

No. 19-546

In the Supreme Court of the United States

DOUGLAS BROWNBACK, ET AL., PETITIONERS

v.

JAMES KING

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: OCT. 25, 2019
CERTIORARI GRANTED: MAR. 30, 2020

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Docket No. 17-2101

JAMES KING, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, DOUGLAS BROWNBACK,
TODD ALLEN, DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
9/13/17	<u>1</u>	Civil Case Docketed. Notice filed by Appellant James King. Transcript needed: n. (RGF) [Entered: 09/13/2017 03:45 PM] * * * * *
9/27/17	<u>17</u>	CIVIL APPEAL STATEMENT OF PARTIES AND ISSUES filed by Attorney Mr. Patrick M. Jaicomo for Appellant James King. Certificate of Service: 09/27/2017. [17-2101] (PMJ) [Entered: 09/27/2017 03:10 PM] * * * * *
1/3/18	<u>32</u>	STIPULATION filed to dismiss Connie Morris as party to the appeal. Stipulation filed by Attorney Mr. Patrick M. Jaicomo for

DATE	DOCKET NUMBER	PROCEEDINGS
		Appellant James King. Certificate of Service: 01/03/2018. [17-2101] (PMJ) [Entered: 01/03/2018 02:29 PM]
		* * * * *
1/4/18	<u>34</u>	ORDER filed GRANTING stipulation to dismiss party (Connie Morris only) [32] filed by Mr. Patrick M. Jaicomo and Lindsay A. Bondy. (PJE) [Entered: 01/04/2018 02:35 PM]
1/10/18	<u>35</u>	RECORD RECEIVED from Mr. Patrick M. Jaicomo for James King. Aty/Pty—CD/DVD, Sealed: n, Comment: 4 copies of R.E. #74, exhibits 6, 7, 17, 18, 19 (MH) [Entered: 01/10/2018 12:36 PM]
1/10/18	<u>36</u>	APPELLANT BRIEF filed by Mr. David A. Portinga for James King. Certificate of Service: 01/10/2018. Argument Request: requested. [17-2101] (DAP) [Entered: 01/10/2018 03:51 PM]
		* * * * *
4/11/18	<u>41</u>	APPELLEE BRIEF filed by Mr. Michael Shih for Todd Allen, Douglas Brownback and USA. Certificate of Service: 04/11/2018.

DATE	DOCKET NUMBER	PROCEEDINGS
		Argument Request: not requested. [17-2101] (MS) [Entered: 04/11/2018 05:17 PM]
		* * * * *
5/9/18	<u>44</u>	REPLY BRIEF filed by Attorney Mr. Patrick M. Jaicomo for Appellant James King. Certificate of Service: 05/09/2018. [17-2101] (PMJ) [Entered: 05/09/2018 05:36 PM]
		* * * * *
8/1/18	<u>48</u>	CAUSE ARGUED by Mr. David A. Portinga for Appellant James King and Mr. Michael Shih for Appellees USA, et al before Boggs, Circuit Judge; Clay, Circuit Judge and Rogers, Circuit Judge. (KSC) [Entered: 08/01/2018 11:41 AM]
		* * * * *
8/1/18	<u>51</u>	LETTER SENT to ALL COUNSEL OF RECORD—Dear Counsel, I write at the direction of the panel before which the appeal noted above was argued on August 1, 2018. The panel requests that the parties file supplemental briefs addressing the applicability of the judgment bar provisions of the Federal Tort Claims Act

DATE	DOCKET NUMBER	PROCEEDINGS
		(“FTCA”), 28 U.S.C. § 2676 and Himmelreich v. Fed. Bureau of Prisons, 766 F.3d 576, 579 (6th Cir. 2014). Each party’s brief may not exceed 15 pages, double spaced, and must be filed no later than close of business, 5:00 p.m. EDT, by August 31, 2018. Thank you in advance for your attention to these requests. (RGF) [Entered: 08/01/2018 04:48 PM]
		* * * * *
9/7/18	54	SUPPLEMENTAL BRIEF filed by Attorney Mr. Patrick M. Jai-como for Appellant James King. Certificate of Service: 09/07/2018. [17-2101] (PMJ) [Entered: 09/07/2018 04:24 PM]
9/7/18	55	SUPPLEMENTAL BRIEF filed by Attorney Mr. Michael Shih for Appellees Todd Allen, Douglas Brownback and USA. Certificate of Service: 09/07/2018. [17-2101] (MS) [Entered: 09/07/2018 04:28 PM]
2/25/19	56	OPINION and JUDGMENT filed: The district court’s findings that the Federal Tort Claims Act judgment bar precludes Plaintiff’s remaining claims, and that Defend-

DATE	DOCKET NUMBER	PROCEEDINGS
		ants are entitled to qualified immunity are REVERSED, its judgment in favor of Defendants is VACATED, and the case is REMANDED for further proceedings consistent with the opinion of this court. decision for publication. Danny J. Boggs, Eric L. Clay (AUTHORING), and John M. Rogers (DISSENTING), Circuit Judges. (CL) [Entered: 02/25/2019 12:42 PM]
4/11/19	<u>57</u>	PETITION for en banc rehearing filed by Mr. Michael Shih for Todd Allen, Douglas Brownback and USA. Certificate of Service: 04/11/2019. [17-2101] (MS) [Entered: 04/11/2019 01:42 PM]
4/12/19	<u>58</u>	LETTER SENT to Mr. Patrick M. Jaicomo for James King, notifying that he is directed to respond to the petition for en banc rehearing filed by Mr. Michael Shih. Response due 04/26/2019. (BLH) [Entered: 04/12/2019 02:08 PM]
4/26/19	<u>59</u>	RESPONSE to petition, [<u>57</u>], previously filed by filed by Mr. Michael Shih for USA, Douglas Brownback and Todd Allen. Response filed by Mr. David A.

DATE	DOCKET NUMBER	PROCEEDINGS
		Portinga for James King. Certificate of service: 04/26/2019. [17-2101] (DAP) [Entered: 04/26/2019 05:20 PM]
5/28/19	<u>60</u>	ORDER filed denying petition for en banc rehearing [57] filed by Mr. Michael Shih. Judge Rogers would grant rehearing for the reasons stated in his dissent. Danny J. Boggs, Eric L. Clay and John M. Rogers, Circuit Judges. (PJE) [Entered: 05/28/2019 02:04 PM]

* * * * *

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
(SOUTHERN DIVISION (1))

Docket No. 1:16-cv-00343-JTN-ESC

JAMES KING, PLAINTIFF

v.

