

ORIGINAL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA


FILED
U.S. DIST COURT
MIDDLE DIST. OF LA

SHANNON KOHLER

CIVIL ACTION NO. 03-857 ^{2004 JAN 21 P 3: 17}

VERSUS

SECTION: D

SIGN _____
BY DEPUTY CLERK 

PAT ENGLADE, ELMER LITCHFIELD,
DETECTIVE CHRISTOPHER JOHNSON,
CITY OF BATON ROUGE, PARISH OF
EAST BATON ROUGE

MAGISTRATE: 2
DEFENDANTS REQUEST
TRIAL BY JURY


ANSWER

NOW INTO COURT, through undersigned counsel, come defendants, City of Baton Rouge, Pat Englade, and Christopher Johnson, who for response to plaintiff's complaint deny each and every allegation contained therein except those that may be hereinafter admitted as follows:

FIRST DEFENSE - FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Plaintiff's complaint fails to state a claim upon which relief can be granted because there are insufficient factual allegations showing that defendants violated any of plaintiff's civil rights under the United States Constitution, or applicable federal law.

A violation of plaintiff's state created civil rights or liberties does not state a claim upon which relief can be granted by this Court.

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SECOND DEFENSE - NO CONSTITUTIONAL DEPRIVATION OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

Defendants did not deprive plaintiff of any vested liberty or property interests in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Plaintiff received all the process that was due him.

THIRD DEFENSE - NO FOURTH AMENDMENT EXCESSIVE FORCE VIOLATION

Defendants did not use any force which was unnecessary or excessive under the circumstances or which rises to the level of a constitutional violation.

In the alternative, if force was used against plaintiff, then the only force used was that force reasonably necessary for defendants to bring plaintiff under control in order to protect the life and safety of plaintiff, and all others present and to maintain the security of the situation. It did not constitute any unnecessary and wanton infliction of pain.

FOURTH DEFENSE - ABSOLUTE AND/OR QUALIFIED IMMUNITY

In the alternative, if any defendant is found by the Court to have violated plaintiff's civil rights, then each such defendant is immune from a judgment for damages because each defendant acted at all times reasonably and in good faith and in accordance with federal and state law and police department rules and regulations. Defendant's conduct did not violate any clearly established constitutional or statutory rights of plaintiff of which a reasonable person would have known. Said defendants further show that their beliefs in the lawfulness of their actions was a reasonable belief and for that reason they are entitled to absolute and/or qualified immunity from liability under the provisions of Title 42 USC 1983.

FIFTH DEFENSE - COMPARATIVE FAULT

In the alternative, if any defendant is found to have violated plaintiff's rights and is not entitled to the defense of qualified immunity, then plaintiff through intentional or negligent acts and failure to act as a reasonable person, contributed to his own injuries or damages.

SIXTH DEFENSE - FAILURE TO MITIGATE DAMAGES

The plaintiff has failed to mitigate his damages.

SEVENTH DEFENSE - DENIAL OF RELIEF PRAYED FOR

Plaintiff is not entitled to injunctive, declaratory, or monetary relief.

Plaintiff is not entitled to attorney fees under 42 U.S.C. 1988.

IN FURTHER ANSWER:

1.

The allegations contained in paragraphs 15,22, and 23 are denied.

2.

The allegations contained in paragraphs 1,5,8,9,20,21,and 24 are denied for lack of sufficient information to justify a reasonable belief therein.

3.

The allegations contained in paragraph 4 are admitted.

4.

The allegations contained in paragraphs 6,7,10,12,13,14,17,18, and 19 are denied and denied as written.

5.

The allegations contained in paragraph 3 are admitted except to deny that Parish of East Baton Rouge is the employer of Elmer Litchfield, Sheriff of East Baton Rouge Parish.

6.

For answer to the allegations contained in paragraph 11, it is admitted that a search warrant was obtained from the Nineteenth Judicial District Court but it is denied that the search warrant lacked probable cause.

7.

The allegations contained in paragraph 16 are denied in that they state there was a lack of probable cause to support the warrant.

8.

Defendants specifically deny any and all relief prayed for by the plaintiff.

WHEREFORE, defendants, City of Baton Rouge, Pat Englade, and Christopher Johnson, pray that judgment be rendered in favor of defendants, City of Baton Rouge, Pat Englade, and Christopher Johnson,, dismissing plaintiff's complaint at his cost and awarding reasonable expenses, including attorney's fees, to defendants.

By Attorneys:

Michael E. Ponder
Parish Attorney

A handwritten signature in black ink, appearing to read 'James L. Hilburn', is written over a horizontal line. The signature is stylized with a large loop on the left and a sharp peak on the right.

James L. Hilburn, T.A. (#20221)
Special Assistant Parish Attorney
10500 Coursey Blvd., Suite 205
Baton Rouge, LA 70816
Telephone: (225) 389-8730


CERTIFICATE

I hereby certify that a copy of the foregoing has this day been mailed, postage prepaid to:

Dennis R. Whalen
Attorney at Law
200 Lafayette Street, Suite 500
Baton Rouge, Louisiana 70801

Leu Anne Greco, Esq.
GRECO & GRECO
522 Europe Street
Baton Rouge, Louisiana 70802

BATON ROUGE, LOUISIANA, this 21st day of January, 2004.



JAMES L. HILBURN