

ORIGINAL

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U.S.D.C. - Newnan

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

JAN 15 2003
LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

RANDY EVANS	:	
	:	CIVIL ACTION
Plaintiff,	:	
-vs-	:	FILE NO. 3:02-CV-124-JTC
	:	
CITY OF ZEBULON, GEORGIA,	:	
ROBERT LUMMUS, Individually,	:	
And in his capacity as POLICE CHIEF	:	JURY TRIAL DEMANDED
OF THE CITY OF ZEBULON,	:	
GEORGIA, and,	:	
DENIS STEPHENS,	:	
Defendants.	:	

**PLAINTIFF'S RESPONSES TO
INITIAL DISCLOSURES**

COMES NOW, the Plaintiff, and answers the Initial Disclosures pursuant to Fed.R.Civ.P. 26(a)(1) and Northern District of Georgia Local Rule 26.1 B(1) as follows:

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including Plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.

RESPONSE: The classification of this case is 440, Other Civil Rights.

On October 28, 2000 Plaintiff Evans, an African-American citizen of the City of Zebulon, Georgia, was driving his vehicle within the city limits of the City of Zebulon. At about 5:10 p.m. City of Zebulon Police Officer Denis Stephens initiated a traffic stop of Evans late model Chevrolet Tahoe, allegedly for displaying a dealer drive-out tag. Once Evans stopped his vehicle, Stephens began interrogating Evans regarding consumption of alcohol. Stephens arrested Evans and transported him in his patrol car to the Pike County Jail. At the jail, Stephens illegally and without any reasonable suspicion ordered Evans to "exit your clothes" and conducted a strip search of Evans. Stephens continued his criminal investigation by requiring Evans to submit to a state-administered breath test to determine his blood alcohol

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concentration as measured by the Intoxilyzer 5000. Evans test registered 0.000 on two different samples. Stephens released Evans without charging him with any criminal activity. Defendant Robert Lummus was the Chief of Police for the City of Zebulon at all times material to this action.

This is a civil action seeking compensatory damages against all defendants, and punitive damages against Stephens and Lummus in their individual capacities, for committing acts under color of state law and depriving Plaintiff of rights secured by the Constitution of the United States. Pursuant to 42 U.S.C §1983 and Title VI of the Civil Rights Act of 1964, Plaintiff seeks money damages for the injuries he suffered as a result of Stephens' unlawful acts. Stephens violated Evans' 4th Amendment right to be free from unreasonable searches and seizure by illegally arresting him and detaining him at the Pike County Jail and conducting an illegal strip search, ostensibly for drugs. Stephens violated Evans' constitutional right of equal protection of the law and due process of law by engaging in a continuing pattern and practice of race-based traffic stops of African-American motorists to search for illegal drugs, commonly known as "racial profiling." Defendant Lummus is liable to Plaintiff because he knowingly condoned, approved, or ratified Stephens racial profiling to the extent it became a pattern and practice of the City of Zebulon Police Department. Defendant Lummus, in the alternative, was deliberately indifferent to the rights of the African-American motoring public generally, and to this Plaintiff specifically, by negligently hiring, negligently supervising, and negligently disciplining Defendant Stephens. The City of Zebulon is liable to Plaintiff because Defendant Lummus, as Chief of Police, was the official policy maker of the City of Zebulon and as a result this pattern and practice of racial profiling became an official policy of the City of Zebulon.

The Plaintiff's cause of action is grounded in 42 U.S.C. §1983 and Title VI of the Civil Rights Act of 1964, and state law claims of negligence. The legal issues are:

(1) Whether Defendant Stephens' traffic stop, criminal investigation, arrest, detention, and strip search of Evans were reasonable in the circumstances or whether Stephens actions violated Evans constitutional rights secured by the 4th, 5th,

and 14th Amendments to the United States Constitution and his civil rights as protected by Title VI of the Civil Rights Act of 1964.

(2) Whether Defendant Stephens' pattern and practice of racial profiling African-American motorists to stop them and search them for drugs violated Evans constitutional rights secured by the 4th, 5th, and 14th Amendments to the United States Constitution and his civil rights as protected by Title VI of the Civil Rights Act of 1964.

