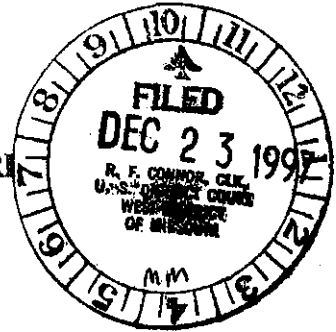


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION



WILLIAM CHRISTOPHER NIEMET,)

Complainant,)

vs.)

THE COUNTY OF COLE, A MISSOURI)
POLITICAL SUBDIVISION,)
JOHN HEMEYER,)
SHERIFF OF COLE COUNTY,)

Defendant.)

97-4354-CV-C-BA

Case No. _____

COMPLAINT

Comes Now William Christopher Niemet, complainant by and through his attorney and alleges the following acts and events that comprise his statement of complaint, to-wit:

1. That at all times mentioned in this petition, complainant was a resident of the County of Cole and a citizen of the United States of America.

2. That John Hemeyer was the duly acting Sheriff of Cole County, Missouri.

3. That defendant, the County of Cole was at all times mentioned herein a political subdivision of the State of Missouri, and as such had a Juvenile Detention facility, Sheriff's Department, Juvenile Courts, and at all times mentioned herein, Cole County acted under the authority of law and acting by and through its employees or agents did act in a manner

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inconsistent and in derogation of the rights afforded complainant under the Constitution of the United States in that they deprived him of his liberty and pursuit of happiness without legal justification.

4. That this action is brought under 42 U.S.C Section 1983 in that all acts were performed by a political subdivision of the State of Missouri namely the County of Cole against William Christopher Niemet, a citizen of the United States of America. That this Court has jurisdiction over this action under 28 U.S.C Section 1343 (A) (5), and that plaintiff seeks monetary damages as well as attorney fees and costs pursuant to 42 U.S.C. Section 1988.

5. That during the year of 1991, complainant was a student at Russellville School, that complainant had a vacation from formal school for the summer months of June, July and August, and had planned to spend the duration of the summer school vacation being with his family and friends, playing sports in organized leagues and outdoor activities. Complainant had a large collection of video tapes and the equipment to play the same at his disposal. Complainant had liberty at the time and schedule to pursue his individual happiness.

6. That defendant took complainant physically from his family and home and restrained

his liberty by locking him up in a Juvenile Detention Center without just cause or a legal reason.

7. That the avowed purpose of the defendant was to sweat out a "confession" of defendant as to his complicity in a murder case under investigation by the County of Cole's Sheriff's Department.

8. That the detention of complainant under lock and key was for a period in excess of 28 days, during which he was a prisoner of the County of Cole for no just or legal reason. That his detention for the entire period was contrived and pretextual, that defendant had no lawful reason to retain complainant of his liberty, and to deny him the right to pursue happiness. That the imprisonment of William Christopher Niemet by defendant was false.

9. That during the course of the false imprisonment of complainant, he was deprived of his liberty, made to live in a jail, and kept from his friends and family and was by the fact of his imprisonment denied his athletic plans and family pursuits and vacation activities for the summer of 1991.

10. That during the course of his imprisonment complainant was depressed, had anxiety moods and did not know or understand why he was confined for an investigation of a crime for

which he had no knowledge or complicity.

11. That complainant due to false imprisonment still suffers from paranoia concerning government and police officials, has suffered from emotional distress, loss of sleep, nightmares and anger toward those who participated in his detention, and that there was no apology for their actions in imprisoning complainant.

12. That complainant has been damaged in the sum of Three Million Dollars (\$3,000,000.00) due to his false imprisonment and the consequences resulting therefrom.

13. That a Jury Trial is requested.

WHEREFORE, Complainant prays that damages and court costs be assessed against the defendant.

