

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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KATIE A. IRVING,

Plaintiff,

v.

COUNTY OF KENOSHA, DAVID G.  
BETH, individually and in his  
Official capacity;  
JONATHAN M. KWIATKOWSKI;  
WISCONSIN MUNICIPAL MUTUAL  
INSURANCE COMPANY; and  
JOHN and JANE DOE, Unknown Kenosha  
County correctional Employees and Sheriff's  
Department Officers,

Defendants.

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**COMPLAINT**

Civil Action No. 18-CV-162  
[Trial by Jury Demanded]

NOW COMES Plaintiff, KATIE A. IRVING, and complaining of Defendants, COUNTY OF KENOSHA, DAVID G. BETH, JONATHAN M. KWIATKOWSKI, WISCONSIN MUNICIPAL MUTUAL INSURANCE COMPANY, and JOHN and JANE DOE, unknown Kenosha County Sheriff's Department employees and officers, and Kenosha County correctional employees and officers ("Defendant Officers"), states as follows:

**I. INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the Fourth, Eighth and Fourteenth Amendments of the United States Constitution.

**II. JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331

(federal question) and 28 U.S.C. § 1343 (civil rights).

3. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because the events and conduct giving rise to the Plaintiff's claims asserted herein occurred within this judicial district.

### **III. PARTIES**

4. Plaintiff, Katie A. Irving, is 31 years old and is an adult resident of the State of Wisconsin, now residing at W1446 Autumn Wood Lane, Marinette, WI 54143. At all relevant times, she was a Huber inmate at Kenosha County Detention Center as part of their electronic monitoring program. Defendant, Officer Jonathan Kwiatkowski, in a "change-over" room while in the scope of his employment during the course of visits to the Huber offices at the Kenosha County Detention Center for the purposes of supervising and monitoring the Plaintiff, including having her electronic monitoring bracelet switched from one leg to the other, restrained her against her will and forcefully thrust his fingers in plaintiff's vagina sexually assaulting her and violating her constitutional rights.

5. Defendant, Jonathan M. Kwiatkowski, DOC #660635, is a citizen of the State of Wisconsin, now residing at Dodge Correctional Institution, One West Lincoln Street, P.O. Box 700, Waupun, WI 53963. Defendant Kwiatkowski was a Kenosha County Detention Center direct supervision officer (DSO) at all times relevant to this action and was acting under color of law and within the scope of his employment with the Kenosha County Sheriff's Department at all times relevant hereto.

6. Defendant Wisconsin Municipal Mutual Insurance Company (WMMIC) is an insurance company operating under the law of and licensed to sell insurance in the State of Wisconsin, with its Registered Agent, Dean Boes, located at Wisconsin Municipal Mutual Ins. Co., 4785 Hayes Rd., Madison, WI 53704. Defendant WMMIC had in full force and effect, at all

material times, a policy of insurance covering Defendants, including Officer Johnathan M. Kwiatkowski, for all alleged conduct which is the subject of this complaint, and is therefore directly liable to plaintiff, Katie A. Irving, for all the below enumerated damages.

7. Defendant David G. Beth is the Sheriff of Kenosha County. In that capacity he is in charge of the Kenosha County Detention Center ("KCDC"). By law, custom, and/or delegation, he has policymaking authority over the detention center for the actions at issue in this case. He is responsible for ensuring that the policies and practices of the KCDC comply with federal and state requirements for the treatment of detainees or inmates like the Plaintiff. Upon information and belief, he has had personal knowledge that the unlawful conduct at issue in this case was occurring at the detention center. He is sued in his official and individual capacities for the constitutional claims arising out of Plaintiff's sexual assault.

8. Defendants John and Jane Doe are current and/or former employees, officers, and/or supervisors of the Kenosha County Detention Center and/or the Kenosha County Sheriff's Department who at all relevant times were acting under color of law and within the scope of their employment.

