

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

BRANDON PAUL CARPENTER and
LOGAN PAGE LALIBERTE

CIVIL ACTION NO. _____

Plaintiffs

JUDGE _____

V

CITY OF SULPHUR,
and BRIAN L. THIERBACH

MAG. JUDGE _____

Defendants

JURY TRIAL DEMANDED

COMPLAINT

The Complaint of BRANDON PAUL CARPENTER, a person of the full age of majority who is a resident and domiciliary of Rumford, Maine, and LOGAN PAGE LALIBERTE, a person of the full age of majority who is a resident and domiciliary of Auburn, Maine. Plaintiffs herein respectfully show:

JURISDICTION and VENUE

1. Jurisdiction is invoked pursuant to 28 U.S.C. 1332 and 28 U.S.C. 1367. Plaintiffs allege pendant jurisdiction and supplemental jurisdiction over Louisiana State Law claims.
2. Venue is proper under 28 U.S.C. 1391 (b)(2) and (e)(2) because events giving rise to

Plaintiffs' claims occurred in this judicial district

PARTIES

Plaintiffs herein are:

3. BRANDON PAUL CARPENTER, a resident and domiciliary of Rumford, Maine, and a citizen of the United States of America.

4. LOGAN PAGE LALIBERTE, a resident and domiciliary of Auburn, Maine, and a citizen of the United States of America.

Made defendants herein are:

5. CITY OF SULPHUR, a municipality and political subdivision of the State of Louisiana, organized under the laws of the State of Louisiana. The CITY OF SULPHUR operates the SULPHUR POLICE DEPARTMENT, and at all times relevant to the events complained of herein, was the employer of Defendant, BRIAN L. THERBACH. The CITY OF SULPHUR is sued pursuant to the doctrine of respondeat superior on the pendant State Law claims. The CITY OF SULPHUR is domiciled in the Parish of Calcasieu, State of Louisiana, and can be served through Mayor, CHRISTOPHER DUNCAN, at 101 N. Huntington Street, Sulphur, La 70663 and;

6. BRIAN L. THERBACH, (hereinafter, sometimes referred to as OFFICER THERBACH), a former police officer with the CITY OF SULPHUR, who, at the times of the occurrence described herein, was employed as a Sulphur City Police Officer and acting within the scope of his employment for purposes of State Law, and under color of State Law for purposes of Federal Law. BRIAN L. THERBACH is a citizen of the State of Louisiana and the United States of America. He is being sued in his individual capacity and in his official capacity as a former Sulphur Police Officer. Upon information and belief, he is domiciled in Sulphur, Louisiana, and can be served at

INTRODUCTION

7. This is an action brought pursuant to 42 U.S.C. Section 1983 to redress the deprivation

under color of law of Plaintiffs' Fourth Amendment rights as secured by the United States Constitution as well as other State Law claims as are discussed in further detail below.

8. At all times relevant hereto and in all actions described herein, the employees, agents, and representatives of the CITY OF SULPHUR, including OFFICER BRIAN L. THIERBACH, were in the course and scope of their employment with the CITY OF SULPHUR and were acting pursuant to their authority as police officers and law enforcement officials for the CITY OF SULPHUR.

FACTS

9. On or about the morning of April 28, 2014, plaintiffs, BRANDON PAUL CARPENTER and LOGAN PAGE LALIBERTE, were traveling through the CITY OF SULPHUR, Parish of Calcasieu, State of Louisiana, along with their travel companion, CARPENTER's dog, Arzy Kenzington, a Newfoundland-Labrador mix. Plaintiffs show that BRANDON PAUL CARPENTER was the owner and guardian of Arzy Kenzington.

10. On the aforementioned date, Plaintiffs, along with Arzy, took shelter in an open box car in the parking lot of Southwest Daily News. Shortly thereafter, Sulphur City Police Officer, BRIAN L. THIERBACH, arrived on the scene with his gun drawn and pointed in plaintiffs' direction.

11. OFFICER THIERBACH ordered the plaintiffs out of the box car and ordered CARPENTER to secure his dog. CARPENTER fully complied with the Officer's demands and tied Arzy securely to the box truck with approximately a three and one-half (3 ½) foot leash. At no time during the events described herein, did Arzy act in an aggressive or threatening manner, nor was he a threat in any way to the safety of OFFICER THIERBACH or any potential bystanders. OFFICER THIERBACH asked CARPENTER if his dog had a propensity for aggression. CARPENTER assured OFFICER THIERBACH that his dog was friendly and was not a threat.

