Defendants.

SIXTH CLAIM FOR RELIEF

**Request for Prospective Injunctive Relief
Against Milwaukee County**

101. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

102. Riot control agents (commonly referred to as "tear gas") are chemical compounds that disorient people by causing irritation to the eyes, mouth, throat, lungs and skin. Several kinds of such agents, include chloroacetophenone and oleoresin capsicum. Chloroacetophenone is a

nerve gas designed to inflict pain and degrade the mucous membranes in a person's eyes, nose, mouth, and lungs. Oleoresin capsicum is derived from capsaicin and is designed to be an irritant and inflammatory agent primarily affecting the respiratory tract. Milwaukee County's deputy sheriffs use both, and probably others.

103. Milwaukee County's deputy sheriffs launch these harmful agents from canisters at protesters, which releases the chemical agents in gaseous form, exposing people through skin contact, eye contact and inhalation. These chemical agents cause immediate irritation to the area of contact, including eye burning, excessive tearing, blurred vision and redness; running nose, nasal burning and swelling; mouth burning, irritation, difficulty swallowing and drooling; chest tightness, coughing, choking, wheezing, shortness of breath; burns and skin rash. Notably, the 1993 International Chemical Weapons Convention bans these chemical agents from use during war.

104. The use of these chemical agents by Milwaukee County deputy sheriffs are, by their very nature, indiscriminate and excessive.

105. Importantly, tear gas and pepper spray can be lethal. It is known that high-dose exposure in an enclosed space can "lead to the development of airway edema, non-cardiogenic pulmonary edema, and possibly respiratory arrest." Toxic Syndrome Description, Riot Control Poising, Centers for Disease Control and Prevention, <https://emergency.cdc.gov/agent/riotcontrol/agentpoisoning.asp>. On May 30, 2020, Sarah Grossman died after law enforcement in Columbus, Ohio, launched tear gas and pepper spray at protesters. She was 22 years old.

106. Even when these chemical agents do not cause death, they increase the risk of developing acute respiratory illnesses, particularly during the current worldwide COVID-19

pandemic. Because of the immediate effects of these chemical agents, their use increases the likelihood that COVID-19 will spread. Facts About Riot Control Agents Interim Document, Centers for Disease Control and Prevention, <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>. By design, the agents' effect is to cause lung irritation by coughing, spitting and vomit; and to cause eye irritation which leads to people rubbing their eyes. Seeking medical care for the injuries creates another opportunity for COVID-19 to spread to other injured persons and medical providers.

107. Milwaukee County now has notice of the unlawful conduct of the defendants and that the defendants' unlawful conduct as well as the use of chemical agents in unconstitutional fashion whenever people gather to peacefully protest is intended to punish assemblers as a group, en masse, for their political speech and to deter future speech.

108. The use of these chemical agents as a means to control and suppress peaceful demonstrations has deprived Frank Nitty and other people of their First Amendment rights and to peacefully protest without fear of being gassed.

109. The use of these chemical agents as a means to control and suppress peaceful demonstrations can be reasonably expected to chill a reasonable person from engaging in protected First Amendment activities.

110. The use of these chemical agents also has the purpose and effect of suppressing large, continuous, yet peaceful, protests.

111. The use of these chemical agents is not a reasonable regulation of the time, place or manner of protesters' exercise of constitutionally guaranteed First Amendment rights.

112. The unlawful use of these chemical agents is motivated by the views expressed by Frank Nitty and others opposing racial and economic injustice.

113. The use of these chemical agents in the absence of an immediate safety threat constitutes excessive force. The failure to prevent the use of these weapons reflects deliberate indifference.

114. Accordingly, given the defendants unlawful conduct and to prevent further harm, the Court should order Milwaukee County to immediately adopt and enforce the following policy language to prevent future violations of Frank Nitty's and all peoples' constitutional rights:

A. ANTI-RACIST, FAIR AND IMPARTIAL LAW ENFORCEMENT

PURPOSE

As part of the County of Milwaukee, the Milwaukee County Sheriff's Office (MCSO) shares the responsibility for fighting racism and discrimination in the County of Milwaukee. In that regard, the MCSO operates as an anti-racist and anti-discriminatory law enforcement department and requires every member of the force to serve our shared community as anti-racist, anti-discriminatory public servants.

