

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kari L. Andrews,
Brandon C. Bennett,
Jeremy D. Boeckel,

Court File No. 12-cv-2877 (ADM/SER)

Plaintiffs,

FIRST AMENDED COMPLAINT

v.

Brian R. Thole,
Aaron L. Biard,
Tyrone D. Barze Jr.,
Brandon P. Kitzerow,
Aaron C. Morrison,
Jeff E. Kading,
Steven J. Laux,
and City of Minneapolis,

Defendants.

For their Complaint against Defendants above-named, Plaintiffs
state and allege as follows:

THE PARTIES

1. Plaintiffs are adults who currently reside and have resided in Minneapolis, Minnesota at all times relevant to this action.
2. Andrews is Bennett's mother.
3. Boeckel lived with Andrews and Bennett at all times relevant to this action.

4. Defendants Brian R. Thole, Aaron L. Biard, Tyrone D. Barze Jr., Brandon P. Kitzerow, Aaron C. Morrison, Jeff E. Kading, and Steven J. Laux (the “individual defendants”) are adult males who at all times relevant to the allegations set forth in this Complaint were acting under the color of state law in their capacities as law enforcement officers employed by the City Minneapolis, Minnesota. Plaintiffs are suing the individual defendants in their individual capacity.

5. Defendant City of Minneapolis (“Minneapolis”) is a political subdivision of the State of Minnesota. Minneapolis employs the individual defendants as police officers. Minneapolis is sued directly pursuant to *Monell v. Dept. of Soc. Svcs.*, 436 U.S. 658 (1978) and also, on all relevant claims, on the theories of respondeat superior or vicarious liability and pursuant to Minnesota Statutes § 466.02 for the unlawful conduct of the individual defendants. Minneapolis is the political subdivision charged with training and supervising law enforcement officers. Minneapolis has established and implemented, or delegated the responsibility for establishing and implementing policies, practices, procedures, and customs used by law enforcement officers employed by Minneapolis regarding seizures and the use of force.

JURISDICTION

6. This is an action for monetary relief under 42 U.S.C. §§ 1983 and 1988 and federal and state common law. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1343(a)(3), 1331, and 1367. Venue is proper in this district under 28 U.S.C. § 1391, as the acts and omissions giving rise to this action occurred in this district, and, on information and belief, all Defendants reside in this district.

GENERAL ALLEGATIONS

7. The INDIVIDUAL DEFENDANTS arrived at Plaintiffs' residence in North Minneapolis on September 13, 2012 at or around 10 AM.

8. The INDIVIDUAL DEFENDANTS arrived to execute a "no knock" search warrant on Plaintiffs' residence.

9. The INDIVIDUAL DEFENDANTS broke down Plaintiffs' front door when they arrived.

10. The INDIVIDUAL DEFENDANTS wore tactical gear and ski masks at all times relevant to this action.

11. Some of the INDIVIDUAL DEFENDANTS carried automatic weapons at the times relevant to this action.

12. Plaintiffs were cooperative with the INDIVIDUAL DEFENDANTS at all times relevant to this action.

13. Plaintiffs complied with the INDIVIDUAL DEFENDANTS' instructions at all times relevant to this action.

14. None of the Plaintiffs were charged with any crime related to the events giving rise to this action.

The INDIVIDUAL DEFENDANTS Used Excessive Force on Bennett

15. The INDIVIDUAL DEFENDANTS placed Bennett in handcuffs.

16. The INDIVIDUAL DEFENDANTS repeatedly kicked and hit Bennett about his face and body.

17. Bennett was in handcuffs and lying on the floor when the INDIVIDUAL DEFENDANTS kicked and hit him about his face and body.

18. Bennett sought medical treatment for his injuries caused by the INDIVIDUAL DEFENDANTS.

19. Bennett's medical providers administered medication to treat his injuries.

The INDIVIDUAL DEFENDANTS Used Excessive Force on Boeckel

20. Boeckel was sleeping on the couch in the front room when the INDIVIDUAL DEFENDANTS entered the residence.

21. Boeckel is a heavy sleeper, and the INDIVIDUAL DEFENDANTS' initial entrance did not wake him up.

22. The INDIVIDUAL DEFENDANTS threw Boeckel on the floor.

23. Boeckel woke up when the INDIVIDUAL DEFENDANTS threw him on the floor.

24. Boeckel turned his head to see who threw him on the floor.

25. One of the INDIVIDUAL DEFENDANTS kicked Boeckel in the face.

26. The kick caused Boeckel to lose consciousness.

27. The INDIVIDUAL DEFENDANTS applied handcuffs on Boeckel while he was unconscious.

28. The INDIVIDUAL DEFENDANTS continued to punch and kick Boeckel about his face and body while he was unconscious.

29. On information and belief, the INDIVIDUAL DEFENDANTS hit Boeckel in his face with a blunt object while he was unconscious.

