

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Marshall Ray Partain
 All other names by which you have been known: Marshall Ray "Partian" (Travis Co. Jail error)
 ID Number Booking # 21-12336
 Current Institution Travis County Correctional Complex
 Address 3614 Bill Price Rd.
Del Valle TX 78617
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

**I will submit defendants' full names & badge #'s at a later date.*

Defendant No. 1

Name J. Hallmark (unable to obtain full name)
 Job or Title (*if known*) Austin Police Officer
 Shield Number (unknown at this time)
 Employer Austin Police Department
 Address 715 E. 8th St.
Austin TX 78701
City State Zip Code
 Individual capacity Official capacity

Defendant No. 2

Name S. Makero (unable to obtain full name)
 Job or Title (*if known*) Austin Police Officer
 Shield Number (unknown at this time)
 Employer Austin Police Department
 Address 715 E. 8th St.
Austin TX 78701
City State Zip Code
 Individual capacity Official capacity

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

officer Hallmark - falsely arrested and charged me for THEFT of my own bicycle on Oct. 4, 2019, and unlawfully seized my bike.

officer Malero - falsely claimed that after running the serial # of my bike, that it was stolen from Miami, FL. They both officially oppressed me and perjured themselves. [The bogus charge was dismissed; but my property has not been returned to me.]

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other (explain) Parole violator awaiting revocation hearing. (original offense DWI)

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.
on Oct. 4, 2019, I was arrested by the Defendants for Resisting Arrest, P. I., and theft; Yet officer Hallmark did not "book me" for theft that day. In Jan. 2021, I was charged for theft of my bike and magisterated; this occurred AFTER I was released from TDCJ-Parole Division custody, over 14mths. later. All of my letters/grievances to the Defendants went unanswered; nor did Internal Affairs Division reply.
- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

C. What date and approximate time did the events giving rise to your claim(s) occur?

Oct. 4, 2019, at approximately 4:00 p.m. at 7-11 convenience store on 1st st. and Ben White Blvd.

In Jan. 2021, at approximately 2:00 p.m., I was registered for the fake-charge. The bogus case was promptly DISMISSED.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

In Travis County Court-at-Law #5, CAUSE NO. 20-400220, I was charged for stealing my own bicycle. My former court-appointed counsel, Cheryl Hinderer, told me that "the case made no sense whatsoever" and the prosecutor agreed. Counselor Hinderer told me that the case "reeked of police misconduct"; but refused to file a claim. I was a PRIVATE CITIZEN at the time the Defendants violated my civil rights... Multiple grievances/letters to the Defendants, Internal Affairs Division, and to the city Attorney's office (Law Enforcement Defense Div.) have gone unanswered. (I do have copies of what I've mailed to various entities.)

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I purchased my bike at Wal-Mart (Lakecreek Blvd.) in September 2019; and I have proof of my purchase. I'm a DWI-offender, so I rely on my bicycle and public transportation to get to and from work, etc. I'm destitute and my bike is the equivalent of one's vehicle/car. I've suffered from fear, paranoia, anxiety, loss of wages; basically mental suffering in general... From reprisals by Austin Police Dept. Austin, TX

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

- A.) A temporary restraining order/injunction to prohibit the City of Austin and/or Austin Police Dept. from continuing to harass me about my bike; and to return it to me; to stop arresting me for bogus charges.
- B.) Compensatory damages - \$25,000 total (for both Defendants).
- C.) Punitive damages - \$25,000 for the Defendants (and Mike Hennessey's, [of the city attorney's office]) cruel indifference and maliciousness.
- D.) Alternative Dispute Resolution - to settle out of court, mediation.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

- Yes
- No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

- Yes
- No
- Do not know *(I wrote numerous grievances to A.P.D., I.A.D., and the city atty. and city mgr.)*

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

- Yes
- No
- Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes [my claim **DID NOT** arise in jail]
 No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes [I have continuously submitted grievances to the Defendants, I.A.D.;
 No I also left voice-mail and email with Mike Hennessey of Austin -
 City Attorney's office.]

- E. If you did file a grievance:

1. Where did you file the grievance?

I submitted a grievance to APD/off. Hallmark in Nov. 2019 while at Williamson -
 county jail; I wrote to Internal Affairs Division (IAD) while at TDCJ's -
 RUDD UNIT in Feb. 2020; and I once again wrote APD/HQ, Attn: Offs.
 Hallmark & Malero; Recently, Aug. 18, 2021, I wrote APD - Internal Affairs another
 complaint. (Please see Exhibit #2)

2. What did you claim in your grievance?

I claimed that I was unlawfully deprived of my property by the
 named-defendants and I wanted my bike returned to me.
~~None~~. The Defendants, nor I.A.D., replied to my grievances.

3. What was the result, if any?

None. No result.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I've telephoned, written, and emailed Austin City Attorney's office
 (while I was not incarcerated).
 Recently, on Aug. 9, 2021, I submitted a letter to Austin City Hall,
 Attn: Mike Hennessey and Spencer Cronk, city Mgr., notifying them of my
 intent to file a claim.
 (Please see Exhibit #1)

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

I did file grievances with the officers, I.A.D., and city Hall.

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

I informed Mike Hennessey, Law Enforcement Defense Dept, and Spencer Cronk, City Mgr., of my claim. (At least 3-times)

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I did all that I could prior to seeking relief in this court, and I have no other remedy at law available. I'm enclosing a copy of Exhibit #1 grievance to City Hall; and Exhibit #2 to Internal Affairs Div..

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

(Please Page 8A OF 11; and 8B OF 11.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

Exhibit #1

August 9, 2021

Austin City Hall

Attn: Mike Hennessey, Law Enforcement Defense Div.; Spencer Crouk, City Manager

P.O. Box 1088

Austin, TX 78767

RE: C1CR20-400220; INITIATION OF LAWSUIT

Dear Sirs:

In regard to the above-mentioned **theft charge** against me for stealing my own bike, which was rightfully DISMISSED in Travis Co. Court-at-Law #5 in Jan. 2021, I am hereby notifying you that I'll be filing a civil action for deprivation of rights (42 U.S.C. § 1983) based upon multiple violations of my civil rights; such as unlawful deprivation of my property, official oppression, abuse of official capacity and malicious and evil intent committed by Austin Police - Department officers Hallmark and Malero.

Mr. Hennessey, in your letter (July 2021) you instructed me to contact an "unknown" detective at A.P.D., indicating that there is **STILL** an ongoing, open investigation; even though this bogus criminal charge was dismissed. This so-called "investigation" being conducted by this unknown detective (you told me to dial "311" to obtain said detective's name) adds insult to injury... further harassment by Austin-city officials. Moreover, the county prosecutor acknowledged to my former court-appointed counsel, Cheryl Hindera, that **NOTHING** about the case made sense. To date, neither A.P.D. nor the City of Austin has returned my property to me.

If you still contend that said APD-officers did not abuse their authority, then save your reply for the U.S. District Court after you're served with process.

yours truly,

Marshall R. Partain

copy

August 18, 2021

Exhibit #2

Austin Police Department (APD)
 Internal Affairs Division (IAD)
 P.O. Box 1088
 Austin, TX 78767

RE: TRAVIS CO. COURT-AT-LAW^{#5}; CAUSE # 20-400220; APD. OFFICERS HALLMARK & MALERO

To whom it may concern:

On Oct. 4, 2019, I was arrested for Public Intoxication and Resisting Arrest by the above-referenced A.P.D. officers; they also unlawfully seized/confiscated my bicycle because they claimed it was stolen from Miami, FL; but I was not charged/magistrated for theft.

Due to that arrest (and other technical violations), my parole was modified and I was returned to TDCJ-P.D. for about fourteen (14) mths.. While at Williamson Co. Jail, the Rudd-Unit (TDCJ), and the East Texas Treatment Facility (TDCJ), I wrote about 3-grievances (handwritten) to Officers Hallmark & Malero; as well as grievances to the Internal-Affairs Division of A.P.D. at their HQ-downtown, inquiring about my bike. No one replied.

I was released from TDCJ/SAFF in Dec. 2020; however, about 2 wks. later, in Jan. 2021, I was magistrated for theft of my own bike. My former court-appointed counsel, Cheryl Hindera, stated that "the case made no sense whatsoever" and it was promptly dismissed by the prosecutor and Judge Nancy Hokegarten. Counselor-Hindera told me that either said APD-officers accidentally entered the wrong serial-# for the bike or purposely entered false information and/or committed perjury.

In any case, my bike still HAS NOT been returned to me, which makes this case a lot more serious than a \$168.00 bike. Please confirm receipt & notify me of any investigation of the officers' misconduct; as well as info about my bike.

COPY

Sincerely,

Marobell R. Partain

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

Yes

No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

(Please see page 10A of 11)

1. Parties to the previous lawsuit

Plaintiff(s) Marshall Ray Partain

Defendant(s) Captain T. Killman, et al.

2. Court (if federal court, name the district; if state court, name the county and State)

U.S. District Court - Eastern District of Texas - Tyler Division

3. Docket or index number

Case #: 6:20 - cv - 00581 - JDK - KNM

4. Name of Judge assigned to your case

Magistrate Judge K. Nicole Mitchell & Judge Jeremy D. Kernodle

5. Approximate date of filing lawsuit

October 28, 2020

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition September 1, 2021

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Dismissed With Prejudice granting parties' joint motion to withdraw and joint motion to dismiss; and Dismissed without Prejudice regarding the prison ~~physician~~ physician.

(I filed a "Notice of Appeal" last week.)

D.

1. Parties to the previous lawsuit
Plaintiff(s) Marshall Ray Partain
Defendants(s) Jimmy Rosales, Physician Asst.

2. Court: U.S. District Court - Southern District of Texas - Houston Div.

3. Docket #: (unknown)

4. Name of Judge assigned to your case: Judge Sim Lake(?)

5. Approximate date of filing lawsuit: November 2007(?)

6. Is the case still pending? NO

If no, give the approximate date of disposition: 2008

7. What was the result of the case? Dismissed; no appeal.

(I was released from TOCT in Jan. 2008 and did not answer the court.)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk’s Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: September 8, 2021

Signature of Plaintiff Marshall Ray Partain
 Printed Name of Plaintiff Marshall Ray Partain
 Prison Identification # Booking #21-12336
 Prison Address Travis County Correctional Complex, 3614 Bill Price Rd.
Del Valle TX 78617
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
 Printed Name of Attorney _____
 Bar Number _____
 Name of Law Firm _____
 Address _____
City State Zip Code
 Telephone Number _____
 E-mail Address _____

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Marshall Ray Partain

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Hallmark et al

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

1:21 CV0829RP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42:1983 Prisoner's Civil Rights

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

X

JUDGE **Pitman**

MAG. JUDGE **Howell**

Marshall R. Partain
Booking # 21-12336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX
78617



SEP 16 2021

SCREENED BY CSO
SEP 16 2021

U.S. District Court - Western District of Texas
U.S. District Clerk's Office
501 W. 5th St., Ste. 1100
Austin, TX
78701

* LEGAL MAIL SENT ON 09/12/2021 (MRS)



INMATE DECLARATION

I, Marshall Ray Partain, Travis Co. Booking # 2112336, being presently confined at the Travis Co. Correctional Complex, do hereby declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746 and Texas Civil Practice and Remedies Code Section 132.001, that the foregoing motion to amend original complaint with defendants' correct full names and badge numbers is true and correct to the best of my knowledge and belief.

EXECUTED ON THIS THE 20TH DAY OF OCTOBER, 2021.

Marshall R. Partain
Declarant

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Travis Co. Booking # 2112336, do hereby certify that a true and correct copy of the foregoing motion to amend original complaint with defendants' correct full names and badge numbers was served upon the defendants by placing same in regular United States mail to: Austin Police Department, Attn. Officer Jason Hallmark #6307 & Officer Sharday Nelerio #8771, 715 E. 8th St., Austin, TX 78701, on this the 20th day of October, 2021.

Marshall R. Partain
Marshall Ray Partain
Plaintiff - pro se

Marshall R. Partain #2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX

78617

SCREENED BY CSO
OCT 22 2021

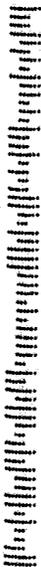
Clerk of the Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX

78701

AUSTIN TX 787
RIO GRANDE DISTRICT
20 OCT 2021 PM 2 L



78701-381275



October 20, 2021

Meghan Riley, Division Chief
Litigation - City of Austin Law Dept.
P.O. Box 1546
Austin, TX 78767-1546

RE: PARTAIN V. HALLMARK, ET AL.;
CASE NO. A-21-CV-829-RP-DH

Dear Ms. Riley,

In accordance with the "Duty To Serve Opposing Counsel", please be advised that I've submitted two (2) motions to the court and served both Defendants (Officer Jason Hallmark #6307 and Officer Sharday Netero #8771) at: Austin Police Dept., 715 8th St., Austin, TX 78701. The first motion was for appointment of counsel; the second motion was to amend my Original Complaint with Defendants' correct full names and badge #'s. Unfortunately I didn't receive the ORDER OF SERVICE from the court until today (10-20-2021).

If you're willing to consider a settlement to off-set the costs of expensive litigation, please feel free to make an offer as I'm very reasonable. Thank you.