The work of MCSO has a substantial and positive effect on crime and helps us pursue our mission of creating diverse neighborhoods capable of sustaining civic life. MCSO recognizes that unlawful officer violence, racism, as well as crime disproportionately impacts communities of color, and officer tactics can at times be perceived as frightening or alienating. Too many of our neighborhoods are inhabited by residents who rightly feel unfairly targeted by law enforcement. We must be aware that the way our authority is used is equally as important as the result of its use.

To that end, this policy is intended to establish MCSO's commitment to anti-racism and anti-discriminatory practices and reaffirm this department's commitment to fair and impartial law enforcement, and to clarify the circumstances in which officers can consider race, color, ethnicity, national origin, economic status, sexual orientation, gender identity or expression, age, gender, religion, limited English proficiency, disability, and housing status when making law enforcement decisions, and to reinforce procedures that serve to ensure the public that we are providing service and enforcing laws in an equitable way.

POLICY

Deputies shall be anti-racist and anti-discriminatory and shall not rely to any degree on an individual's race, color, ethnicity, national origin, economic status, sexual orientation, gender identity or expression, age, gender, religion, limited English

proficiency, disability, or housing status in carrying out law enforcement activities except when credible, locally relevant information links a person or people of specific characteristics/status, as listed above, to a specific unlawful incident, or to specific unlawful incidents, criminal patterns, or schemes. This restriction on the use of race/ethnicity does not apply to law enforcement activities solely designed to strengthen the department's relationship with a diverse community.

Biased based profiling by MCSO is prohibited and is defined as the following: Law enforcement-initiated action that relies to any degree upon common traits associated with belonging to a certain group; such as race, color, ethnicity, national origin, ancestry, age, gender, gender identity or expression, sexual orientation, religion, marital status, economic status, disability, political affiliation, cultural group, limited English proficiency, disability, housing status or any other identifiable characteristics of an individual rather than the behavior of that individual, or credible information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

B. TRAINING AND CAREER DEVELOPMENT PURPOSE

The purpose of this directive is to establish basic principles for employee training and development under the direction of a training director. The Milwaukee County Sheriff's Office (MCSO) provides basic recruit training and continuing education that exceeds requirements established by the state of Wisconsin Law Enforcement Standards Board (LESB) and the Training and Standards Bureau. In addition, the purpose of this directive is to ensure that deputies are verifiably competent with all department policies and with the principles of anti-racism and anti-discrimination. Deputies shall follow the directives of the training director in matters relating to law enforcement certification and recertification training, and other training that may arise relevant to members' positions or work assignments.

ANTI-RACISM and ANTI-DISCRIMINATION TRAINING

The MCSO is committed to anti-racism and anti-discrimination throughout the force, and throughout the County of Milwaukee. To that end, every member of the MCSO shall annually complete 10 hours of anti-racism and anti-discrimination training. Every member of the MCSO must demonstrate competency and excellency over the principles of anti-racism and anti-discrimination in law enforcement by passing a written examination every year upon completion of the training. MCSO members must pass this annual written examination each year before performing any further duties that require them to exercise law enforcement authority, carry a department-issued firearm outside of training, and make arrests.

The questions of all anti-racism and anti-discrimination written examinations will be published online each year upon the completion of officer testing.

The MCSO will publish searchable data regarding the results (pass/fail) of all deputies' anti-racism and anti-discrimination written examinations every year.

TESTING

On an annual basis all MCSO members must satisfactorily complete a written examination governing all MCSO written policies in order to perform any duties that require any MCSO officer to exercise law enforcement authority, carry a department-issued firearm outside of training, and make arrests.

The MCSO will publish searchable data regarding the results (pass/fail) of all MCSO members' written examinations every year.

CORRUPTION IN TRAINING PROHIBITED

Any deputy performing any training of any other deputy is prohibited from describing or counseling on how to avoid culpability for violating MCSO policy or the law.

Each MCSO member carries an affirmative duty to report any such commentary to a captain. Any captain receiving such a complaint must report it to the Sheriff and all sustained reports shall be published online. Any members' failure to report such commentary by any deputy (including by any person who receives such a complaint) must result in formal discipline.

Any MCSO member who, while training any other MCSO member, describes or counsels those other MCSO member's on how to lie or avoid culpability for violations of MCSO policy or the law will be terminated.