12. OFFICER THIERBACH then placed both plaintiffs under arrest for an alleged trespass violation. At all times pertinent herein, both plaintiffs, CARPENTER and LALIBERTE, were fully cooperative and compliant with OFFICER THIERBACH's demands and orders. Despite the plaintiffs' peaceful compliance, OFFICER THIERBACH'S words and actions toward the plaintiffs were hostile, threatening and demeaning. While in the process of handcuffing the plaintiffs, OFFICER THIERBACH, without any reasonable justification, kicked both CARPENTER and LALIBERTE'S legs out from underneath them, causing them to fall violently to the ground.

13. After having committed a battery upon the plaintiffs, OFFICER THIERBACH walked directly over to the restrained dog and maliciously and intentionally shot Arzy in the head, resulting in the death of the dog. This intentional and needless act was performed without the slightest provocation or legal or moral justification. On information and belief, and due to OFFICER THIERBACH's comments and actions directed at Plaintiffs, this act was done with the intent to cause emotional distress to plaintiffs. CARPENTER and LALIBERTE were forced to witness this heinous act while they were restrained in handcuffs and helpless. There was no proper or justifiable cause whatsoever for OFFICER THIERBACH to discharge his firearm nor for OFFICER THIERBACH to use excessive force upon the plaintiffs or deadly force upon Arzy.

14. Following the malicious shooting and battery upon the plaintiffs, additional law enforcement arrived on the scene. In clear view of the plaintiffs, officers stuffed Arzy's remains into a bag and threw said remains into the back of a vehicle. All the while, conduct of officers at the scene was jovial and unconcerned to the events that had just transpired.

15. Upon information and belief, BRIAN L. THIERBACH's career as a law enforcement officer had been the subject of reprimand and marred by substandard conduct. Plaintiffs allege that

Officials with the CITY OF SULPHUR and SULPHUR POLICE DEPARTMENT had prior knowledge of BRIAN L. THIERBACH's history of inappropriate conduct as a law enforcement officer at the time of hiring, and were negligent in hiring BRIAN L. THIERBACH given his past record.

16. As a result of this incident, plaintiff, BRANDON PAUL CARPENTER, suffers from mental anguish due to the loss of his property, Arzy. CARPENTER'S property was damaged by an intentional and illegal act at the hands of OFFICER THIERBACH. CARPENTER was present at the time of the incident and suffered psychic trauma as a result.

17. Both plaintiffs, BRANDON CARPENTER and LOGAN PAGE LALIBERTE, were the victims of assault, battery and fearfulness for their lives and safety. Plaintiffs sustained serious mental and emotional injuries and physical pain, as will be proven at trial.

DAMAGES

18. Plaintiff, BRANDON PAUL CARPENTER, required and continues to require medical and psychological treatment as a result of this incident, due to the loss of his property, Arzy, as well as physical, mental, and emotional distress caused by the intentional actions of OFFICER THIERBACH. BRANDON PAUL CARPENTER itemizes his damages in the following particulars, to-wit:

- (A) Loss of property
- (B) Past, present and future medical expenses;
- (C) Past, present and future mental and emotional pain, anguish, and distress;
- (D) Mental and physical injuries due to the assault, battery and use of excessive force upon his person.

19. Plaintiff, LOGAN PAGE LALIBERTE, has sustained physical, mental and emotional distress due to the intentional actions of OFFICER THIERBACH. LOGAN PAGE LALIBERTE itemizes his damages in the following particulars, to-wit:

- (A) Future medical expenses;
- (B) Past, present and future mental and emotional pain, anguish, and distress;
- (C) Mental and physical injuries due to the assault, battery and use of excessive force upon his person.

