

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

| | | |
|---|---|--------------------------|
| CHARLES F. BARRETT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 16-2386-CSB-EIL |
| |) | |
| DEE BURGIN, in his individual capacity, JEFF D. |) | Trial by Jury Demanded |
| WOOD, Sheriff of Edgar County, in his official |) | |
| capacity and COUNTY OF EDGAR, ILLINOIS, |) | |
| a municipal corporation, |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF’S ANSWER AND AFFIRMATIVE DEFENSES TO
DEFENDANT DEE BURGIN’S COUNTERCLAIM**

NOW COMES the Plaintiff, by counsel, and for his Answer and Affirmative Defenses to Defendant Dee Burgin’s Counterclaim states:

1. On December 26, 2015, Deputy Burgin was on duty as a duly licensed officer for Edgar County, Illinois.

ANSWER: Admit that at times relevant to Plaintiff’s Complaint, Defendant Burgin was on duty as a duly licensed deputy sheriff for Edgar County, Illinois on December 26, 2015.

2. On December 26, 2015, Barrett’s Illinois State Driver’s license was suspended.

ANSWER: Admit.

3. On December 26, 2015, Barrett drove a car registered to another individual to Hume, IL and then returned home.

ANSWER: Admit.

4. Deputy Burgin observed Plaintiff driving the car.

ANSWER: Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in this paragraph.

5. Deputy Burgin arrived at Plaintiff's home after observing him driving.

ANSWER: Plaintiff admits that Defendant Burgin arrived at Plaintiff's home but Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegation set forth in this paragraph.

6. When Barrett opened his garage, he saw Deputy Burgin, who he knew was a police officer.

ANSWER: Admit.

7. Barrett approached Deputy Burgin, raised his hand toward Burgin's chest in an attempt to shove him and told him "no."

ANSWER: Denied.

8. Barrett's actions placed Deputy Burgin in reasonable apprehension of receiving a battery.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Plaintiff Admits that he knew that Defendant Burgin was an Edgar County Deputy Sheriff and Denies the remaining allegations of this paragraph.

11. As a proximate cause of Barrett's conduct, Deputy Burgin was injured.

ANSWER: Denied.

AFFIRMATIVE DEFENSES

Plaintiff, Charles F. Barrett, in addition to the denials and defenses set forth hereinabove, asserts the following additional affirmative defenses to Defendant Burgin's purported counterclaim:

1. Self-defense – Plaintiff was justified in the use of the amount of force allegedly used against Defendant Burgin because he reasonably believed, based on his knowledge of Defendant Burgin's character and habits of unlawful conduct, that his conduct was necessary to defend himself against Defendant Burgin's imminent use of unlawful force.

2. Defense of dwelling – Plaintiff was justified in the use of the amount of force allegedly used against Defendant Burgin because he reasonably believed, based on his knowledge of Defendant Burgin's character and habits of unlawful conduct, that his conduct was necessary to terminate Defendant Burgin's unlawful entry into Plaintiff's dwelling.

3. Unclean hands – Defendant Burgin's invasion into Plaintiff's home was unlawful under clearly established Fourth Amendment law. *Payton v. New York*, 445 U.S. 573, 585, 100 S.Ct. 1371, 1379 (1980), *Hawkins v. Mitchell*, 756 F.3d 983, 992 (7th Cir. 2014), *Reardon v. Wroan*, 811 F.2d 1025, 1028 (7th Cir. 1987) (per curiam).

Defendant Burgin's illegal invasion into Plaintiff's home was done in bad faith by an officer who knowingly violated federal law. Plaintiff's alleged assault against Defendant Burgin was solely a result of Defendant Burgin's unlawful invasion of the privacy of Plaintiff's home and therefore, Defendant Burgin is precluded from taking advantage of his own wrong and the relief requested by Defendant Burgin is barred because he is guilty of misconduct in connection with the very subject matter of the litigation.

4. Federal Right to Resist Unlawful Intrusion by Government Agents – Plaintiff exercised his right and privilege, protected by federal law, to resist unlawful arrests and intrusions by governmental agents, using no more force than was absolutely necessary to repel the assault constituting the attempt to arrest, which preserves the sense of individual personal liberty and integrity inherent in our system of constitutional government.

WHEREFORE, Plaintiff CHARLES F. BARRETT prays for Judgment in his favor and against Defendant Dee Burgin on his Counterclaim of Assault, for costs and attorney's fees, for pre judgment and post judgment interest and for such other and further relief as the court deems just.

CHARLES F. BARRETT

June 5, 2017

/s/ Jude Marie Redwood
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For the plaintiff
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CERTIFICATE OF SERVICE

I certify that on June 5, 2017, I on behalf of the plaintiff, electronically filed the foregoing *PLAINTIFF'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT DEE BURGINS COUNTERCLAIM* with the Clerk of the District Court, using the CM/ECF system which will send notification of such filing to the following: Jude M. Redwood, Gail Reich, Bhairav Radia.

June 5, 2017

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