RECRUIT OFFICER BASIC TRAINING

Sworn deputies must satisfactorily complete the Wisconsin law enforcement basic training curriculum established by the LESB and the Training and Standards Bureau prior to assignment to any duties that require them to unilaterally exercise police authority, carry a department-issued firearm outside of training, and make arrests.

In addition, under this section deputies must first pass a written examination covering anti-racism, anti-discrimination, cultural competency, de-escalation and communication prior to assignment to any duties that require them to unilaterally exercise police authority, carry a department-issued firearm outside of training, and make arrests.

ANNUAL INSERVICE AND SPECIALIZED TRAINING

The training director shall ensure that an in-service curriculum is designed and implemented each fiscal year to satisfy state training standards and the needs of the department. Each deputy must demonstrate during each in-service, by passing a written examination, excellency in anti-racism and anti-discrimination, cultural competency, de-escalation, and communication.

C. GENERAL USE OF FORCE PRINICIPLES

REQUIREMENT TO GIVE VERBAL WARNING

When feasible, prior to using force against a person, a deputy shall identify himself or herself as a deputy, and issue a verbal warning to the person that the deputy seeks to apprehend,

(A) include a request that the person surrender to the deputy; and

(B) notify the person that the deputy will use force against the person if the person resists arrest or flees.

PROHIBITION ON LESS LETHAL FORCE

Deputies may not use any less lethal force unless:

(A) the form of less lethal force used is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense; and

(B) reasonable alternatives to the use of the form of less lethal force have been exhausted.

“Reasonable alternatives” means tactics and methods used by a deputy to effectuate an arrest that do not unreasonably increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, de-escalation tactics and techniques, tactical repositioning, and other tactics and techniques intended to stabilize the situation and reduce the immediacy of the risk so that more time, options, and resources can be called upon to resolve the situation without the use of force.

“Necessary” means that, under all credible facts known to a deputy leading up to and at the time of the use of force, there was no reasonable alternative to the use of force.

PROHIBITION ON DEADLY USE OF FORCE

Deputies may not use deadly force against a person unless:

(A) the form of deadly force used is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person;

(B) the use of the form of deadly force creates no substantial risk of injury to a third person; and

(C) reasonable alternatives to the use of the form of deadly force have been exhausted.

DE-ESCALATION TRAINING

Every deputy shall annually complete at least 10 hours of scenario-based training on lawful use-of-force options, focusing on skills and tactics that minimize the likelihood of using unlawful excessive force, including de-escalation tactics. Such tactics are actions and techniques used by law enforcement to slow down or stabilize a potentially unstable situation to allow for more time, options, and resources for resolution or prevention of an incident.

Any violation of the use of force policy will result in graduated discipline as follows:

First Offense:	15 Day Suspension Without Pay
Second Offense:	30 Day Suspension Without Pay
Third Offense:	Termination

In the event an arrest made or an injury to a peaceful protester in violation of MCSO policies and/or the law results in substantial bodily injury or death, the deputy will be immediately terminated.

D. DUTY TO INTERVENE

Any deputy who personally observes another deputy or other law enforcement officer using force, which the observing deputy, based on his MCSO anti-racist training believes or knows to be beyond that which is objectively reasonable under the circumstances, shall reasonably intervene to prevent the use of such excessive force. Any such intervening deputy shall promptly report his/her observations, along with his/her own intervening actions to both an immediate supervisor and a Captain. A failure to intervene in any unreasonable use of force, when there is an opportunity to do so, demonstrates a lack of courage and a violation of the MCSO policies and procedures and well established law.

Any supervisor or Captain to whom such intervention or failure to intervene is reported must complete a use of force report and discipline the violating deputy.

It is the policy of the MCSO that any violation of this duty to intervene will result in graduated discipline as follows:

First Offense: 15 Day Suspension Without Pay

Second Offense: 30 Day Suspension Without Pay

Third Offense: Termination

In the event that any such violation results in substantial bodily injury or death, the deputy will be immediately terminated along with all deputies involved in the substantial bodily injury or death of the person.

E. CITATION IN LIEU OF ARREST POLICY

It is the policy of the Milwaukee County Sheriff's Office that citations and release are presumed. All full custodial arrests are to be cleared by a lawyer with the Office of the District Attorney.

