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Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

CHARLES F. BARRETT,	)
	)
Plaintiff,	)
	)
vs.	)
	)
DEE BURGIN, in his individual capacity, JEFF D. WOOD, Sheriff of Edgar County, in his official capacity and COUNTY OF EDGAR, ILLINOIS, a municipal corporation,	)
	)
Defendants.	)

COMPLAINT

Plaintiff, by counsel, alleges as follows:

1. This is a civil action arising under the First and Fourth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1988, 740 ILCS 24/5(a) and the Common Law of Illinois. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, and supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

2. This judicial district is an appropriate venue under 28 U.S.C. § 1391(b) because the events giving rise to the suit happened in this judicial district.

PARTIES

3. Plaintiff Charles F. Barrett is a citizen of the United States and a resident of Edgar County, Illinois.

4. Defendant Dee Burgin was, at all times relevant, a sheriff's deputy employed by the Sheriff of the County of Edgar, Illinois. He is sued in his individual

capacity and at all times relevant hereto he was acting under color of state law and within the scope of his employment as an Edgar County Sheriff Deputy.

5. Defendant Jeff D. Wood is sued in his official capacity as the Sheriff of Edgar County, Illinois.

6. Defendant County of Edgar, Illinois is sued as a necessary party in interest to a civil rights lawsuit seeking monetary damages alleged against a deputy of an independently elected county sheriff. *Carver v. Sheriff of LaSalle County,* 324 F.3d 946 (7th Cir. 2003).

FACTS COMMON TO ALL COUNTS

7. On December 26, 2015, Plaintiff drove to his home, went into the house and closed the door.

8. At that time, Plaintiff went through his kitchen to the doorway of his attached garage and used the electric door opener to open the overhead garage door, intending to drive his car into his attached garage.

9. Defendant Burgin finished up some business in Hume and then drove to Plaintiff's home, parked his squad car in the driveway behind Plaintiff's car and observed that Plaintiff was not outside and the house and garage doors were all closed.

10. When Plaintiff opened his overhead garage door, Defendant Burgin was standing right outside.

11. At that time, Defendant Burgin stepped into the attached garage without Plaintiff's consent, without a search warrant for the premises, without an arrest warrant for the Plaintiff and without requesting consent to enter the home.

12. At that time, Plaintiff repeatedly told Defendant Burgin to get out and that

he was not welcome in Plaintiff's home.

13. At that time, instead of leaving, Defendant Burgin immediately drew his Taser, pointed the Taser at Plaintiff, Laser Painted Plaintiff about the head, neck and chest with his Taser and ordered Plaintiff to move back and stated "we can do this the easy way or the hard way", which Plaintiff reasonably felt was mental torture.

14. Plaintiff was fully aware that Defendant Burgin was known to abuse and mistreat persons in Edgar County and when he saw the laser dots on his body and saw the Taser being pointed at his head and neck, Plaintiff felt extreme fear that he may be killed, blinded or hurt by Defendant Burgin and this extreme fear persisted throughout the incident with Defendant Burgin on December 26, 2015.

15. At that time and within the garage attached to Plaintiff's home, Defendant Burgin formally arrested Plaintiff and handcuffed Plaintiff behind his back for the misdemeanor offense of driving on a revoked license, without a warrant for arrest.

16. At that time, Defendant Burgin searched Plaintiff's person, disregarding Plaintiff's verbal assertion that Burgin did not have consent to conduct the search.

17. At that time, Defendant Burgin seized the Plaintiff's cell phone and a bottle of pills, all of which had been hidden from plain view within Plaintiff's pockets, without a search/seizure warrant.

18. At that time, without first advising Plaintiff of his *Miranda* rights, Defendant Burgin began interrogating Plaintiff about drugs and attempting to elicit incriminating statements from Plaintiff.

19. At that time, Plaintiff demanded to speak with a lawyer but Defendant Burgin refused to release Plaintiff from the handcuffs and refused to provide Plaintiff's

cell phone to him in order to call a lawyer, instead Defendant Burgin continued interrogating Plaintiff about drugs, without advising Plaintiff of his *Miranda* rights.

20. Defendant Burgin again threatened Plaintiff that "we can do this the easy way or the hard way" which Plaintiff understood to mean that if he did not make incriminating statements and sign a consent to search form, he would be Tased, which increased his fear of death and severe injury and continued the mental torture to which Defendant Burgin was subjecting Plaintiff.

