

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

DEMETRI SIMS, INDIVIDUAL
Plaintiff,

V.

**NACOGDOCHES COUNTY, TEXAS;
UNIDENTIFIED UNIFORMED
NACOGDOCHES COUNTY EMPLOYEE,
INDIVIDUALLY;
TYLER JOHNSON, INDIVIDUALLY;
*Defendants.***

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CIVIL ACTION NO. 9:21-cv-251

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES Plaintiff Demetri Sims and complains of the County of Nacogdoches, Texas; a Unidentified Uniformed Nacogdoches County Employee, *Individually*; Tyler Johnson, *Individually*, The City of Nacogdoches, Texas; Logan Finch, *Individually*; Whitney Howell-Mask, *Individually*; Brandon Hayward, *Individually*; Mike Brazil, *Individually*; and P Martin, *Individually*, and will show the Court the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear Plaintiff's state law claims, if any.

2. Venue is proper in this Court, under 28 U.S.C. § 1391(b) because the incident at issue took place in Nacogdoches County, Texas within the United States Eastern District of Texas, Lufkin Division.

PARTIES

3. Demetri Sims is a resident of Nacogdoches County, Texas. Demetri Sims is currently being held in the Nacogdoches County Jail. Demetri Sims is represented by Paul Anderson, PLLC, 601 North Street, Nacogdoches Texas (paul@paulandersonlaw.com).

4. The County of Nacogdoches, Texas is a government entity existing under the laws of the State of Texas and is in the U.S. Eastern District. The County of Nacogdoches, Texas can be served process of citation on Greg Sowell, County Judge, or John Fleming, County Attorney, both located at 101 West Main Street, Nacogdoches, Texas, 75961. Citation is requested for the County of Nacogdoches.

5. One defendant, an Unidentified Uniformed Nacogdoches County Employee remains unidentified, despite numerous requests to the Nacogdoches County Attorney's and Sheriff's Offices requesting the name of the individual in the following photograph:



See attached Exhibit "A" - Still from October 21st, 2019 Demetri Sims assault video.

6. This suit will be amended when this individual is identified. Citation is requested to be issued for, "Unidentified Uniformed Nacogdoches County Employee." The Unidentified Uniformed Nacogdoches County Employee can be served with process through Nacogdoches County Judge Greg Sowell, 101 West Main Street, #100, Nacogdoches, Texas 75961.

7. Tyler Johnson is an individual that is, or was, employed by the Nacogdoches County Sheriff's Office, Nacogdoches, Texas. Citation is requested to be issued for Tyler Johnson, Individual.

Tyler Johnson can be served with process at 2306 Douglass Road, Nacogdoches, Texas 75964 or wherever he may be found.

FACTS AND NARRATIVE OF OCTOBER 21st, 2019 INCIDENT

The Brutish Attack by an Unidentified Uniformed Peace Officer Assailant

8. Demetri Sims is African American, and not a particularly large man. Demetri Sims certainly does not exude or convey the stereotyped-threat Nacogdoches County Texas Sheriff's Deputy Tyler Johnson was looking for when Deputy Johnson drove past the Chevron Depot Convenience Store around noon on October 21st, 2019 and at the moment Demetri Sims was putting gas in his fiancée's car.

9. For no known reason, Deputy Johnson deliberately and quickly slowed and turned his patrol vehicle into the Chevron gas station and parked his patrol car next to the gas pump Demetri Sims was using. Deputy Johnson exited his vehicle and began staring at Demetri Sims in an intimidating manner. Deputy Johnson said nothing, returned to his patrol car, and began typing on his laptop.

10. Mr. Sims completed pumping gas, closed his gas cap, and was preparing to leave when Deputy Johnson approached from the rear of the vehicle and asked Demetri Sims for his name. A dialogue ensued between Demetri Sims and Deputy Tyler Johnson and a portion of this exchange was videorecorded by Ms. Moore.

11. Fortunately, Destiny Moore began to record the entire incident on her cell phone. A copy of the 3 minute and 24 second exchange has been provided to the Court on USB thumb drive.

12. The 3:24 video to this exchange can also be viewed at:

<http://www.paulandersonlaw.com/page-7.html>.

13. A transcript of that exchange is herein attached as **Exhibit "B"** – Demetri Sims, October 21st, 2019.

14. Mr. Sims asked Deputy Johnson, "Am I being detained or arrested?" Deputy Johnson stated, "No." Sims asked Deputy Johnson, "Then what crime have I committed? This is a violation of my constitutional rights." Deputy Johnson did not respond.

