

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

CHARLES F. BARRETT,)	
)	
Plaintiff,)	
)	Case No. 16-CV-2386-CSB-EIL
v.)	
)	
DEE BURGIN, et al.)	
)	
Defendants.)	

**DEFENDANTS’ ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO
PLAINTIFF’S COMPLAINT**

NOW COME Defendants, DEE BURGIN, JEFF D. WOOD, and EDGAR COUNTY (hereinafter “the Defendants”), by and through their attorney, Gail L. Reich, and for their Answer and Affirmative Defenses to Plaintiff’s Complaint, Defendants state 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.

ANSWER: Defendants admit that Plaintiff purports to bring actions pursuant to the First and Fourth Amendments and Illinois State Law and that this Court has jurisdiction over his claims.

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.

ANSWER: Defendants admit that venue is proper.

PARTIES

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

ANSWER: Admit.

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.

ANSWER: Admit.

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

ANSWER: Admit.

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).

ANSWER: Admit.

FACTS COMMON TO ALL COUNTS

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

ANSWER: Admit.

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.

ANSWER: Defendants admit that the garage door opened. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.

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.

ANSWER: Admit.

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

ANSWER: Admit.

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.

ANSWER: Defendants admit that Burgin stepped into the garage during his conversation with Plaintiff. Defendants deny the sequence of events and deny the remaining allegations set forth in this paragraph.

12. At that time, Plaintiff repeatedly told Defendant Burgin to get out and that he was not welcome in Plaintiff's home.

ANSWER: Denied.

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.

ANSWER: Defendants admit that Burgin drew his taser and pointed it at Barrett, that Burgin ordered Barrett to step back away from him, and that Burgin stated “we can do this the easy way or the hard way.” However, Defendants deny the sequence of events and deny the remaining allegations set forth in this paragraph.

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.

ANSWER: Denied.

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.

ANSWER: Defendants admit that Burgin lawfully arrested Plaintiff in the garage for driving on a revoked license and handcuffed him behind his back. Defendants deny that a warrant was required.

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.

ANSWER: Defendants admit that Burgin searched Plaintiff’s person pursuant to a lawful arrest and therefore deny that consent was required.

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.

ANSWER: Defendants admit that Burgin seized Plaintiff's cell phone from Plaintiff's jacket pocket, but deny that a warrant was required. Defendants deny the remaining allegations set forth in this paragraph.

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.

ANSWER: Defendants admit that Plaintiff was not advised of his *Miranda* rights and that Burgin questioned Plaintiff about the crushed powder he had recovered from Plaintiff's person during the custodial search. Defendants deny the remaining allegations set forth in this paragraph.

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.

ANSWER: Defendants admit that at a certain point, Plaintiff stated he wanted a lawyer, but Barrett reengaged Burgin in conversation. Defendants deny the remaining allegations set forth in this paragraph.

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.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Defendants admit that Burgin did not take Plaintiff to jail and that he requested another officer respond to the scene. Defendants deny the remaining allegations set forth in this paragraph.

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

ANSWER: Admit.

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.

ANSWER: Defendants admit that Lewsader entered the garage, but deny that consent was required.

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.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Admit.

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.

ANSWER: Defendants lack knowledge or information a sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

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.

ANSWER: Defendants admit that Plaintiff's criminal case was dismissed *nolle prosequi* on December 12, 2016.

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.

ANSWER: Denied.

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

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

ANSWER: Defendants incorporate by reference their answers to 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 [sic] 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.

ANSWER: Denied.

COUNT II - STATE LAW CLAIMS - DEFENDANT DEE BURGIN

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

ANSWER: Defendants incorporate by reference their answers to 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.

ANSWER: Admit.

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.

ANSWER: Denied.

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 search 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 with 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.

ANSWER: Denied.

COUNT III - RESPONDEAT SUPERIOR - DEFENDANT JEFF D. WOOD

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

ANSWER: Defendants incorporate by reference their answers to 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.

ANSWER: Denied.

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.

ANSWER: Denied.

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

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

ANSWER: Defendants incorporate by reference their answers to 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.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Denied.

COUNT V - INDEMNIFICATION AGAINST EDGAR COUNTY

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

ANSWER: Defendants incorporate by reference their answers to each paragraph, as if fully set forth herein.

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.

ANSWER: Defendants admit that 745 ILCS 10/9-102 is an existing Illinois statute that may or may not be applicable in whole or in part to this case and deny the remaining allegations set forth in this paragraph.

WHEREFORE, Defendants, DEE BURGIN, JEFF D. WOOD, and EDGAR COUNTY, pray that this Court find that they are immune from liability in Plaintiff's action and enter a judgment in their favor and against Plaintiff and for the costs associated with the defense of this action.

AFFIRMATIVE DEFENSES

Defendants, DEE BURGIN, JEFF D. WOOD, and EDGAR COUNTY, in addition to the denials and defenses set forth hereinabove this responsive pleading, assert the following additional affirmative defenses to Plaintiff's purported claims, to wit:

1. Defendant Burgin is entitled to qualified immunity for the claims brought against him in his individual capacity under § 1983 because the acts complained of occurred within the scope of his official duties and a reasonable police officer objectively viewing the facts and circumstances that confronted Deputy Burgin could have believed his actions to be reasonable, in light of clearly established law and the information that Burgin possessed. In other words, Deputy Burgin did not knowingly violate clearly established constitutional rights of which a reasonable officer would have known.

2. The use of any force employed by Deputy Burgin during Plaintiff's seizure and arrest was reasonable and necessary, and therefore not excessive or in violation of Plaintiff's civil rights.

