

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Nicholas John Kastner,

Plaintiff,

vs.

**Sherry Renee Appledorn,
Individually and in her Official
Capacity as a Minneapolis Officer;
and Joseph Robert Will, Individually
and in his Official Capacity as a
Minneapolis Officer,**

Defendants.

Court File No.: 09-cv-1730 (ADM/AJB)

**DEFENDANTS' ANSWER TO
COMPLAINT**

JURY TRIAL DEMANDED

Defendants for their Answer to the Complaint of Plaintiff state and allege as follows: Unless admitted, denied, or otherwise pled below, Defendants deny each and every allegation contained in the Complaint. Defendants:

I. PRELIMINARY STATEMENT

1. Admit that the Defendant officers used force on the person of the Plaintiff; deny the remaining allegations set forth in paragraph 1 of the Complaint.
2. Admit the allegations set forth in paragraph 2 of the Complaint.
3. Admit the allegations set forth in paragraph 3 of the Complaint.

II. PARTIES

4. Admit, upon information and belief, the allegations set forth in paragraph 4 of the Complaint.

5. Admit the allegations set forth in paragraph 5 of the Complaint.

6. Admit the allegations set forth in paragraph 6 of the Complaint.

III. JURISDICTION

7. Admit the allegations set forth in paragraph 7 of the Complaint.

IV. FACTS

8. Admit the allegations set forth in paragraph 8 of the Complaint.

9. Admit the allegations set forth in paragraph 9 of the Complaint.

10. Admit that police officers attempted to stop the vehicle in which the Plaintiff was a passenger after observing the occupants breaking into vehicles in the parking ramp; deny the remaining allegations set forth in paragraph 10 of the Complaint.

11. Admit that McCarthy did not comply with orders to stop and fled toward the exit of the parking ramp; deny the remaining allegations set forth in paragraph 11 of the Complaint.

12. Admit that McCarthy's vehicle collided with a Minneapolis police squad car blocking the exit; deny the remaining allegations set forth in paragraph 12 of the Complaint.

13. Admit that Plaintiff got out of the vehicle and onto the ground; deny the remaining allegations set forth in paragraph 13 of the Complaint.

14. Admit that Officer Appledorn approached the Plaintiff; deny the remaining allegations set forth in paragraph 14 of the Complaint.

15. Admit that Officer Appledorn used force on the person of the Plaintiff; deny the remaining allegations set forth in paragraph 15 of the Complaint.

16. Admit that Officer Appledorn struck the Plaintiff several times; deny the remaining allegations set forth in paragraph 16 of the Complaint.

17. Admit that Officer Appledorn applied a Taser in stun mode to the Plaintiff; deny the remaining allegations set forth in paragraph 17 of the Complaint.

18. Admit that Officer Will used force on the person of the Plaintiff; deny the remaining allegations set forth in paragraph 18 of the Complaint.

19. Deny the allegations set forth in paragraph 19 of the Complaint.

20. Deny the allegations set forth in paragraph 20 of the Complaint.

21. Admit that Officer Will was present when Officer Appledorn used force on the person of the Plaintiff; deny the remaining allegations set forth in paragraph 21 of the Complaint.

22. Deny the allegations set forth in paragraph 22 of the Complaint.

V. CLAIMS FOR RELIEF

Count I. 42 U.S.C. § 1983: Unreasonable Use of Force in Violation of the Fourth Amendment

23. The allegations set forth in paragraph 23 of the Complaint are not susceptible to responsive pleading and are, therefore, denied.

24. Deny the allegations set forth in paragraph 24 of the Complaint.

25. Deny the allegations set forth in paragraph 25 of the Complaint.
26. Deny the allegations set forth in paragraph 26 of the Complaint.
27. Deny the allegations set forth in paragraph 27 of the Complaint.

Count II. Punitive damages under federal law

28. The allegations set forth in paragraph 28 of the Complaint are not susceptible to responsive pleading and are, therefore, denied.
29. Deny the allegations set forth in paragraph 29 of the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against Defendants upon which relief can be granted.
2. Defendants allege affirmatively that its officers were government officials such that they have qualified immunity from any liability in this action.
3. Defendants allege affirmatively that Plaintiff had knowledge, or in the exercise of reasonable care should have had knowledge, of each of the risks about which Plaintiff complains, and allege that if any risk inhered in the situation that gave rise to the Complaint, then Plaintiff voluntarily assumed such risks.
4. Defendants allege affirmatively that the acts upon which the Complaint is made were privileged, were based upon probable cause to believe the Plaintiff committed a criminal offense, were commanded or authorized by law, and were done in a reasonable and lawful manner under the circumstances, such that Defendants are immune from liability in this action.

5. Defendants allege affirmatively that Plaintiff's injuries and damages, if any, were caused, contributed to, or brought about by Plaintiff's own negligence and/or the negligence of those over whom Defendants exercise no right of control and for whose actions Defendants are not legally responsible.

6. Defendants allege affirmatively that Plaintiff's damages, if any, were caused, contributed, or brought about by Plaintiff's unlawful and illegal acts and/or the unlawful and illegal acts of those over whom Defendants exercise no right of control.

7. Defendants allege affirmatively that the use of force, if any, was privileged under the common law and/or under Minn. Stat. §609.06, it being reasonable force used by a public officer or one assisting a public officer under the public officer's direction: a.) in effecting a lawful arrest, or b.) in the execution of legal process, or c.) in enforcing an order of the court, or d.) in executing any other duty imposed upon the public officer by law; or the actor reasonably believed any of the said circumstances to exist.

8. Defendants allege that Plaintiff has failed to take reasonable action to avoid or mitigate the alleged detriment or damages.

9. Defendants specifically deny that Plaintiff has any right to attorney's fees in this action.

WHEREFORE, Defendants pray for an Order of this Court as follows:

a. Dismissing the Plaintiff's Complaint on its merits and with prejudice.

- b. Awarding Defendants all its costs and disbursements as allowed by law, including reasonable attorney's fees.
- c. For such other and further relief as this Court deems just and equitable.

Dated: July 24, 2009

SUSAN L. SEGAL
City Attorney
By

s/Timothy S. Skarda

TIMOTHY S. SKARDA (10176X)
Assistant City Attorney
Attorneys for Defendants
300 Metropolitan Centre
333 South Seventh Street
Minneapolis, MN 55402-2453
(612) 673-2553
Fax: (612) 673-3362