CLAIMS FOR RELIEF

**COUNT I- 42 U.S.C. §1983
Fourth Amendment- Illegal Seizure**

20. Each of the foregoing paragraphs is incorporated as if restated fully herein.
21. BRIAN L. THIERBACH is liable for the subject accident by intentionally and maliciously shooting and killing plaintiff, BRANDON PAUL CARPENTER'S dog, without justification.
22. The seizure of BRANDON PAUL CARPENTER'S dog, Arzy, as detailed above, violated CARPENTER'S fourth Amendment right to be free of unreasonable seizures.
23. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to CARPENTER'S constitutional rights.
24. As a result of OFFICER THIERBACH'S illegal seizure, CARPENTER suffered injury, including emotional anguish, pain, suffering, and the loss of his beloved dog, Arzy.

**COUNT II- 42 U.S.C § 1983
Fourth Amendment- Excessive Force**

25. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
26. As described in the preceding paragraphs, the conduct of OFFICER THIERBACH, acting under color of law, constituted excessive force in violation of the United States Constitution.
27. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to plaintiffs' constitutional rights.
28. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of plaintiffs.
29. As a result of OFFICER THIERBACH's unjustified and excessive use of force, both Plaintiffs suffered injuries including emotional anguish, pain, suffering, and BRANDON PAUL CARPENTER has sustained the loss of his beloved dog, Arzy.

COUNT III - State Law Claim

Intentional Infliction of Emotional Distress

30. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
31. As described in the preceding paragraphs, the misconduct of OFFICER THIERBACH toward the plaintiffs was extreme and outrageous.
32. As described in the preceding paragraphs, OFFICER THIERBACH displayed callous and reckless conduct which caused anguish, grief, fear, and apprehension of loss of life or serious bodily injury to plaintiffs, who, at all times, were restrained.
33. Given the nature of the misconduct, OFFICER THIERBACH committed the misconduct with knowledge that his actions would cause severe emotional distress to both the plaintiffs.
34. As a direct and proximate cause of OFFICER THIERBACH's misconduct, both Plaintiffs have suffered severe emotional distress, including emotional anguish, humiliation, fear and anxiety.

COUNT IV- State Law Claim

Assault

35. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
36. The above detailed conduct by OFFICER THIERBACH, including (1) drawing his weapon without justification and pointing it in the direction of plaintiffs and (2) unjustifiably shooting and killing CARPENTER'S dog, Arzy, in the presence of plaintiffs, was done with intent to cause plaintiffs apprehension of imminent bodily harm or death.
37. As described in the preceding paragraphs, OFFICER THIERBACH displayed callous and reckless conduct which caused anguish, grief, fear, and apprehension of loss of life or serious bodily injury to plaintiffs, who, at all times, were restrained.
38. Plaintiffs apprehension was reasonable.
39. As a result of OFFICER THIERBACH's conduct, Plaintiffs suffered injury, including emotional anguish, anxiety, and fear.

COUNT V- State Law Claim

Battery

40. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
41. The above detailed conduct by OFFICER THIERBACH, including kicking both plaintiffs' legs out from underneath them, was done with intent to cause plaintiffs physical bodily harm.
42. The above detailed conduct by OFFICER THIERBACH did cause Plaintiffs physical and bodily harm.
43. As a result of OFFICER THIERBACH's conduct, Plaintiffs suffered physical injuries to

their persons.

COUNT VI- State Law Claim

Respondent Superior

44. Each of the foregoing paragraphs is incorporated as if restated fully herein.
45. In committing the acts alleged in the preceding paragraphs, OFFICER THERBACH was employed by the SULPHUR POLICE DEPARTMENT and thereby acting as an agent of the CITY OF SULPHUR.
46. In committing the acts alleged in the preceding paragraphs, OFFICER THERBACH was, at all time pertinent herein, in the course and scope of his employment with the CITY OF SULPHUR.

47. Defendant, CITY OF SULPHUR, is liable as principal for all acts/omissions committed by its agents and employees.

COUNT VII- State Law Claim

Negligent Hiring, Training And Supervision

48. Each of the foregoing paragraphs is incorporated as if restated fully herein.
49. As described in the preceding paragraphs, plaintiffs allege that the CITY OF SULPHUR failed to properly screen potential employee, BRIAN L. THERBACH, was negligent in hiring BRIAN L. THERBACH, and failed to properly train and supervise BRIAN L. THERBACH, while having knowledge of his past employment- related conduct and incidents, thereby resulting in the subject incident.
50. As described in the preceding paragraphs, plaintiffs allege that the CITY OF SULPHUR failed to adequately train and/or instruct officers in the management, risks, and procedures involved

