

Daniel W. Sexton, Esq. LLC
AIN 1021992
329 Pacific Avenue
Jersey City, NJ 07304
201 332 5455/ 201-406-9960

CHERYL MORRISON

Plaintiff

Vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

HUDSON COUNTY
DOCKET NO.: L

Civil Action

CITY OF JERSEY CITY, JERSEY CITY
POLICE DEPARTMENT, and PO Arkaiusz
Zylkiewicz, and POLICE
OFFICERS JOHN AND JANE DOE, 1 – 20,
being as yet unknown actors

Defendants

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

Plaintiff, CHERYL MORRISON by and through her attorney, Daniel W.
Sexton, Esq. LLC complains of the DEFENDANTS as follows

INTRODUCTION

This is a “driving while black” civil rights claim. Plaintiff got hit broadside from an out of control squad car . The collision was solely the result of the recklessness of the officer, P.O. Arkaiusz Zylkiewicz, who backed out into the flow of traffic without taking any precautions. What was merely an accident, then became an Excessive Force case when Plaintiff was subjected to verbal and physical assault, wrongful arrest, and the illegal and intrusive searches of her persona and property. These wrongful acts are actionable under the Equal Protection Clause of the 14th

Amendment and its New Jersey analog) and the Fourth Amendment to the Constitution of the United States because plaintiff's race was the motivating force in her mistreatment. In addition to the wrongful conduct of Defendant Zylliewicz, other officers including high ranking officers joined in and conspired to violate Plaintiff's Constitutional rights. Indeed, the misconduct of the police officers was either approved of implicitly or explicitly by high level police officer so r was the expression of a policy or practice.

FACTS COMMON TO ALL COUNTS

1. Plaintiff is an African American woman who lives and works in Bayonne, New Jersey.
2. Plaintiff is a professional woman, college educated and with no criminal history, but rather a life lived as a model citizen.
3. On or about March 24, 2018, Plaintiff attended a family function where she consumed less than one glass of wine over the course of an evening and afterward drove her sister in law, Cora Jackson-Morrison, home dropping her off sometime after 11:00 pm.
4. Plaintiff began driving home within the 25 mph limit and exercising all due care to her home which took her southbound on Bergen Avenue intending to merge with JFK Boulevard and proceed on to Bayonne where she lives..
5. As Plaintiff approached Wilkinson Avenue, with no warning and without plaintiff having had an opportunity to react, a Jersey City Police Squad car suddenly darted out of its parking spot at the South District and collided with great force with Plaintiff car impacting with it passenger side front panel .

6. The South District is staffed at all times by high level employees who set the policies and practices of the Jersey City Police Department and who either observed these events or took part in them.
7. The police squad car had not activated its sirens or lights and Plaintiff never saw the police car until it impacted her vehicle, hitting the front panel of the passenger side of the car with the front of the police vehicle.
8. Immediately after impact, plaintiff brought the car to a halt.
9. Thereafter, without any delay, the officer who had driven into Plaintiff's car jumped out of his vehicle and began screaming at Plaintiff asserting that she had hit him.
10. Plaintiff was extremely upset by the screaming officer who put her in fear of her physical safety.
11. Plaintiff was at this point in great distress, both from the accident and from the police officer who was screaming at her and, therefore, used her cell phone to call her sister in law, Cora Jackson-Morrison.
12. As Plaintiff was explaining to her sister in law about how the police car had hit her without warning from the right side, a mob of police officers emptied out of the West District which was located at that intersection.
13. The mob of police officers is estimated to have consisted of at more than ten officers.
14. These officers surrounded the car and were all now shouting and leaning on plaintiff's car and greatly adding to Plaintiff's sense of danger.
15. From the beginning until the end of this ordeal, the defendants were acting under color of law and are liable for the violation of plaintiff's civil rights under the Civil Rights Act of 1871 (Codified as 42 U.S.C. § 1983).

