

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON
Civil Action No. 6:20-CV-00068-KKC

Electronically Filed

STEPHEN CODY SIMPSON

PLAINTIFF

-vs-

CITY OF CUMBERLAND, KENTUCKY;
CHARLES RALEIGH, Individually and in
his official capacity as Cumberland City
Mayor; CODY WILLIAMSON, Individually
and in his Official Capacity as Cumberland
Police Chief; KENNY RAY RALEIGH,
Individually and in his Official Capacity as
Cumberland Police Assistant Chief; and
ZACH SMITH, Individually and in his
Official Capacity as Cumberland Police Officer

DEFENDANTS

ANSWER

Come the Defendants and for their Answer to the Complaint, plead as follows:

First Defense

The Complaint fails to state a claim or claims in whole or in part on which relief can be granted.

Second Defense

JURISDICTION AND VENUE

- (1) Defendants deny paragraph 1 of the Complaint.
- (2) The Defendants deny that this Court has jurisdiction over them pursuant to 28 U.S.C. § 1331, 1343, 2201 or any other statute of the United States as

asserted in paragraph 2, and otherwise state that the allegations contained in paragraph 2 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(3) The Defendants admit paragraph 3 which states that the United States District Court for the Eastern District of Kentucky, Southern Division at London, is the proper venue for civil actions arising in Harlan County, but deny the remainder of that paragraph which states there were events or omissions for which an action can be brought.

PARTIES

(4) The Defendants lack knowledge sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and deny those allegations.

(5) The Defendants admit that part of the allegations of paragraph 5 of the Complaint which allege that the City of Cumberland is a political body which operates the Cumberland Police Department and which employs certain police officers, some of whom are Defendants herein. Defendants otherwise deny the remainder of that paragraph.

(6) The Defendants admit Charles Raleigh was the Mayor of the City of Cumberland who was a citizen of the United States and a resident of Kentucky; otherwise, Defendants deny paragraph 6.

(7) The Defendants admit Cody Williamson was a law enforcement officer employed by the City of Cumberland who was a citizen of the United States and a resident of Kentucky; otherwise, Defendants deny paragraph 7. Defendant Williamson was not on duty on the date and time alleged.

(8) The Defendants admit Kenny Ray Raleigh was a law enforcement officer employed by the City of Cumberland who was a citizen of the United States and a resident of Kentucky; otherwise, Defendants deny paragraph 8. Defendant Raleigh was not on duty on the date and at the time alleged.

(9) The Defendants admit Zack Smith was a law enforcement officer employed by the City of Cumberland who was a citizen of the United States and a resident of Kentucky; otherwise, Defendants deny paragraph 9.

(10) The Defendants deny paragraph 10.

(11) The Defendants deny paragraph 11.

(12) The Defendants deny paragraph 12.

(13) The Defendants deny paragraph 13.

FACTUAL ALLEGATIONS

(14) The Defendants deny paragraph 14..

(15) The Defendants admit Officers Zach Smith and Jonathan Franklin arrested Plaintiff, but otherwise deny the allegations and characterization of the remainder of paragraph 15.

(16) The Defendants deny paragraph 16.

(17) The Defendants deny paragraph 17.

(18) The Defendants deny paragraph 18.

(19) The Defendants deny paragraph 19.

(20) The Defendants deny paragraph 20.

(21) The Defendants admit Plaintiff went to the Harlan County Detention Center, but otherwise deny the sequence of events as asserted by Plaintiff in paragraph 21.

(22) The Defendants deny paragraph 22.

(23) The Defendants deny paragraph 23.

(24) The Defendants deny paragraph 24.

(25) The Defendants deny paragraph 25.

(26) The Defendants deny paragraph 26.

(27) The Defendants deny paragraph 27.

(28) The Defendants deny paragraph 28.

(29) The Defendants deny paragraph 29.

(30) The Defendants deny paragraph 30.

(31) The Defendants deny paragraph 31.

(32) The Defendants deny paragraph 32.

FIRST CLAIM FOR RELIEF—42 U.S.C. 1983

(33) The Defendants deny paragraph 33.

(34) The allegations contained in paragraph 34 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(35) The allegations contained in paragraph 35 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(36) The Defendants deny paragraph 36.