CREWS & LUTZ

By: 

James F. Crews

Missouri Bar No.: 18276

P.O. Drawer D

Tipton, Missouri 65081

(816) 433-5321

ATTORNEYS FOR COMPLAINANT

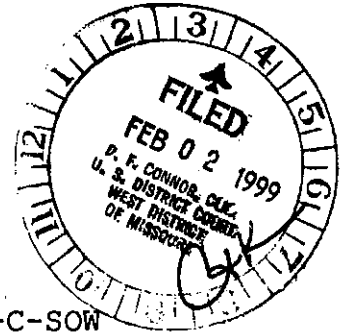
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97-4054-CV-2-300

County of Cole

SEAL OF THE COURT
FOR THE COUNTY OF COLE
AND THE DISTRICT OF COLUMBIA
IN THE DISTRICT OF COLUMBIA
BY SUGEN IN SUGEN

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION



WILLIAM CHRISTOPHER NIEMET,)

Plaintiff,)

vs.)

No. 97-4354-CV-C-SOW

THE COUNTY OF COLE, a Missouri)
political subdivision, and
JOHN HEMEYER, Sheriff of Cole)
County,

Defendants.)

ORDER

Before this Court is defendants' Motion for Summary Judgment and for Protective Order (Doc. #23), plaintiff's Answer, that was never officially filed with the Court, and defendants' response. For the reasons stated below, this Motion is granted in part and denied in part.

I. Background

Plaintiff asserts one claim of violation of 42 U.S.C. § 1983. Plaintiff alleges that he was unlawfully detained during the months of June and July 1991. Plaintiff alleges that the County of Cole and the Sheriff of said county detained him for reasons that were pretextual and that the detention was in violation of plaintiff's rights.

The undisputed facts are as follows:

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1. Gregory Jones was shot to death in April of 1991.
2. Plaintiff is a suspect in said shooting death. Def. ex. 3.
3. On June 14, 1991, Juvenile Officer Michael Prenger filed a Petition in the Juvenile Division of Cole County Circuit Court alleging plaintiff's involvement in the death of Gregory Jones. Def. Ex. 1, p. 4-5.
4. On June 14, 1991, Judge Thomas J. Brown, III, entered an order to detain plaintiff. Def. Ex. 1, p.6-7.
5. On June 17, 1991, Juvenile Officer Michael Prenger filed a First Amended Petition in the Juvenile Division of the Cole County Circuit Court alleging the commission of the Class C Misdemeanor of Assault in the Third Degree. Def. Ex. 1, p.8-9.
6. On June 17, 1991, Judge Thomas J. Brown, III, after a hearing at which plaintiff was represented by counsel, entered an order finding probable cause to detain plaintiff pending a hearing upon the petition. Def. Ex. 1, p.12.
7. On June 18, 1991, Juvenile Officer Michael Prenger filed a Second Amended Petition alleging the commission of the Class D Felony of Unlawful Use of a Weapon. Def. Ex. 1, p. 13-14.
8. On June 27, 1991, plaintiff filed a Petition for Writ of Habeas Corpus, and said Motion was denied. Def. ex. 2.
9. On July 10, 1991, Juvenile Officer Michael Prenger issued a report to the court indicating that he was without enough information to make a "solid recommendation" about plaintiff. Def. ex. 1, p. 35-37.
10. On July 12, 1991, Judge Byron L. Kinder issued an order releasing plaintiff from custody. Def. ex. 1, p. 40.
- 11 . On January 28, 1992, pursuant to a Motion to Dismiss filed by Juvenile Officer Michael Prenger, Judge Cary Augustine dismissed the petition against plaintiff without prejudice. Def. ex. 1, p.44.

Plaintiff contends that the assault charge, that became an unlawful use of a weapon charge, was simply a pretext to hold plaintiff while attempting to "sweat" a confession out of him.

II. Standard

A motion for summary judgment should be granted if, viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue as to any material facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Rafos v. Outboard Marine Corp., 1 F.3d 707, 708 (8th Cir. 1993) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)). A defendant who moves for summary judgment has the burden of showing that there is no genuine issue of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A plaintiff opposing a properly supported motion for summary judgment may not rest upon the allegations of his pleadings, "but must set forth specific facts showing there is a genuine issue for trial." Id.

III. Discussion

Defendants raise two arguments in support of their Motion. These two issues will be discussed separately.

