

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

BERTRAM KEYS

PLAINTIFF

VS.

CIVIL ACTION NO.: 4:19-CV-048-SA-JMV

**CITY OF GREENWOOD, MISSISSIPPI,
ET AL.**

DEFENDANTS

**MUNICIPAL DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT¹**

Defendants, City of Greenwood, Mississippi, James C. Layton, in his individual capacity, Byron L. Granderson, in his individual capacity, Dylan H. Peden, in his individual capacity, Lenard Paige, in his individual capacity and Ray Moore, in his official capacity (herein collectively referred to as "Municipal Defendants"), respectfully submit this their Answer and Affirmative Defenses to Plaintiff's Amended Complaint [Doc. 28] ("Complaint"), as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Municipal Defendants plead all applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Punitive damages cannot be assessed against the City of Greenwood, Mississippi or Defendant Moore in his official capacity.

FOURTH AFFIRMATIVE DEFENSE

While denying that Plaintiff is entitled to punitive damages, Municipal Defendants affirmatively plead that an award of punitive damages in an amount in excess of that proportion

¹ For the record, Municipal Defendants note that Plaintiff filed his Amended Complaint [Doc. 28] without filing a motion for leave of Court to do so, as is required by the Court's Case Management Order [Doc. 23].

permitted by the laws of the United States would violate the Due Process protections of the U.S. Constitution. Further, Mississippi laws and procedures governing punitive damages are violative of the 6th Amendment, 8th Amendment, the Due Process Clause and Equal Protection Clause of the 14th Amendment, and other provisions, of the United States Constitution in Article III, Section 14 and other provisions of the Constitution of the State of Mississippi.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries were not caused by a policy or custom of the City of Greenwood, Mississippi. Therefore, there can be no municipal liability under federal law.

SIXTH AFFIRMATIVE DEFENSE

Defendants Layton, Granderson, Peden, and Paige are entitled to qualified immunity from Plaintiff's federal law claims brought through 42 U.S.C. § 1983 because their conduct did not violate clearly established constitutional rights of which a reasonable person would have known.

SEVENTH AFFIRMATIVE DEFENSE

Municipal Defendants assert all affirmative defenses that are or may become available or of which Defendant may become aware (upon further investigation or discovery) under FED. R. Civ. P. 8(c).

EIGHTH AFFIRMATIVE DEFENSE

Municipal Defendants assert all affirmative defenses that are or may become available or of which Defendant may become aware (upon further investigation or discovery) under FED. R. Civ. P. 12(b).

NINTH AFFIRMATIVE DEFENSE

Municipal Defendants reserve their right to assert any other affirmative defenses that become known during further investigation and/or discovery in this matter.

ANSWER

Without waiving any of the aforementioned Affirmative Defenses, Municipal Defendants respond to the Complaint as follows:

Municipal Defendants admit Plaintiff has brought his claims under the Fourth and Fourteenth Amendments to the United States Constitution—by and through 42 U.S.C. § 1983. All remaining allegations contained in the first, unnumbered paragraph of Plaintiff’s Complaint beginning “Plaintiff Bertram (Bert) Keys...” are denied.

I. JURISDICTION

1. Municipal Defendants admit this Court has subject matter jurisdiction and that venue is proper in this Court. All remaining allegations contained in Paragraph 1 of Plaintiff’s Complaint are denied.

II. PARTIES

2. Municipal Defendants are without information sufficient to admit or deny the allegations contained in Paragraph 2 of Plaintiffs’ Complaint and, therefore, deny the same.

3. Municipal Defendants admit the City of Greenwood, Mississippi is a municipality within the State of Mississippi. All remaining allegations contained in Paragraph 3 of Plaintiff’s Complaint are denied.

4. Municipal Defendants admit that Defendant Layton was employed as a Greenwood police officer as of September 2, 2016. All remaining allegations contained in Paragraph 4 of Plaintiff’s Complaint are denied.

5. Municipal Defendants admit that Defendant Granderson was employed as a Greenwood police officer as of September 2, 2016. All remaining allegations contained in Paragraph 5 of Plaintiff’s Complaint are denied.

6. Municipal Defendants admit that Defendant Peden was employed as a Greenwood police officer as of September 2, 2016. All remaining allegations contained in Paragraph 6 of Plaintiff's Complaint are denied.

7. Municipal Defendants admit that Defendant Paige was employed as a Greenwood police officer as of September 2, 2016. All remaining allegations contained in Paragraph 7 of Plaintiff's Complaint are denied.