Yours Truly,
Marshall R. Partain
Marshall Ray Partain

Marshall R. Partain #2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

AUSTIN TX 787
RIO GRANDE DISTRICT
21 OCT 2021 PM 2 L



SCREENED BY CSO
Clerk of the Court
United States District Court
Western District of Texas
Austin Division

501 W. 5th St., Ste 1100
Austin, TX

78701

78701-381275



RECEIVED

NOV 8 2021
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

NOV 08 2021
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

OFFICER JASON HALLMARK and
OFFICER SHARDAY NELERO,
Defendants.

Case No. A-21-CV-829-RP

DECLARATION FOR ENTRY OF DEFAULT

Marshall Ray Partain, hereby declares:

1. I am the Plaintiff herein. The complaint herein was filed on or about the 17th of September, 2021.
2. The court files and record herein show that the Defendants were served process by the United States Marshal with a copy of Plaintiff's complaint on the 11th day of October, 2021.
3. More than twenty-one (21) days have elapsed since that date on which the Defendants herein were served with a copy of Plaintiff's complaint, excluding the date thereof.

4. The Defendants have failed to answer or otherwise defend as to Plaintiff's complaint, or serve a copy of any answer or any defense which it might have had, upon Plaintiff herein.
5. Defendants are not in the military service and are not infants or incompetents.

I, Marshall Ray Partain, hereby declare under penalty of perjury that the foregoing declaration for entry of default is true and correct.

EXECUTED ON THIS THE 4TH DAY OF NOVEMBER, 2021.

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain
Pro se

CERTIFICATE OF SERVICE

I, Marshall R. Partain, do hereby certify that a true and correct copy of the foregoing declaration for entry of default has been served upon the Defendants by placing same in regular U.S.P.S. mail to: Meghan Riley, Division Chief, Litigation - City of Austin Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 4th day of November, 2021.

Marshall R. Partain
Marshall Ray Partain

Marshall R. Partain Booking # 2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX

78617

AUSTIN TX 787
RIO GRANDE DISTRICT
4 NOV 2021 PM 2 L



SCREENED BY CSO
NOV 08 2021

Clerk of the Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St. Ste. 1100
Austin, TX

78701

78701-981275



RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

NOV 17 2021
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

NOV 17 2021
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. A-21-CV-829-RP

OFFICER JASON HALLMARK and
OFFICER SHARDAY NELERO,
Defendants.

MOTION FOR JUDGMENT BY DEFAULT

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, Plaintiff respectfully moves this honorable court for a judgment by default in this case, which was filed in this court on or about the 17th day of September, 2021, and in support thereof would respectfully show:

1. On October 11, 2021, this court **ORDERED** defendants to file an answer to the complaint; service of process was duly served by the U.S. Marshal in care of Meghan Riley, Division Chief of Litigation, City of Austin Law Dept.;
2. Under the provisions of the Federal Rules of Civil Procedure, Rule 12(a)(A)(i), "A defendant **must** serve an answer: within 21 days after being served with the summons and complaint." (emphasis added) In this case, no answer or other defense has been filed by the defendants. Plaintiff contends that defendants are willfully obstructing the administration of justice with their disobedience or resistance to this Court's order;

3. Plaintiff submitted his Declaration For Entry of Default to the Office of the Clerk on or about November 2, 2021, seeking a "Notice of Entry of Default" pursuant to the Federal Rules of Civil Procedure, Rule 4(a)(1)(E); to date, which is November 15, 2021, Plaintiff has not received said notice from the Clerk. Nonetheless, in compliance with Local Court Rule 55. Failure to Obtain Default - Judgment, to avoid a dismissal, Plaintiff moves this court for a default judgment.
4. No proceedings have been taken by the defendants since Plaintiff served them with a true and correct copy of his Declaration For Entry of Default; and
5. Defendants were not in military service during service of process; nor are they infants or incompetents.

PRAYER FOR RELIEF

Plaintiff prays that this honorable court will enter a default judgment, in the best interests of justice and grant him compensatory damages in the amount of \$25,000.00. In the event Plaintiff obtains such relief, he respectfully withdraws his injunctive relief and punitive damages requests.

Dated: November 15, 2021

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain

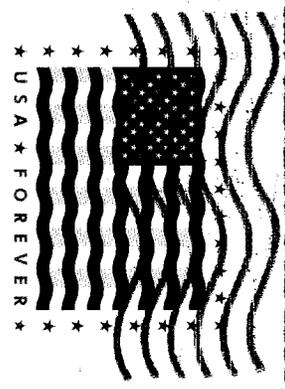
CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Travis Co. Booking # 2112336, hereby certify that a true and correct copy of the foregoing motion for judgment by default has been served upon the defendants by placing same in regular U.S.P.S. mail to:
Meghan Riley, Division Chief, Litigation - City of Austin Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 15th day of November, 2021.

Marshall R. Partain
Plaintiff - pro se

Marshall R. Partain #2113336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

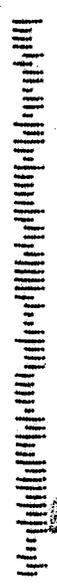
AUSTIN TX 786
RIO GRANDE DISTRICT
15 NOV 2021 PM 2 L



Clerk, United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED BY
NOV 17 2021

78701-381275



RECEIVED

IN THE UNITED STATES DISTRICT COURT

NOV 22 2021

FOR THE WESTERN DISTRICT OF TEXAS

FILED

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

AUSTIN DIVISION

NOV 22 2021

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. 1-21-cv-829-RP-DH

OFFICER JASON HALLMARK and
OFFICER SHARDAY NELERO,
Defendants.

MOTION TO REVIEW CLERK'S INACTION

Pursuant to Title 28 U.S.C. § 951, Plaintiff respectfully requests this honorable court to review the inaction of the Clerk of Court in regards to U.S. Magistrate-Judge Howell's ORDER OF SERVICE, which was ORDERED and SIGNED on October 11, 2021, and in support thereof would respectfully show:

1. Plaintiff contends that Magistrate Judge Howell's Orders compel the Clerk of Court to execute his orders issued under his authority of the U.S. District Court. The undue delay of the Clerk of Court in issuing summons to the defendants has unfairly prejudiced the Plaintiff. In this case, the responsibility of the service of a summons falls on the Clerk of Court, which was delayed for nearly one (1) month **after** the judge issued his order. Interestingly, Plaintiff has timely received ALL orders from this court; yet regarding an ORDER OF SERVICE/SUMMONS on the defendants (local government and/or law enforcement officials), it appears that the Clerk of Court was not impartial in discharging duties.

2. Plaintiff asserts that the clerks' "oversight" in compliance with the requirements of issuing summons has directly and unfairly harmed him because, in all actuality, defendants have received the benefit of a longer period for responding to Plaintiff's complaint due to the Clerk of Court delaying the issuance of summons for nearly one (1) month. To date, Plaintiff has submitted three (3) motions to this court and one (1) declaration for entry of default; and he has served defendants with true and correct copies of all of his submissions to this court, which contained the defendants' names, badge numbers and the case number of Plaintiff's claim. It is highly unlikely that defense counsel for the defendants is (was) "unaware" of Plaintiff's claim. In essence, the defense in this case has been "awarded" forty-two (42) days in which to respond to Plaintiff's complaint.

3. Under the provisions of 28 U.S.C. § 951. Oath of office of clerks and deputies, it states (in pertinent part):

"... I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and faithfully and impartially discharge all other duties of my office... So help me God." (emphasis added.)

What could possibly be justification to not issue summons for nearly one (1) month after ordered to do so, with a multitude of deputy clerks, various assistants and U.S. Marshal's available?

Earlier this month (Nov. 2021), Plaintiff submitted a Declaration For Entry of Default in hopes of obtaining a "Notice of Entry of Default"... after receiving no response from the Clerk of Court, he submitted his Motion For Judgment By-Default. From the date this claim was filed, Plaintiff has kept the defendants apprised of all of his filings with this court.

If the Clerk of Court is to be excused for a possible oversight, whose oversight should not? If Rule 4. Summons, of the Federal Rules of Civil Procedure is to be disregarded in this case, when should it be enforced?

Plaintiff feels as if he has been subjected to a terrible prejudicial injustice for which there is no legal recourse due to the special immunities bestowed upon court officials.

RELIEF REQUESTED

Plaintiff prays for any and all relief that this court deems as fair and just. Plaintiff prays that this court will grant him the courtesy of a response as to why the Clerk of Court took nearly one(1) month to issue summons to the defendants who are located mere blocks away from this courthouse in downtown Austin, TX.

Respectfully submitted,
Marshall R. Partain
Marshall Ray Partain

CERTIFICATE OF SERVICE

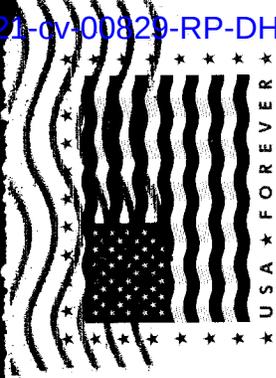
I, Marshall Ray Partain, Travis Co. Booking #2112336, do hereby certify that a true and correct copy of the foregoing motion to review clerk's inaction was served upon the defendants by placing same in regular U.S. mail to: Meghan Riley, Division Chief, Litigation - City of Austin Law Dept., P.O. Box 1546, Austin, TX - 78767-1546, on this the 18th day of November, 2021.

Marshall R. Partain
Plaintiff - pro se

Marshall R. Partain #2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617
78617
78617

SCREENED BY GSO
NOV 22 2021

AUSTIN TX 787
RIO GRANDE DISTRICT
19 NOV 2021 PM 3 L



Clerk of the Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701



78701-381275

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN
Plaintiff,

v.

**JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,**
Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S PRISONER’S CIVIL RIGHTS COMPLAINT [DOC 1]
AND ALL AMENDED COMPLAINTS, MOTIONS, ASSERTIONS OR OTHER
CLAIMS, INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13]**

TO THE HONORABLE JUDGE ROBERT PITMAN:

Officer Jason Hallmark and Officer Sharday Nelerero of the Austin Police Department, hereinafter sometimes referred to as “Defendants,” file this Answer denying all claims, and asserting Affirmative Defenses to Plaintiff’s Complaint [DOC 1] [Form: Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)], and AND ALL AMENDED COMPLAINTS, MOTIONS, ASSERTIONS OR OTHER CLAIMS, INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13].

Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant Jason Hallmark (“Hallmark”) and Defendant Sharday Nelerero (“Nelerero”) respond to each of the specific averments in Plaintiffs’ Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment.¹

¹ Paragraph numbers in Defendant’s Answer correspond to the paragraphs of the Complaint For Violation of Civil Rights (Prisoner Complaint) Pro Se 14 (Rev. 12/16).

**COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)**

With regard to the NOTICE and other pre-printed official language contained within the subparagraphs and subheadings included under this section, no response is required, as this portion of the COMPLAINT does not contain any factual or liability allegations. To the extent any response is required, the Defendants deny the allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

I. THE PARTIES TO THIS COMPLAINT

A. The Plaintiff(s):

With regard to this section of the pre-printed official form, no response is required, as this portion of the PRISONER'S CIVIL RIGHTS COMPLAINT does not contain any factual or liability allegations. To the extent any response is required, Defendants admit that Marshall Ray Partain is the named plaintiff in this case. Defendants are without sufficient knowledge to form a belief as to Plaintiff's present address. Any remaining allegations are denied. Defendants further expressly deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

B. Defendant(s):

Defendant No. 1:

Defendant Jason Hallmark admits that he is an officer with the Austin Police Department. Defendant denies the remaining allegations of excessive force. Defendant further expressly denies that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

Defendant No. 2:

Defendant Sharday Nelerio admits that she is an officer with the Austin Police Department. Defendant denies the remaining allegations of cruel and unusual punishment of or and excessive force. Defendant further expressly denies that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

II. BASIS OF JURISDICTION

Denied. With regard to this section of the pre-printed official form, no response is required, as this portion of the COMPLAINT does not contain any factual or liability allegations. To the extent any response is required, the Defendants note this section, including subparts A., B., C.,D., merely state factual and legal conclusions and procedural matters, and the Defendants reserve all rights and opportunities to contest any prior determinations or conclusions and deny any allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

III. PRISONER STATUS

With regard to this section of the pre-printed official form, no response is required, as this portion of the COMPLAINT does not contain any factual or liability allegations. To the extent any response is required, the Defendants deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

IV. STATEMENT OF CLAIM

Denied. With regard to this section of the pre-printed official form and the handwritten allegations, no additional response is required, as this portion of the COMPLAINT merely asserts conclusory statements or opinions of law and fact. To the extent any response is required, the Defendants note this section, including subparts A., B., C.,D., merely state factual and legal conclusions and procedural matters, and the Defendants reserve all rights and opportunities to contest any conclusions and deny any allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

V. INJURIES

Denied. With regard to this section of the pre-printed official form and the handwritten allegations, no additional response is required, as this portion of the COMPLAINT merely asserts conclusory statements or opinions of law and fact. To the extent any response is required, the Defendants reserve all rights and opportunities to contest any conclusions and deny any allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

VI. RELIEF

Denied. With regard to this section of the pre-printed official form and the handwritten allegations, no additional response is required, as this portion of the COMPLAINT merely asserts conclusory statements or opinions of law and fact. To the extent any response is required, the Defendants note this section, including subparts A., B., C.,D., merely state factual and legal conclusions and claims for relief which are expressly denied. Defendants reserve all rights and opportunities to contest any conclusions and deny any allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES ADMINISTRATIVE PROCEDURES

No response is required, as this portion of the PRISONER'S CIVIL RIGHTS COMPLAINT, including subparts A., B., C., D., E. (1,2,3,4), F. (1,2), G.(including Page 8A of 11 [dated August 9, 2021, and also referenced as Exhibit #1]; and 8B of 11 [dated August 18, 2021, and also referenced as Exhibit #2]) does not contain any factual or liability allegations. To the extent any response is required, the Defendants note this section merely states factual and legal conclusions which are contested and denied, and the Defendants reserve all rights and opportunities to contest any prior determinations or conclusions and deny any allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

VIII. PREVIOUS LAWSUITS

With regard to this section, including subparagraphs A, B (1 through 7), C, D (subparts 1 through 7 (including Page 10A of 11 [DOC Page 13], no response is required, as this portion of the PRISONER'S CIVIL RIGHTS COMPLAINT does not contain any factual or liability allegations. To the extent any response is required, the Defendants deny the allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

IX. CERTIFICATION AND CLOSING

With regard to this section, including subparagraphs A, B, no response is required, as this portion of the PRISONER'S CIVIL RIGHTS COMPLAINT does not contain any factual or liability allegations.