(3) Whether Defendant Lummus was deliberately indifferent to the constitutional rights of African-American motorists by condoning, approving, or ratifying the pattern and practice of racial profiling by Stephens and other City of Zebulon Police Officers, to stop and search African-American motorists for drugs.

(4) Whether Defendant Lummus, as Chief of Police, was the official policy maker for the City of Zebulon such that Lummus' actions of condoning, approving and ratifying the pattern and practice of racial profiling of African-American motorists became an official police policy of the City of Zebulon.

(5) Whether Defendant Lummus violated Georgia state tort law by negligently hiring Defendant Stephens.

(6) Whether Defendant Lummus violated Georgia state tort law by negligently supervising Defendant Stephens.

(7) Whether Defendant Lummus violated Georgia state tort law by negligently disciplining Defendant Stephens.

(8) Whether Defendant Lummus, as the Chief of Police, was the official policy maker for the City of Zebulon, to the extent that Lummus' negligence should be attributed to the City of Zebulon.

(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which Plaintiff contends are applicable to this action.

RESPONSE:

42 U.S.C. §1983

Civil Rights Act of 1964, Title VI

Bell v. Wolfish, 441 U.S. 520 (1979)
Terry v. Ohio, 392 U.S. 21, 88 S. Ct. 1880
Tennessee v. Garner, 471 U.S. 1, 105 S. Ct. 1694
U.S. v. Place, 462 U.S. 696, 193 S. Ct. 2637
U.S. v. Ortiz, 422 U.S. 891, 95 S. Ct. 2585
Monell v. Dept. of Social Services, 436 U.S. 658, 98 S. Ct. 2018 (1978)
Hope v. Pelzer, 122 S. Ct. 2508 (2002)
Gilmore v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985)
Rochlin v. California, 342 U.S. 165 (1952)
Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973)
Quinones v. Durkis, 638 F. Supp. 856 (S.D. Fla. 1986)
Miree v. U.S., 490 F. Supp. 768 (N.D. Ga. 1987)
Fundiller v. City of Cooper, 777 F. Supp. 627 (S.D. Ga. 1987)
Gunthorp v. Cobb County, 723 F. Supp. 771 (N.D. Ga. 1984)
Marx v. Gumbinner, 905 F.2d 1503 (11th Cir. 1990)
Von Stein v. Brescher, 904 F.2d 572 (11th Cir. 1990)
Justice v. City of Peachtree City, 961 F.2d 188 (11th Cir. 1992)
Skurstenis v. Jones, 236 F.3d 678 (11th Cir. 2000)
Lowe v. Aldridge, 958 F.2d 1565 (11th Cir. 1992)

Discovery may reveal additional facts that will make additional case law applicable to this case, in addition to the authorities set forth herein.

(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Responses to Initial Disclosures as Attachment A).

RESPONSE:

See Attachment A.

(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703 or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Response to Initial Disclosures as Attachment B).

RESPONSE: Plaintiff has not yet retained any expert witnesses.

(5) Provide a copy of, or a description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subject of the information. (Attach document list and descriptions to Responses to Initial Disclosures as Attachment C).

RESPONSE:

See Attachment C

(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying as under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Response to Initial Disclosures as Attachment D).

RESPONSE:

See Attachment D

(7) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. (Attach copy of insurance agreement to Responses to Initial Disclosures as Attachment E).

RESPONSE:

NOT APPLICABLE

(8) Disclose the full name, address and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in Plaintiff's cause of action and state the basis and extent of such interest.

RESPONSE:

NOT APPLICABLE

Respectfully submitted,

FOSTER, JENSEN & GULLEY, LLC



CHRIS JENSEN, GA Bar No. 391250
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

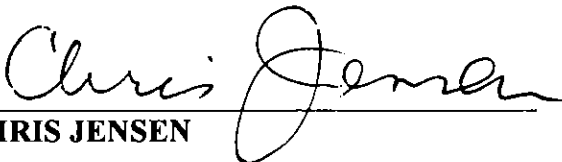
This is to certify that I have this date served a copy of the within and foregoing **PLAINTIFF'S RESPONSES TO INITIAL DISCLOSURES** upon counsel for Defendants by placing same in the U.S. Mail with adequate postage affixed thereon, addressed as follows to:

Richard A. Carothers, Esq.
Thomas M. Mitchell, Esq.
Carothers & Mitchell, LLC
4350 South Lee Street
Suite 200
Buford, GA 30518

Thomas F. Richardson, Esq.
Norman C. Pearson, III, Esq.
Chambless, Higdon & Carson, LLP
PO Box 246
Macon, GA 31202-0246

Laurel E. Henderson, Esq.
315 West Ponce de Leon Avenue
Suite 912
Decatur, GA 30030

This 10 day of January, 2003.