16. Under 42 U.S.C. § 1983, a municipality can be held liable for acts committed by one of its employees or agents, pursuant to a government policy or custom, that violate the Constitution. *Monell v. Department of Social Services* 436 U.S. 658 (1978).
17. The acts of individual police officers in this case, may be considered “an act of official government ‘policy.’
18. Moreover, upon information and belief, the police officer who hit plaintiff’s vehicle and who initiated the wrongful conduct has a history of misconduct that Defendant has failed to confront.
19. From the beginning until the end of this ordeal, the defendants acted in such a way that no reasonable police officer or governmental official, confronting the circumstances as they appeared to the official at the time of the challenged conduct and in light of then-established law, could have believed his or her conduct was constitutional.
20. In other words, the actions of the defendants violated clearly settled law as of the time of the conduct, the official acted unreasonably and loses on qualified immunity,
21. Plaintiff’s sister in law, Cora Jackson-Morrison, was a direct witness (albeit solely of an auditory nature) to the increasing level of intimidation and harassment of Plaintiff: Ms. Cora Jackson-Morrison heard the police officers screaming and heard her sister in law become extremely distressed and fearful.
22. As a result of this, even though it was now near midnight, Cora Jackson Morrison, called her son, Kenneth Ricks, to pick her up and drive to the scene of the unfolding assault upon plaintiff.

23. When Cora Jackson-Morrison and Kenneth Ricks arrived, approximately ten minutes later, they observed that a mob of officers was still present and was creating an intimidating and dangerous situation.
24. Meanwhile, although there was no sign of alcohol intoxication or any other impairment and even though Plaintiff had advised that she had had less than one glass of wine that night, the officers declared that she was being arrested, *inter alia*, for driving while under the influence of alcohol.
25. Plaintiff was, in fact, ordered to get out of the car and submit to a battery of sobriety tests by the mob of angry police officers.
26. They were screaming at Plaintiff to get out of the car so she complied.
27. But while talking to her sister in law and her nephew, plaintiff decided to refuse to engage in sobriety tests for fear that they would be manipulated and mischaracterized
28. Without being read the rights as set forth, *inter alia*, in *Miranda v. Arizona* (Miranda Rights), plaintiff was placed under arrest.
29. Plaintiff, a middle aged woman with no criminal history but, rather a record of impeccable achievement and comportment, was rudely hand cuffed, with her arms being roughly held behind her back while the cuffs were tightened in a manner to cause her pain and discomfort.
30. While restrained in this manner, her car was seized by police officers and transported to the police pound even though Plaintiff's relatives were ready, willing and able to take

possession of the car, Kenneth Ricks and Cora Jackson-Morrison having by this time arrived at the scene.

31. Although there were other high ranking officers at the South District as this unfolded, none stepped in to stop this wrongful conduct.
32. Meanwhile, plaintiff was pushed into the hard plastic back seat of a squad car other than the one which had hit her, and was transported across town to the Bureau of Criminal Investigation on Summit Avenue.
33. Kenneth Ricks and Cora Jackson-Morrison followed plaintiff to the Bureau of Criminal Investigations (BCI) at the municipal court complex on Summit Avenue.
34. Plaintiff's fiancé, Rob Andersen, also met plaintiff at BCI.
35. At BCI, Plaintiff was subjected to continued humiliation and intimidation as she had her finger prints taken and although there were other high ranking JCPD officials at BCI, none of them intervened to stop the wrongful treatment of Plaintiff.
36. Plaintiff was also ordered to submit to a breathalyzer test and did not recall being told by anyone that she had the right to refuse the test.
37. In an outrageous and harassing manner which sought somehow to justify the wrongful police action, Plaintiff was forced to take the breathalyzer test six times.
38. The reported breath test result from these six tests was 0.06%, a reading consistent with the reported intake of less than one glass of wine and under the minimum reading to be charged with driving under the influence which is 0.08.

39. The defendants, therefore, had no basis for continuing to keep Plaintiff under arrest and so finally, near dawn, plaintiff was released to her family.
40. However, in a continuation of the mendacious and false narrative the defendants had sought to construct, plaintiff was charged with reckless driving and multiple other moving violations.
41. Plaintiff was forced to retain a lawyer to represent her at court, who she had to pay \$1500 out of pocket.
42. The lawyer failed to adequately represent her and pressed her to plead guilty to the reckless charge in exchange for dismissal of the other charges.
43. This was done based upon erroneous counsel from her attorney and because plaintiff remained anxious.
44. Counsel in municipal court was also negligent in that he failed to ask for and receive a stipulation that this plea not be evidentiary in any subsequent lawsuit.
45. Nonetheless, this plea is not res judicata on any issue. See, *Maida v. Kuskin*, 221 N.J. 112 (2015).
46. Plaintiff did receive her car back from the pound and had to remit \$500.00 to have it towed to the auto body place, East Coast Collison on Garfield Avenue, Jersey City, NJ.
47. Plaintiff also had to have \$2,057 in body work done on the vehicle.
48. Although plaintiff did not go to the hospital, she has experienced soft tissue injuries since she was hit by the defendant's vehicle and these include but are not limited to cervical strain and sprain, etc.