UNITED STATES OF AMERICA; DOUGLAS BROWNBACK;
TODD ALLEN; CONNIE MORRIS, DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/4/16	<u>1</u>	COMPLAINT against all defendants filed by James King (Jaicomo, Patrick) Modified text on 4/4/2016 (cmi). (Entered: 04/04/2016)
		* * * * *
6/30/16	<u>12</u>	REQUEST for pre-motion conference by defendant United States of America by defendant United States of America; (Cobb, Ryan) (Entered: 06/30/2016)
6/30/16	<u>13</u>	REQUEST for pre-motion conference by defendants Douglas Brownback, Todd Allen by defendants Douglas Brownback, Todd Allen; (Attachments: # <u>1</u> Exhibit 1—Images) (Cobb, Ryan) (Entered: 06/30/2016)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/5/16	<u>21</u>	DEMAND for TRIAL BY JURY by plaintiff James King (Jaicomo, Patrick) (Entered: 07/05/2016)
7/7/16	<u>22</u>	RESPONSE TO REQUEST for pre-motion conference by defendant United States of America <u>12</u> filed by James King (Jaicomo, Patrick) Modified text on 7/8/2016 (pjw). (Entered: 07/07/2016)
7/7/16	<u>23</u>	RESPONSE TO REQUEST for pre-motion conference by defendants Douglas Brownback, Todd Allen <u>13</u> filed by James King (Jaicomo, Patrick) Modified text on 7/8/2016 (pjw). (Entered: 07/07/2016)
		* * * * *
8/17/16	<u>26</u>	MOTION for leave to file <i>First Amended Complaint</i> by plaintiff James King; (Attachments: # <u>1</u> Exhibit A) (Jaicomo, Patrick) (Entered: 08/17/2016)
8/17/16	<u>27</u>	BRIEF in support of MOTION for leave to file <i>First Amended Complaint</i> <u>26</u> filed by James King (Jaicomo, Patrick) (Entered: 08/17/2016)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
8/18/16	<u>29</u>	ORDER granting <u>26</u> motion for leave to file first amended complaint; the Clerk of Court shall accept for filing Plaintiff's proposed first amended complaint (Dkt 26-1); dismissing as moot pre-motion conference requests <u>12</u> , <u>13</u> , <u>17</u> ; cancelling 8/23/2016 pre-motion conference; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 08/18/2016)
8/18/16	<u>30</u>	AMENDED COMPLAINT against All Defendants filed by James King (pjw) (Entered: 08/19/2016)
		* * * * *
9/1/16	<u>35</u>	REQUEST for pre-motion conference by defendant United States of America by defendant United States of America; (Mazzocco (AUSA), Nicole) (Entered: 09/01/2016)
9/1/16	<u>36</u>	REQUEST for pre-motion conference by defendants Todd Allen, Douglas Brownback (Mazzocco (AUSA), Nicole) (Entered: 09/01/2016)
		* * * * *
9/8/16	<u>40</u>	RESPONSE TO REQUEST for pre-motion conference by defendant United States of America <u>35</u> ;

DATE	DOCKET NUMBER	PROCEEDINGS
		filed by James King (Jaicomo, Patrick) Modified text on 9/9/2016 (pjw). (Entered: 09/08/2016)
		* * * * *
9/8/16	<u>42</u>	RESPONSE TO REQUEST for pre-motion conference by defendants Todd Allen, Douglas Brownback <u>36</u> ; filed by James King (Jaicomo, Patrick) Modified text on 9/9/2016 (pjw). (Entered: 09/08/2016)
		* * * * *
9/22/16	<u>44</u>	MOTION to stay <i>Discovery</i> by defendants Todd Allen, Douglas Brownback, Connie Morris, United States of America; (Mazzocco (AUSA), Nicole) (Entered: 09/22/2016)
9/22/16	<u>45</u>	BRIEF in support of MOTION to stay <i>Discovery</i> <u>44</u> filed by Todd Allen, Douglas Brownback, Connie Morris, United States of America (Attachments: # <u>1</u> Exhibit 1—Plaintiff’s First Set of Discovery Requests) (Mazzocco (AUSA), Nicole) (Entered: 09/22/2016)
		* * * * *
10/3/16	<u>48</u>	RESPONSE in opposition to MOTION to stay <i>Discovery</i> <u>44</u>

DATE	DOCKET NUMBER	PROCEEDINGS
		filed by James King (Jaicomo, Patrick) (Entered: 10/03/2016)
10/4/16	<u>49</u>	MINUTES of pre-motion conference re <u>32</u> , <u>35</u> , <u>36</u> held before Judge Janet T. Neff; Order to issue; (Court Reporter: Kathy Anderson) (Judge Janet T. Neff, rmw) (Entered: 10/04/2016)
10/4/16	<u>50</u>	PRE-MOTION CONFERENCE ORDER setting forth the briefing schedule re anticipated dispositive motions <u>32</u> <u>35</u> <u>36</u> ; Defendants' motion to stay discovery <u>44</u> is GRANTED IN PART and DENIED IN PART; signed by Judge Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 10/04/2016)
		* * * * *
11/1/16	<u>55</u>	CERTIFICATE OF SERVICE by defendants Todd Allen, Douglas Brownback, United States of America <i>re: Federal Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents</i> (Mazzocco (AUSA), Nicole) (Entered: 11/01/2016)
		* * * * *
11/18/16	<u>57</u>	UNOPPOSED MOTION for leave to file excess pages by defendants Todd Allen, Douglas Brownback,

