

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

C.A. NO: 97-11743-MLW

MICHAEL ELBERY,
Plaintiff

v.

DANIEL SKLUT, JAMES CARLIN,
STEPHEN FAUCHER, CARL HANSON,
CHESTER JOHNSON, JAMES HURLEY
WAYNE SAMPSON, ROBERT MCGINLEY,
and THE TOWN OF SHREWSBURY,
Defendants.

DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT AND JURY CLAIM

To the extent that the paragraph in the complaint entitled "Introduction" contains allegations against the defendants, the same are denied.

1. To the extent that the paragraph in the complaint entitled "Jurisdiction" contains allegations against the defendants, the same are denied.
2. The defendants admit the allegation contained in paragraph number 1.
3. The defendants admit the allegation contained in paragraph number 2.
4. The defendants admit that Robert McGinley was the Chief of Police and admits that he is responsible for some of the delineated duties set forth in paragraph 4 to the extent to the extent that the duties are not the responsibility of another municipal official or entity.
5. The defendants cannot either admit or deny the allegation contained in paragraph number 5 as it is vague and confusing as to the allegation "at all times".

6. To the extent that paragraph number 6 contains allegations against the defendants, the same are denied.
7. The defendants admit the allegation contained in paragraph number 7.
8. The defendants admit that the plaintiff was arrested and deny the remaining allegations contained in paragraph 8.
9. The defendants admit that the plaintiff was indicted and convicted, and deny the remaining allegations contained in paragraph 9.
10. The defendants admit that the plaintiff was sentenced to a term of imprisonment and deny the remaining allegations of paragraph 10.
11. The defendants admit that the victim was Tom King and the incident occurred at the Winner's Circle Bar. The defendants admit that King and the plaintiff were present. The defendants are without knowledge or belief as to whether King's friends were present.
12. The defendants deny the allegations contained in paragraph 12.
13. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 13 of the complaint.
14. The defendants deny the allegations contained in paragraph 14.
15. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 15 of the complaint and call on the plaintiff to prove the same.
16. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 16 of the complaint and call on the plaintiff to prove the same.

17. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 17 of the complaint and call on the plaintiff to prove the same.
18. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 18 of the complaint and call on the plaintiff to prove the same.
19. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 19 of the complaint and call on the plaintiff to prove the same.
20. The defendants admit that the plaintiff was arrested and deny the remaining allegations contained in paragraph 20.
21. The defendants deny the allegations contained in paragraph 21.
22. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 22 of the complaint and call on the plaintiff to prove the same.
23. The defendants deny the allegations contained in paragraph 23.
24. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 24 of the complaint and call on the plaintiff to prove the same.
25. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 25 of the complaint and call on the plaintiff to prove the same.

26. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 26 of the complaint and call on the plaintiff to prove the same.

27. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 27 of the complaint and call on the plaintiff to prove the same.

COUNT I

28. The defendants restate their responses to paragraphs 1-27 as if specifically restated herein.

29. The defendants deny the allegations contained in paragraph 29.

30. The defendants deny the allegations contained in paragraph 30.

31. The defendants deny the allegations contained in paragraph 31.

32. The defendants deny the allegations contained in paragraph 32.

33. The defendants deny the allegations contained in paragraph 33.

34. The defendants deny the allegations contained in paragraph 34.

COUNT II

35. The defendants restate their responses to paragraphs 1-34 as if specifically restated herein.

36. The defendants deny the allegations contained in paragraph 36.

37. The defendants deny the allegations contained in paragraph 37.

38. The defendants deny the allegations contained in paragraph 38.

- 39. The defendants deny the allegations contained in paragraph 39.
- 40. The defendants deny the allegations contained in paragraph 40.

COUNT III

- 41. The defendants restate their responses to paragraphs 1-40 as if specifically restated herein.
- 42. The defendants deny the allegations contained in paragraph 42.

COUNT IV

- 43. The defendants admit that items were removed from the unit.
- 44. The defendants deny the allegations contained in paragraph 44.
- 45. The defendants admit that the car was returned.
- 46. The defendants deny the allegations contained in paragraph 46.
- 47. The defendants deny the allegations contained in paragraph 47.
- 48. The defendants deny the allegations contained in paragraph 48 and 48 a..
- 49. The defendants deny the allegations contained in paragraph 49.

COUNT V

- 50. The defendants restate their responses to paragraphs 1-49 as if specifically restated herein.
- 51. The defendants admit that a search warrant was applied for and received.
- 52. The defendants state that the search warrant was issued based on the material contained in the affidavit in support of the application for the search warrant.