15. Mr. Sims asked Deputy Johnson again whether he was being arrested and Johnson replied, “No.”

16. Deputy Johnson then activated his body camera and walked back to his patrol car.

17. Mr. Sims entered Ms. Moore’s vehicle, sat down in the driver’s seat and waited for Deputy Johnson to return.

18. Demetri Sims testifies at that point he felt very unsafe because the officer was refusing to answer any questions. While waiting for Deputy Johnson to return, Mr. Sims locked the car doors and rolled the window down enough to be able to communicate in a safe manner.

19. Deputy Johnson then returned to the vehicle and demanded Demetri Sims exit the vehicle. This is the moment that Destiny Moore begins to record Deputy Johnson.

20. Deputy Johnson threatened to break the windshield of Destiny Moore’s car with his collapsible baton if Demetri Sims did not exit the vehicle. Demetri Sims removed his belongings from his pockets, unlocked the vehicle door and began to exit the vehicle. Suddenly, Deputy Johnson pulled the door open and grabbed Demetri Sims by his left arm, violently dragged him from the vehicle and threw him to the ground. Demetri Sims repeatedly declared to Deputy Johnson that he was not resisting.

21. Without any warning or any indication and out of nowhere, another unidentified uniformed officer suddenly appeared and became physically involved in grabbing and assaulting Demetri Sims. This individual has still not been identified, but he is wearing a Nacogdoches County law enforcement uniform.

22. The unidentified uniformed Nacogdoches County employee grabbed Demetri Sims by his throat, constricting his airway and proceeded to choke Demetri Sims while Sims was prone on the ground and certainly not resisting.

23. Demetri Sims will testify that he could not breath and was gasping for air.

25. Demetri Sims was rolled onto his back and placed in handcuffs.

26. For the duration of these events, approximately 3 minutes and 25 seconds, Destiny Moore was video recording the assault on her telephone camera.

27. The video concludes with the Unidentified Uniformed Nacogdoches County Employee Defendant slapping the cell phone from Destiny Moore's hands. Destiny Moore was then arrested as well.

28. Demetri Sims was dragged to his feet and placed in a Sheriff patrol car by two City of Nacogdoches Police Department officers. Demetri Sims was then taken to the Nacogdoches County Jail and charged with resisting arrest.

29. An Officer Report for Incident S19010021 was prepared and filed. A true and accurate copy of that report is attached as Exhibit "C" – October 21st, 2019 Officer Report for Incident S19010021.

The False Incident Report

30. The attached Exhibit "C" is the written report for Incident number S19010021 and identifies the following as the "responding officers:" P. Martin (Unit 535), T. Johnson (Unit 547), W. Howell (Unit 215), B. Hayward (Unit 256), L. Finch (Unit 214) and M. Brazil (Unit 539).

31. The "Responsible Officer" is identified as "T. Johnson."

32. The "Narrative" of the attached report for Incident number S19010021 does not describe or identify any other officers involved in or present during the arrest of Demetri Sims other than those six officers listed on the Incident Report.

33. Exhibit "J" is a true and accurate photograph taken of Demetri Sims' arrest by two Nacogdoches County Sheriff's Office employees. ***See attached Exhibit "J"*** – Tyler Johnson involved picture taken October 21, 2019. The uniformed officer on the left has been identified as Tyler S. Johnson. Deputy T. Johnson authored the attached report for Incident number S19010021.

34. There were seven officers involved in this incident, but only six are named in the Incident Report.

35. All of the six officers appearing in the report have been identified, and none are the uniformed officer seen in the photograph (and video) choking Demetri Sims.

36. The Officer Report for Incident S19010021 is a false report because it omits the identification of the officer choking Demetri Sims. Under Texas Penal Code Sec. 37.08. FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, LAW ENFORCEMENT EMPLOYEE, CORRECTIONS OFFICER, OR JAILER it states that; (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to a peace officer or federal special investigator conducting the investigation. An offense under this section is a Class B misdemeanor.

37. Since June of 2021 and numerous times since, the County of Nacogdoches has refused to identify, assist in the identification of, or confirm the identification of, the uniformed individual choking Demetri Sims.

38. Nacogdoches County employee Tyler S. Johnson knowingly filed a false statement material to a criminal investigation by purposefully and deliberately omitting the identify, presence and material involvement of the unidentified uniformed Nacogdoches County employee pictured in Exhibit “A.”