To the extent any response is required, the Defendants deny the allegations, and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

DEFENDANTS RESPOND TO AND DENY PLAINTIFF'S AMENDED COMPLAINT, MOTIONS, ASSERTIONS OR OTHER CLAIMS, INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13].

Plaintiff has also filed the following documents which make various allegations and demands for relief. The Defendants DENY all of the requests as follows:

[DOC 8] - Plaintiff's Motion to Amend Original Complaint With Defendants' Correct Full Names and Badge Numbers. To the extent any response is required, the Defendants deny any allegations of fault or liability and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

[DOC 11] - Declaration For Entry of Default. Denied. Defendants did not receive a copy of the Original Complaint until November 15, 2021. To the extent any response is required, the Defendants deny any allegations of fault or liability and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

[DOC 12] - Motion for Judgment By Default. Denied. Defendants did not receive a copy of the Original Complaint until November 15, 2021. To the extent any response is required, the Defendants deny any allegations of fault or liability and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

[DOC 13] - Motion To Review Clerk's Inaction. To the extent any response is required, the Defendants deny any allegations of fault or liability and further deny that Plaintiff has any valid or supportable basis for any recovery of any type or nature.

**AFFIRMATIVE DEFENSES ASSERTED TO PLAINTIFF'S
AMENDED COMPLAINT, MOTIONS, ASSERTIONS OR OTHER CLAIMS,
INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13]**

1. Defendants deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the decedent by the United States

Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

2. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their respective obligations and public duties in good faith, and would show that their respective actions were objectively reasonable in light of the law and the information possessed at that time.
3. The incident in question and any claimed resulting harm to Plaintiff was caused or contributed to by Plaintiff's own conduct.
4. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
5. Pleading further, alternatively, and by way of affirmative defense, Defendants would show that at the time and on the occasion in question, Plaintiff failed to use *any* degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise herefrom. Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.
6. Defendants further plead that, in the unlikely event they are found to be liable, separately or individually, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.
7. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.
8. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil

Practice & Remedies Code, and the due process clause of the United States Constitution.

9. Defendants assert additional affirmative defenses throughout the development of this case, as may become applicable, including Statute of Limitations,
10. To the extent Defendants did not address a specific averment made by Plaintiff in his Amended Complaint, Defendants expressly deny all such averments.
11. Defendants assert the affirmative defense that Plaintiffs failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff.
12. Defendants assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.
13. To the extent Defendants did not address a specific averment made by Plaintiff in the Complaint, Defendants expressly deny all such averments.
14. If applicable, and subject to withdrawal, Defendants assert any and all defenses of pre-existing disease, handicap, or lesions, or any other condition involving the Plaintiff.
15. Defendants affirmatively assert the statute of frauds and all statutes of limitation. Further, the facts not having been fully developed, Defendants affirmatively plead the following affirmative defenses as may be applicable in this action: the terms, provisions and conditions of any contract or agreement; accord and satisfaction, assumption of risk; contributory negligence; estoppel; failure of consideration; fraud; illegality; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; waiver; the alleged losses and damages complained of were proximately caused or proximately contributed to by external forces, acts of nature, force majeure, or negligent acts of others

for whom this Defendant is not responsible or liable; and any other matter constituting an avoidance or affirmative defense.

16. If appropriate, and subject to withdrawal, Defendants assert that Plaintiff's claim should be dismissed, with all attorneys fees, other expenses and costs of this action taxed against Plaintiff. Plaintiff's claims are without substantial justification, frivolous, groundless in fact and law, meritless, unnecessary, and vexatious.

DEFENDANTS' PRAYER

Defendants pray that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Federal Procedure, this 6th day of December, 2021.

Via ECF and First Class Regular Mail and Certified Mail:

Marshall R. Partain
Booking #21-12336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, Texas 78617

PLAINTIFF PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

RECEIVED

IN THE UNITED STATES DISTRICT COURT

DEC 3 2021

FOR THE WESTERN DISTRICT OF TEXAS

FILED

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

AUSTIN DIVISION

DEC 03 2021
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. 1:21-cv-829-RP

OFFICER JASON HALLMARK and
OFFICER SHARDAY NELERO,
Defendants.

PLAINTIFF'S SECOND MOTION FOR DEFAULT JUDGMENT

In accordance with the Federal Rules of Civil Procedure, Rules 55. Default Judgment, Plaintiff respectfully moves this Court for a judgment by default in this case, and in support thereof would show:

1. The complaint in this case was filed on or about September 17, 2021.
2. Initially an ORDER OF SERVICE was issued by U.S. Magistrate Judge Howell on October 11, 2021; however, the Clerk of Court did not issue summons until November 8, 2021, on which date Defendants were duly served by the U.S. Marshal.
3. Defendants were given 21-days in which to file an answer to Plaintiff's complaint; Defendants have failed to answer or otherwise defend as to Plaintiff's complaint, or serve a copy of any answer or defense they might have had.

4. No proceedings have been taken by the Defendants since the filing of this claim.
5. Defendants were not in active-military service and are not infants or incompetents.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves this honorable court to make and enter a default judgment which will grant Plaintiff the requested relief he sought in his complaint:

- COMPENSATORY DAMAGES - \$25,000.00
- INJUNCTION AGAINST AUSTIN POLICE DEPT. ("RESTRICTIVE INJUNCTION"), FORBIDDING THE DEFENDANTS FROM ATTEMPTING OR CONTINUING TO ARREST THE PLAINTIFF FOR BOGUS CRIMES.
- PUNITIVE DAMAGES - \$25,000.00

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain

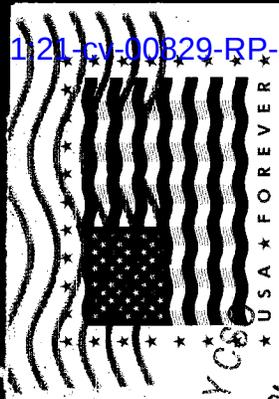
CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Travis Co. Correctional Complex #2112336, do hereby certify that a true and correct copy of the foregoing "Second Motion for Default - Judgment" was served upon the Defendants by placing same in regular U.S. mail to: Meghan Riley, Division Chief, Litigation - City of Austin Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 1st day of December, 2021.

Marshall R. Partain
Plaintiff - pro se

Marshall R. Partain #2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

AUSTIN TX 787
RIO GRANDE DISTRICT
1 DEC 2021 PM 3 L



SCREENED BY CS
DEC 03 2021

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

78701-981275

FILED

December 02, 2021

RECEIVED
DEC 6 2021
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY

DEC 06 2021
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY CLERK

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

RE: 1:21-cv-00829-RP-DH

Dear Clerk of Court:

On Dec. 2, 2021, I received two (2) "Process Receipt and Return" copies (Form 285) from the U.S. Marshals Service, but four (4) dates were altered/corrected by Deputy (?) Marshal Gabriel Rodriguez; and one (1) correction was made about "personally serving". I'm confused because U.S. District Judge Pitman stated that you issued summons on November 8, 2021... but the earliest date on the copies I received today is November 15, 2021....

I'm requesting to know the actual date of service on the Defendants, please. I'd also like to know if it's possible for you to send me the Local Court-Rules Appendices, as I do not have access to said Appendices.

Thank you for your time and assistance in this matter.

Yours truly,
[Signature]
Marshall R. Partain
Marshall Ray Partain - Plaintiff

Marshall R. Partain #2112336
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

AUSTIN TX 787
RIO GRANDE DISTRICT
3 DEC 2021 PM 4 FOREVER
USA



Clerk of Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED
DEC 06

78701-381275
78701-381275

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

FEB 09 2021

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY CC
DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

CIVIL ACTION NO. 1:21-cv-829-RP

JASON HALLMARK, AP#6307,
SHARDAY NELERO, AP#8771,
Defendants.

MOTION FOR LEAVE TO FILE

May it please the Court, Plaintiff respectfully requests leave to file his response to opposing counsel's Answer to his complaint, under the provisions set forth in Rule 7(a)(7) of the Federal Rules of Civil Procedure.

Plaintiff asserts that a response is necessary to clarify the issues of his complaint, as opposing counsel's "blanket denial" of his claim is clearly erroneous and without merit.

PRAYER

WHEREFORE, PREMISES CONSIDERED, in the best interests of justice, Plaintiff prays that this honorable Court will allow him to respond to opposing counsel's Answer to his complaint.

Respectfully submitted,
Marshall R. Partain
Marshall R. Partain

Marshall R. Partain
Austin Transitional Center
3154 E. Hwy 71
Del Valle, TX

78617

AUSTIN TX 786
RIO GRANDE DISTRICT
7 FEB 2022 PM 2 L

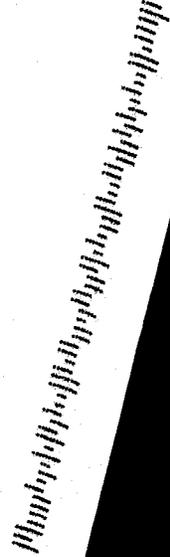


FOREVER / USA

Clerk of Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED BY CSO
FEB 09 2022

78701-381275



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
Plaintiff,

v.

CIVIL ACTION No. 1:21-cv-829-RP

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' ANSWER

Pursuant to Rule 7(a)(7), of the Federal Rules of Civil Procedure, Plaintiff respectfully submits his response to Defendants' Answer and Affirmative Defenses (hereinafter referred to as "Answer") and would show this honorable Court the following:

1. Plaintiff hereby acknowledges receipt of opposing counsel's Answer on January 28, 2022. Plaintiff was unaware that defense counsel filed said Answer until he borrowed a cellphone to contact the Clerk of court on January 25, 2022. Plaintiff is destitute, mentally ill, and does not have access to the Internet.
2. Plaintiff contends that opposing counsel erroneously claims that his Complaint is a "Prisoner Civil Rights Action", subject to the provisions of the Prisoner Litigation Reform Act (PLRA). Although Plaintiff utilized the form for a Prisoner Civil Rights Action to file his claim, the substance of his claim has absolutely nothing to do with conditions of confinement. Plaintiff was in fact a civilian on October 4, 2019, when he was unlawfully, deliberately, and maliciously deprived of his property by the Defendants.

Moreover, under 42 U.S.C. § 1997(a), it states (in pertinent part):

" No action shall be brought with respect to prison conditions under Section 1983 of this title, or any other federal law by a prisoner..." (emphasis added)

Plaintiff asserts that he was confined at the Travis Co. Correctional-Complex at the time he filed but that the PLRA does not apply to this case because it is not about "prison conditions."

3. Under opposing counsel's "I. THE PARTIES TO THIS COMPLAINT, Defendant No 1", Defendant Jason Hallmark denies the allegations of "excessive force". Plaintiff contends that he did not allege excessive-force in his Complaint; his claim is about the sadistic-deprivation of his property, clear violations of his rights under the 4th, 5th, and 14th Amendments of the U.S. Constitution. Likewise, Defendant No. 2, Sharday Nelerio denies the allegations of "cruel and unusual punishment of and or excessive force". Interestingly, neither of the Defendants mentioned anything about the illegal, unlawful seizure of his property... his bicycle.
4. Under section IV. STATEMENT OF CLAIM., opposing counsel claims that Plaintiff "merely asserts conclusory statements or opinions of law and fact." Plaintiff contends that he has evidence that will substantiate his claim.

PRAYER

Plaintiff prays that this honorable court will allow his claim to proceed to trial on its merits and schedule Discovery so that he can prove his factual and liability allegations, in the best interests of justice.