DATE	DOCKET NUMBER	PROCEEDINGS
		United States of America; (Attachments: # <u>1</u> Exhibit A—Federal Defs’ Br. (excl. exhibits)) (Mazzocco (AUSA), Nicole) (Entered: 11/18/2016)
		* * * * *
11/21/16	<u>60</u>	ORDER granting <u>57</u> unopposed motion to file brief in excess of 25 pages; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 11/21/2016)
		* * * * *
12/28/16	<u>68</u>	MOTION for leave to file excess pages by plaintiff James King; (Attachments: # <u>1</u> Exhibit 1) (Jaicomo, Patrick) (Entered: 12/28/2016)
		* * * * *
1/4/17	<u>70</u>	ORDER granting <u>68</u> unopposed motion to file response in excess of 25-page limit; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 01/04/2017)
1/17/17	<u>71</u>	MOTION to dismiss, or in the alternative, for summary judgment by defendants Todd Allen, Douglas Brownback, United States of America; (Cobb, Ryan) (Entered: 01/17/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
1/17/17	<u>72</u>	BRIEF in support of MOTION to dismiss, or in the alternative, for summary judgment <u>71</u> filed by Todd Allen, Douglas Brownback, United States of America (Attachments: # <u>1</u> Exhibit A—Medical Records) (Cobb, Ryan) (Entered: 01/17/2017)
1/17/17	<u>73</u>	EXHIBITS <i>Additional Exhibits to Brief in Support of Motion to Dismiss, or, Alternatively, for Summary Judgment re <u>71</u></i> by defendants Todd Allen, Douglas Brownback, United States of America (Attachments: # <u>1</u> Exhibit B—Trial Transcript Vols 2 and 3, # <u>2</u> Exhibit C—Burns Declaration, # <u>3</u> Exhibit D—Holland Declaration, # <u>4</u> Exhibit E—Kings Brief in Support of Motion to Dismiss Statement of Facts, # <u>5</u> Exhibit F—Pictures from Trial, # <u>6</u> Exhibit G—Preliminary Examination Waiver) (Cobb, Ryan) Modified text on 1/18/2017 (ems). (Entered: 01/17/2017)
1/17/17	<u>74</u>	RESPONSE TO MOTION to dismiss, or in the alternative, for summary judgment <u>71</u> filed by James King (Attachments: # <u>1</u> Exhibit 1—Criminal Trial Transcript Vol I 02-24-2015, # <u>2</u> Exhibit 2—

DATE	DOCKET NUMBER	PROCEEDINGS
		Criminal Trial Transcript Vol II 02-25-2015, # <u>3</u> Exhibit 3—Photo of Allen in black shirt, # 4 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 4—Crim Trial State Ex 1 Davison Driver’s Li- cence Photo, # 5 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 5—Crim Trial State Ex 2 Davison Facebook Photo, # <u>6</u> Exhibit 6— Place holder—Leah Buchanan By- stander Video, # <u>7</u> Exhibit 7— Place holder—Dashcam Video, # 8 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 8—King Felony Complaint, # <u>9</u> Exhibit 9—Photos, # 10 (STRICKEN and R EMOVED per Order <u>87</u>) Exhibit 10 —Davison Warrant, # 11 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 11—FBI Memo Open EC Davison, # <u>12</u> Exhibit 12 —Allen Time Card, # 13 (STRIC- KEN and REMOVED per Order <u>87</u>) Exhibit 13—GRPD Incident King and Use of Force Reports, # 14 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 14—GRPD Incident Davison, # <u>15</u> Exhibit 15 —FBI Fugitive Policy Implementation Guide, # 16 (STRICKEN and REMOVED per

DATE	DOCKET NUMBER	PROCEEDINGS
		Order <u>87</u>) Exhibit 16—SF-95 FTCA Claim Form, # <u>17</u> Exhibit 17—Place holder—Dashcam In-car-video 674390, # <u>18</u> Exhibit 18—Place holder—Buchanan 911 Audio, # <u>19</u> Exhibit 19—Place holder—Buchanan Police Interview Audio, # <u>20</u> Exhibit 20—Probable Cause Affidavit HL, # 21 (STRICKEN and REMOVED per Order <u>87</u>) Exhibit 21—FBI report HL) (Jaicomo, Patrick) Modified text on 1/18/2017 (ems). Modified text per Order <u>87</u> on 1/23/2017 (mla) (Entered: 01/17/2017)
		* * * * *
1/17/17	<u>79</u>	JOINT STATEMENT of material facts re MOTION to dismiss, or in the alternative, for summary judgment <u>71</u> (Cobb, Ryan) (Entered: 01/17/2017)
		* * * * *
1/17/17	<u>82</u>	CORRECTED MOTION for leave to file excess pages <i>Corrected Unopposed Motion for Enlargement of Page Limits for Reply Brief</i> by defendants Todd Allen, Douglas Brownback, United States of America; (Attachments: # <u>1</u> Proposed

DATE	DOCKET NUMBER	PROCEEDINGS
		Document Reply Brief, # <u>2</u> Exhibit A—Trial Transcripts, # <u>3</u> Exhibit B—Plaintiff’s Initial Disclosures, # <u>4</u> Exhibit C—E-mail, # <u>5</u> Exhibit D—King Record, # <u>6</u> Exhibit E—Hearing Transcript) (Mazzocco (AUSA), Nicole) Modified text on 1/18/2017 (ems). (Entered: 01/17/2017)
1/18/17	<u>83</u>	LETTER with a disc from attorney Patrick Michael Jaicomo regarding <u>74</u> , <u>80</u> ; paper file created (ns) Modified text on 1/20/2017 (ns). (Entered: 01/20/2017)
1/20/17	<u>84</u>	UNOPPOSED MOTION to strike <i>and Remove Certain Exhibits</i> by plaintiff James King; (Jaicomo, Patrick) (Entered: 01/20/2017)
1/20/17	<u>85</u>	BRIEF in support of UNOPPOSED MOTION to strike <i>and Remove Certain Exhibits</i> <u>84</u> filed by James King (Jaicomo, Patrick) (Entered: 01/20/2017)
		* * * * *
1/23/17	<u>87</u>	ORDER granting <u>84</u> unopposed motion to strike and remove; the Clerk of Court is directed to strike and remove Dkts 74-4, 74-5, 74-8, 74-10, 74-11, 74-13, 74-14, 74-16, 74-21, 80-4, 80-5, 80-8, 80-10, 80-11, 80-13, 80-14, 80-16, 80-21; signed