The Refusal to Identify the Uniformed Deputy

39. On June 28th, 2021 Nacogdoches County Sheriff Jason Bridges was notified to not spoliage evidence related to Demetri Sims’ October 21st, 2019 arrest. See attached Exhibit “D” – Bridges June 28th, 2021 Letter. This was the first time Nacogdoches County did not respond to a request to identify the uniformed individual seen choking Demetri Sims in Exhibit “A.”

40. On July 2nd, 2021 the County of Nacogdoches was served written notice of a claim by Demetri Sims for negligent hiring, supervision, and retention of the employees who assaulted Demetri Sims on October 21st, 2019.

41. On August 6th, 2021, the County of Nacogdoches was asked for the fifth time to identify the officer choking Demetri Sims. *See attached Exhibit “E”* – Davis/Fleming Letter August 12th, 2021.

42. On the 10th of August, 2021 Demetri Sims prepared a sworn criminal complaint and submitted that complaint to Nacogdoches County Attorney John Fleming, DPS Texas Ranger Lt. Travis Brazil and Nacogdoches City Attorney Steven Kirkland.¹ *See attached Exhibit “F”* - August 10th, 2021 email.

43. On August 10th, 2021 a sworn Criminal Complaint was prepared and delivered to Nacogdoches County Attorney John Fleming. *See attached Exhibit “G”* – Sims Criminal Complaint August 10th, 2021 with Exhibits.

44. On August 16th, Demetri Sims again complained that the County of Nacogdoches refused to identify the person choking him. *See attached Exhibit “H”* – August 16th, 2021 Letter to John Fleming.

45. On August 19th, 2021, August 25th, 2021 and again on August 26th, 2021 Nacogdoches County Attorney John Fleming was asked to identify the uniformed Nacogdoches County employee choking Demetri Sims on October 21st, 2019, but Fleming ignored all requests.

46. To date, 2 months and 26 days (as of 9/23/21) after Demetri Sims’ first written request, the County of Nacogdoches still refuses to identify the uniformed county employee seen choking Demetri Sims on October 21st, 2019.

Allegations of Retaliation

47. On June 27th, 2021 Demetri Sims contacted civil rights law firm Paul Anderson, PLLC for representation in matters related to civil rights violations. At some time after that date, the video recording made by Destiny Moore of Demetri Sims’ assault was posted on the internet.

49. Demetri Sims to date remains incarcerated in the Nacogdoches County Jail awaiting a ruling for a felony charge.

¹ The City of Nacogdoches is a potential third-party because one or more of the five officers identified in the Incident Report were employed at that time by the City of Nacogdoches. Logan Finch and Brandon Hayward are currently employed with the City of Nacogdoches, while Whitney Howell (now Mask) is employed by Stephen F. Austin State University.

50. On September 10th, 2021 Demetri Sims executed an affidavit alleging that in the prosecution of a current felony case, Judge Edwin Klein, District Attorney Andrew Jones, and court-appointed criminal defense attorney John Heath had a meeting after which Demetri Sims was threatened by attorney John Heath on September 8th, 2021 that if Demetri Sims did not “drop Paul Anderson as his civil attorney and take down the video,” Demetri would receive an additional two years added to his jail sentence. *See attached Exhibit “I”* - Demetri Sims’ September 10th, 2021 Affidavit.

CLAIMS
42 U.S.C. § 1983

51. Plaintiff incorporates all preceding paragraphs within by reference for all intents and purposes.

52. Plaintiff Demetri Sims brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because the Defendants, acting under the color of law, retaliated against Demetri Sims in violation of his protected rights under the 4th and 14th Amendments of the U.S. Constitution. The 4th Amendment guarantees the right of a person “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *U.S. Const. Amend. IV*. The 14th Amendment guarantees due process of law. Such violations are actionable pursuant to 42 U.S.C. Sections 1983 and 1988.

53. The excessive force used by Deputy Tyler Johnson and the unidentified uniformed Nacogdoches County employee on October 21st, 2019 against Demetri Sims was objectively unreasonable under the circumstances and inflicted unnecessary injury, pain, and suffering upon the Plaintiff.

54. A seizure is unreasonable if it results in a (an) injury, (b) that resulted directly and only from the use of force that was clearly excessive, and (c) the excessiveness was clearly unreasonable.

55. Although officers may need to use “physical force ... to effectuate [a] suspect’s compliance” when he refuses to comply with commands during a traffic stop, the officers must still assess “the relationship between the need and the amount of force used.” *Newman v Guidry*, 703 F.3d 763 (5th Cir. 2012); quoting *Deville v Marcantel*, 567 F.3d156, 167 (5th Cir. 2009).