21. Although Plaintiff repeatedly told Defendant Burgin to "take me to jail", Defendant Burgin refused to take Plaintiff to the jail for the driving offense and instead continued to harass, threaten, intimidate, offer "deals" and make false promises to Plaintiff in order to coerce and compel Plaintiff to sign a consent to search form.

22. Instead of taking Plaintiff to the jail for the driving offense, Defendant Burgin requested a back-up officer to respond to the Plaintiff's home.

23. Edgar County Deputy Kevin Lewsader responded to Defendant Burgin's request for back up, and arrived at the Plaintiff's home.

24. Defendant Burgin allowed Deputy Lewsader to enter Plaintiff's garage without asking for or receiving Plaintiff's consent for Lewsader to enter the home.

25. After approximately 20 minutes of the aforesaid un-Mirandized interrogation, coercion, threats and mental torture, Plaintiff made self-incriminating statements supplying enough probable cause to obtain a search warrant, but only because he was under duress and in great fear of being Tased by Defendant Burgin.

26. After approximately 30 minutes of the aforesaid un-Mirandized interrogation, coercion, threats and mental torture, Plaintiff signed a consent to search

form, but only because he was under duress and in great fear of being Tased by Defendant Burgin.

27. Plaintiff was charged with four counts of felony drug offenses in Edgar County Case 16-CF-15, based on his own incriminating statements and items found on his person and from within his home on December 26, 2015.

28. Plaintiff hired private counsel and expended money and was required by the court to be absent from work and other activities in order to regularly to appear in court as ordered.

29. On December 12, 2016 Edgar County Case 16-CF-15 was nolle prossed by the State's Attorney and case dismissed without conviction, as a direct result of evidence heard during a hearing on Plaintiff's Motion To Suppress Evidence.

30. As a direct and proximate result of the above-described acts or omissions, Plaintiff suffered and continues to suffer severe mental and emotional injuries and distress, indignation, aggravation, humiliation, outrage, fear, inconvenience, worry, anxiety, embarrassment, loss of liberty, and loss of cherished constitutional rights as well as pecuniary damages.

COUNT I – 42 U.S.C. § 1983 - DEFENDANT DEE BURGIN

31. Plaintiff Incorporates by reference paragraphs 1-30 as if fully set forth herein.

32. As a result of his unlawful, malicious, reckless and indifferent conduct, Defendant Dee Burgin acted under color of law but contrary to law, and did deprive Plaintiff of his rights, privileges or immunities secured under the Constitution and laws of the United States and 42 USC § 1983, including:

a. His right to be free from unreasonable entries of his home in which he has a right to privacy, in violation of Amendment IV;

b. His right to be free from unreasonable seizures of his person, by arresting Plaintiff within his home for a minor misdemeanor, without consent and without a warrant, in violation of Amendment IV;

c. His right to freedom of speech, by retaliating against Plaintiff by laser painting with a Taser and arresting Plaintiff, in whole or in part because Plaintiff verbally protested against Defendant Dee Burgin's illegal entry into his home, in violation of Amendment I;

d. His right to be free from unreasonable force, by pointing a Taser at Plaintiff and laser painting Plaintiff when no use of force was necessary or called for in the situation, in violation of Amendment IV.

WHEREFORE, Plaintiff demands judgment against Defendant Dee Burgin for compensatory damages and for punitive damages in amounts to be determined by the jury, plus costs, pre-judgment and post-judgment interest, and actual attorney fees pursuant to 42 USC §1988.

COUNT II –STATE LAW CLAIMS – DEFENDANT DEE BURGIN

33. Plaintiff Incorporates by reference paragraphs 1-30 as if fully set forth herein.

34. Defendant Dee Burgin had a duty to exercise ordinary care for the person of the plaintiff, in the exercise of his official duties.

35. Notwithstanding his aforesaid duty, Defendant Dee Burgin willfully and wantonly engaged in a course of conduct and action with an actual or deliberate

intention to cause harm to, or, if not intentional, with an utter indifference to or conscious disregard for the safety of the person of the Plaintiff, in violation of Illinois law, thereby proximately causing, in whole or in part, severe mental and emotional distress and injury and pecuniary damages.