49. Worse than the physical injury has been the emotional distress that she experienced and continues to experience.
50. This Complaint is brought under the Sec. 1983 to the U.S.C.A., and the New Jersey Civil Rights Act, N.J.S.A. 10-6.1 et seq. as plaintiff has been deprived of substantive due process, or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, and substantive rights, privileges or immunities secured by the Constitution or laws of this State, and whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law.

**AS AND FOR A FIRST CAUSE OF ACTION FOR A VIOLATION OF THE
EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE
FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED
STATES AND OF THE NEW JERSEY CIVIL RIGHTS LAW (N.J.S.A. 10-6.2)**

51. Plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his constitutional rights. Section 1983 provides in relevant part:
52. Every person who, under color of any statute, ordinance, regulation custom, or usage, of any State or Territory .subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”
53. The claim of racial profiling is considered to be an equal protection claim essentially that

she was detained, arrested, and charged primarily because she is or appears racially African or African-American. (citing *Groman v. Twp. of Manalapan*, 47 F.3d 628, 638 (3d Cir. 1995)).

54. Likewise, the equal protection clause is also directed at official conduct, and therefore requires “state action.” *Id.* (citing *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937, 102 S. Ct. 2744 (1982)); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619, 111 S. Ct. 2077, 2082 (1991) (“The Constitution’s protections of individual liberty and equal protection apply in general only to action by the
55. The defendant police officers had had a discriminatory effect and (were motivated by a discriminatory purpose.’ ”¹⁷ See *Alvin v. Calabrese*, 455 F. App’x 171, 177 (3d Cir. 2011) (quoting *Bradley v. United States*, 299 F.3d 197, 205 (3d Cir. 2002))
56. Plaintiff is a member of a protected class and she was treated differently from similarly situated individuals in an unprotected class.”
57. Plaintiff’s race was a substantial factor” in disparate treatment she received.

AS AND FOR A SECOND CAUSE OF ACTION FOR EXCESSIVE FORCE, A VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND OF THE NEW JERSEY CIVIL RIGHTS ACT (N.J.S.A. 10:6.2)

58. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 57 above as if set forth in full.
59. The police action against plaintiff was not justified and was excessive.
60. Excessive force refers to force in excess of what a police officer reasonably believes is necessary.

61. No reasonable officer would be able to consider that it was necessary to make vituperative verbal attacks on the plaintiff, nor to allow a mob of police officers to surround plaintiff.
62. No reasonable officer would believe that it was necessary to arrest of the plaintiff and handcuff her.
63. No reasonable officer would believe it necessary to transport plaintiff to BCI for processing.
64. No reasonable officer would believe it necessary to compel plaintiff to submit to a breathalyzer.
65. No reasonable officer would fail to advise plaintiff that she had an option to refuse the breathalyzer.
66. No reasonable officer would make plaintiff submit to the breathalyzer six times! across town to BCI, and the seizure of her vehicle, the su would be considered excessive.
67. The use of Excessive Force by Defendants is a violation of the Fourth Amendment to the Constitution of the United States of America.
68. All of the other officers who observed the wrongful treatment of Plaintiff are also liable for not preventing the wrongdoers from using excessive force.
69. The actions of defendants were such to put plaintiff in aa reasonable concern for her physical safety as she was in apprehension of being physically assaulted.

**AS AND FOR A THIRD CAUSE OF ACTION CIVIL CONSPIRACY UNDER
USC 42 U.S.C.A. § 1985 AND THE NEW JERSEY CIVIL RIGHTS LAW
(N.J.A.S 10-12.1 et seq.)**

70. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 69 above as if set forth in full.
71. Defendants engaged in a conspiracy for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and
72. Defendants acted in furtherance of the conspiracy.
73. Plaintiff was deprived of any right or privilege of a citizen of the United States.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR COMMON LAW FALSE
ARREST**

74. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 77 above as if set forth in full.
75. Plaintiff was restrained against her will.
76. This restraint of plaintiff was unlawful in that there was a complete lack of probable cause to arrest her.
77. It was obvious that no crime had been committed by the plaintiff.
78. The only wrongdoer was the officer who drove the squad car into plaintiff's passenger side and the officers who, as a mob, piled on.
79. This arrest was mere pretext to cover up and distract from the wrongdoing by the police officer.

