

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

COREY KILGORE,)	
)	
Plaintiff,)	Case No. 11-2145
)	
v.)	
)	Chief Judge Michael P. McCuskey
SHON M. JOHNSON,)	Magistrate Judge David G. Bernthal
)	
Defendant.)	JURY DEMAND

**DEFENDANT’S ANSWER & AFFIRMATIVE DEFENSES
TO PLAINTIFF’S COMPLAINT**

NOW COMES the Defendant, SHON M. JOHNSON, by and through his attorney, MICHAEL W. CONDON of HERVAS, CONDON & BERSANI, P.C., and, in answer to Plaintiff’s Complaint, states as follows:

1. This is a civil action for damages brought pursuant to the United States Constitution and 42 U.S.C.A. § 1983 and resulting from deprivations, under color of law, of Plaintiff’s rights under the fourth, fifth, sixth and eighth Amendments to the United States Constitution.

ANSWER: Defendant denies the allegations contained in paragraph 1 of Plaintiff’s Complaint.

2. This Court has jurisdiction over these claims pursuant to Article III, Section 1 of the Constitution and 28 U.S.C. Sections 1331, 1332, and 1343.

ANSWER: Defendant admits only that this Honorable Court has jurisdiction over Plaintiff’s claims.

3. Venue is properly established in this judicial district pursuant to 28 U.S.C. Section 1391(b). Venue is appropriate because Defendant resides in this judicial district and the instance complained of occurred in this judicial district.

ANSWER: Defendant admits the allegations contained in paragraph 3 of Plaintiff's Complaint.

PARTIES

4. COREY KILGORE, Plaintiff, is a citizen of the United States and a resident of Iroquois County, Watseka, Illinois.

ANSWER: Defendant admits the allegations contained in paragraph 4 of Plaintiff's Complaint.

5. Defendant was at all times relevant to the incidents that are subject of this lawsuit, an officer of the Iroquois County Sheriff's Department. The acts of Defendant, which are the subject of this lawsuit, were undertaken in the regular course of his employment for the Iroquois County Sheriff's Department. Defendant is sued individually. Upon information and belief, Defendant is a resident of Watseka, Illinois.

ANSWER: Defendant admits the allegations contained in paragraph 5 of Plaintiff's Complaint.

FACTS

6. On January 5, 2011, Plaintiff was arrested and transported by a State Police Officer to the Iroquois County Jail.

ANSWER: Defendant admits the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. Upon arrival at the County jail, Defendant was present outside the jail.

ANSWER: Defendant admits the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Defendant opened the police car door to remove Plaintiff. Plaintiff alleged that his feet were caught underneath the front seat, but Defendant forcibly removed Defendant from the car.

ANSWER: Defendant denies the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. Plaintiff claims to have been dragged up the stairs of the County jail, dragged down the hallway, and placed in the holding cell at said jail.

ANSWER: Defendant admits only that Plaintiff was placed in the holding cell at the jail. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's Complaint.

10. Defendant then asked Plaintiff to remove his two shirts and boots. Before being able to finish what Defendant had asked, defendant had pushed Plaintiff and shoved Plaintiff's head into the steel bench.

ANSWER: Defendant admits only that Plaintiff was told to remove his jacket and boots. Defendant denies the remaining allegations contained in paragraph 10 of Plaintiff's Complaint.

11. Defendant began to choke Plaintiff, giving Plaintiff a sharp pain on his outer ear from Defendant's fingers around Plaintiff's neck.

ANSWER: Defendant denies the allegations contained in paragraph 11 of Plaintiff's Complaint.

12. Plaintiff asked to use the restroom, and when his plea went ignored, Plaintiff was forced to urinate in the drain of the holding cell floor.

ANSWER: Defendant admits only that Plaintiff urinated in the drain of the holding cell floor. Defendant denies the remaining allegations contained in paragraph 12 of Plaintiff's Complaint.

13. Defendant came to the cell door again later. Plaintiff retreated, fearing Defendant's wrath again and feeling threatened. Defendant charged at Plaintiff, grabbing him from behind and choking him. Plaintiff could not breathe and lost consciousness.

ANSWER: Defendant admits only that he returned to the location of the holding cell. Defendant denies the remaining allegations contained in paragraph 13 of Plaintiff's Complaint.

14. Once Plaintiff had regained consciousness, he was then taken to perform a Breathalyzer test. Plaintiff claims that the assault on him by Defendant made it hard and painful to swallow and blow for said test.

ANSWER: Defendant admits only that Plaintiff was eventually taken to perform a Breathalyzer test. Defendant denies the remaining allegations contained in paragraph 14 of Plaintiff's Complaint.