Respectfully submitted,
Marshall R. Partain
Marshall Ray Partain
pro se

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, hereby certify that a true and correct copy of the foregoing Motion for Leave to File and Plaintiff's Response to Defendant's Answer has been served upon the Defendants by placing same in regular U.S. mail to: Monte L. Barton, Jr., Attorney-of-Record, City of Austin - Law Defense Dept., P.O. Box 1546, Austin, TX 78767, on this the 30th day of January, 2022.

Marshall R. Partain
Marshall Ray Partain

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
Plaintiff,

V.

CIVIL ACTION No. 1:21-cv-829-RP

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' ANSWER

Pursuant to Rule 7(a)(7), of the Federal Rules of Civil Procedure, Plaintiff respectfully submits his response to Defendants' Answer and Affirmative Defenses (hereinafter referred to as "Answer") and would show this honorable Court the following:

1. Plaintiff hereby acknowledges receipt of opposing counsel's Answer on January 28, 2022. Plaintiff was unaware that defense counsel filed said Answer until he borrowed a cellphone to contact the Clerk of court on January 25, 2022. Plaintiff is destitute, mentally ill, and does not have access to the Internet.
2. Plaintiff contends that opposing counsel erroneously claims that his Complaint is a "Prisoner Civil Rights Action", subject to the provisions of the Prisoner Litigation Reform Act (PLRA). Although Plaintiff utilized the form for a Prisoner Civil Rights Action to file his claim, the substance of his claim has absolutely nothing to do with conditions of confinement. Plaintiff was in fact a civilian on October 4, 2019, when he was unlawfully, deliberately, and maliciously deprived of his property by the Defendants.

Moreover, under 42 U.S.C. § 1997(a), it states (in pertinent part):

" No action shall be brought with respect to
prison conditions under Section 1983 of this
title, or any other federal law by a prisoner..." (emphasis added)

Plaintiff asserts that he was confined at the Travis Co. Correctional-Complex at the time he filed but that the PLRA does not apply to this case because it is not about "prison conditions."

3. Under opposing counsel's "I. THE PARTIES TO THIS COMPLAINT, Defendant No 1", Defendant Jason Hallmark denies the allegations of "excessive force". Plaintiff contends that he did not allege excessive-force in his Complaint; his claim is about the sadistic-deprivation of his property, clear violations of his rights under the 4th, 5th, and 14th Amendments of the U.S. Constitution. Likewise, Defendant No. 2, Sharday Nelerio denies the allegations of "cruel and unusual punishment of and or excessive force". Interestingly, neither of the Defendants mentioned anything about the illegal, unlawful seizure of his property... his bicycle.
4. Under section IV. STATEMENT OF CLAIM., opposing counsel claims that Plaintiff "merely asserts conclusory statements or opinions of law and fact." Plaintiff contends that he has evidence that will substantiate his claim.

PRAYER

Plaintiff prays that this honorable court will allow his claim to proceed to trial on its merits and schedule Discovery so that he can prove his factual and liability allegations, in the best interests of justice.

Respectfully submitted,
Marshall R. Partain
Marshall Ray Partain
pro se

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, hereby certify that a true and correct copy of the foregoing Motion for Leave to File and Plaintiff's Response to Defendant's Answer has been served upon the Defendants by placing same in regular U.S. mail to: Monte L. Barton, Jr., Attorney-of-Record, City of Austin - Law Defense Dept., P.O. Box 1546, Austin, TX 78767, on this the 30th day of January, 2022.

Marshall R. Partain
Marshall Ray Partain

RECEIVED

FEB 11 2021

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

FEB 11 2021

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

J.R.
MARSHALL RAY PARTAIN,
Plaintiff,

v.

CIVIL ACTION NO. 1:21-cv-829-RP

JASON HALLMARK, AP#6307,
SHARDAY NELERO, AP#8771,
Defendants.

**MOTION TO COMPEL TRAVIS CO. COURT-AT-LAW
No. 5 TO RELEASE ALL COURT DOCUMENTS RELATED
TO CAUSE NO. C1-CR-20-400220**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Plaintiff respectfully moves this Court to compel Travis Co. Court-at-Law No. 5, to release any and all court documents related to cause no. C-1-CR-20-400220; and in support thereof would respectfully show the following:

1. Plaintiff submitted his motion for restoration of property, Article 47.01a, of the Texas Code of Criminal Procedure in January 2021, after his court-appointed counsel Cheryl Hindera said: "APD lost your bike".
2. Plaintiff's motion to court-at-law No. 5 was ignored; he then ^{sent} a petition for writ of mandamus to the Texas Court of Appeals, Third District, at Austin... (Please see **Exhibit A**)... which granted no relief.
3. Plaintiff has since submitted numerous letters and made numerous phone calls to Dana DeBeauvoir (Travis Co. Criminal Co. Clerk), Judge - Nancy Hohengarten (court-at-law No. 5), and even the District-

Attorney, Public Integrity Unit; all to no avail. Plaintiff asserts that he's being "stonewalled" in his attempts to obtain material-evidence needed which is pertinent for his dispositive motion(s).

4. Plaintiff contends that without an issuance of an ORDER TO COMPEL the release of court documents (such as offense reports, Arrest Affidavits, Criminal Information, audio/video footage...), he will be prejudiced and suffer harm.

Plaintiff further contends that the court documents he seeks are material evidence and is essential to establish the maliciousness and callous indifference of Austin Police Officers Hallmark and Nelerero, the Defendants in this case.

Plaintiff has no other remedy at law available to him.

PRAYER

Plaintiff prays that this honorable court will issue an ORDER TO COMPEL Travis Co. Court-at-Law No. 5 and or the Travis County Criminal County Clerk to release any and all documents and information related to cause no. C-1-CR-20-400220.

In the alternative, Plaintiff requests that the Clerk of Court will issue him subpoenas so that he can have them served upon state and county officials.

Respectfully submitted,

Marshall R. Partain

Marshall Ray Partain

Plaintiff - pro se

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, hereby certify that a true and correct copy of the foregoing Motion to Compel Travis Co. Court-at-Law No. 5 to Release all Court Documents Related to Cause no. C-1-CR-20-400220, has been served upon the Defendants by placing same in regular U.S. mail to: Hon. Monte L. Barton, Jr. - Attorney-of-Record, City of Austin - Law Dept., P.O. Box 1546, Austin, TX 78767, on this the 9th day of February 2022.

Marshall Partain
Plaintiff - pro se

Exhibit A

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00128-CV

In re Marshall Partain

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relator Marshall Partain, an inmate proceeding pro se, has filed a petition for writ of mandamus, asking the Court to direct the lower court to rule or act on his motion for restoration of property under Article 47.01a of the Texas Code of Criminal Procedure. He claims to have filed the motion in the court below on or about January 20, 2021.

When a mandamus petition is based on the allegation that the trial court has failed to rule on a properly filed motion, the relator must establish that the trial court (1) had a duty to rule on a motion, (2) was asked to rule on the motion, and (3) failed or refused to do so. *See In re Whitfield*, No. 03-18-00564-CV, 2018 WL 4140735, at *1 (Tex. App.—Austin Aug. 29, 2018, no pet.) (mem. op.). Partain has failed to provide this Court with a copy of the motion or any supporting materials so there is no way for us to determine whether the motion was actually brought to the court’s attention or even filed properly. *See In re Blakeney*, 254 S.W.3d 659, 662 (Tex. App.—Texarkana 2008, no pet.) (“The trial court is not required to consider a motion unless it is called to the court’s attention.”); *see also* Tex. R. App. P. 52.3(a) (requiring a relator to file a record containing sworn copies “of every document that is material to [his] claim for relief and that was filed in any underlying proceeding”).

Moreover, even if the motion was properly filed and brought to the trial court's attention, the record before us does not show that the less than three-month delay here is unreasonable, especially when article 47.01a does not contain any express deadlines for resolving such motions. *See* Tex. Code Crim. Proc. art. 47.01a; *see also In re Whitfield*, 2018 WL 4140735, at *1 (explaining that "three months does not ordinarily constitute an unreasonable length of time for a motion to remain pending").

Accordingly, we deny the petition for writ of mandamus. *See* Tex. R. App. P. 52.8(a).

Thomas J. Baker, Justice

Before Chief Justice Byrne, Justices Baker and Smith

Filed: April 16, 2021

Marshall R. Partain
Austin Transitional Center
3154 E. Hwy 71
Del Valle, TX 78617

SCREENED BY CSO

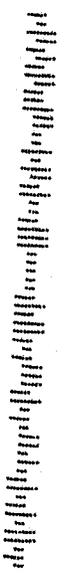


AUSTIN TX 786
RIO GRANDE DISTRICT
9 FEB 2022 PM 3 L

FEB 11 2022
Western District Court

Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

78701-381275



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN

Plaintiff,

v.

JASON HALLMARK, AP# 6307,

SHARDAY NELERO, AP# 8771,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-DM

**DEFENDANTS' MOTION FOR TIME EXTENSION
TO FILE DISPOSITIVE MOTION**

TO THE HONORABLE DUSTIN M. HOWELL:

NOW COMES Jason Hallmark and Sharday Nelerero, Defendants in the above captioned cause, and files this Motion for Extension of Time to file a Dispositive Motion in this case, and in support whereof, Defendants show as follows:

1. Pro Se Plaintiff filed his original complaint on September 16, 2021 (Doc. 1). Pro Se Plaintiff filed an Amended Complaint on October 22, 2021 (Doc. 8). Defendants were served with process on November 16, 2021 (Doc. 14) and Defendants properly served their answer on December 6, 2021 (Doc. 15). Thereafter, the Court issued a Scheduling Order on December 7, 2021 (Doc. 18), setting a dispositive motion deadline of February 7, 2022. On January 27, 2022 Plaintiff filed a Motion for Extension of Time in reference to non-dispositive and dispositive motions (Doc. 22). The Court granted Plaintiff's request on January 29, 2020, setting a new dispositive motions deadline for March 7, 2022.
2. Plaintiff and Defendants, by and through the office of legal counsel, have had informal settlement discussions. Defendants are looking into alternative compromise resolutions and respectfully request additional time to explore and consider options. Defendants are requesting

a 6-week extension until April 18, 2022 to file their dispositive motion.

3. Legal Counsel for Defendants respectfully submits that an extension of time is necessary and will not prejudice Plaintiff.
4. This extension of time is not sought for delay, and no party will be prejudiced if it is granted.
5. The Defendants are agreeable to having this time extension, if granted, apply to all parties.

For the foregoing reason, Defendants respectfully request that the Court grant a 6-week extension of time to file all dispositive motions, creating a new due date of **April 18, 2022**.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409
Facsimile: (512) 974-1311
Counsel for Defendants

CERTIFICATE OF CONFERENCE

I certify that on March 4, 2022, the undersigned was unable to confer with the pro se Plaintiff regarding this motion because Plaintiff is only reachable by mailing, however a copy is being served in accordance with the FRCP.

/s/ Monte L. Barton, Jr. _____
MONTE L. BARTON, JR.

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 4th day of March, 2022.

Via First Class Regular Mail and Certified Mail:

Marshall Ray Pertain, Pro Se,
c/o Transitional Center
3154 E. Hwy 71
Del Valle, TX 78617.

PRO SE

/s/ Monte L. Barton, Jr. _____
MONTE L. BARTON, JR.
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN

Plaintiff,

v.

JASON HALLMARK, AP# 6307,

SHARDAY NELERO, AP# 8771,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-DM

**DEFENDANTS' SECOND MOTION FOR
EXTENSION OF TIME TO FILE DISPOSITIVE MOTION**

TO THE HONORABLE DUSTIN M. HOWELL:

NOW COMES Jason Hallmark and Sharday Nelerero, Defendants in the above captioned cause, and files this, their Second Motion for Extension of Time to file a Dispositive Motion in this case (*through May 30, 2022*) and in support whereof, Defendants show as follows:

1. Pro Se Plaintiff filed his original complaint on September 16, 2021 (Doc. 1). Pro Se Plaintiff filed an Amended Complaint on October 22, 2021 (Doc. 8). Defendants were served with process on November 16, 2021 (Doc. 14) and Defendants properly served their answer on December 6, 2021 (Doc. 15). Thereafter, the Court issued a Scheduling Order on December 7, 2021 (Doc. 18), setting a dispositive motion deadline of February 7, 2022. On January 27, 2022 Plaintiff filed a Motion for Extension of Time in reference to non-dispositive and dispositive motions (Doc. 22). The Court granted Plaintiff's request on January 29, 2020, setting a new dispositive motions deadline for March 7, 2022.
2. Defendants and Plaintiff have engaged in discussions into alternative resolutions in this matter and requested additional time in hopes of resolution. On March 4, 2022, the Court granted Defendants' original Motion [Doc # 27] requesting a 6-week extension until April 18, 2022 to

file their dispositive motion.

3. The parties have continued to discuss possible alternative dispute resolution, and have had discussions and other correspondence over the last several days. However, Plaintiff has recently filed a “NOTICE of Change of Address by Marshall Ray Partain” [DOC # 29], as follows:

Marshall Ray Partain
Williamson County Jail
P.O. Box 2119
Georgetown, TX 78627

4. Plaintiff no longer seems to have access to a telephone, and correspondence via U.S. Mail is slow. Accordingly, Legal Counsel for Defendants respectfully submits that another extension of time is necessary and will not prejudice Plaintiff.
5. This extension of time is not sought for delay, and no party will be prejudiced if it is granted.
6. The Defendants are agreeable to having this time extension, if granted, apply to all parties.