DATE	DOCKET NUMBER	PROCEEDINGS
		by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 01/23/2017)
1/24/17	<u>88</u>	EXHIBIT re <u>80</u> , <u>74</u> by plaintiff James King (Attachments: # <u>1</u> Exhibit 04—Crim Trial State Ex 1 Davison Driver's License Photo, # <u>2</u> Exhibit 05—Crim Trial State Ex 2 Davison Facebook Photo, # <u>3</u> Exhibit 08—King Felony Complaint, # <u>4</u> Exhibit 10—Davison Warrant, # <u>5</u> Exhibit 11—FBI Memo Open EC Davison, # <u>6</u> Exhibit 13—GRPD Incident King and Use of Force Reports, # <u>7</u> Exhibit 14—GRPD Incident Davison, # <u>8</u> Exhibit 16—SF-95 FTCA Claim Form, # <u>9</u> Exhibit 21—FBI Report HL) (Jaicomo, Patrick) (Entered: 01/24/2017)
2/6/17	<u>89</u>	ORDER granting <u>82</u> motion for leave to file excess pages; signed by Judge Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 02/06/2017)
2/6/17	<u>90</u>	REPLY to response to motion <u>71</u> filed by Todd Allen, Douglas Brownback, United States of America (Attachments: # <u>1</u>

DATE	DOCKET NUMBER	PROCEEDINGS
		Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E) (pjw) (Entered: 02/07/2017)
8/24/17	<u>91</u>	OPINION AND ORDER granting <u>71</u> motion to dismiss or in the alternative for summary judgment; granting <u>77</u> motion to dismiss; Judgment to issue; signed by Judge Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 08/24/2017)
8/24/17	<u>92</u>	JUDGMENT in accordance with the Opinion and Order in favor of Defendants and against Plaintiff; signed by Judge Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 08/24/2017)
9/12/17	<u>93</u>	NOTICE OF APPEAL re <u>92</u> by plaintiff James King (Jaicomo, Patrick) Modified text on 9/13/2017 (pjw). (Entered: 09/12/2017)
		* * * * *
1/31/18	<u>96</u>	TRANSCRIPT of Premotion Conference Proceedings held October 4, 2016 before Honorable Janet T. Neff; NOTE: this transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the release of transcript restriction date; after that date it may be obtained through PACER;

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>under the <u>Policy Regarding Transcripts</u> the parties have 14 days within which to file a Notice of Intent to redact, and 21 days within which to file a Redaction Request; if no Transcript Redaction Request is filed, the court will assume redaction of personal identifiers is not necessary and this transcript will be made available via PACER after the release of transcript restriction set for 5/1/2018; redaction request due 2/21/2018 (Court Reporter-Transcriptionist: Anderson, Kathy (616) 914-2384) (Entered: 01/31/2018)</p> <p>* * * * *</p>
2/25/19	<u>98</u>	<p>SLIP OPINION of USCA re appeal <u>93</u> and <i>JUDGMENT</i> filed; <i>the district court's findings that the Federal Tort Claims Act judgment bar precludes plaintiff's remaining claims, and that defendants are entitled to qualified immunity are reversed, its judgment in favor of defendants is vacated, and the case is remanded for further proceedings consistent with the opinion of this court; mandate to issue</i> (pjw) (Entered: 02/26/2019)</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
6/5/19	<u>100</u>	MANDATE of USCA re appeal <u>93</u> (pjw) (Entered: 06/06/2019)
6/6/19	<u>101</u>	ORDER: Defendants' answer to the amended complaint <u>30</u> is due not later than 6/27/2019; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 06/06/2019)
6/20/19	<u>102</u>	MOTION to stay <i>Pending Application for Writ of Certiorari, Expedited Consideration Requested</i> by defendants Todd Allen, Douglas Brownback, United States of America; (Cobb, Ryan) (Entered: 06/20/2019)
6/20/19	<u>103</u>	BRIEF in support of MOTION to stay <i>Pending Application for Writ of Certiorari, Expedited Consideration Requested</i> <u>102</u> <i>Expedited Consideratin Requested</i> filed by Todd Allen, Douglas Brownback, United States of America (Attachments: # <u>1</u> Exhibit 1—Order on Motion to Stay in 1:18-cr-00066-GJQ USA v. McElrath 11-13-2018—544896220, # <u>2</u> Exhibit 2—Petition for Rehearing En Banc, # <u>3</u> Exhibit 3—Appellees Brief) (Cobb, Ryan) (Entered: 06/20/2019)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
6/24/19	<u>106</u>	ORDER granting <u>102</u> motion to stay; administratively closing the case pending resolution of Defendants' petition for certiorari to the Supreme Court; adjourning without date the deadline for Defendants' answer to the amended complaint; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 06/24/2019)
7/2/19	<u>107</u>	MOTION for reconsideration re <u>106</u> by plaintiff James King; (Portinga, D.) (Entered: 07/02/2019)
7/2/19	<u>108</u>	BRIEF in support of MOTION for reconsideration re <u>106</u> <u>107</u> filed by James King (Portinga, D.) (Entered: 07/02/2019)
		* * * * *
7/17/19	<u>111</u>	RESPONSE in opposition to MOTION for reconsideration re <u>106</u> <u>107</u> filed by Todd Allen, Douglas Brownback (Cobb, Ryan) Modified text and filers on 7/18/2019, per ECF Help Desk call (jlg) (Entered: 07/17/2019)
		* * * * *
7/23/19	<u>113</u>	ORDER denying <u>107</u> motion for reconsideration; signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
		Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 07/23/2019)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:16-cv-00343

JAMES KING, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DOUGLAS
BROWNBACK, TODD ALLEN, AND CONNIE MORRIS,
DEFENDANTS

Aug. 17, 2016

FIRST AMENDED COMPLAINT

Hon. JANET T. NEFF, United States District Judge

James King states the following First Amended Complaint against the United States of America, Douglas Brownback, Todd Allen, and Connie Morris:

The Parties

1. Plaintiff James King is a resident of Grand Rapids, Michigan.
2. Defendant Douglas Brownback is employed as a special agent by the FBI.
3. Defendant Todd Allen is employed as a police detective by the Grand Rapids Police Department.
4. Defendant Connie Morris is employed as a police officer by the Grand Rapids Police Department.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1346(b) because this dispute arises out under the Constitution and laws of the United States and involves a claim against the United States.