56. Where an individual's conduct amounts to a mere "passive resistance," use of force is not justified. *Trammell v. Fruge*, 868 F.3d 332, 341 (5th Cir. 2021).

57. A constitutional violation occurs when an officer tases, strikes, or violently slams an arrestee who is not actively resisting arrest. *Darden v. City of Fort Worth, Texas*, 880 F.3d 722, 731 (5th Cir.), cert. denied sub nom. *City of Ft. Worth, Tex. V. Darden*, 139 S. Ct. 69, 202 L. Ed. 2d 23 (2018).

58. Fifth Circuit case law makes it clear that when an arrestee is not actively resisting arrest the degree of force the officer can employ is reduced. *Id.*

59. In Texas, the use of force to resist an arrest is justified: (1) if, before the actor offers any resistance, the peace officer uses, or attempts to use, greater force than necessary to make the arrest or search; and (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's use or attempted use of greater force than necessary. Tex. Penal Code Ann. §9.31.

60. This means in Texas, if an officer decides to arrest a person and in doing so uses excessive force to effect that arrest, the arrestee is justified in offering physical resistance to protect himself from the officer's use of excessive force. Tex. Penal Code Ann. §9.31.

61. The unidentified uniformed Nacogdoches employee choking Demetri Sims used excessive force by choking Demetri around his neck until Demetri Sims could not breathe. Demetri Sims suffered extreme pain, suffering and mental anguish.

62. Demetri Sims' pain and suffering, including medical injuries, were not caused by any other means.

63. Plaintiff Demetri Sims brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because the Defendants retaliated, or conspired with other Defendants who retaliated, against Demetri Sims in violation of his 4th and 14th Amendment rights when they intentionally filed a false police report. The narrative of the report was intentionally falsified so as not to identify the uniformed Nacogdoches County employee choking Demetri Sims. Fortunately, a video

recording was made of the incident and the undisputed video and photographic evidence seen in Exhibit's "A" and "B," shows quite a different narrative than the October 21st, 2019 Officer Incident Report alleges. *See attached Exhibit "C"* – October 21st, 2019 Officer Report for Incident S19010021.

Plaintiff Demetri Sims brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because the Defendants retaliated, or conspired with other Defendants who retaliated, against Demetri Sims in violation of his protected 4th and 14th Amendment rights when they conspired to engage in a pattern and practice of refusing to identify the uniformed Nacogdoches County employee choking Demetri Sims.

The City of Nacogdoches, and Defendants, P. Martin (Unit 535), W. Howell, Brandon Hayward, Logan Finch and Mike Brazil, who, with other Defendants conspired against Demetri Sims in violation of his protected 4th and 14th Amendment rights when they engaged in a pattern and practice of refusing to identify the uniformed Nacogdoches County employee choking Demetri Sims, intervene or render aid.

Defendants Nacogdoches County, Tyler Johnson and the Unidentified uniformed Nacogdoches County Employee, employees of the Nacogdoches County Sheriff's Office, Nacogdoches County District Attorney Andrew Jones, and Judge Edwin Klein have aided and abetted the retaliation campaign by covering it up and threatening Demetri Sims with additional jail time.

Defendants Nacogdoches County, Tyler Johnson and the Unidentified uniformed Nacogdoches County Employee, and employees of the Nacogdoches County Sheriff's Office, Nacogdoches County District Attorney Andrew Jones, and Judge Edwin Klein and others have been deliberately indifferent to the Constitutional violations of Demetri Sims' rights.

Plaintiff Demetri Sims brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because the Defendants retaliated, or conspired with other Defendants who retaliated, against Demetri Sims in violation of his protected 4th and 14th Amendment rights when they conspired to threaten, intimidate, coerce and pressure Demetri Sims to drop Paul Anderson, his civil rights attorney, and take down the video made of the October 21st, 2019 assault.

Plaintiff brings claims for damages against all Defendants under 42 U.S.C. § 1983 because they (1) denied Demetri Sims equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution; (2) conspired with other Defendants who denied Sims' equal protection rights; and (3) failed to supervise those who denied Sims' equal protection rights. Demetri Sims was profiled as a stereotypical threat, and, but for being black, Tyler Johnson would have just driven past that gas station on October 21st, 2019.

Sheriff Jason Bridges, Nacogdoches County Attorney John Fleming, Nacogdoches County District Attorney Andrew Jones, and Judge Edwin Klein are liable for all of the Constitutional torts outlined in this complaint because these individuals have either ratified by their deliberate indifference or have participated in a conspiracy to conceal and coerce constitutional violations exacted against Demetri Sims.