3. Deputy Burgin's used only that amount of force necessary to protect himself from Plaintiff's unlawful conduct, and as such, he cannot be liable to Plaintiff.

4. Plaintiff's Battery claim is barred because Deputy Burgin was legally justified in making physical contact of an offensive or harmful nature for the purpose of effectuating Plaintiff's lawful arrest.

5. Sheriff Wood and Edgar County are not liable on Plaintiff's Illinois State law claims for an injury resulting from an act or omission of Deputy Burgin, where Burgin is not liable. 745 ILCS 10/2-109.

6. Deputy Burgin was a public employee acting within the scope of his employment and cannot be liable on Plaintiff's state law claims for an injury caused by the act or omission of another person. 745 ILCS 10/2-204.

7. Deputy Burgin is not liable on Plaintiff's Illinois State Law claims for his act or omission in the execution or enforcement of any law because his act or omission did not constitute willful or wanton conduct. 745 ILCS 10/2-202.

8. Sheriff Wood and Edgar County cannot be liable to pay punitive damages to Plaintiff for the state law claims brought directly or indirectly against them. 745 ILCS 10/2-102.

9. Deputy Burgin was a public employee acting within the scope of his employment and cannot be liable to pay punitive damages on Plaintiff's state law claims arising out of an act or omission while serving as a law enforcement officer, which involves the exercise of discretion. 745 ILCS 10/2-213.

10. Deputy Burgin cannot be liable for punitive damages to Plaintiff on his state law claim of intentional infliction of emotional distress. *O'Neill v. Gallant Ins. Co.*, 329 Ill. App. 3d 1166, 1179 (2002); *Knierim v. Izzo*, 22 Ill. 2d 73, 88 (1961).

11. Sheriff Wood and Edgar County are immune from punitive damages on Plaintiff's civil rights claims brought under 42 U.S.C. § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981); *Kolar v. County of Sangamon*, 756 F.2d 564, 567 (7th Cir. 1985).

12. Sheriff Wood and Edgar County cannot be liable on Plaintiff's state law claims for an injury caused by any information provided by Deputy Burgin, orally or in writing. 745 ILCS 10/2-107.

13. Deputy Burgin was a public employee acting within the scope of his employment and cannot be liable on Plaintiff's state law claims for an injury caused by his negligent misrepresentation or the provision of information either orally or in writing. 745 ILCS 10/2-210.

14. Deputy Burgin was a public employee and law enforcement officer serving in a position involving the exercise of discretion, and is not liable on Plaintiff's state law claims for an injury resulting from his act or omission in the exercise of such discretion. 745 ILCS 10/2-201.

WHEREFORE, Defendants, DEE BURGIN, JEFF D. WOOD, and EDGAR COUNTY, pray that this Court find that they are immune from liability in Plaintiff's action and enter a judgment in their favor and against Plaintiff and for the costs associated with the defense of this action.

COUNTERCLAIM

Defendant/counter-claimant, Dee Burgin, (“Deputy Burgin”), for his counterclaim against plaintiff/counter-defendant Charles Barrett, (“Barrett”) of assault, states as follows:

1. On December 26, 2015, Deputy Burgin was on duty as a duly licensed officer for Edgar County, Illinois.
2. On December 26, 2015, Barrett’s Illinois State Driver’s License was suspended.
3. On December 26, 2015, Barrett drove a car registered to another individual to Hume, IL and then returned home.
4. Deputy Burgin observed Plaintiff driving the car.
5. Deputy Burgin arrived at Plaintiff’s home after observing him driving.
6. When Barrett opened his garage, he saw Deputy Burgin, who he knew was a police officer.
7. Barrett approached Deputy Burgin, raised his hand toward Burgin’s chest in an attempt to shove him and told him “no.”
8. Barrett’s actions placed Deputy Burgin in reasonable apprehension of receiving a battery.
9. It was the duty of Charles Barrett to refrain from committing any acts which would place Deputy Burgin in reasonable apprehension of receiving a battery.
10. Barrett committed these acts with full knowledge that Deputy Burgin was a police officer employed by the County of Edgar and acting in the course and scope of that employment.
11. As a proximate cause of Barrett’s conduct, Deputy Burgin was injured.

WHEREFORE, Deputy Dee Burgin prays for judgment in his favor and against Charles Barrett, for any damages recoverable under the law, for costs, and for any other and further relief this court deems equitable and just.

DEFENDANTS DEMAND TRIAL BY JURY.

Respectfully submitted,

**DEE BURGIN, JEFF D. WOOD,
EDGAR COUNTY**

By: *s/Gail L. Reich*

Gail L. Reich, #6279564
O'Halloran Kosoff Geitner & Cook, LLC
650 Dundee Road, Suite 475
Northbrook, Illinois 60062
Phone: 847/291-0200
Fax: 847/291-9230
Email: greich@okgc.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

CHARLES F. BARRETT,)	
)	
Plaintiff,)	
)	Case No. 16-CV-2386-CSB-EIL
v.)	
)	
DEE BURGIN, et al.)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017, I electronically filed *Defendants' Answer, Affirmative Defenses and Counterclaim to Plaintiff's Complaint* with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following registered CM/ECF participant(s):

Jude Marie Redwood
Redwood Law Office
redwoodlaw42@hotmail.com

By: s/Gail L. Reich
Gail L. Reich, #6279564
O'Halloran Kosoff Geitner & Cook, LLC
650 Dundee Road, Suite 475
Northbrook, Illinois 60062
Phone: 847/291-0200
Fax: 847/291-9230
Email: greich@okgc.com