30. Boeckel sought medical treatment for his injuries caused by the INDIVIDUAL DEFENDANTS.

31. Boeckel's medical providers administered medication to treat his injuries.

32. Boeckel's medical providers prescribed him medication to treat his injuries.

The INDIVIDUAL DEFENDANTS Caused Andrews to Experience Emotional Distress

33. The INDIVIDUAL DEFENDANTS placed Andrews in handcuffs while executing the warrant.

34. The INDIVIDUAL DEFENDANTS made her crawl through broken glass into the kitchen while she was in handcuffs.

35. Andrews asked the INDIVIDUAL DEFENDANTS why they were in her house.

36. In response, one of the INDIVIDUAL DEFENDANTS trained the laser sight of his weapon on Bennett's temple, near Andrews and within her view, for about one minute.

37. The INDIVIDUAL DEFENDANTS' conduct has caused Andrews to develop a tremor that, at times, causes her to shake uncontrollably.

38. Andrews sought medical treatment for her emotional injuries caused by the INDIVIDUAL DEFENDANTS.

39. Andrews' medical providers diagnosed her with PTSD.

40. Andrews' medical providers prescribed her medication to treat her injuries.

COUNT I
(Bennett and Boeckel)
DEPRIVATION OF CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1983
AND THE FOURTH AND FOURTEENTH AMENDMENTS—EXCESSIVE
FORCE

41. Plaintiffs restate the allegations contained in the preceding paragraphs as though fully incorporated herein.

42. The INDIVIDUAL DEFENDANTS used force against Bennett and Boeckel when effectuating a seizure on them.

43. The amount of force that the INDIVIDUAL DEFENDANTS used while seizing Bennett and Boeckel was unreasonable under the circumstances.

44. The INDIVIDUAL DEFENDANTS were acting under color of state law when they used unreasonable force while seizing Bennett and Boeckel.

45. The INDIVIDUAL DEFENDANTS actions and omissions caused Bennett and Boeckel to suffer violations of their Fourth Amendment rights.

46. At the time of the events giving rise to this action, it was clearly established that it is unconstitutional to use unreasonable force, as the INDIVIDUAL DEFENDANTS used against Bennett and Boeckel, to effectuate a seizure.

47. Bennett and Boeckel suffered harm as a result of the INDIVIDUAL DEFENDANTS' denial of their constitutional rights.

COUNT II
(Bennett and Boeckel)
BATTERY

48. Plaintiffs restate the preceding paragraphs as though fully stated herein.

49. The INDIVIDUAL DEFENDANTS harmfully touched Bennett and Boeckel.

50. The INDIVIDUAL DEFENDANTS' actions were objectively unreasonable and actually and proximately caused Bennett and Boeckel to suffer harm.

COUNT III
(All Plaintiffs)
INFLICTION OF EMOTIONAL DISTRESS

51. Plaintiffs restate the allegations contained in the preceding paragraphs as though fully incorporated herein.

52. By Defendants' aforementioned wrongful conduct and/or failure to act, Defendants engaged in a pattern of unlawful conduct that caused Plaintiffs to suffer severe emotional distress and trauma that no reasonable person could be expected to endure.

53. The course of Defendants' conduct was so extreme and outrageous that it goes beyond all possible bounds of decency and is utterly intolerable in a civilized society.

54. Defendants, by their extreme and outrageous conduct complained of herein, intentionally and/or recklessly caused severe emotional distress to Plaintiffs.

55. Plaintiffs have suffered injuries as a result of the severe emotional distress caused by Defendants in an amount to be proven at trial.

COUNT IV
(Bennett and Boeckel)
CIVIL CONSPIRACY TO VIOLATE CIVIL RIGHTS

56. Plaintiff restates the preceding paragraphs as though fully stated herein.

57. THE INDIVIDUAL DEFENDANTS reached an agreement to deprive Bennett and Boeckel of their constitutional rights when they unlawfully used excessive force against them.

58. THE INDIVIDUAL DEFENDANTS did not report each other's unlawful conduct.

59. Bennett and Boeckel were harmed as a result of Defendants' conduct.

JURY DEMAND

60. Plaintiffs demand a jury trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter judgment in Plaintiffs' favor on their claims against Defendants in an amount exceeding \$75,000, the exact amount to be proven at trial;

2. Award Plaintiffs damages to compensate them for the injuries they suffered as a result of Defendants' unlawful conduct;
3. Award Plaintiffs punitive damages with respect to their claims arising under federal law, the exact amount to be proven at trial;
4. Grant Plaintiffs leave to amend the complaint to include a claim for punitive damages with respect to their claims arising under state law, the exact amount to be proven at trial;
5. Award Plaintiffs reasonable expenses incurred in this litigation, including attorney and expert fees, pursuant to 42 U.S.C. § 1988;
6. Grant Plaintiffs all statutory relief to which they are entitled;
7. Grant any other relief the Court deems just and equitable.

Dated: January 19, 2013

s/ Joshua R. Williams
Joshua R. Williams (#389118)
jwilliams@jrwilliamslaw.com
Tim M. Phillips (#390907)
tphillips@jrwilliamslaw.com
3249 Hennepin Avenue S, Suite 216
Minneapolis, Minnesota 55408
(612) 486-5540
(612) 605-1944 Facsimile

ATTORNEYS FOR PLAINTIFF