A. Collateral Estoppel

Defendants' first argument is that the County of Cole should be protected by collateral estoppel because the issue of probable cause was litigated and that protects the county from a later claim under § 1983. Defendants claim that the hearings held by Judge Brown based upon the petition that Juvenile Officer Prenger filed, at which plaintiff was represented by counsel, satisfied all process due to plaintiff. Defendants further argue that any action to detain plaintiff taken by the County of Cole pursuant to the Orders entered by Judge Brown are protected by the doctrine of collateral estoppel because the procedural due process required for the detention of the plaintiff was satisfied in those hearings.

Plaintiff argues that there was no hearing on the Petition. This, however, is not the issue. The issue raised by plaintiff was whether the pre-trial detention of plaintiff on the weapons charges was violative of plaintiff's rights under the Constitution. A probable cause hearing on the pre-trial detention issue was held.

The doctrine of collateral estoppel applies to § 1983 actions. Allen v. McCurry, 449 U.S. 90, 96-99 (1980). The doctrine provides that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of

action involving a party to the first case." Id. at 94. Collateral estoppel applies, however, only when a party had "such a full and fair opportunity to litigate that issue [that] the benefits of preclusion outweigh the countervailing due process concerns present whenever a party is estopped from raising a claim." Simmons v. O'Brien, 77 F.3d 1093, 1095-96 (8th Cir. 1996).

In this case, plaintiff had a full and fair opportunity to litigate the issue of probable cause if the Petition and hearing was based upon truthful information from Sheriff Hemeyer. Although no support has been brought forth by the plaintiff for his contentions, this Court finds that a genuine issue of material fact still exists. For this reason, summary judgment cannot be granted in favor of Sheriff Hemeyer.

The remainder of the County offices named in the body of the Complaint by plaintiff, such as the Juvenile Courts and the juvenile detention facility, present a different situation. No evidence of any sort has been presented by the plaintiff to support an argument that the Juvenile Court and related agencies and individuals did anything other than their job in the detention of plaintiff. If they relied upon bad information presented to them by Sheriff Hemeyer, that is unfortunate but not actionable.

B. Qualified Immunity

Defendants' second argument is that Sheriff Hemeyer is protected by qualified immunity. Qualified immunity protects a governmental official's actions in a discretionary function "insofar as their conduct does not violate a clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). This is an objective test. Id.

Plaintiff argues that Sheriff Hemeyer knowingly violated the law in pursuing the weapons charge against plaintiff. Defendants argue that Sheriff Hemeyer acted within his bounds as Sheriff and did not violate any clearly established constitutional right. The resolution of this issue depends upon a genuine issue of material fact, as stated above, which must be decided by a jury. As to the claim of qualified immunity, defendants' Motion is denied.

IV. Motion for Protective Order

Defendants also ask for a Protective Order for the investigative file of the Gregory Jones shooting that was requested by plaintiff. Because the claim against Sheriff Hemeyer is proceeding, certain contents of that investigative file may be pertinent to the plaintiff and discoverable. Due to the nature of the materials and the ongoing status of the

investigation, this Court will conduct an In Camera review of the requested file and determine at that time what parts of the file, if any, are discoverable.

V. Conclusion

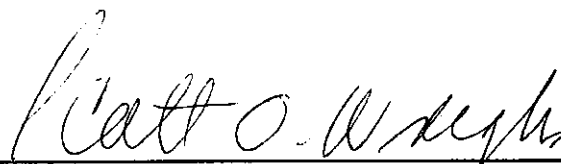
Accordingly, it is hereby

ORDERED that defendants' Motion for Summary Judgment (Doc. #23) is denied as to Sheriff Hemeyer. It is further

ORDERED that defendants' Motion for Summary Judgment (Doc. #23) is granted as to the County of Cole, except to the extent of liability for the actions of Sheriff Hemeyer. It is further

ORDERED that defendants shall turn over to this Court the investigative file sought by plaintiff by **February 15, 1999**, for an In Camera examination. It is further

ORDERED that plaintiff shall file with the Court, in the Central Division Clerk's Office in Jefferson City, the Answer to Joint Motion for Summary Judgment that was sent to this Court by facsimile on January 15, 1999.



SCOTT O. WRIGHT
Senior United States District Judge

February 2, 1999.