For the foregoing reason, Defendants respectfully request that the Court grant another 6-week extension of time to file all dispositive motions, creating a new due date of *May 30, 2022*.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409

Facsimile: (512) 974-1311

Counsel for Defendants
CERTIFICATE OF CONFERENCE

I certify that on April 14, 2022, the undersigned was unable to confer with the pro se Defendant regarding this motion because Defendant is only reachable by mailing, however a copy is being served in accordance with the FRCP.

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 14th day of April, 2022.

Via First Class Regular Mail and Certified Mail:

Marshall Ray Pertain, Pro Se,
Williamson County Jail
P.O. Box 2119
Georgetown, TX 78627

PRO SE

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.
Counsel for Defendants

FILED

APR 18 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY CC
DEPUTY CLERK

RECEIVED

APR 18 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY CC
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. 1:21-cv-829-RP-DH

JASON HALLMARK, AP#6307,
SHARDAY NELERO, AP#8771,
Defendants.

PLAINTIFF'S MOTION FOR LEAVE TO FILE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Marshall Ray Partain, Plaintiff in the above-styled and numbered case and files this his motion for leave to file pursuant to W.D. Texas CV-7, and in support thereof would respectfully show:

1. This honorable set a deadline of April 18, 2022, for all dispositive motions.
2. Plaintiff respectfully requests leave to file his motion for judgment on the pleadings.

PRAYER

Plaintiff prays this honorable court will grant this motion for leave to file so that he can timely file his dispositive motion for judgment on the pleadings.

Dated: April 13, 2022

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain
Plaintiff - pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. 1:21-cv-829-RP-DH

JASON HALLMARK, AP#6307,
SHARDAY NELERO, AP#8771
Defendants.

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Marshall Ray Partain, hereinafter referred to as "Plaintiff" and respectfully moves for judgment on the pleadings against Officer Jason Hallmark and Officer Sharday Netero, collectively referred to as "Defendants", pursuant to Rule 12(c) of the Federal Rules of Civil Proc., and in support thereof would show:

STATEMENT OF THE CASE

1. Plaintiff filed his original complaint on September 16, 2021, for the unlawful, illegal and malicious deprivation of his property (bicycle) on or about October 6, 2019. Plaintiff amended his complaint on October 22, 2021, to include Defendants' badge numbers and correct full names.
2. Defendants served their Answer to Plaintiff's complaint with this court on December 6, 2021; however, Plaintiff did not receive a copy of Defendants' Answer until on or about January 25, 2022. Plaintiff then submitted a motion for extension of time to file which was granted and set a new deadline for dispositive motions of March 7, 2022.

3. On March 4, 2022, Defendants filed a motion for extension of time to file dispositive motion, creating a new due date for dispositive motions of April 18, 2022, to explore and consider settlement options.
4. Plaintiff and counsel for Defendants, Honorable Monte L. Barton, Jr., have had many unfruitful conversations (via phone) since; unfortunately Plaintiff's good-faith attempts to settle this case by agreement have failed. According to attorney - Barton, the **ONLY** type of relief the City of Austin Law Dept. is offering Plaintiff is the return of his own bike... more than 2 1/2-years later.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FAILED TO PROPERLY PLEAD OR SUFFICIENTLY DEFEND

1. Defendants' Answer to Plaintiff's complaint is so grossly insufficient and immaterial to his claim that the Defendants' Answer should constitute no answer at all. Plaintiff asserts that the basis of this entire lawsuit is the wanton indifference of the Defendants' actions when they unlawfully, illegally and maliciously deprived him of his property (bicycle) on Oct. 6, 2019. Plaintiff was then arrested/magistrated for "theft" of his own bike **15-months later**; said theft charge was rightfully dismissed in Travis County Court-at-Law #5... yet nearly 14-month after the bogus theft charge has been dismissed, Defendants refuse to return Plaintiff's bicycle.
2. Under the provisions of the Federal Rules of Civil Procedure, Rule 8. General Rules of Pleading, it states (in pertinent part):

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) In General. In responding to a pleading, a party **must**:

(A) state in short and plain terms its defenses to **each claim** against it.

(2) Denials - Responding to the Substance, a denial must fairly respond to the **SUBSTANCE OF THE ALLEGATION**. (emphasis added.)

In this case, Defendant Hallmark failed to address Plaintiff's assertions of fact in his complaint; and that Defendant Hallmark's failure to defend and/or respond to the substance of Plaintiff's allegations amounts to an "admission" since a responsive pleading was required and the allegation was not denied. Moreover, Defendant Hallmark's denial of "excessive force" was irrelevant and immaterial.

Likewise, Defendant Netero failed to address Plaintiff's assertions of fact in his complaint; Defendant Netero **specifically** denied "cruel and unusual punishment" in her Answer, which is highly immaterial because Plaintiff never alleged nor asserted such a phrase in his complaint.

3. An allegation in a complaint is admitted if a responsive pleading is required and the allegation is not denied. Over seven (7) months have gone by since Plaintiff filed his complaint and initiated this claim for many violations of his constitutional rights. Plaintiff contends that the Defendants failed to properly plead and sufficiently defend against Plaintiff's sole-allegation: the unlawful, illegal and malicious deprivation of his property (bike). Furthermore, Plaintiff contends that no genuine dispute as to any material fact exists and he is entitled to judgment as a matter of law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this honorable court will grant his motion for judgment on the pleadings in the best interests of justice and issue an Order granting relief sought in his original complaint.

Plaintiff prays for any and all relief this court deems as fair and just.

Dated: April 13, 2022

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain
Plaintiff - pro se

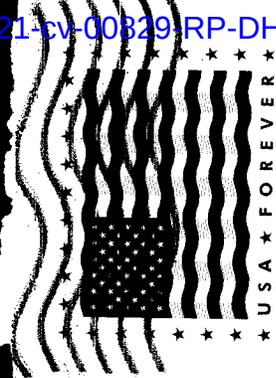
CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Williamson County Sheriff's Office # 15-161477,
do hereby certify that a true and correct copy of the foregoing motion for
judgment on the pleadings has been served upon the Defendants by placing same
in regular U.S. mail to: Hon. Monte L. Barton, Jr., Attorney-of-Record, City of Austin -
Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 13th day of April, 2022.

Marshall R. Partain
Marshall Ray Partain D.O.B.: 01-17-1974
Williamson Co. Jail
P.O. Box 2119
Georgetown, TX 78627

Marshall Ray Partain D.O.B. 01-17-1974
Williamson Co. Jail # 1510477
P.O. Box 2119
Georgetown, TX 78627

AUSTIN TX 786
RIO GRANDE DISTRICT
14 APR 2022 PM 3 L



Clerk, United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED BY CSO
APR 18 2022

78701-381275

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
Plaintiff,

v.

Case No. 1:21-cv-829-RP-DH

JASON HALLMARK, AP#6307,
SHARDAY NELERO, AP#8771
Defendants.

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Marshall Ray Partain, hereinafter referred to as "Plaintiff" and respectfully moves for judgment on the pleadings against Officer Jason Hallmark and Officer Sharday Netero, collectively referred to as "Defendants", pursuant to Rule 12(c) of the Federal Rules of Civil Proc., and in support thereof would show:

STATEMENT OF THE CASE

1. Plaintiff filed his original complaint on September 16, 2021, for the unlawful, illegal and malicious deprivation of his property (bicycle) on or about October 6, 2019. Plaintiff amended his complaint on October 22, 2021, to include Defendants' badge numbers and correct full names.
2. Defendants served their Answer to Plaintiff's complaint with this court on December 6, 2021; however, Plaintiff did not receive a copy of Defendants' Answer until on or about January 25, 2022. Plaintiff then submitted a motion for extension of time to file which was granted and set a new deadline for dispositive motions of March 7, 2022.

3. On March 4, 2022, Defendants filed a motion for extension of time to file dispositive motion, creating a new due date for dispositive motions of April 18, 2022, to explore and consider settlement options.
4. Plaintiff and counsel for Defendants, Honorable Monte L. Barton, Jr., have had many unfruitful conversations (via phone) since; unfortunately Plaintiff's good-faith attempts to settle this case by agreement have failed. According to attorney - Barton, the **ONLY** type of relief the City of Austin Law Dept. is offering Plaintiff is the return of his own bike... more than 2 1/2-years later.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FAILED TO PROPERLY PLEAD OR SUFFICIENTLY DEFEND

1. Defendants' Answer to Plaintiff's complaint is so grossly insufficient and immaterial to his claim that the Defendants' Answer should constitute no answer at all. Plaintiff asserts that the basis of this entire lawsuit is the wanton indifference of the Defendants' actions when they unlawfully, illegally and maliciously deprived him of his property (bicycle) on Oct. 6, 2019. Plaintiff was then arrested/magistrated for "theft" of his own bike **15-months later**; said theft charge was rightfully dismissed in Travis County Court-at-Law #5... yet nearly 14-month after the bogus theft charge has been dismissed, Defendants refuse to return Plaintiff's bicycle.
2. Under the provisions of the Federal Rules of Civil Procedure, Rule 8. General Rules of Pleading, it states (in pertinent part):

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) In General. In responding to a pleading, a party **must**:

(A) state in short and plain terms its defenses to **each claim** against it.

(2) Denials - Responding to the Substance, a denial must fairly respond to the **SUBSTANCE OF THE ALLEGATION**. (emphasis added.)

In this case, Defendant Hallmark failed to address Plaintiff's assertions of fact in his complaint; and that Defendant Hallmark's failure to defend and/or respond to the substance of Plaintiff's allegations amounts to an "admission" since a responsive pleading was required and the allegation was not denied. Moreover, Defendant Hallmark's denial of "excessive force" was irrelevant and immaterial.

Likewise, Defendant Netero failed to address Plaintiff's assertions of fact in his complaint; Defendant Netero **specifically** denied "cruel and unusual punishment" in her Answer, which is highly immaterial because Plaintiff never alleged nor asserted such a phrase in his complaint.

3. An allegation in a complaint is admitted if a responsive pleading is required and the allegation is not denied. Over seven (7) months have gone by since Plaintiff filed his complaint and initiated this claim for many violations of his constitutional rights. Plaintiff contends that the Defendants failed to properly plead and sufficiently defend against Plaintiff's sole-allegation: the unlawful, illegal and malicious deprivation of his property (bike). Furthermore, Plaintiff contends that no genuine dispute as to any material fact exists and he is entitled to judgment as a matter of law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this honorable court will grant his motion for judgment on the pleadings in the best interests of justice and issue an Order granting relief sought in his original complaint.

Plaintiff prays for any and all relief this court deems as fair and just.

Dated: April 13, 2022

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain
Plaintiff - pro se

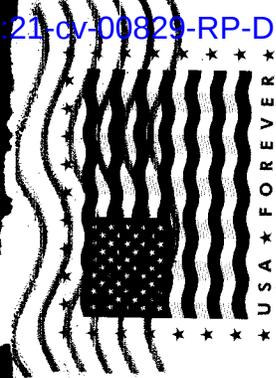
CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Williamson County Sheriff's Office # 15-161477,
do hereby certify that a true and correct copy of the foregoing motion for
judgment on the pleadings has been served upon the Defendants by placing same
in regular U.S. mail to: Hon. Monte L. Barton, Jr., Attorney-of-Record, City of Austin -
Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 13th day of April, 2022.

Marshall R. Partain
Marshall Ray Partain D.O.B.: 01-17-1974
Williamson Co. Jail
P.O. Box 2119
Georgetown, TX 78627

Marshall Ray Partain D.O.B. 01-17-1974
Williamson Co. Jail # 15110477
P.O. Box 2119
Georgetown, TX 78627

AUSTIN TX 786
RIO GRANDE DISTRICT
14 APR 2022 PM 3 L



Clerk, United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED BY CSO

APR 18 2022

78701-381275



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

APR 26 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY

MARSHALL RAY PARTAIN,
Plaintiff,

v.

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

CIVIL ACTION NO. 1:21-cv-829-RP-DH

PLAINTIFFS RESPONSE IN OPPOSITION TO DEFENDANTS' SECOND MOTION
FOR EXTENSION OF TIME TO FILE DISPOSITIVE MOTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Marshall Ray Partain, Plaintiff in the above-styled and numbered cause, and files this, his response in opposition to Defendants' second-motion for extension of time to file dispositive motion, pursuant to W.D. Tex. CV-7(e)(1), and in support thereof would show:

1. This Response is within the time-limits set forth under the provisions of W.D. Tex. CV-7(e)(2), as Defendants filed their second-motion for extension of time "electronically" with the Clerk of Court on April 14, 2022; but served Plaintiff a copy of said motion via regular U.S. mail, which he received on April 20, 2022. (Please see attached Exhibit 1).
2. On April 13, 2022, Plaintiff timely filed his dispositive motion for judgment on the pleadings and addressed the fruitless "alternative resolution discussions" with attorney Barton; as defense counsel has been unyielding when it comes to monetary relief for the Plaintiff. Moreover, Plaintiff initiated each discussion with counselor Barton in a good-faith attempt to resolve this matter by agreement. Counselor Barton has repeatedly stated that "no monetary relief is on the table per the legal counsel for the City of Austin."
3. Plaintiff contends that the Defendants have no intention of awarding him meaningful-

relief and that an extension of time issued by this court would be futile in settling this lawsuit. Not surprisingly, defense counsel appears to be cunningly "playing for time" to drag this civil action out; thus exacerbating Plaintiff's injury. Furthermore, such an undue, improper delay for prospective relief that is not expected or likely tends to bring this court into disrespect.