(37) The allegations contained in paragraph 37 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(38) The allegations contained in paragraph 38 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(39) The allegations contained in paragraph 39 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(40) The Defendants deny paragraph 40.

(41) The Defendants deny paragraph 41.

(42) The Defendants deny paragraph 42.

(43) The Defendants deny paragraph 43.

(44) The Defendants deny paragraph 44.

(45) The Defendants deny paragraph 45.

(46) The Defendants deny paragraph 46.

(47) The Defendants deny paragraph 47.

(48) The Defendants deny paragraph 48.

(49) The Defendants deny paragraph 49.

(50) The Defendants deny paragraph 50.

(51) The Defendants deny paragraph 51.

(52) The Defendants deny paragraph 52.

(53) The Defendants deny paragraph 53.

(54) The Defendants deny paragraph 54.

SECOND CLAIM FOR RELIEF—42 U.S.C. 1983

(55) The Defendants deny paragraph 55.

(56) The allegations contained in paragraph 56 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(57) The allegations contained in paragraph 57 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(58) The Defendants deny paragraph 58.

(59) The allegations contained in paragraph 59 assert legal conclusions to which no response is required, but to the extent a response is required, Defendants deny same.

(60) The Defendants deny paragraph 60.

(61) The Defendants deny paragraph 61.

(62) The Defendants deny paragraph 62.

(63) The Defendants deny paragraph 63.

(64) The Defendants deny paragraph 64.

(65) The Defendants deny paragraph 65.

(66) The Defendants deny paragraph 66.

(67) The Defendants deny paragraph 67.

(68) The Defendants deny paragraph 68.

(69) The Defendants deny paragraph 69.

(70) The Defendants deny paragraph 70.

THIRD CLAIM FOR RELIEF—ASSAULT

(71) The Defendants deny paragraph 71.

(72) The Defendants deny paragraph 72.

(73) The Defendants deny paragraph 73.

(74) The Defendants deny paragraph 74.

(75) The Defendants deny paragraph 75.

FOURTH CLAIM FOR RELIEF—BATTERY

(76) The Defendants deny paragraph 76.

(77) The Defendants deny paragraph 77.

(78) The Defendants deny paragraph 78.

(79) The Defendants deny paragraph 79.

(80) The Defendants deny paragraph 80.

FIFTH CLAIM FOR RELIEF—

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(81) The Defendants deny paragraph 81.

(82) The Defendants deny paragraph 82.

(83) The Defendants deny paragraph 83.

(84) The Defendants deny paragraph 84.

(85) The Defendants deny paragraph 85.

SIXTH CLAIM FOR RELIEF—

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(86) The Defendants deny paragraph 86.

(87) The Defendants deny paragraph 87.

(88) The Defendants deny paragraph 88.

(89) The Defendants deny paragraph 89.

(90) The Defendants deny paragraph 90.

SEVENTH CLAIM FOR RELIEF–NEGLIGENCE

(91) The Defendants deny paragraph 91.

(92) The Defendants deny paragraph 92.

(93) The Defendants deny paragraph 93.

(94) The Defendants deny paragraph 94.

Third Defense

The Defendants deny each and every allegation of the Complaint except the allegations specifically admitted in the Second Defense.

Fourth Defense

The Defendants plead statute of limitations as a bar, in whole or in part, to Plaintiff's Complaint.

Fifth Defense

The Defendants affirmatively plead that the Plaintiff and the Defendants named herein are citizens of the Commonwealth of Kentucky and that this Court lacks jurisdiction for any state law claims against the Defendants based on diversity of citizenship pursuant to 28 U.S.C. § 1332.

Sixth Defense

The Defendants affirmatively states that if the Plaintiff sustained any damages as alleged, which the Defendants specifically deny, said damages are the

sole and proximate result of an intervening, superseding, intentional and/or negligent act or acts on the part of others or Acts of God over which the Defendants had no liability or responsibility.

Seventh Defense

The Defendants affirmatively state that the subject incident, injuries, or damages, if any, which are specifically denied, resulted from the sole negligence or intentional acts of the Plaintiff, or in the alternative, resulted from the sole negligence or intentional acts of some third person or persons, or in the alternative, resulted solely from the combined negligence or intentional acts of the Plaintiff and some third person or persons, which is a bar to their complaint.