36. By the actions described herein, Defendant Dee Burgin willfully and wantonly committed the following wrongful acts against the Plaintiff, which are tortious under the laws of the State of Illinois:

a. Assault by threatening Plaintiff with a Taser and placing Plaintiff in reasonable apprehension of receiving a severe battery;

b. Battery by handcuffing and searching Plaintiff to effect an arrest made in violation of the Fourth Amendment to the US Constitution, which was a harmful or offensive un-consented touching of Plaintiff's person;

c. Trespass by entering and remaining within Plaintiff's home without a warrant and without consent, and after being ordered to get out;

d. Intentional Infliction of Emotional Distress by threatening to use a Taser against Plaintiff, which was objectively extreme and outrageous and which was rooted in an abuse of power and authority and done with the deliberate intention of causing the Plaintiff severe emotional distress or in reckless disregard of the probability that this conduct would cause severe emotional distress, which did cause the Plaintiff severe emotional distress and which was undertaken with malice, willfulness and deliberate indifference to Plaintiff's rights, such that the Defendant's actions shock the conscience.

WHEREFORE, Plaintiff demands judgment against Defendant Dee Burgin for compensatory damages and for punitive damages in amounts to be determined by the

jury, plus costs, pre-judgment and post-judgment interest.

COUNT III – RESPONDEAT SUPERIOR - DEFENDANT JEFF D. WOOD

37. Plaintiff Incorporates by reference paragraphs 1-30 as if fully set forth herein.

38. While committing the misconduct alleged in Count II, Defendant Dee Burgin was an employee and agent of Defendant Jeff D. Wood, Sheriff of Edgar County, Illinois, acting at all relevant times within the scope of his employment.

39. Defendant Sheriff Jeff D. Wood, in his official capacity, is liable as principal for all state law torts committed by its agents, including Defendant Burgin.

WHEREFORE, Plaintiff demands judgment against Defendant Jeff D. Wood for compensatory damages and for punitive damages in amounts to be determined by the jury, plus costs, pre-judgment and post-judgment interest.

COUNT IV – 740 ILCS 24/5 – DEFENDANT DEE BURGIN

40. Plaintiff Incorporates by reference paragraphs 1-30 as if fully set forth herein.

41. Defendant Dee Burgin used force to compel Plaintiff to confess and to provide incriminating statements, by handcuffing Plaintiff, in violation of the Illinois Civil Rights Act of 2006.

42. Defendant Dee Burgin used threat of imminent bodily harm to compel Plaintiff to confess and to provide incriminating statements, by pointing a Taser at Plaintiff, laser painting Plaintiff on and about the head, neck and chest and stating “we can do this the easy way or the hard way”, in violation of the Illinois civil Rights Act of 2006.

43. Defendant Dee Burgin's aforesaid force and threats of imminent bodily harm did compel Plaintiff to confess and to provide incriminating statements, all to the Plaintiff's detriment.

44. As a direct and proximate result of Defendant Dee Burgin's aforesaid force and threats of imminent bodily harm, Plaintiff suffered and continues to suffer severe mental and emotional injuries and distress, indignation, aggravation, humiliation, outrage, fear, inconvenience, worry, anxiety, embarrassment and pecuniary damages.

WHEREFORE, Plaintiff demands judgment against Defendant Dee Burgin for compensatory damages and for punitive damages in amounts to be determined by the jury, plus costs, pre-judgment and post-judgment interest, and actual attorney fees pursuant to 740 ILCS 24/5(a).

COUNT V – INDEMNIFICATION AGAINST EDGAR COUNTY

45. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

46. Defendant Dee Burgin was an employee of the County of Edgar, acting at all relevant times within the scope of his employment in committing the misconduct alleged herein such that the County of Edgar is obligated to pay any judgment entered against the Defendant Dee Burgin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment on all Counts as follows:

(a) Compensatory damages in accordance with proof;

(b) Punitive damages against the individual defendant, as allowed under the law, (except the immune entity defendant) in an amount sufficient to punish the

defendant and to deter future misconduct; and

(c) Costs of suit necessarily incurred herein;

(d) Such further relief as the Court deems just or proper;

(e) Reasonable Attorney's Fees and expenses of litigation if and as allowed by state or federal statute on each Count as so allowed;

(f) Pre-judgment interest and post-judgment interest.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully Submitted
CHARLES F. BARRETT

JUDE MARIE REDWOOD

December 22, 2016 /s/ Jude Marie Redwood

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