Plaintiff asserts that if defense counsel has any intention of settling this matter, he would agree to the amount of \$3,000.00 (along with the return of his bicycle), and simply mail Plaintiff a Settlement Agreement and Release with a Joint Motion to Dismiss. This type of settlement does not require a six(6) week extension.

4. The deadline for dispositive motions has already been extended twice for both parties of this suit; and although motions for extensions of time to file are "discretionary", Plaintiff contends that granting defense counsel another six(6) week extension of time to file would be meaningless (in hopes of settlement) and harmful to Plaintiff because justice delayed is justice denied. (see Two-Way Media LLC vs. AT&T Inc., 782 F.3d 1311, 1314 [Fed. Cir. 2015], finding no abuse of discretion when the lower court refused to extend an appeal deadline). Plaintiff respectfully requests this court to **DENY** Defendants' second motion for extension of time to file dispositive motion.

Dated: April 20, 2022

RESPECTFULLY SUBMITTED,

Marshall R. Partain
Plaintiff - Pro se
Marshall Ray Partain

CERTIFICATE OF SERVICE

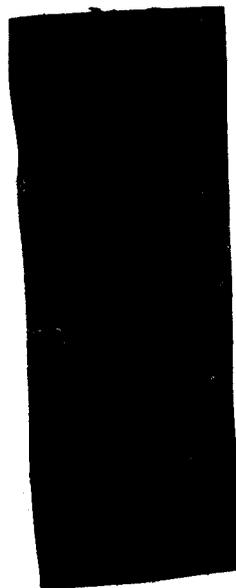
I, Marshall Ray Partain, hereby certify that a true and correct copy of the foregoing Plaintiff's Response in opposition to Defendants' second motion for extension of time to file dispositive motion has been served upon the Defendants by placing same in regular U.S. mail to: Hon. Monte L. Barton, Jr., Attorney-of-Record, City of Austin - Law Dept., P.O. Box 1546, Austin, TX, 78767-1546, on this the 20th day of April, 2022.

Marshall R. Partain
Williamson Co. Jail - DOB: 01-17-1974
P.O. Box 2119
Georgetown, TX 78627

City of Austin
P.O. BOX 1546
AUSTIN, TEXAS 78767-1546

Exhibit 1

Marshall Ray Partain DOB 01-17-1974
Williamson County Jail
P.O. Box 2119
Georgetown, TX 78627



RECEIVED
APR 20 2022
R. Stude

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN
Plaintiff,

v.

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

**DEFENDANTS’ RESPONSE IN OPPOSITION TO
PLAINTIFF PRISONER’S MOTION FOR JUDGMENT ON THE PLEADINGS [DOC 32]**

TO THE HONORABLE JUDGE ROBERT PITMAN:

Officer Jason Hallmark and Officer Sharday Nelero of the Austin Police Department, hereinafter sometimes referred to as “Defendants,” file this response in opposition to Plaintiff’s Motion for Judgment on the Pleadings [DOC 32], confirming their original Answer denying all claims, and asserting Affirmative Defenses to Plaintiff’s Complaint [DOC 1] [Form: Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)], and AND ALL AMENDED COMPLAINTS, MOTIONS, ASSERTIONS OR OTHER CLAIMS, INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13].

BACKGROUND

Plaintiff has filed a Motion for Judgment on the Pleadings [DOC 32], asserting that Defendants’ answer to the Plaintiff’s complaint “*is so grossly insufficient and immaterial to his claims that the Defendants’ Answer should constitute no answer at all.*”

Defendants respectfully submit that Plaintiff’s motion must be denied because the Defendants fully responded to and denied all of Plaintiffs claims of any sort or nature set out in Plaintiff’s Complaint [DOC 1] [Form: Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil

Rights (Prisoner)], and ALL AMENDED COMPLAINTS, MOTIONS, ASSERTIONS OR OTHER CLAIMS, INCLUDING [DOC 8], [DOC 11], [DOC 12], [DOC 13]. In support, Defendants hereby fully adopt and incorporate their Answer and Affirmative defenses [DOC 15].

The Plaintiff has merely asserted bald allegations, which do not support a claim against the defendants. Defendants, in accordance with Fed. R. Civ. P. 8(b)(1)(B): denied and continue to deny all of the allegations asserted against it by Plaintiff. And, in accordance with Fed. R. Civ. P. 8(b)(3), Defendants generally and in good faith denied all the allegations.

DEFENDANTS' PRAYER

Defendants pray that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 4th day of May, 2022.

Via ECF and to be followed by First Class Regular Mail and Certified Mail:

Via First Class Regular Mail and Certified Mail:
Marshall Ray Pertain, Pro Se,
Williamson County Jail
P.O. Box 2119
Georgetown, TX 78627
PRO SE

/s/ Monte L. Barton Jr.
MONTE L. BARTON, JR.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN
Plaintiff,

v.

**JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,**
Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant police officers, Jason Hallmark (AP #6307) and Sharday Melero (AP #8771) [misspelled as “Nelero” in the Complaint], file this Motion and respectfully move the Court to grant summary judgment in their favor. Plaintiff has failed to state a legal cause of action and Defendants are immune from suit via qualified immunity. There is no genuine dispute as to any material fact and the movants are entitled to judgment as a matter of law.” FED. R. CIV.P .56(a). This is so even though the evidence is viewed in the light most favorable to the non-moving party. *TIG Specialty Ins. Co. v. Pinkmonkey.com, Inc.*, 375 F.3d 365, 369 (5th Cir. 2004).

OVERVIEW

Plaintiff filed the Complaint [Doc #1] on September 16, 2021, alleging under 42 U.S.C. §1983, that the Defendants deprived him of “rights, privileges, or immunities secured by the Constitution and [federal laws].” Plaintiff asserts unlawful seizure of property (specifically a bicycle); deprivation of property without due process of law; and denial of equal protection under the Constitution and laws of the United States of America. On page 4 of the Complaint,

Plaintiff asserts that: *“Officer Hallmark - falsely arrested and charged me for THEFT of my own bicycle on October 4, 2019; and unlawfully seized my bike.” And he asserts that: “Officer Melero - falsely claimed that after running the serial # of my bike, that it was stolen from Miami, Fl. They both officially oppressed me and perjured themselves. [The bogus charge was dismissed, but my property has not been returned to me.]”*

Mr. Partain was arrested on October 6, 2019, for Public Intoxication and for Resisting Arrest. He was not arrested for the bicycle. Instead, as explained fully below, he was given a “cite and release” citation, which is like a traffic ticket under class B misdemeanor citation criteria. This was because at the time of his arrest for resisting arrest and public intoxication, and in accordance with standard police procedure, the serial number for his bicycle was checked through the National Crime Information Center (NCIC) database -- it had been registered by the Miami Police Department and identified as stolen property. Consequently, it was delivered into the custody of the Austin Police Department as evidence. The Austin Police Department maintains possession of the bicycle pursuant to an official litigation hold for the present lawsuit, and pending the resolution of the Miami Police Department Property Crimes case and a decision by Mr. Levi Looney, who has been identified as the registered owner of the bicycle.

Defendants submit that good faith efforts have been made to resolve this lawsuit through alternative dispute resolution. Defendants note from the Austin Police Department General Office Report that discussions have occurred between APD and the Miami Police Department and Mr. Levi Looney (bicycle owner) whereby Mr. Looney is willing, perhaps, to donate the bicycle to Plaintiff, Mr. Partain, and for the Miami Police Department to close its file. This possibility was conveyed to Plaintiff, Mr. Partain, during March 2022 (see the General Offense Report GO# 2019-2791435, page 10, attached as Exhibit 1 to the Declaration of Officer Melero

attached hereto as *Exhibit "A"*). Plaintiff rejected this and instead demanded Three Thousand Dollars and some other things from the City of Austin as conditions for dismissing the lawsuit. Soon after that, on April 2, 2022, Plaintiff was arrested and confined to jail in Williamson County for matters relating to indecent behavior and other things. There have not been any additional dispute resolution discussions about this lawsuit.

For the reasons explained below, this lawsuit must be dismissed with prejudice because Plaintiff's claims fail to state a claim against these individual defendants on which relief may be granted. Further, the Defendants are immune from Plaintiff's claims via qualified immunity.

FACTUAL BACKGROUND

On October 6, 2019, Officer Sharday Melero (Defendant) responded to an Urgent Check Welfare. The original caller reported that a male was suicidal and wanted to be shot by police. Defendant Melero met the Plaintiff and was present when Defendant Hallmark, a mental health officer (MHO) arrived on scene and advised Mr. Partain that he wanted to take him to the hospital. Plaintiff's demeanor changed and he became aggressive when Defendant Hallmark would not allow him to continue drinking beer, and he resisted arrest.

During this process, Mr. Partain advised that he was concerned about his bicycle. It was determined to be: SERIAL NUMBER #GS52714WMA, KENT 700C ROAD BIKE, 21 SPEED BICYCLE, green and black. Defendant Melero ran a background check on the serial number through Austin Police Department Communications. Communications advised that the Bicycle was identified as stolen by the National Crime Information Center (NCIC) through the Miami Police Department. Defendant Melero submitted the bicycle as evidence at the East Substation. The value of the bicycle was approximately \$197 via Amazon.com. She completed a Class B Cite and Release citation for the theft of the bicycle. The citation was acknowledged and signed

by Mr. Partain.

Officer Hallmark completed, and submitted the probable cause (“PC”) affidavits for Resisting Arrest, Class A, and Public Intoxication, Class C, along with the Cite and Release Citation for the bicycle. The Cite and Release Citation for the bicycle as stolen property was not related to Plaintiff’s arrest on October 6, 2019.

Both Defendants, Officer Melero and Officer Hallmark, prepared reports setting out the events of the R2R encounter with Mr. Partain.

After October 6, 2019, neither defendant (Officer Melero or Officer Hallmark) are aware of any further contact or interaction with Mr. Partain or any matters related to him. They were not involved with and do not have any knowledge about Mr. Partain’s allegations and statements about being arrested in January 2021 on charges brought against him by Travis County related to bicycle theft. [See the sworn Declaration of Officer Melero attached hereto as *Exhibit “A”* and the General Offense Report GO# 2019-2791435, attached to the Declaration as Exhibit 1. See also the sworn Declaration of Officer Hallmark attached as *Exhibit “B”* and incorporated by reference.] [Note: Officer Hallmark has authorized undersigned defense counsel to digitally “sign” the declaration on his behalf, as he is out of town for the next few days. The record will be supplemented with a copy bearing his signature.]

The officers’ description of the events is fully supported by the available video footage from the body worn camera (BWC) carried by Officer Melero [*Exhibit “C”* - *BWC video Officer Melero, incorporated herein by reference, which will be delivered to the Court and made a part of the record on June 1, 2022*] and [*Exhibit “D”* - *BWC video Officer Hallmark, incorporated herein by reference, which will be delivered to the Court and made a part of the record on June 1, 2022*]. In particular, Defendants direct the Court to the following timestamps:

Sharday Melero BWC:

Time	EXHIBIT "C" -- Sharday Melero BWC: Description of Event
00:30	Arrives on scene
02:52	Partain tells officers to pull the trigger on him
03:20	Partain says he needs a little help; says he is not mentally stable; says when he gets this mad he attacks police officers
04:12	Marshall asked Melero to let him drink his beer; he says don't put cuffs on me because I am going to resist, and we are going to fight
06:25	Hallmark begins speaking with Partain (identifies himself as a mental health officer)
10:30	Hallmark tells him not to drink anymore beer and moves the can (irritates Partain)
11:30	Partain tells Hallmark "now this is when you are going to earn your paycheck", "now you are playing with fire, Marshall gets resistant"
13:26	"I want my beer or we are going the hard way"
14:03	Partain grabs for beer; R2R begins
15:10	Partain cuffed and seated upright
15:15	Partain walked to patrol car
15:30	"We are going to play hardball again"
16:12	Officers tell Marshall they have his bike and it is coming with them
16:20	Partain placed in patrol car
24:35	Melero discusses bicycle;
25:10	Melero's official R2R interview with Sgt. Shand
27:40	Melero places bicycle in back of her patrol car
29:17	Officer Batham AP8104 mentioned to Melero "run the bike to make sure it isn't stolen";
29:52	Informs other officers she is headed to the East Substation

Jason Hallmark BWC:

Time	EXHIBIT "D" -- Jason Hallmark BWC: Description of Event
00:30	Arrives on scene
01:00	Hallmark gets update of situation from other officers
02:00	1 st contact with Marshall – tells Marshall he is only here to talk with him
02:38	Tells Marshall "How would you like me to be able to get you some help, what is the best solution for you, because we are not going to hurt you?"
06:04	Hallmark tells him not to drink anymore beer and moves the can
07:04	Partain tells Hallmark "now this is when you are going to earn your paycheck", "now you are playing with fire, Marshall gets resistant"
09:00	"I want my beer or we are going the hard way"
09:37	Partain grabs for beer; R2R begins
10:45	Partain cuffed and seated upright
10:50	Partain walked to patrol car
10:58	"We are going to play hardball again"
11:45	Officers tell Marshall they have his bike and it is coming with them
12:09	Partain placed in patrol car
13:30	Hallmark tells Shand that Marshall will be charged with Public Intoxication and Resisting Arrest
19:28	Marshall making treats; "Wait till I get out.....you going to see worse....I got weapons too"
20:25	Marshall is requesting medical attention
40:43	"Where's my bike?"; Hallmark tells Marshall that his bike will be turned in for safekeeping
21:55	Hallmark's official R2R interview with Sgt. Shand
24:55	Hallmark begins transport to jail; Marshall shouts, threatens and yells throughout transport
29:04	"You are going to have to have about 20 guards outside that jail..."
37:35	Marshall says "I'm a paralegal, I'll fight you....."
40:00	Arrive at jail
41:10	Met by 7 deputies and restraint chair; walks in without incident

ARGUMENT AND AUTHORITIES

THE PLAINTIFF HAS FAILED TO ALLEGE FACTS WHICH SHOW VIOLATIONS OF HIS RIGHTS UNDER THE THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983 AND THUS HIS CLAIMS AGAINST THE OFFICER-DEFENDANTS ARE BARRED BY THE DOCTRINE OF QUALIFIED IMMUNITY.