Eighth Defense

The Defendants affirmatively state that at the time and on the occasion complained of, the Plaintiff himself acted negligently and/or intentionally, which substantially caused or brought about the incident, damages, and injuries, if any, which are specifically denied, to such an extent that the aforesaid negligence and/or intentional act on the part of the Plaintiff contributed directly thereto, the incident, damages, injuries, if any, which are specifically denied, would not and could not have occurred, which is a bar to the Complaint in whole or in part.

Ninth Defense

The Complaint is barred by the doctrines of qualified immunity, qualified official immunity, official capacity community, sovereign immunity, governmental immunity, discretionary function immunity and/or any other type of immunity afforded to government entities or their employees under federal or Kentucky law.

Tenth Defense

The Defendants plead estoppel, failure to exhaust administrative remedies, waiver, laches, res judicata, and collateral estoppel as a bar, failure to mitigate damages, in whole or in part, to the Plaintiff's Complaint.

Eleventh Defense

The Complaint fails to state a claim for punitive damages under the common law, federal law, and/or KRS 411.184 or 411.186 and should therefore be dismissed. The Defendants assert lack of malice, deliberate indifference, lack of reckless disregard or any other state of culpability that would allow for the imposition of punitive damages.

The Complaint fails to state a claim for punitive damages under Kentucky Common Law, pursuant to KRS 411.182, 184, 186, or under federal law and should therefore be dismissed. Defendants plead lack of bad faith, lack of deliberate indifference, and lack of reckless disregard, and lack of any other culpable state of mind necessary for the imposition of punitive damages as a bar in whole or in part, to any punitive damages asserted. In addition, the Plaintiff's claims for punitive damages against the Defendants cannot be sustained because:

- (1) an award of punitive damages under Kentucky law without proof of every element beyond a reasonable doubt;
- (2) an award of punitive damages under Kentucky law without bifurcating the trial of all punitive damage issues;
- (3) any award of punitive damages under Kentucky law subject to no predetermined limits such as a maximum multiple of compensation damages or a

maximum amount on the award of punitive damages, that a jury could impose;

- (4) an award of punitive damages under Kentucky law without the same protections that are afforded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the right to confront adverse witnesses, a speedy trial and the effective assistance of counsel;

would violate the Defendants' rights and rights to due process under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and by Sections 2, 10, 11, 13, and 14 of the Kentucky Constitution.

Twelfth Defense

Any claim for punitive damages against the Defendants cannot be sustained because an award of punitive damages under Kentucky law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size of a punitive damages award, and/or (2) is not instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state required and is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size of a punitive damages award, and (5) is not subject to judicial review on the basis of objective standards, would violate the defendant's due process and equal protection rights guaranteed by the Fourteenth

Amendment to the United States Constitution and the Double Jeopardy Clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and by Sections 2, 3, 13, and 17 of the Kentucky Constitution.

Thirteenth Defense

Any award of punitive damages based on anything other than the Defendants' alleged conduct regarding the subject of this lawsuit would violate the Due Process Clause of the Fifth Amendment to the United States Constitution and the Double Jeopardy Clause of the Fifth Amendment as incorporated into the Fourteenth Amendment by Sections 2 and 13 of the Kentucky Constitution because any other judgment for punitive damages in this case cannot protect the Defendants against impermissible multiple punishment for the same wrong.

Fourteenth Defense

The Defendants plead as a defense the statutory limitation of punitive damages under 42 U.S.C. § 1981(A)(b)(3)(D). Additionally, the Complaint fails to state a claim for relief for punitive damages under Kentucky, Federal, or common law and, therefore, should be dismissed.

Fifteenth Defense

The Defendants affirmatively state that the Plaintiff's claim for punitive damages and/or exemplary damages violates the Defendants' protected interests under the Constitutions of the United States and the Commonwealth of Kentucky, and that such an award of damages constitutes the taking of property without due process of law, the exercise of arbitrary and capricious power, and a violation of equal protection.

WHEREFORE, the Defendants pray for judgment dismissing the Complaint; for their costs expended; for a jury trial on all issues; and for all other relief to which they may appear to be entitled.

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2020, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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