53. The defendants deny the allegations contained in paragraph 53.

54. The defendants deny the allegations contained in paragraph 54.

55. The defendants deny the allegations contained in paragraph 55.

56. *The defendants deny the allegations contained in paragraph 56.*

57. The defendants deny the allegations contained in paragraph 57.

58. The defendants deny the allegations contained in paragraph 58.

COUNT VI

59. The defendants restate their responses to paragraphs 1-58 as if specifically restated herein.

60. The defendants deny the allegations contained in paragraph 60.

61. The defendants deny the allegations contained in paragraph 61.

62. The defendants deny the allegations contained in paragraph 62.

63. The defendants deny the allegations contained in paragraph 63.

COUNT VII

64. The defendants deny the allegations contained in paragraph 64.

65. The defendants deny the allegations contained in paragraph 65.

COUNT VIII

66. The defendants deny the allegations contained in paragraph 66 a-e.

67. The defendants deny the allegations contained in paragraph 67.

68. The defendants deny the allegations contained in paragraph 68 a-c.

69. The defendants deny the allegations contained in paragraph 69.

70. The defendants deny the allegations contained in paragraph 70.

COUNT IX

71. The defendants deny the allegations contained in paragraph 71.

72. The defendants deny the allegations contained in paragraph 72.

73. The defendants deny the allegations contained in paragraph 73.

74. The defendants are without knowledge or belief sufficient to admit or deny the allegations contained in paragraph 74.

Wherefore, the defendants demand that the complaint be dismissed and costs be assessed against the plaintiff.

COUNT X

75. The defendants deny the allegations contained in paragraph 75.

76. The defendants deny the allegations contained in paragraph 76.

77. The defendants deny the allegations contained in paragraph 77.

78. The defendants deny the allegations contained in paragraph 78.

79. The defendants deny the allegations contained in paragraph 79.

80. The defendants deny the allegations contained in paragraph 80.

Wherefore: the defendants move the court to dismiss the amended complaint and deny the plaintiff any injunctive relief that he seeks.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted, as a result of which, this action should be dismissed with prejudice and with costs to the defendants.
2. The plaintiff is estopped by his conduct from recovering on his claim.
3. The defendants say that the injuries or damages alleged were caused in whole or in part by the plaintiff's conduct.
4. The defendants say that the injuries or damages alleged were caused in whole or in part by the violation by the plaintiff of the various statutes, ordinances and regulations governing the conduct of the parties at the time said injuries or damages were sustained.
5. The defendants are entitled to qualified immunity.
6. The defendants' actions were pursuant to standard policy and practice and were reasonable and proper.
7. The defendants were justified in their conduct and acts and are therefore not liable to the plaintiff.
8. The defendants say that the plaintiff was rightly detained and that the detention was for a reasonable period of time.
9. The defendants say that their actions were performed according to, and protected by law and or legal process, and that therefore the plaintiff cannot recover.
10. The defendants say that they were privileged in their conduct and acts and that therefore the plaintiff cannot recover.

11. The defendants are entitled to immunity based on good faith in that the harm suffered by the plaintiff was not a result which a reasonable person in defendants' position would have known to result from their actions.

12. The defendants states that at all times relevant hereto they had acted without malice toward the plaintiff and that their actions relative to the plaintiff were privileged by virtue of their acting reasonably and in good faith within the scope of their authority as police officers.

13. The defendants have qualified immunity from this suit as the alleged acts complained of occurred within the scope of the defendants' official duties and the defendants have no knowledge that said alleged acts were illegal and/or unconstitutional nor were said alleged acts clearly violative of the plaintiff's rights at the time that they were committed.

14. The defendants say that when the plaintiff was arrested there was probable cause for making the arrest and the defendants were justified in so doing.

15. The defendants says that the plaintiff was rightly detained.

16. At all times relevant hereto, the defendants were police officers acting within the scope of their authority, and if physical contact was made between the defendants and the plaintiff, such conduct was a fair and reasonable exercise of the defendants' police powers and is therefore immune from liability and or an award of monetary damages.

17. Acts complained of occurred within the scope of the defendants' official duties and defendants had no knowledge that said acts were illegal and or unconstitutional nor were said acts clearly violative of the plaintiff's rights at the time they were committed.

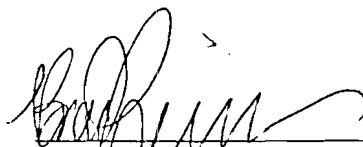
18. The plaintiff has failed to state a cause of action under 42 U.S.C. section 1983 because the plaintiff has suffered no deprivation of due process in that law affords the plaintiff an adequate remedy.

19. The defendants are immune from this action pursuant to M.G.L. ch 258, and therefore the action against them must be dismissed.
20. The complaint must be dismissed for improper venue.
21. The complaint must be dismissed for insufficiency of process.
22. The complaint must be dismissed for insufficiency of service of process, in that the summons and complaint was not properly served on the Defendants.

JURY CLAIM

The defendants demand a jury trial on all counts.

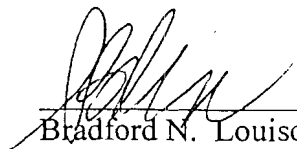
The defendants,
by their attorneys,



Bradford N. Louison (BBO# 305755)
Douglas I. Louison (BBO# 545191)
MERRICK AND LOUISON
67 Batterymarch St.
Boston, Massachusetts 02110
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CERTIFICATE OF SERVICE

I, Bradford N. Louison, hereby certify that on the 10th day of Nov, 1997, I served the foregoing by causing a copy to be mailed, postage prepaid, directed to Michael Elbery, 168 Fairfield Street, Needham, MA 02192.



Bradford N. Louison