Qualified Immunity Standard

Because Officers Hallmark and Melero are sued in their individual capacities, they assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5th Cir. 2016). Consequently, the burden is on Plaintiff to plead sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5th Cir. 1999). “The Supreme Court has characterized the doctrine as protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Cozzo v. Tangipahoa Parish Council-President Gov’t*, 279 F.3d 273, 284 (5th Cir. 2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

“The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity is determined by following a two-part analysis. First, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a “clearly

established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). Second, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). When a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

As discussed above, qualified immunity protects government officials from civil damages liability when their actions could reasonably have been believed to be legal. *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc). “Even if the government official's conduct violates a clearly established right, the official is nonetheless entitled to qualified immunity if his conduct was objectively reasonable.” *Wallace v. Cnty. of Comal*, 400 F.3d 284, 289 (5th Cir. 2005). A defendant's acts are held to be objectively reasonable unless all reasonable officials in the defendant's circumstances would have then known that the defendant's conduct violated the plaintiff's asserted constitutional or federal statutory right. *Cozzo*, 279 F.3d at 284 (quoting *Thompson v. Upshur Cnty.*, 245 F.3d 447, 457 (5th Cir. 2001)).

To defeat a claim of qualified immunity, the plaintiff has the burden to demonstrate the inapplicability of the defense. *Atteberry*, at 253. The plaintiff must show “(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the

time of the challenged conduct.” *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013) (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). “Courts have discretion to decide which prong of the qualified-immunity analysis to address first.” *Morgan*, 659 F.3d at 371 (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)).

In this case, the irrefutable facts are established by video. “[A] plaintiff’s version of the facts should not be accepted for purposes of qualified immunity when it is ‘blatantly contradicted’ and ‘utterly discredited’ by video recordings.” *Hanks v. Rogers*, 853 F.3d 738, 744 (5th Cir. 2017) (emphasis added). Moreover, a court need not rely on the “plaintiff’s description of the facts where the record discredits that description, but should instead consider ‘the facts in the light depicted in the videotape’.” *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); citing *Scott v. Harris*, 550 U.S. 372, 381 (2007). “Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions . . . and protects all but the plainly incompetent.” *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2085 (2011).

It was reasonable for Officer Melero and Officer Hallmark to detain Plaintiff under the suspicious circumstances established on the video. And it was reasonable for Officer Melero to follow usual police methods to run a background check on the serial number of the bicycle through Austin Police Department communications. And it was reasonable to submit the bicycle as evidence to APD when Communications advised that the Bicycle was identified as stolen by the National Crime Information Center (NCIC) through the Miami Police Department.

“An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law.” *Evetts v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, Hallmark and Melero did not violate clearly established law but were in fact

following clearly established practices. The overwhelming weight of the evidence establishes that Hallmark and Melero are entitled to qualified immunity.

When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the conduct and actions of Officer Hallmark and Officer Melero were objectively reasonable under the circumstances.

PRAYER

Accordingly, Defendants respectfully request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiff's claims against the Defendants with prejudice and with all costs assessed to the Plaintiff.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409
Facsimile: (512) 974-1311
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 31 st day of May, 2022.

To be followed Via First Class Mail:

Mr. Marshall Partain
c/o Liberty Lawn Care
2111 RR 1869
Liberty Hill, TX 78642

PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.
Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN

Plaintiff,

v.

JASON HALLMARK, AP# 6307,

SHARDAY NELERO, AP# 8771,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-DM

DECLARATION OF OFFICER SHARDAY MELERO

STATE OF TEXAS
COUNTY OF HAYS

I, Sharday Melero, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. I am over 21 years of age, of sound mind, and fully competent to testify. I am currently and at all relevant times was employed by the City of Austin Police Department as a Police Officer (AP8771 - MELERO, SHARDAY).

2. On October 6, 2019, I responded to an Urgent Check Welfare at 601 W Ben White Blvd. The original caller reported that a male was suicidal and wanted to be shot by police. When I arrived I met Marshall Partain while Officer Maurer was speaking with him. Officer Hallmark, a mental health officer (MHO) arrived on scene and advised Mr. Partain that he wanted to take him to the hospital, and he could not drink his beer. Mr. Partain’s demeanor changed drastically and he started to raise his voice, tense up, and at one point he started punching his own head. When Mr. Partain became more aggressive, Office Hallmark attempted to gain custody of him. Mr. Partain resisted. I assisted Officer Maurer with maintaining control of Mr. Partain’s right arm and we were able to place his right arm in a handcuff. Mr. Partain advised that he was concerned about

his bicycle: SERIAL NUMBER #GS52714WMA, KENT 700C ROAD BIKE, 21 SPEED BICYCLE GRN & BLK. Mr. Partain stated he purchased the bicycle at Walmart with his own money. I transported the bicycle to the East Substation for safekeeping. Prior to me submitting the bicycle I ran a background check on the serial number through Austin Police Department communications. Communications advised me the Bicycle was identified as stolen by the National Crime Information Center (NCIC) through Miami Police Department. I submitted the bicycle as evidence at the East Substation. The value of the bicycle was approximately \$197 via Amazon.com. I completed a Class B Cite and Release citation for the theft of the bicycle. The citation was signed by Mr. Partain and was placed with personal items at Travis County Jail. Officer Hallmark completed, and submitted the PC affidavits for Resisting Arrest, Class A, and Public Intoxication, Class C, along with the Cite and Release Citation for the bicycle at Arrest Review. The Cite and Release Citation was not related to his arrest on October 6, 2019.

3. I prepared a report setting out the events of my R2R encounter with Mr. Partain. The Subject is noted as "R2R" which means Response to Resistance. My narrative is included as part of the Austin Police Department General Offense Report GO# 2019-2791435, pages 14 - 16.

4. A true and correct copy of General Offense Report GO# 2019-2791435 is attached to this Declaration as Exhibit 1.

5. After October 6, 2019, I am not aware of any further contact or interaction with Mr. Partain or any matters related to him. I was not involved with and do not have any knowledge about Mr. Partain's allegations and statements about being arrested in January 2021 on charges brought against him by Travis County related to bicycle theft.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 31st day of May, 2022.

 #8771 5/31/2022
AP8771 SHARDAY MELERO

Exhibit 1



**AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
(**LITIGATION HOLD**)
GO# 2019-2791435**

Table of Contents

Related Event GO# 2019-2791435	1
Offense(s)	1
Related Event(s)	2
Related Person(s)	2
1. ARRESTED # 1 - PARTIAN, MARSHALL RAY	2
2. PROPRTY OWN # 1 - LOONEY, LEVI	3
Related Narrative(s)	5
1. HALLMARK, JASON (AP6307), INITIAL REPORT	5
2. LUNDBERG, KENNETH (AP7317), SUPPLEMENTS - SUPERVISOR REVIEW	8
3. BREMNER, VENEZA (AP4191), SUPPLEMENTS - OWNER RELEASE/DONATE BICYCLE	10
Related Follow Up(s)	11
1. Follow Up Report # 1 - SHAND, DAVID	11
2. Follow Up Report # 2 - MELERO, SHARDAY L	14
3. Follow Up Report # 3 - MAURER, BRIAN	17
4. Follow Up Report # 4 - BATHAM, MICHAEL	20
5. Follow Up Report # 5 - CANTU, CALEB	22
6. Follow Up Report # 6 - TURNER, DUSTIN	24
Related Clearance Information	26
Related Event Details	27
Related Property Report(s)	31
1. PROPERTY REPORT # 2723552 (LOST/STOLEN)	31
BICYCLE (TAG # 2723552 - 1)	31
2. PROPERTY REPORT # 2723549 (SAFEKEEPING)	32
Related Attachment(s)	33
1. DIGITAL IMAGE - BIKE SN	33
2. ATTCHMENTS - EMAIL FROM EVIDENCE	34



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
LAW ENFORCEMENT USE ONLY
(*LITIGATION HOLD***)**

General Offense Information

Operational Status CLEARED BY ARREST
Reported On OCT-06-2019 1754
Occurred On OCT-05-2019 1815
Approved On OCT-07-2019 (MON.)
Approved By AP5671 - SHAND, DAVID
Report Submitted By AP6307 - HALLMARK, JASON
Org Unit DAVID 300 REG IV PATROL
Address 601 W BEN WHITE BLVD SVRD EB
Municipality AUSTIN
County TRAVIS COUNTY
District DA Beat 3 Grid 490
Premise Code 204
Family Violence NO
Cargo Theft NO

Offenses (Completed/Attempted)

- Offense #** 1 2300-0 PUBLIC INTOXICATION - COMPLETED
Location PARKING LOTS / GARAGE
Suspected Of Using N/A (MUTUALLY EXCLUSIVE)
Bias NONE (NO BIAS)

- Offense #** 2 0905-0 RESISTING ARREST OR SEARCH - COMPLETED
Location PARKING LOTS / GARAGE
Suspected Of Using N/A (MUTUALLY EXCLUSIVE)
Bias NONE (NO BIAS)

- Offense #** 3 3113-0 PAROLE VIOL - COMPLETED
Location PARKING LOTS / GARAGE
Suspected Of Using N/A (MUTUALLY EXCLUSIVE)
Bias NONE (NO BIAS)

- Offense #** 4 8403-0 LEVEL 3 RESPONSE TO RESISTANCE - COMPLETED
Location PARKING LOTS / GARAGE
Suspected Of Using N/A (MUTUALLY EXCLUSIVE)
Bias NONE (NO BIAS)

- Offense #** 5 8404-0 LEVEL 4 RESPONSE TO RESISTANCE - COMPLETED
Location PARKING LOTS / GARAGE
Suspected Of Using N/A (MUTUALLY EXCLUSIVE)
Bias NONE (NO BIAS)



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
LAW ENFORCEMENT USE ONLY
(LITIGATION HOLD**)**

Related Event(s)

- 1. AB 2019-29378
- 2. GO 2021-850853

Related Person(s)

- 1. ARRESTED # 1 - PARTIAN, MARSHALL RAY

CASE SPECIFIC INFORMATION

Sex MALE
 Race WHITE
 Date Of Birth [REDACTED]
 Address TRANSIENT
 Municipality AUSTIN
 State TEXAS

PERSON PARTICULARS

Place Of Birth TEXAS
 Occupation UNKNOWN
 Ethnicity NON-HISPANIC
 Additional Remarks PAROLEE

MASTER NAME INDEX REFERENCE

Name PARTIAN, MARSHALL RAY
 Sex MALE
 Race WHITE
 Date Of Birth [REDACTED]
 Ethnicity NON-HISPANIC
 Address HOMELESS
 Municipality AUSTIN
 State TEXAS
 County TRAVIS COUNTY
 ZIP Code 78617

PHONE NUMBERS

HOME (512) 970-5591
 CELL PHONE (512) 299-1988



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
LAW ENFORCEMENT USE ONLY
(LITIGATION HOLD**)**

ALIAS(ES)

Name	Address	Sex	DOB
PARTAIN, MARSHALL RAY		M	██████████
PARTAIN, MARSHALL RAY		M	██████████
PARTAIN, MARSHALL RAY	TRANSIENT , AUSTIN TX	M	██████████

CHARGE SUMMARY

CHARGE # 1

Offense Date OCT-05-2019 1815
Offense PUBLIC INTOXICATION - COMPLETED
Charge Statute C 2300
Charge Count 1
Domestic Violence NO

CHARGE # 2

Offense Date OCT-05-2019 1815
Offense RESIST ARREST SEARCH OR TRANSPORT - COMPLETED
Charge Statute MA 38.03(A)
Charge Count 1
Domestic Violence NO

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 30-49 YEARS
Armed With NONE (MUTUALLY EXCLUSIVE)
Offense 2300- 0 PUBLIC INTOXICATION - COMPLETED
Arrest Date OCT-05-2019 (SAT.)
Arrest Type ON VIEW ARREST (LOCAL ARREST NO WARRANT)

2. PROPRTY OWN # 1 - LOONEY, LEVI

CASE SPECIFIC INFORMATION

Sex MALE
Race UNKNOWN
Address 1723 SOUTHWEST 2ND AVE **Apartment** ██████
Municipality MIAMI
State FLORIDA
ZIP Code 33129



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

CELL PHONE [REDACTED]

Email [REDACTED]

PERSON PARTICULARS

Ethnicity UNKNOWN

MASTER NAME INDEX REFERENCE

Name LOONEY, LEVI

Sex MALE

Race UNKNOWN

Ethnicity UNKNOWN

Address 1723 SOUTHWEST 2ND AVE

Apartment [REDACTED]

Municipality MIAMI

State FLORIDA

ZIP Code 33129

PHONE NUMBERS

CELL PHONE [REDACTED]

Email [REDACTED]

LINKAGE FACTORS

Resident Status NONRESIDENT OF AUSTIN

**AUSTIN POLICE DEPARTMENT****GENERAL OFFENSE HARDCOPY****LAW ENFORCEMENT USE ONLY**

(**LITIGATION HOLD**)

Narrative Text

Type INITIAL REPORT

Author AP6307 - HALLMARK, JASON

Related Date Oct-07-2019 :59

On Sunday October 7, 2019 I, Officer Hallmark 6307, responded as a CIT to 601 W Ben White Blvd. The original caller stated a man was on the East side of the 7-11 who stated he wanted the police to kill him.