Any violation of this policy will result in graduated discipline as follows:

First Offense: 15 Day Suspension Without Pay

Second Offense: 30 Day Suspension Without Pay

Third Offense: Termination

In the event an arrest made in violation of MCSO policies and/or the law results in substantial bodily injury or death, the deputy will be immediately terminated.

F. PEACEFUL ASSEMBLIES POLICY

It is the policy of the Milwaukee County Sheriff's Office (MCSO) to facilitate peaceful assemblies. Deputies shall not direct the messages of peaceful assemblers or the direction of an assembly. Less-lethal weapons (e.g., tear gas, pepper spray grenades, sponge rounds, baton rounds, rubber bullets) must never be used at close range or aimed at sensitive areas (e.g., the head, groin, ears, eyes, knees, feet). There is no legitimate use for flashbang grenades or similar weapons that are designed to disorientate. Deputies should order dispersal only as a last resort and assemblers must be given a reasonable opportunity in which to comply.

Any violation of this policy will result in graduated discipline as follows:

First Offense: 15 Day Suspension Without Pay

Second Offense: 30 Day Suspension Without Pay
Third Offense: Termination

In the event an arrest or injury to a peaceful protester made in violation of MCSO policies and/or the law results in substantial bodily injury or death, the deputy will be immediately terminated.

G. BODY WORN CAMERAS POLICY

Milwaukee County Sheriff's deputies shall wear a body camera. A body camera shall have a field of view at least as broad as the deputy's vision and shall be worn in a manner that maximizes the camera's ability to capture video footage of the deputy's activities.

Both the video and audio recording functions of the body camera shall be activated whenever a deputy is responding to a call for service or at the initiation of any other law enforcement or investigative stop between a deputy and a member of the public, except that when an immediate threat to the deputy's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so.

The body camera shall not be deactivated until the encounter has fully concluded and the deputy leaves the scene.

A deputy who is wearing a body camera shall notify any subject of the recording that he or she is being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative stop between a law enforcement officer and a member of the public, and shall not be equipped with or employ any facial recognition technologies.

Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for 3 years after the date it was recorded.

Failing to use a body-worn camera as required by this policy will result in graduated discipline as follows:

First Offense: 15 Day Suspension Without Pay
Second Offense: 30 Day Suspension Without Pay

Third Offense: Termination

RELIEF REQUESTED

Wherefore, Frank Nitty respectfully requests judgment in his favor and against Defendants, jointly and severally, awarding him:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Reasonable costs and expenses, without limitation, attorneys' fees and experts' fees under 42 U.S.C. § 1988(b) and (c);
- d. An award of prejudgment interest;
- e. Equitable and injunctive relief to prevent future violations of the law; and
- f. An order awarding such other and further relief as this Court deems just and equitable.

Dated at the law office of GINGRAS, THOMSEN & WACHS, LLP in Milwaukee, Wisconsin, on this 27th day of August, 2020.

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

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State of Wisconsin



Frank Sensabaugh, Frank Nitti

NOW YOU BY THESE PRESENTS

WHEREAS, Frank Sensabaugh, Frank Nitti is a community activist, leading marches against police misconduct, helping families and assisting families to provide a voice for peace and justice; *and*

WHEREAS, Frank Sensabaugh, Frank Nitti has worked down through the years throughout Milwaukee and Wisconsin, being an leader of organizing and orchestrating people to come together from all different backgrounds; *and*

WHEREAS, Frank Sensabaugh, Frank Nitti uses his own resources to assist in various efforts and has lead all type of protests in every corner of Milwaukee County, most recently working in a fundraising effort to redevelop a community resource center and a main contributor of the People's Cookout event; *and*

WHEREAS, Frank Sensabaugh, Frank Nitti most recently honored by his portrait on a mural on 14th & Vliet Street sponsored by the Samsour Family has stepped up to the task and has protested everyday ever since the horrifying death of George Floyd in Minnesota, now

THEREFORE IT BE RESOLVED, the members of the Wisconsin Senate, by the motion of Senator Lena C Taylor and the Wisconsin Legislative Black Caucus, does hereby recognize and honor Frank Sensabaugh, Frank Nitti, a true pillar, role model, and voice of positivity in our community, and salute him for his greatness as a leader.

A handwritten signature in cursive script, appearing to read "Lena C. Taylor".

LENA C. TAYLOR
State Senator, 4th Senate District

JULY 11, 2020

DATE