CHRIS JENSEN

ATTACHMENT A

**Randy Evans - 117 4TH street, Concord, GA 30206, (770) 884-5646
traffic stop, arrest, detention, and strip search by Stephens on October 28,
2000. Damages, prior contact between Stephens and Evans.**

**Regina Evans - 117 4th Street, Concord, GA 30206, (770) 884-5646
damages, prior contact between Stephens and Evans.**

**Keith McAfee - 122 Church Street, Concord, GA 30206, 770-884-3470 damages,
prior contact between Stephens and Evans**

**Tyrone Henley - 113 3rd Street, Concord, GA 30206, 770-884-5164, damages, prior
contact between Stephens and Evans.**

**Milton and Patricia McGill- 117 4th Street, Concord, GA 30206, 770-884-5646 -
damages**

**Milton and Keisha McGill Jr. – 198 Connally Place, Griffin, GA 30223, 770-412-
8560, damages**

Yolanda Evans – P.O. Box 234, Zebulon, GA 30295, 770-567-8147, damages

**Mary and Randy Evans Sr. – P.O. Box 441, Zebulon, GA 30295, 770-567-5590,
damages**

Tanisha Latrell Evans – PO Box 441, Zebulon, GA 30295, 770-567-5590, damages

Steve McGill – 122 Church Street, Concord, GA 30206, 770-884-3470 damages

Peter Evans – prior strip search by Stephens

Detree Jordan – prior strip search by Stephens

Andre Dawson – prior strip search by Stephens

Denis Stephens – address and phone number unknown to Plaintiff

Robert Lummus – address and phone number unknown to Plaintiff

Tom Shepherd – address and phone number unknown to Plaintiff

Officer Henslee – address and phone number unknown to Plaintiff

**All City of Zebulon Police Officers employed between March 1998 and December
2001 who participated in racial profiling of African-American motorists and
strip searches as evidenced by videotapes maintained by the City of Zebulon
Police Department.**

Michael Beres – address and phone number unknown to Plaintiff

City of Zebulon City Council members between March 1998 and December 2001.
Mayor of City of Zebulon between March 1998 and December 2001.

ATTACHMENT C

Plaintiff is in possession of certain documents and video tapes produced by Defendants in the case of Peter Evans and Detree Jordan v. City of Zebulon et al. Case No. 3:01-CV-009-JTC filed in the Northern District of Georgia, Newnan division before the Honorable Jack T. Camp that supports his claims in this lawsuit, including:

1. Denis Stephens' typewritten incident report regarding the 10/28/00 arrest of Plaintiff Evans.
2. Approximately 200 incident reports prepared by Defendant Stephens prior to January 22, 1999 during his tenure as a City of Zebulon Police Officer.
3. Approximately 37 videotapes of traffic stops by Defendant Stephens and other unidentified City of Zebulon Police Officers prior to January 22, 1999 demonstrating racial profiling of African-American motorists and illegal strip searches of African-American motorists on the side of the roadway.

Plaintiff's attorneys viewed the official videotape of Defendant Stephens' 10/28/00 traffic stop of Plaintiff Evans on March 5, 2002, however, that videotape was not produced to Plaintiff's attorneys in the Evans/Jordan case.

ATTACHMENT D

Plaintiff suffered compensable injuries including mental anguish, embarrassment, humiliation, anger, emotional distress, and fright in at least a nominal amount but an amount to be determined by the enlightened consciences of a jury. In addition, Plaintiff seeks punitive damages against Defendant Stephens and Lummus in their individual capacities only, and the costs of this action, attorney's fees, and expert witness fees.