

ORIGINAL

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

FILED IN CLERK'S OFFICE  
U.S.D.C. - Newnan

JAN 24 2005

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

RANDY EVANS, )  
)  
Plaintiff, )  
v. )  
)  
CITY OF ZEBULON, GEORGIA, )  
ROBERT LUMMUS, Individually, )  
And in his capacity as )  
POLICE CHIEF OF THE CITY )  
OF ZEBULON, GEORGIA, )  
and, DENIS STEPHENS, )  
)  
Defendants. )

Civil Action No: 3:02-CV-124-JTC

**DEFENDANT'S INITIAL DISCLOSURES**

COME NOW Defendant, City of Zebulon, by and through counsel and pursuant to Local Rule 26.1, Northern District of Georgia, and files its Initial Disclosures as follows:

(1) If the defendants are improperly identified, state defendants' correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

**Response to No. 1:** This defendant is correctly identified.

(2) Provide the names of any parties whom defendants contend are necessary parties to this action, but who have not been named by plaintiff. If defendants contend that there is a question of misjoinder of parties, provide the reasons for defendants' contention.

**Response to No. 2 :** Defendant does not so contend.

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendants in the responsive pleading.

**Response to No. 3:** Denis Stephens, the officer accused of violating the Civil Rights of the Plaintiff in this action, came to the City of Zebulon POST certified and trained in basic law enforcement techniques. This information was verified by then Police Chief Robert Lummus. While he was employed with City of Zebulon police, Officer Stephens was trained in the following classes: basic radar operations, ASP Tactical Baton, advanced traffic law, use of the Intoxilyzer 5000, and advanced report writing. The City of Zebulon adopted a detailed policy manual regarding the day-to-day operations and organization structure of the City of Zebulon Police Department. This manual was in effect during the times referred to in Plaintiff's Complaint. The policy manual contains provisions regarding the training of officers. The manual also describes some of the qualifications required for hiring

in the Police Department. All applicants had to be POST certified through the Georgia Police Academy or receive a waiver from the Mayor and City Counsel. The policy manual also detailed that strip searches were to be done only when reasonable under the circumstances, and that conditional strip searches of detainees was prohibited.

At the time of the incident alleged in Plaintiff's Complaint, Robert Lummus was the Chief of Police of the City of Zebulon Police Department. During Officer Stephens' time on the force, the City Council had received no word of any complaint regarding Stephens. Chief Lummus had counseled Stephens for minor disciplinary infractions, such as arresting a teen-ager for throwing a water balloon and using profanity in front of women from town. Chief Lummus had also told Denis Stephens not to conduct any more strip searches prior to the alleged incident involving the Plaintiff. Chief Lummus did not tell City Counsel about the prior strip search incident. Chief Lummus also had a written policy in practice that his officers did not conduct strip searches of detainees at the Pike County Jail.

This Defendant anticipates that there will be factual disputes between Plaintiff's account of what happened to him during the alleged incident and the account as recollected by Denis Stephens. In any event, the City of Zebulon did not have a policy, custom or practice which was the moving force behind any alleged

constitutional violation. Nor did any conduct of Chief Lummus acting as a final policymaker of the City of Zebulon, cause or contribute to a violation of the Plaintiff's constitutional or federally protected rights.

This Defendant is not aware of any "racial profiling" or racially discriminatory conduct of Officer Stephens.

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

**Response to No. 4:** There is no respondeat superior liability making a municipality liable for the wrongful acts of its police officers in performing arrests and searches of suspects. Gold v. City of Miami, 151 Fed 3d 1346 (1998). See also Monell v. Dept. of Social Services, 436 US 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

Congress did not intend to impose liability on a municipality unless a deliberate act attributable to the municipality is the "moving force" behind the Plaintiff's deprivation of Federal Rights. Board of County Commissioners of Bryan County, OK v. Brown, 520 US 397, 400, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997).

Failure to train may amount to the deliberate indifference needed to show a municipality's culpability only where a failure to train reflects a deliberate or

conscience choice by a municipality. Gold, 151, F 3d at 1350, citing City of Canton v. Harris, 489 US 378, 388-89, 109 S. Ct. 1197, 103 Led 2d 412 (1989).