9. Defendant County of Kenosha is a Wisconsin municipal corporation with its principal place of business in Kenosha, Wisconsin. County of Kenosha is a "person" for purposes of 42 U.S.C. § 1983. County of Kenosha owns and operates the Kenosha County Detention Center (KCDC). Acting through the Kenosha County Sheriff's Office, the County is responsible for training, supervising and disciplining its KCDC employees; adopting, implementing, and enforcing KCDC policies and practices; and ensuring KCDC conditions and the treatment of Huber inmates complies with the United States Constitution and other federal, state and local laws. The County and its Sheriff are liable for KCDC policies, practices, and customs that caused the

harm alleged below. Under Wis. Stat. § 895.46(1)(a), the County is required to pay or indemnify all judgments, including for compensatory and punitive damages, attorneys' fees and costs that may be incurred against its officials and employees.

**IV. FACTUAL ALLEGATIONS - THE SEXUAL ASSAULTS  
UNDER COLOR OF LAW AND WITHIN THE SCOPE OF EMPLOYMENT**

10. On February 26, 2015, Plaintiff was sentenced to a one year jail sentence stemming from a criminal conviction in Kenosha County case 14-CF-253.

11. Plaintiff was Huber-approved for the electronic monitoring program and fitted with an electronic monitoring ankle bracelet. The Huber electronic monitoring program for Kenosha County is located in the Kenosha County Detention Center, 4777 88th Avenue, Kenosha, WI 53144 and run and controlled by the Kenosha County Sheriff's Department and its Sheriff.

12. Defendant Jonathan Kwiatkowski, at the time of the conduct at issue, including the sexual assaults, was employed as a Direct Supervision Officer (DSO) with the Huber electronic monitoring program as an employee of the Kenosha County Sheriff's Department under the direction and control of Defendant Beth.

13. Plaintiff did not know Defendant Kwiatkowski and had never interacted with him prior to being sentenced to the Huber electronic monitoring program.

14. In June 2015, Defendant Kwiatkowski began texting Plaintiff personal and inappropriate messages.

15. Defendant Kwiatkowski sent numerous text messages to Plaintiff as part of his Huber electronic monitoring program, asking Plaintiff sexually suggestive questions such as "what are you wearing?" via text messages.

16. Defendant Kwiatkowski made no attempts to conceal his identity within the texts and Plaintiff was able to easily tell that Defendant Kwiatkowski was the person sending her the text messages.

17. Defendant Kwiatkowski sent the text messages in attempts at arranging an encounter with Plaintiff, who did not reciprocate or encourage these unwanted sexual advances from Defendant Kwiatkowski in her text responses but was afraid he may retaliate.

18. Neither Defendant Beth nor Defendants John and Jane Doe took any action to evaluate and/or discipline Defendant Kwiatkowski to stop him from engaging inappropriately while in the scope of his employment.

19. On July 11, 2015 Plaintiff reported to the KCDC to be supervised, including having her ankle monitor switched to her other leg. Direct Supervision Officer (DSO) Jared Reinersman was also in the Huber room but left the room. No female correctional officer was required to be present when Defendant Kwiatkowski was alone with the Plaintiff or other female inmates. Defendant Kwiatkowski approached her as if he was going to proceed with the supervision and attention to the ankle monitor. Defendant Kwiatkowski forced his hand down inside the front of her buttoned jeans and forcefully inserted his fingers into her vagina. Defendant Kwiatkowski did not remove his fingers all while the Plaintiff pointed out to him the cameras were on and then noted that DSO Reinersman would soon return.

20. The County Defendants recklessly failed to monitor the camera.

21. Defendant Kwiatkowski has now admitted to sexually assaulting the Plaintiff during her mandatory appointment with the electronic monitoring program to have her ankle "bracelet" switched from one ankle to another while in the course of his employment with the County.