8. Municipal Defendants admit that Defendant Moore is the Chief of Police for the City of Greenwood, Mississippi. All remaining allegations contained in Paragraph 8 of Plaintiff's Complaint are denied.

III. FACTS

9. Municipal Defendants admit that certain members of the Greenwood Police Department's SWAT team were patrolling around the 100 block of Palace Street in Greenwood, Mississippi on the night of September 2, 2016. All remaining allegations contained in Paragraph 9 of Plaintiff's Complaint are denied as stated.

10. Municipal Defendants admit that Captain Michael Johnson conducted an Internal Affairs investigation into the events that transpired on the night of September 2, 2016 based on a complaint made by Plaintiff. Municipal Defendants further admit that Captain Johnson took recorded statements of the officers who were present during the altercation with Plaintiff on the night of September 2, 2016. All remaining allegations contained in Paragraph 10 of Plaintiff's Complaint, inclusive of the allegations contained in sub-paragraphs (a) through (i), are denied as stated.

11. Municipal Defendants deny the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. Municipal Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Municipal Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Municipal Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Municipal Defendants deny the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Municipal Defendants deny the allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Municipal Defendants admit Plaintiff resisted arrest. Municipal Defendants deny all remaining allegations contained in Paragraph 17 of Plaintiff's Complaint.

18. Municipal Defendants admit Plaintiff resisted arrest. Municipal Defendants deny all remaining allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Municipal Defendants admit Defendant Granderson instructed Defendant Peden to arrest Plaintiff. Municipal Defendants deny all remaining allegations contained in Paragraph 19 of Plaintiff's Complaint as stated.

20. Municipal Defendants deny the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21. Municipal Defendants admit Plaintiff resisted arrest. Municipal Defendants deny all remaining allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. Municipal Defendants admit Defendant Granderson tased Plaintiff after Plaintiff resisted arrest and struck Defendant Peden. Municipal Defendants deny all remaining allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Municipal Defendants admit that Plaintiff fell into the grass after being tased by Defendant Granderson. Municipal Defendants deny all remaining allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Municipal Defendants admit Plaintiff was tased a second time after continuing to resist arrest while on the ground. Municipal Defendants deny all remaining allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Municipal Defendants admit Plaintiff was tased a second time after continuing to resist arrest while on the ground. Municipal Defendants deny all remaining allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. Municipal Defendants admit Plaintiff was placed in handcuffs after he stopped resisting arrest. Municipal Defendants deny all remaining allegations contained in Paragraph 26 of Plaintiff's Complaint.

27. Municipal Defendants admit Plaintiff was placed into the back of Defendant Layton's patrol vehicle for transport to the Leflore County jail. Municipal Defendants deny all remaining allegations contained in Paragraph 27 of Plaintiff's Complaint as stated.

28. Municipal Defendants admit the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Municipal Defendants admit Plaintiff was booked into the Leflore County jail. Municipal Defendants deny all remaining allegations contained in Paragraph 29 of Plaintiff's Complaint as stated.

30. Municipal Defendants lack sufficient information or knowledge to admit or deny the allegations contained in Paragraph 30 of Plaintiff's Complaint and, therefore, deny the same.

31. Municipal Defendants admit the charges of disorderly conduct—failure to comply, threat on an officer, and “other parking” were dismissed with prejudice. Municipal

Defendants deny all remaining allegations contained in Paragraph 31 of Plaintiff's Complaint as stated.

IV. DAMAGES

32. Municipal Defendants deny the allegations contained in Paragraph 32 of Plaintiff's Complaint.

V. CLAIMS

(FOURTH AND FOURTEENTH AMENDMENTS)

33. Municipal Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Complaint.

VI. REQUESTED RELIEF

34. Municipal Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint.

WHEREFORE, PREMISES CONSIDERED, having answered the allegations contained in the Complaint filed against them and having set forth their affirmative defenses herein, Municipal Defendants deny they are liable to Plaintiff or anyone else for any damages or relief whatsoever and respectfully request that the Complaint filed against these Defendants be dismissed, with prejudice, in its entirety and that Plaintiff and his counsel take nothing of or from Municipal Defendants.

Dated: September 9, 2019.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/ Jason T. Marsh

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**ATTORNEYS FOR MUNICIPAL
DEFENDANTS**

CERTIFICATE OF SERVICE

I, JASON T. MARSH, do hereby certify that on September 9, 2019 I electronically filed the above and foregoing *MUNICIPAL DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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ATTORNEYS FOR PLAINTIFF

SO CERTIFIED, this the 9th day of September, 2019.

/s/ Jason T. Marsh

JASON T. MARSH