6. On September 14, 2015, James, through counsel, submitted an administrative claim on Standard Form 95 to the FBI under the Federal Tort Claims Act.

7. The FBI did not respond to the claim within six months and, as such, it was deemed denied on March 14, 2016. 28 U.S.C. § 2675(a).

8. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1402(b) because the events giving rise to this action occurred in this district.

Facts

9. James King is a 23-year-old, who came to Grand Rapids from Alpena to study computer science at Grand Valley State University.

10. During the summer of 2014, James worked two jobs, one installing DSL cable for Moss Telecommunications and the other working for the Greek Group, a local science education non-profit.

11. In the afternoon of Friday, July 18, 2014, James was walking down Leonard Street toward his job at the Geek Group.

12. He had worked at Moss that morning and had gone home for lunch. After lunch, he left for his next job.

13. As James was walking, he came upon two men who were leaning against a black SUV near Tamarack Avenue.

14. One of these men was Todd Allen, an undercover Grand Rapids police detective.

15. The other was Douglas Brownback, an undercover FBI agent.

16. Both Allen and Brownback were in plain clothes; they were not uniformed; both were unshaven and wearing jeans and baseball hats; Allen was wearing sunglasses.

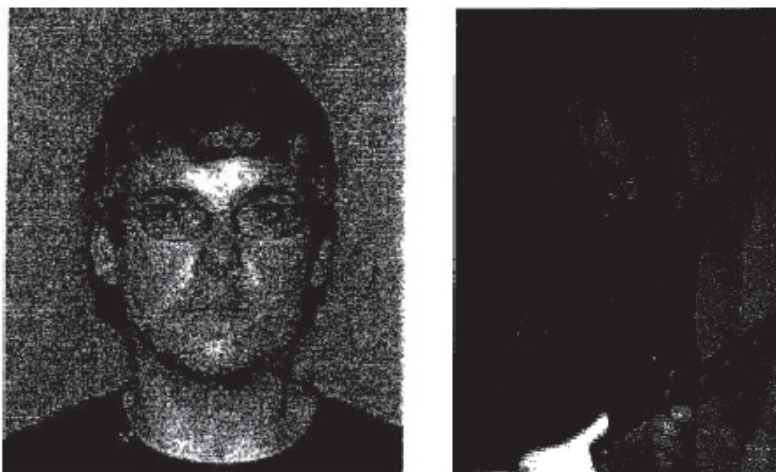
17. Unknown to James, Allen and Brownback were members of a joint fugitive task force between the FBI and the City of Grand Rapids and tasked with operating in West Michigan.

18. They were looking for a fugitive named Aaron Davison.

19. Davison was wanted for home invasion and had been seen in the area the previous day.

20. The description of Davison from which Allen and Brownback were working was very broad. They knew only that Davison was a 26-year-old white male with glasses between 5'10" and 6'3" tall.

21. Allen and Brownback had a seven-year-old driver's license photo of Davison and a more recent Facebook photo, where Davison's face was not visible.



22. Allen and Brownback did not find Davison on July 18, 2014, but they did find James.



23. James was five years younger than Davison and did not bear a resemblance to either photograph of Davison.

24. Allen and Brownback determined, however, that James matched Davison's description because James was a white male with glasses and between 5'10" and 6'3" tall.

25. Allen and Brownback were wearing lanyards with badges.

26. But James could not see what the badges were.

27. Neither Allen nor Brownback identified himself as a law enforcement officer to James.

28. James did not know that Allen and Brownback were law enforcement officers.

29. Allen asked James who he was.

30. James simply replied, "James."

31. Allen then asked James for identification.

32. James said that he did not have any.

33. Brownback then went behind James so that Allen was beside James and Brownback was behind him.

34. Brownback patted James's pants and asked him why he had a wallet.

35. Allen and Brownback then told James to get against the unmarked SUV and put his hands behind his head.

36. James initially complied.

37. Allen and Brownback both later stated under oath that, at that point, they had seized James—he was not free to leave; he was under arrest.

38. Allen and Brownback both also stated under oath that they decided to arrest James because he did not produce identification or answer their questions.

39. Allen removed James's wallet.

40. James turned his head around to see what was happening, but one of the men shoved James's face back toward the SUV.

41. At that point, James believed he was being mugged and asked, "Are you mugging me?"

42. Rather than answer, Brownback grabbed James's arm.

43. James turned and ran.

44. He made it about three steps before Allen and Brownback tackled him to the ground.

45. James yelled for help, begging for passersby to call the police.

46. As Brownback restrained James, Allen put him in a chokehold from behind.

47. Allen choked James unconscious.

48. When he regained consciousness, in a panicked attempt to save his own life, James bit Allen in the arm that was still around James's neck.

49. Allen then started beating James in the head and face "as hard as I could, as fast as I could, and as many times as I could."

50. James continued screaming for help and for someone to call the police.

51. Several bystanders called the police.

52. Uniformed officers eventually arrived.

53. The bystanders stated that they did not know that Allen and Brownback were law enforcement officers.

54. One of the bystanders took video on her phone. The video does not show the beating, but it shows the aftermath, including the following exchanges:

Bystander 1: I know, they were pounding him.
[0:04]

Officer: Todd, you alright? [0:18]

Bystander 1: No, he's not alright, they were
pounding him in the head. [0:20]

* * *

Bystander 1: . . . [T]hey were literally pound-
ing him in the head . . . They
were out of control, pounding him.
[0:47]

* * *

Bystander 2: Yeah, they was fucking him up.
[1:02]

Bystander 1: They were pounding his head for no
reason. They were being brutal.
[1:03]

Bystander 2: They was beating him up. . . .
[1:07]

55. After uniformed officers arrived, the dashboard cameras on their squad cars picked up the following statements through their lapel microphones:

Bystander 1: I was right there. I mean, they were literally pounding him in the head though. [Video # 674541 at 3:09]

* * *

Officer: Do you have any weapons on you at all? [3:34]

James: No sir, I thought they were trying to mug me. [3:37]

* * *

Officer: Send another ambulance. [3:57]

James: Please guys, is he a real police? [3:59]

Officer: Stay on your stomach; stay on your stomach . . . We've got an ambulance coming for you, okay? [4:01]

* * *

Bystander 1: They're all calling, "call the police; call the police." So, I was on the phone with 911 saying this guy was getting his face pounded. [5:47]

Officer: He didn't know who these guys were? [5:54]

Bystander 2: No, he didn't know who they were until we came across the street.