LIABILITY FOR FAILURE TO INTERVENE

DELIBERATE INDIFFERENCE

Plaintiff incorporates all preceding paragraphs within by reference for all intents and purposes.

A law enforcement officer “who is present at the scene and does not take reasonable measures to protect a suspect from another officer’s use of excessive force may be liable under section 1983.” *Hale v. Townley*, 45 F.3d 914, 919 (5th Cir. 1995). Although *Hale* most often applies in the context of excessive force claims, this Court recognized that other constitutional violations also may support a theory of bystander liability. *Whitley v. Hanna*, 726 F.3d 631, 646 n. 11 (5th Cir. 2013)(citing *Richie v. Wharton County Sheriff’s Dep’t Star Team*, No. 12-20014, 2013 WL616962 at *2 (5th Cir. Feb. 19, 2013) (per curiam)(unpublished)(noting that plaintiff failed to allege facts suggesting that officers “were liable under a theory of bystander liability for failing to prevent ... other member[s] from committing constitutional violations”)). Further, the Second Circuit has stated that “law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.” *Anderson v. Branen*, 17 F.3d 522, 557 (2d Cir. 1994). *See also, Byrd v Brishke*, 466 F.2d 6, 11 (7th Cir. 1972)(“we believe it is clear that one who is given the

badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge.”).

Thus, officers M. Brazil, Logan Finch, Brandon Hayward, P. Martin and W. Howell may be liable under § 1983 under a theory of bystander liability when the officer “(1) knows that a fellow officer is violating an individual’s constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.” *Whitley*, 726 F.3d at 646.

An official’s actual knowledge of a substantial risk may only be inferred if the “substantial risk” was obvious. *Easter v Powell*, 467 F3d. 459, 463 (5th Cir 2006).

An allegation of deliberate indifference must show that “(1) the official was ‘aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,’ and (2) the official actually drew that inference.” *Dyer v. Houston*, 964 F3d 374, 380 (5th Cir. 2020)(quoting *Domino v Tex. Dep’t of Criminal Justice*, 239 F.3d 752, 755 (5th Cir. 2001)).

The City of Nacogdoches, and Defendants, P. Martin, Brandon Hayward, Logan Finch and Mike Brazil, who, with other Defendants conspired against Demetri Sims in violation of his protected 4th and 14th Amendment rights when they engaged in a pattern and practice of refusing to identify the uniformed Nacogdoches County employee choking Demetri Sims, intervene or render aid.

Tyler Johnson, in particular, acted with deliberate indifference when the unidentified uniformed Nacogdoches County employee choked Demetri Sims by the neck until he could not breath.

PUNITIVE DAMAGES

Demetri Sims repeats and re-alleges each and every allegation contained in the above paragraphs as if fully repeated herein.

As a direct and proximate result of the occurrences which made the basis of this lawsuit, Demetri Sims was forced to suffer:

- a. Emotional distress, torment, and mental anguish;
- b. Physical injuries;
- c. Physical pain and suffering;
- d. Acts of threats, coercion, and intimidation; and,

e. Deprivation of his liberty.

When viewed objectively, the Defendants' conduct of choking Demetri Sims involved an extreme and unjustifiable degree of risk, considering the probability and the magnitude of harm. As a direct, proximate, and producing cause, the intentional, egregious, and malicious conduct of Tyler Johnson and the unidentified uniformed Nacogdoches County employee, which was recklessly or callously indifferent to Demetri Sims constitutionally-protected rights, entitles Demetri Sims to recover punitive damages in an amount within the jurisdictional limits of this Court.

ATTORNEY'S FEES

If Plaintiff prevails in this action, by settlement or otherwise, Plaintiff is entitled to and hereby demands attorney's fees under 42 U.S.C. § 1988.

REQUEST FOR RELIEF

Demetri Sims respectfully prays that upon final hearing of this case, judgment be entered for him against the Defendants, for damages in an amount within the jurisdictional limits of this Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of the court; attorney's fees; and such other and further relief to which Demetri Sims may be entitled at law or in equity.

REQUEST FOR JURY TRIAL

Plaintiff demands a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be rendered against the Defendants, for an amount in excess of the jurisdictional minimum of this Court. Plaintiff further prays for all other relief, both legal and equitable, to which he may be justly entitled, including injunctive relief to prevent further retaliation.

Respectfully submitted,

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