**V. CLAIMS FOR RELIEF –  
CLAIM I - 42 U.S.C. § 1983  
Unlawful Search – 4<sup>th</sup> Amendment  
Due Process – 14<sup>th</sup> Amendment**

22. Each Paragraph of this Complaint is incorporated herein.

23. As described above, Defendants denied Plaintiff due process of law in that they allowed an unlawful cavity search and deprived her of her liberty, violated her right to bodily integrity and privacy, and were so malfeasant as to shock the conscience. In addition, Defendant Kwiatkowski's conduct was objectively undertaken with deliberate indifference or reckless disregard to Plaintiff's constitutional rights, health, and safety, all while acting in the scope of his employment.

24. Upon information and belief, Defendants Kenosha County and Sheriff Beth and/or John and Jane Doe violated Plaintiff's liberty interest in her bodily integrity through their condoning of an unconstitutional policy of inappropriate conduct, including sexual, between Defendant Kwiatkowski and female inmates such as Plaintiff. These Defendants were deliberately indifferent to Plaintiff's liberty interests, and were deliberately indifferent to her right to bodily integrity by, among others, disregarding the monitoring cameras or Defendant Kwiatkowski's texts.

25. The misconduct described in this Claim was undertaken with willfulness, and reckless indifference to the rights of others, and was objectively unreasonable.

26. The misconduct described in this Claim was undertaken by Defendants within the scope of their employment and under color of law such that their employer, the County of Kenosha, is liable for their actions.

27. The misconduct described in this Claim was undertaken pursuant to the policy and practice or custom of the Kenosha County Detention Center

28. As a result of the misconduct described in this Claim, Plaintiff has suffered damages, including but not limited to severe emotional distress, anguish, pain, suffering, and loss of enjoyment of life.

**CLAIM II - 42 U.S.C. § 1983**  
**Failure to Intervene**

29. Each Paragraph of this Complaint is incorporated herein.

30. As noted above, Defendant Beth and/or one or more of the John and Jane Doe Defendants had a reasonable opportunity to prevent the violation of Plaintiff's constitutional rights as set forth above had they been so inclined, but failed to do so.

31. The misconduct described in this Claim was undertaken with willfulness and reckless indifference to the rights of others.

32. The misconduct described in this Claim was undertaken by Defendants within the scope of their employment and under color of law such that their employer, County of Kenosha, is liable for their actions.

33. The misconduct described in this Claim was undertaken pursuant to the policy and practice of the Kenosha County Detention Center in the manner described above.

34. As a result of the misconduct described in this Claim, Plaintiff has suffered damages, including but not limited to severe emotional distress, anguish, pain, suffering and loss of enjoyment of life.

**CLAIM III - Indemnification**

35. Each of the foregoing paragraphs is incorporated as if fully stated herein.

36. Wisconsin law, Wis. Stat. §895.46, requires public entities to pay any judgment such as one in this case for damages for which employees are liable within the scope of their employment activities.

37. The Defendants are or were employees of the County of Kenosha, who acted within the scope of their employment in committing the misconduct described herein and the County is therefore liable.

WHEREFORE, Plaintiff, Katie A. Irving, respectfully requests that this Court enter judgment in her favor and against Defendants, COUNTY OF KENOSHA, DAVID G. BETH, JONATHAN KWIATKOWSKI, JOHN and JANE DOE, unknown Kenosha County Sheriff's Department employees and officers, and WISCONSIN MUNICIPAL MUTUAL INSURANCE COMPANY awarding compensatory damages and attorneys' fees, as well as punitive damages against the Defendants, including in their individual capacities, as well as any other relief this Court deems just and appropriate.

#### **VI. JURY DEMAND**

Plaintiff, KATIE A. IRVING, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

#### **VII. REQUEST FOR RELIEF**

Plaintiff asks the Court to award the following relief:

- A. All available compensatory damages, including, but not limited to, damages for Plaintiff, Katie A. Irving's mental and emotional distress and physical pain and suffering and loss of enjoyment of life;
- B. Punitive damages against all individual defendants;
- C. Attorneys' fees and litigation costs; and
- D. Any other relief that the Court deems just and equitable.

Dated this 30th day of January, 2018.



Respectfully Submitted:

GINGRAS, CATES & WACHS

s/ Mark L. Thomsen

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