And I was like, “Why y’all doing that?” . . . and he threw out his wallet . . . and he showed us that it was FBI—threw his wallet out on the ground . . . [5:56]

Bystander 1: We saw no cars around that even looked remotely like a police car . . . [6:15]

Bystander 2: But he did; he threw his wallet out after I asked him why was they doing it to him, and he said that he was FBI. [6:24]

* * *

Bystander 1: I was on the phone with 911 like “there’s these two guys pounding this guy and everybody is screaming, ‘Call 911!’” . . . [6:49]

* * *

Bystander 1: I do understand at times there needs to be excessive force. But he was pounding him, I mean pounding. Before we knew they were undercover, we thought they were going to kill him; they were bad. [Video # 674390 at 5:19]

56. Among the uniform officers who arrived on the scene was Grand Rapids Police Officer Connie Morris.

57. Morris ordered several bystanders to delete any video of the event, telling them:

No, no, no, we got undercover officers there. No pictures. Delete it. Delete it. It's for the safety of the officers. Everybody has cameras . . . All we used to do was tell the story; we didn't have a picture to tell the story with, right? Did you delete it? . . . We don't need no pictures.

58. Morris confirmed that at least two bystanders deleted video of the event.

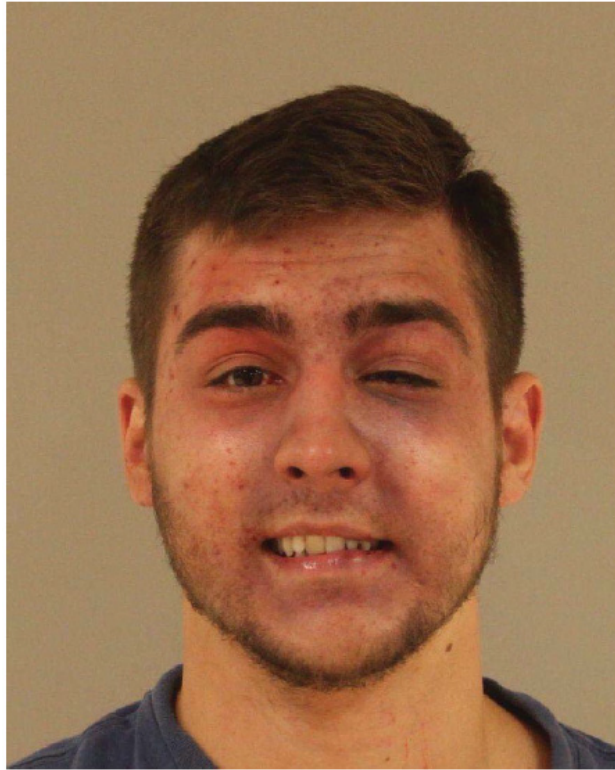
59. Because of Morris's actions, no video of the actual struggle between Allen and Brownback and James was ever discovered; only the aftermath remains.

60. James was transported from the scene to the emergency room, where he was given a CT scan.

61. Eventually, the police realized James was not the sought-after fugitive, Davison.

62. Instead of releasing James, however, police took him from the hospital to the Kent County Jail and booked him for assault with intent to do great bodily harm, aggravated assault of a police officer, and resisting arrest.

63. James's booking photo shows the severe swelling on his face as a result of the beating:

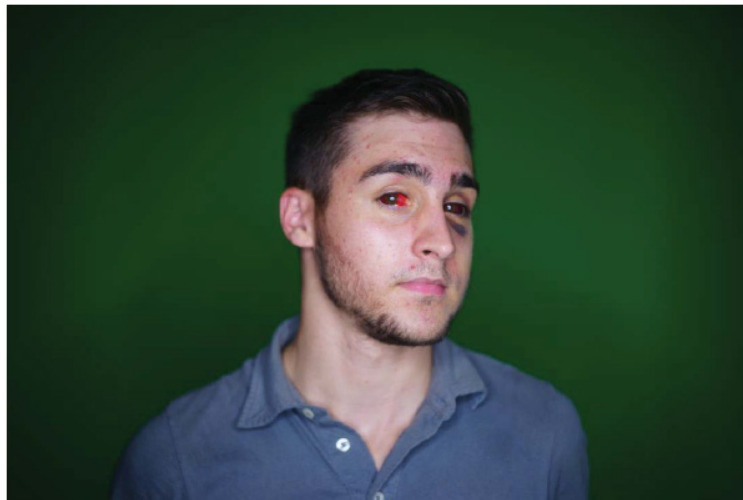


64. Because James was booked on a Friday, he spent the entire weekend in jail and was only allowed to leave his cell for meals.

65. James was released on bond the following Monday, after his parents posted bail.

66. Upon his release, James visited another hospital for further examination.

67. By that time, much of the swelling had gone down, but the whites of his eyes had turned almost entirely black and red:





68. Owing to the false and misleading statements of Allen and Brownback and the lack of video evidence to the contrary due to the actions of Morris, the prosecutor proceeded with charges against James and tried him for assaulting a police officer and causing injury (Allen), assaulting a police officer (Brownback), and assault with a dangerous weapon (for the handcuffs that Allen or Brownback was able to clasp to one of James's wrists while James was trying to escape).

69. If convicted of those felonies, James faced many years in prison.

70. James and his family spent their life savings on legal counsel to defend James.

71. Following a jury trial, James was acquitted of all charges.

72. As a result of Allen, Brownback, and Morris's actions, James was forced to drop out of Grand Valley State University.

**Count I – Violation of Rights Secured by the
Fourth Amendment**

(42 U.S.C. § 1983 – Defendants Brownback and Allen)

73. Plaintiff incorporates by reference the preceding allegations of his Complaint.

74. All of the actions taken by Brownback and Allen and referred to in the preceding allegations were done while acting under color of Michigan law—investigating a fugitive wanted under a state-law warrant—and caused the deprivation of James's clearly-established constitutional rights under the Fourth Amendment of the United States Constitution, including his:

- a. Freedom from unreasonable seizure;
- b. Freedom from unreasonable searches;
- c. Freedom from the use of excessive force;
and
- d. Freedom from malicious prosecution.