15. When Plaintiff complained of the abuse to a different State Police Officer at said jail, that State Police Officer claimed he did not see or know about the incident Plaintiff complained of, and therefore, did not stop the abuse.

ANSWER: The Defendant states that he has knowledge or information insufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of Plaintiff's Complaint.

16. After the test, Plaintiff was taken back to his cell. While in the cell, Plaintiff claims Defendant approached the door of the cell numerous times, insulting and berating Plaintiff.

ANSWER: Defendant admits only that Plaintiff was taken back to his cell after performing the Breathalyzer test. Defendant denies the remaining allegations contained in paragraph 16 of Plaintiff's Complaint.

17. During Plaintiff's checkout through the bail process from said jail, Defendant was verbally excessive with Plaintiff. Defendant was taunting Plaintiff with extreme verbal demands. Furthermore, Plaintiff complied with Defendant's questions, even through threats of being put back in said jail cell.

ANSWER: Defendant denies the allegations contained in paragraph 17 of Plaintiff's Complaint.

18. Defendant was acting under the color of law. At such time, the Defendant officer intentionally, and with deliberate indifference to Plaintiff's rights, violated Plaintiff's Constitutional rights, including but not limited to those under the fourth, fifth, sixth and eighth Amendments by:

- a. Using a degree of force that was unreasonable under the circumstances, and in violation of Plaintiff's rights to be free from an unreasonable search and seizure under the Fourth Amendment;
- b. Depriving Plaintiff of his liberty by subjecting him to unwarranted and unreasonable restraint on his person without due process in violation of his rights under the Fifth Amendment;
- c. Subjecting Plaintiff to punishment without the benefit of a trial by jury in violation of his rights under the Sixth and Eighth Amendments.

ANSWER: Defendant denies the allegations contained in paragraph 18 and specifically denies subparagraphs (a) through (c) of Plaintiff's Complaint.

19. Plaintiff's injuries and deprivation of his Constitutional rights were proximately caused by the municipality's inadequate supervision of the training and conduct of Defendant Officer and their failure to promulgate proper rules and regulations.

ANSWER: Defendant denies the allegations contained in paragraph 19 of Plaintiff's Complaint.

WHEREFORE, Defendant denies that the Plaintiff is entitled to any judgment whatsoever against him and prays that this Honorable Court enter a judgment in his favor and allows for the costs of defending this lawsuit.

Respectfully submitted,

s/ Michael W. Condon

MICHAEL W. CONDON, Atty Bar No.06192071

Attorney for Defendant

HERVAS, CONDON & BERSANI, P.C.

333 Pierce Road, Suite 195

Itasca, IL 60143-3156

Phone: 630-773-4774

Fax: 630-773-4851

mcondon@hcbattorneys.com

FIRST AFFIRMATIVE DEFENSE

NOW COMES the Defendant, SHON M. JOHNSON, by and through his attorney, MICHAEL W. CONDON of HERVAS, CONDON & BERSANI, P.C., and, for his First Affirmative Defense to Plaintiff's Complaint, states as follows:

Defendant did not violate any clearly established constitutional right of which a reasonable person would have known, thus entitling him to qualified immunity.

WHEREFORE, Defendant denies that the Plaintiff is entitled to any judgment whatsoever against him and prays that this Honorable Court enter a judgment in his favor and allows for the costs of defending this lawsuit.

Respectfully submitted,

s/ Michael W. Condon

MICHAEL W. CONDON, Atty Bar No.06192071

Attorney for Defendants

HERVAS, CONDON & BERSANI, P.C.

333 Pierce Road, Suite 195

Itasca, IL 60143-3156

Phone: 630-773-4774

Fax: 630-773-4851

mcondon@hcbattorneys.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

COREY KILGORE,)	
)	
Plaintiff,)	Case No. 11-2145
)	
v.)	
)	Chief Judge Michael P. McCuskey
SHON M. JOHNSON,)	Magistrate Judge David G. Bernthal
)	
Defendant.)	

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2011, I electronically filed the foregoing *Defendant's Answer & Affirmative Defenses to Plaintiff's Complaint* with the Clerk of the District Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant:

TO: H. Kent Heller
Heller Holmes & Associates, P.C.
P.O. Box 889
Mattoon, IL 61938-0889
Ph: 217-235-2700
Fax: 217-235-0743
kent@hhlawoff.com

s/ Michael W. Condon
MICHAEL W. CONDON, Atty Bar No.06192071
Attorney for Defendant
HERVAS, CONDON & BERSANI, P.C.
333 Pierce Road, Suite 195
Itasca, IL 60143-3156
Phone: 630-773-4774
Fax: 630-773-4851
mcondon@hcbattorneys.com