AS AND FOR A FIFTH CAUSE OF ACTION FOR FALSE IMPRISONMENT

80. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 82 above as if set forth in full.
81. Plaintiff was shackled and was deprived of freedom of movement.
82. Plaintiff was further forced to be driven to BCI to be processed and to be given a breathalyzer test for DWI.
83. There was no legal justification for plaintiff's arrest and it was against plaintiff's manifest will.
84. Plaintiff was imprisoned for over five hours in the dead of night.

**AS AND FOR A SEVENTH CAUSE OF ACTION FOR FRAUDULENT
CONCEALMENT and DESTRUCTION OF EVIDENCE**

85. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 84 above as if set forth in full.
86. Defendants had a legal obligation to create evidence, e.g. by making accurate reports, and preserve evidence at the time of the wrongful conduct.
87. This evidence would be material to this litigation.
88. Plaintiff had no way to create or safeguard this evidence.
89. Upon information and belief, Defendants have intentionally failed to write accurate reports or have intentionally destroyed such reports.

AS AND FOR A FIFTH CAUSE OF ACTION FOR ASSAULT AND BATTERY

90. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 89 above as if set forth fully herein.
91. Defendants intended g to cause a harmful or offensive contact with the person of the plaintiff, or an imminent apprehension of such a contact,
92. The plaintiff was thereby put in such imminent apprehension.
93. Plaintiff, in fact, experienced an unprivileged touching by Defendants which constituted a battery.
94. Plaintiff also had an apprehension of the battery thus suffering an assault.

AS AND FOR A NINTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

95. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 94 above as if set forth fully herein.
96. The defendants acted intentionally or at the very least recklessly in violating the civil rights of plaintiff as well her common law rights.
97. The defendant, in fact, intended to create great emotional distress in plaintiff to shift the blame for the accident which was the result of the negligence of the police officer.
98. Alternatively, the defendants acted in deliberate disregard of a high degree of probability that emotional distress would follow.

99. The actions of defendants were, in fact, outrageous in character and were so extreme in degree so as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.
100. Plaintiff did, in fact, experience great emotional distress at the time, immediately after and it continues until this day and it is such that no reasonable person can be expected to endure such distress.
101. Plaintiff's response is consistent with the response of the average person similarly situated to the plaintiff.

AS AND FOR A TENTH CAUSE OF ACTION FOR BODILY INJURY

102. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 100 above as if set forth.
103. As a result of the sole negligence and/or recklessness of the defendant driver, Plaintiff suffered personal injuries.
104. The personal injuries include cervical strain/sprain injury.
105. As a result of the injury, plaintiff has experienced significant pain and discomfort.
106. Plaintiff has also had to curtail activities and past times.
107. This injury has caused Plaintiff significant pain.

AS AND FOR A N ELEVENTH CAUSE OF ACTION FOR PROPERTY DAMAGE

108. Plaintiff repeats and re-alleges all of the factual averments in paragraphs one through 107 above as if set forth fully herein.

109. As a result of the sole negligence and/or recklessness of the defendant driver,
Plaintiff suffered property damage- to wit, a car which required extensive repairs.

WHEREFORE, plaintiff demand judgment against Defendants for

- (a) compensatory damages, for pain and suffering, both physical and emotional damages,
- (b) and for punitive damages with interest, cost of suit incurred,
- (c) and with counsel fees enhanced by the Rendine factor to be paid to plaintiff's counsel.

DATED: October 15, 2019

By: 
Daniel W. Sexton, Esq.

DESIGNATION OF TRIAL COUNSEL PURSUANT TO R.4:25-1(b)(14)

Daniel W. Sexton, Esq. is hereby designated as trial counsel.

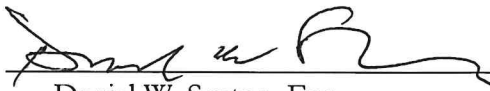
By: 
Daniel W. Sexton, Esq.

DATED: October 15, 2019

JURY DEMAND

Plaintiff demands a trial by a jury of six.

DATED: October 15, 2019

By: 
Daniel W. Sexton, Esq.

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the matter in controversy is not the subject of any other action pending in any court or pending in any arbitration proceeding and that no such action or arbitration proceeding is contemplated. To plaintiffs' knowledge no other party should be joined in this action.

By: 
Daniel W. Sexton, Esq. LLC

Dated: October 15, 2019