75. Brownback and Allen's actions were intentional, knowing, malicious, undertaken in bad faith, and/or in gross and reckless disregard of James's constitutional rights.

76. As a direct and proximate result of the violation of his constitutional rights by Brownback and Allen, James suffered significant damages and is entitled to relief under 42 U.S.C. § 1983.

77. James's damages include pain and suffering, emotional and mental harms, legal expenses, lost wages,

diminished future earning potential and medical expenses.

78. James seeks all relief allowed by law, including compensatory damages, punitive damages, and reasonable attorney fees.

**Count II – Violation of Rights Secured by the
Fourth Amendment**

(Bivens – Defendants Brownback and Allen)

79. Plaintiff incorporates by reference the preceding allegations of his Complaint.

80. In the alternative, all of the actions taken by Brownback and Allen and referred to in the preceding allegations were done while acting in their capacity as federal agents and caused the deprivation of James's clearly-established constitutional rights under the Fourth Amendment of the United States Constitution, including:

- a. Freedom from unreasonable seizure;
- b. Freedom from unreasonable searches;
- c. Freedom from the use of excessive force;
and
- d. Freedom from malicious prosecution.

81. Brownback and Allen's actions were intentional, malicious, and/or in gross and reckless disregard of James's constitutional rights.

82. As a direct and proximate result of the violation of his constitutional rights by Brownback and Allen, James suffered significant damages and is entitled to re-

lief under *Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).

83. James's damages include pain and suffering, emotional and mental harms, legal expenses, lost wages, diminished future earning potential, and medical expenses.

84. James seeks all relief allowed by law, including compensatory damages, punitive damages, and reasonable attorney fees.

**Count III – Violation of Rights Secured by the
Fourth Amendment**

(42 U.S.C. § 1983 – Defendant Morris)

85. Plaintiff incorporates by reference the preceding allegations of his Complaint.

86. All of the actions taken by Morris and referred to in the preceding allegations were done while acting under color of Michigan law and had the effect of depriving James of his clearly-established constitutional rights under the Fourth Amendment of the United States Constitution, including his freedom from malicious prosecution.

87. Morris's actions were intentional, malicious, undertaken in bad faith, and/or in gross and reckless disregard of James's constitutional rights.

88. As a direct and proximate result of the violation of his constitutional rights by Morris, James suffered significant damages and is entitled to relief under 42 U.S.C. § 1983.

89. James's damages include pain and suffering, emotional and mental harms, legal expenses, lost wages, diminished future earning potential, and medical expenses.

90. James seeks all relief allowed by law, including compensatory damages, punitive damages, and reasonable attorney fees.

Count IV – Federal Tort Claims Act
(Defendant United States of America)

91. Plaintiff incorporates by reference the preceding allegations of his Complaint.

92. Brownback is an employee of the FBI.

93. Allen is a member of a federal task force.

94. All of the actions taken by Brownback and Allen and referred to in the preceding allegations were done while acting on behalf of a federal agency in an official capacity.

95. Brownback and Allen's actions caused personal injury to James.

96. Brownback and Allen's actions amount to multiple torts recognized by Michigan law, including:

- a. Assault;
- b. Battery;
- c. False Arrest;
- d. False Imprisonment;
- e. Malicious Prosecution; and
- f. Intentional Infliction of Emotional Distress.

97. Brownback and Allen's actions were intentional, malicious, undertaken in bad faith, and/or in gross and reckless disregard of James's constitutional rights.

98. James submitted, through counsel, an administrative claim in writing to the FBI and it has been deemed denied by the FBI's failure to issue a decision within six months; James's administrative claims are, therefore, exhausted.

Prayer for Relief

WHEREFORE, Plaintiff seeks a judgment awarding him compensatory and punitive money damages against Brownback, Allen, and Morris, and compensatory money damages against the United States of America. James also seeks his attorney fees in bringing this action as well as any other relief that this Court deems appropriate.

MILLER JOHNSON
Attorneys for Plaintiff

Dated: Aug. 17, 2016

By s/ Patrick M. Jaicomo
D. Andrew Portinga (P55804)
Patrick M. Jaicomo (P75705)

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:16-cv-343

JAMES KING, PLAINTIFF

v.

TODD ALLEN, ET AL., DEFENDANTS

Filed: Oct. 4, 2016

ORDER

The Court having conducted a Pre-Motion Conference with counsel on October 4, 2016 concerning Defendants' proposed dispositive motions (Dkts 32, 35 & 36):

IT IS HEREBY ORDERED that the parties shall proceed with briefing the dispositive motion proposed by Defendant Morris (Dkt 32) in accordance with the following schedule:

- (1) Defendant's Motion and Brief, specifying the Federal Rule of Civil Procedure applicable to each issue presented, shall be served and a proof of service filed not later than November 18, 2016;
- (2) Plaintiff's Response shall be served and a proof of service filed within 28 days of service of the Motion;

- (3) Defendant's Reply, if any, shall be served and a proof of service filed within 14 days of service of the Response; and
- (4) The parties shall electronically file their respective motion papers as soon as the motion is fully briefed.

IT IS FURTHER ORDERED that the parties shall also proceed with briefing the dispositive motion proposed by Defendants Allen, Brownback and the United States (Dkts 35 & 36) in accordance with the following schedule:

- (1) Defendants' Motion and Brief, specifying the Federal Rule of Civil Procedure applicable to each issue presented, shall be served and a proof of service filed not later than November 18, 2016;
- (2) Plaintiff's Response shall be served and a proof of service filed within 28 days of service of the Motion;
- (3) Defendants' Reply, if any, shall be served and a proof of service filed within 14 days of service of the Response; and
- (4) The parties shall electronically file their respective motion papers as soon as the motion is fully briefed.

IT IS FURTHER ORDERED that the parties shall adhere to this Court's February 9, 2016, Administrative Order No. 16-MS0-017 when referencing a page of the record.

IT IS FURTHER ORDERED that the parties shall otherwise adhere to the requirements for briefing and

filing dispositive motions, as set forth in Judge Neff's Information and Guidelines for Civil Practice, available on the Court's website (www.miwd.uscourts.gov), paying particular attention to the "Joint Statement of Material Facts and Joint Exhibits" requirement for summary judgment motions.