In order to demonstrate notice on the part of the City of Zebulon, the Plaintiff would have to demonstrate a pattern of incidents which would place the City on notice of a need to train in that area. Popham v. The City of Talledaga, 908 F. 2d 1561-1564-65 (11<sup>th</sup> Cir. 1990). This pattern of incidents must amount to a “history of widespread abuse” that would put the City on notice of the need to train its officers in this particular area. Wright v. Sheppard, 919 F. 2d, 919 F. 2d 665, 674 (11<sup>th</sup> Cir. 1990).

The reasonableness of Officer Stephens traffic stop of the Plaintiff must be judged under standards articulated in Riley v. City of Montgomery, AL, 104 F. 3d 1247 (1996) and Whren v. United States, 517 US 806, 116 S. Ct. 1769, 135 Led. 2d 89 (1996).

In analyzing the hiring of a particular officer, “the showing of an instance of inadequate screening is not enough to establish deliberate indifference”. The Board of County Commissioners of Bryan County v. Brown, 520 US 397, 117 S. Ct. 1382, 137 Led 2d 626.

The Plaintiff cannot point to any specific policy, action, or failure to act by the City of Zebulon which demonstrated the requisite deliberate indifference to the Plaintiff that would authorize the Plaintiff to recover against the City itself.

(5) 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 Initial Disclosures as Attachment A.)

**Response to No. 5:** See Attachment A.

(6) 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 Initial Disclosures as Attachment B.)

**Response to No. 6:** No expert witness has been retained by this Defendant at this time. This Defendant reserves the right to supplement this response at a later time.

(7) Provide a copy of, or 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 subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

**Response to No. 7:** See Attachment "C".

(8) 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 under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

**Response to No. 8:** Not applicable to this Defendant.

(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address and telephone number of such person or entity and describe in detail the basis of such liability.

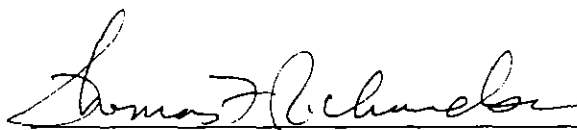
**Response No. 9:** Defendant does not so contend.

(10) 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 to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

**Response to No. 10:** See attachment E.

This 23rd day of January, 2003.



Thomas F. Richardson  
State Bar No: 604325



Norman C. Pearson, III  
State Bar No: 569378

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Attorneys for Defendant City of Zebulon



**CERTIFICATE OF SERVICE**

The below signed attorney for Defendant City of Zebulon, do hereby certify that the following has been prepared in font Times New Roman 14 point in accordance with Local Rule 5.1B and that I have this day served the within and foregoing upon the following counsel by mailing a true and correct copy thereof with sufficient postage attached thereto to ensure delivery at their addresses of record, to-wit:

Mr. Chris Jensen  
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Buford, GA 30518  
Attorney for Def. Robert Lummus

This 23rd day of January, 2003.

  
THOMAS F. RICHARDSON

## ATTACHMENT A

The City of Zebulon's list of persons having discoverable information:

- 1) Robert Lummus, 500 Highway 19 South, Zebulon, Georgia 30295
- 2) Michael Beres, City Council, City of Zebulon, 500 Highway 19, South, Zebulon, Georgia 30295;
- 3) Plaintiff Randy Evans, address unknown;
- 4) Peter Evans, address and telephone number unknown; and,
- 5) Detree Jordon, address and telephone number unknown.

## ATTACHMENT C

### DOCUMENTS AND TANGIBLE THINGS

- 1) Videotape of traffic stop of Randy Evans, October 28, 2002;
- 2) Incident Report of October 28, 2002;
- 3) Application of Denis Stephens for employment with the Police Department of the City of Zebulon ;
- 4) Portion of personnel file of Denis Stephens showing training received during his tenure as a City of Zebulon police officer; and,
- 5) City of Zebulon Policy Manual.

## **ATTACHMENT E**

The City of Zebulon is a member of a pooling arrangement of Georgia cities through Georgia Interlocal Risk Management Agency. A coverage document has been requested and will be provided by supplement as soon as it is received.