IT IS FURTHER ORDERED, for the reasons stated on the record, that Defendants' Motion to Stay Discovery (Dkt 44) is **GRANTED IN PART** and **DENIED IN PART**, and counsel is directed to collaborate and produce discovery not later than November 1, 2016, or file a motion to compel production of discovery not later than November 8, 2016.

Dated: Oct. 4, 2016 /s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:16-cv-00343

JAMES KING, PLAINTIFF

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Filed: Nov. 1, 2016

CERTIFICATE OF SERVICE

Hon. JANET T. NEFF
United States District Judge

The undersigned hereby certifies that on November 1, 2016, she caused to be mailed copies of **FEDERAL DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, and discs bearing Bates numbers KING-000009 & KING-000010, KING-000022 & KING-000023**, via Federal Express in the above-captioned matter to:

D. Andrew Portinga
Patrick M. Jaicomo
MILLER JOHNSON
45 Ottawa Avenue SW, Suite 1100
Grand Rapids, MI 49503

Kristen Rewa
Patrick J. Lannen
Lindsay A. Bondy
City of Grand Rapids
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Grand Rapids, MI
49503

She also caused to be sent a copy of files bearing Bates numbers KING-000001-KING000364, KING-000020-KING-000021 and KING-000183, via Secure Electronic Transfer, in the above-captioned matter to:

<p><u>Via USAF:</u> D. Andrew Portinga Patrick M. Jaicomo MILLER JOHNSON 45 Ottawa Avenue SW, Suite 1100 Grand Rapids, MI 49503</p> <p>In Care of: Heather A. Root RootH@millerjohnson.com</p>	<p><u>Via USAF:</u> Kristen Rewa Patrick J. Lannen Lindsay A. Bondy City of Grand Rapids 300 Monroe Ave. NW, Ste. 620 Grand Rapids, MI 49503</p> <p>In Care of: Susan Love slove@grand-rapids.mi.us</p>
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PATRICK A. MILES, JR.
United States Attorney

Dated: Nov. 1, 2016

/s/ Nicole L. Mazzocco
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:16-cv-00343

JAMES KING, PLAINTIFF

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Filed: Jan. 17, 2017

**JOINT STATEMENT OF MATERIAL FACTS
IN CONNECTION WITH DEFENDANTS'
MOTIONS TO DISMISS OR FOR SUMMARY JUDGMENT**

Hon. JANET T. NEFF
United States District Judge

Pursuant to the Information and Guidelines for Civil Practice before the Honorable Janet T. Neff, United States District Judge, the parties submit the following undisputed material facts in connection with the Defendants' Motions to Dismiss or for Summary Judgment:¹

1. James King is a 23-year-old, who came to Grand Rapids from Alpena to study computer science at Grand Valley State University.

¹ Defendants recognize the standard of review involved in their motions, and stipulate to the facts herein only for the purposes of these motions.

2. During the summer of 2014, James worked two jobs, one installing DSL cable for Moss Telecommunications and the other working for the Greek Group, a local science education non-profit.

3. In the afternoon of Friday, July 18, 2014, James was walking down Leonard Street toward his job at the Geek Group.

4. He had worked at Moss that morning and had gone home for lunch. After lunch, he left for his next job.

5. As James was walking, he came upon two men who were leaning against a black SUV near Tamarack Avenue.

6. One of these men was Todd Allen, a Grand Rapids police detective.

7. The other was Douglas Brownback, an FBI agent.

8. Both Allen and Brownback were in plain clothes; they were not uniformed; both were wearing baseball hats; Allen was wearing jeans and sunglasses.

9. Unknown to James, Allen and Brownback were members of a fugitive task force operating in West Michigan.

10. They were looking for a fugitive named Aaron Davison.

11. Davison was wanted for home invasion and had been seen in the area the previous day.

12. Allen and Brownback knew that Davison was a 26-year-old white male with glasses and he was between 5'10" and 6'3" tall.

13. Allen and Brownback had a seven-year-old driver's license photo of Davison and a more recent Facebook photo, where Davison's face was not visible.

14. Allen and Brownback did not find Davison on July 18, 2014, but they did find James.

15. James was five years younger than Davison.

16. Allen and Brownback determined that James matched Davison's description.

17. Allen and Brownback were wearing lanyards with badges.

18. Allen asked James who he was.

19. James simply replied, "James."

20. Allen then asked James for identification.

21. James said that he did not have any.

22. One of the men patted James's pants.

23. Allen and Brownback then told James to get against the unmarked SUV and put his hands behind his head.

24. James initially complied.

25. Allen removed James's wallet.

26. At that point, James asked, "Are you mugging me?"

27. James attempted to run.

28. He was tackled to the ground.

29. James yelled for help, begging for passersby to call the police.

30. James bit Allen in the arm that was around James's neck.

31. Allen then started punching James in the head and face "as hard as I could, as fast as I could, and as many times as I could."

32. James continued screaming for help and for someone to call the police.

33. Several bystanders called the police.

34. Uniformed officers eventually arrived.

35. One of the bystanders took video on her phone. The video does not show the struggle, but it does contain bystander statements.

36. Among the uniformed officers who arrived on the scene was Grand Rapids Police Officer Connie Morris.

37. Morris ordered several bystanders to delete any video of the event.

38. No video of the actual struggle between Allen and Brownback and James was ever discovered; only the aftermath remains.

39. James was transported from the scene to the emergency room, where he was given a CT scan.

40. Eventually, the police realized James was not the sought-after fugitive, Davison.

41. Police took James from the hospital to the Kent County Jail and booked him on charges relating to the incident.

42. James spent the weekend in jail and was only allowed to leave his cell for meals.

43. James was released on bond the following Monday, after his parents posted bail.

44. Upon his release, James visited another hospital for further examination.

45. By that time, much of the swelling had gone down, but the whites of his eyes had turned almost entirely black and red.

46. The prosecutor proceeded with charges against James.

47. Following a jury trial, James was acquitted of all charges.

Dated: Jan. 17, 2017

/s/ Ryan D. Cobb
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Dated: Jan. 17, 2017

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Dated: Jan. 17, 2017

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