Officers arrived and located the subject and called for a CIT. The subject was identified as:

Partian, Marshall

w/m [REDACTED]

When I arrived it was explained to me that Partian was suicidal and wanted suicide by cop since he was not sure he could kill himself. It was explained to me that Partian said things were just not going ok.

I introduce myself to Partian and told him I was with the Austin Police and that I was an MHO. I asked him if he was feeling suicidal and wanted to die by suicide by cop which he said he did.

At this point I asked for his ID which he gave me without issue and he was being cooperative. I intended to put Partian on an ED and get him to a hospital. During my interaction with Partian he smelled of an alcoholic beverage, had an empty 24oz Budweiser beer next to him and a full one also next to him. Partian seemed intoxicated by his actions and speech and I reached a decision that he qualified for an Emergency Detention.

Partian said he was going to open his beer and drink it. I explained that he was not going to open the beer. The 7-11 is a licensed premises and would be a violation of state law, Partian was already intoxicated, and Partian was already suicidal. Partian made statements that if he was not allowed to drink the beer he was going to force Officers to Tase or Shoot him.

As an experienced MHO I attempted to reason with him but he was not having any part of that. I attempted multiple times to tell Partian that we were not going to drink beer because he was already drinking and if he wanted help he could not continue to drink. Partian became irate and started making obvious threats to myself and other Officers in his words and actions.

I had moved the unopened beer away from him but not far enough. Partian told me he was about to force us to shoot or tase him.

Based on Partian actions and behavior I determined that he was intoxicated and potentially violent. I told Partian to stand up and he started yelling that he would fight before he let us place him in handcuffs. Partian told me multiple times that we would have to fight him to get him into handcuffs. Partian

**GENERAL OFFENSE HARDCOPY**

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

lunged for the unopened beer and grabbed it stating he was going to drink his beer.

A 24oz beer is a heavy object and could easily be used as a deadly weapon especially for someone wanting to commit suicide by cop.

R2R Follows

When Partian lunged for the beer and grabbed it, I acted and tried to grab Partian by his left arm to place him in custody. Partian pulled his arms to the front and was not cooperating. Partian actively pulled and used his body strength against my own and pulled his arms in front of him.

Partian ended up on the ground and I was unable to secure his left arm. Using control of Partian's head I held him in a position so as to prevent him from getting leverage against myself or other Officers.

During my time attempting to gain control over Partian he continued to pull his arms under him. I was physically in a spot where I could not grab his arms and since he was actively trying to hold onto the beer that could have been used as a weapon, I used the mandibular angle pressure point. When I used the pressure point the first time Partian turned his head to the left and I used the mandibular angle on his right side.

I used the mandibular angle pressure point on Partian's left and right side to gain compliance of Partian.

End R2R

During the attempt to gain control of Partian he continued to fight and refused to comply. Partian was told to stop resisting and he continued to keep his arms under him until another Officer was able to pull his arm to the back and he was placed in handcuffs.

Partian was stood up and then searched in front of a patrol car. Once at the car Partian kept making demands to have his bike taken where he was going, I told him that would happen so he would calm down.

Later it was determined that the bike was stolen, see supplements.

Partian was transported to the Travis County Jail for Public Intoxication and Resisting Arrest. The bike that Partian was found to be listed as stolen, he was issued a Class B citation for the stolen bike.

Partian was charged with Resisting Arrest, Class A and Public Intoxication Class C.

PC's Filed

Partian is recently out of Prison. Partian is still on parole with 3 years



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

left on his sentence. Resisting arrest should be a violation of Partian's parole as is being in possession of a stolen bicycle.

I request that Partian's parole violation be reported to pardons and parole.

Supervisor was on scene.

NOI



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(LITIGATION HOLD**)**

Narrative Text

Type SUPPLEMENTS

Subject SUPERVISOR REVIEW

Author AP7317 - LUNDBERG, KENNETH

Related Date Nov-16-2021

On 11/16/21, I was made aware of this case by Sgt. C. Moore #3491 and Ofc. S. Melero #8771. Ofc. Melero notified Sgt. Moore and myself that she had received a copy of a motion made in District Court in reference to this arrest case. I reviewed the motion, which was a motion to appoint counsel for the plaintiff (Partian).

The motion did not specify the details of the case, but Ofc. Melero said that she believed it was related the the bicycle that was in Partain's possession at the time of his arrest.

I reviewed the report and the CAD history. I saw that Ofc. Melero described the bicycle as a Black and Green 21 Speed Men's Kent brand bicycle SN: GS52714WMA. Ofc. Melero's supplement said that she ran the SN through the TCIC/NCIC via dispatch and was notified that the bicycle was reported stolen:

HIGH PRIORITY [TLETS]: 13893756 - GS52714WMA,BBICYCL

HIGH PRIORITY [TLETS]: Results for Article Check Query Performed By Mares, Hannah for Unit D302 ASX1.45688.HMR0368.

2752256

QA.TXNCIC000.ASX1.

TXT

1L01ASX1

TX22701X9

MKE/STOLEN ARTICLE

ORI/FL0130600 TYP/BBICYCL SER/GS52714WMA BRA/KENT

MOD/700C DOT/20190907

OCA/190923-0071894

MIS/21 SPEED BICYCLE GRN & BLK C0L0R CP

OPT/IN AS OF 20190924

NIC/A595767025 DTE/20190924 1724 EDT DLU/20190924 1724 EDT

ORI IS MIAMI PD 305 603-6015

IMMED CONFIRM RECORD WITH ORI

MRI: 2752256 IN: NCIC 176345 AT 06OCT2019 19:14:02

OUT: ASX1 14229 AT 06OCT2019 19:14:0210/06/201919:15:42AP8712Response POSS BELOW

The stolen record was confirmed with Miama PD and Ofc. Melero turned the bicycle in as evidence.

I changed the "Seized" status on the property to "Recovered." I also contacted Miami PD and added the owner information from their records.

*****Update: 11/18/21

I received an email response from evidence room employee Nathan Navarro with a photo of the recovered bicycle's serial number. I noticed that the SN was missing from the property report, so I asked evidence to verify the serial number. The serial number did match the stolen hit from TCIC/NCIC and I added it to the property report. I also uploaded the photo and email from Navarro to this report.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

NOI 7317



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Subject OWNER RELEASE/DONATE BICYCLE

Author AP4191 - BREMNER, VENEZA

Related Date Mar-10-2022

On 03/10/22 at 7:41 a.m. Legal Liaison Detective V. Bremner #4191 called Miami PD 305-603-6015 and spoke to a person in property crimes who stated that they have no interest in the bicycle. She provided the bicycle owner's name, number and address: Levi Looney at [REDACTED], 1723 Southwest 2nd Ave. [REDACTED], Miami, FL 33129. at 7:51a.m. I then called the phone number for Levi and he answered. (captured on BWC)

Levi stated that he completely forgot about the bicycle and he stated that he was willing to donate it and even willing to donate it to Partain if it was determined that he was not the one that stole the bicycle. It is my understanding that Partain was in possession of the bicycle in Austin and was not in Miami when the bicycle was stolen.

All of this information will be sent in an email to Levi to track our conversation. I also advised City Legal of our conversation for the civil litigation.

NOI.

BWC

VB4191



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 1

Follow Up Report # 1

ASSIGNMENT INFORMATION

Assigned To AP5671- SHAND, DAVID
Capacity SUPPLEMENTAL
Assigned On OCT-06-2019 2014
Report Due On OCT-06-2019 (SUN.)

Org Unit DAVID 300 REG IV PATROL
By AP5671 - SHAND, DAVID

SUBMISSION INFORMATION

Submitted On OCT-06-2019 2014
Checked By AP5671 - SHAND, DAVID
Approved On OCT-07-2019 (MON.)

By AP5671 - SHAND, DAVID

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Author AP5671 - SHAND, DAVID

Related Date Oct-06-2019 20:14

On 10/6/19 at 5:55pm, I Sgt Shand #5671 heard officers from my shift respond to a Check Welfare call at 601 W Ben White. The call text advised there was a suicidal male on the east side of the building that wanted to be "shot by police". Due to the seriousness of the call, I responded to the scene. Upon arrival, Officer Maurer reported to me the male suspect had been cooperative with him. I confirmed with Maurer that the suspect had been frisked for weapons. I observed the suspect to be seated on the curb next to two large 25oz Budweiser beer cans. The suspect later identified as

Marshall Partian W/M DOB [REDACTED]

was upset and down about his life circumstances in general. I waited until a CIT officer arrived to evaluate him. SPO Hallmark arrived on scene and began to speak with Marshall who admitted he needed to get some help initially. I remained on scene while SPO Hallmark continued the evaluation. Marshall became upset when SPO Hallmark told him he would not be opening the second 25oz Budweiser beer. Marshall began to raise his voice and ball both of his fists in anger. Marshall made mention of reaching for something that would "send him to Hell". I took this as he was going to reach for the Officers gun belts. I advised Officer Maurer and Officer Melero that it was time to put gloves on. I recognized Marshall's behavior to be preparatory resistance and anticipated him resisting arrest or launching an attack on officers. Martial had scrapes on his knees and legs and I did not want officers exposed to his blood (prior bike accident). I watched as SPO Hallmark attempted to deescalate and reason with Marshall. Marshall only became more agitated that he wouldn't be finishing his beer.

*****R2R*****

SPO Hallmark went hands on with Marshall while he was seated and attempted to get his hands behind his back for handcuffing. Marshall defensively resisted and moved his hands up under his stomach area. All three officers went hands on and attempted to get Marshall's hands behind his back. I observed Hallmark to be on the suspect's back with Maurer and Melero working to get his hands behind his him. The officers were struggling to take control of the suspect and get him in to handcuffs so I put my knee across the suspects upper back and applied body weight and pressure to free up Hallmark to assist with the handcuffing. I gave commands and assisted the officers during the R2R. I originally called for another unit and tried to stay out of the R2R so I could conduct the review. I made the decision to help the officers take the suspect into custody and end the resistance.

I later called Sgt Bealand and explained my involvement in the R2R. I did the on scene interviews with Officer Maurer, Melero, and Hallmark. I approved the Resisting Arrest charge for the suspect.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

noi



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 2

Follow Up Report # 2

ASSIGNMENT INFORMATION

Assigned To AP8771- MELERO, SHARDAY L

Capacity SUPPLEMENTAL

Assigned On OCT-06-2019 1747

Report Due On OCT-07-2019 (MON.)

Org Unit DAVID 300 REG IV PATROL

By AP8771 - MELERO, SHARDAY L

SUBMISSION INFORMATION

Submitted On OCT-07-2019 54

Checked By AP5671 - SHAND, DAVID

Approved On OCT-07-2019 (MON.)

By AP5671 - SHAND, DAVID

FOLLOW UP CONCLUSION

Follow Up YES

Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Subject SUPP

Author AP8771 - MELERO, SHARDAY L

Related Date Oct-06-2019 19:40

On 10/06/2019 I, Officer Melero #8771 responded to a Check Welfare Urgent at 601 W Ben White Blvd SvrD Eb.

Caller advised male stated he was suicidal and wants to be shot by police.

Upon my arrival I met with:

Partian, Marshall W/M DOB: [REDACTED]

Officer Maurer was speaking with Marshall, and Marshall was stating how he was unhappy about his life right now. Marshall advised he didn't have the courage to kill himself, so he rather have police do it.

Marhsall said he would fight with officers, because he has before in the past. Officer Hallmark who is a MHO arrived on scene and advised that he wanted to take him to the hospital, and he could not drink his beer. Marhsall's demeanor changed drastically and he started to raise his voice, tense up, and at one point he started punching his head.

*****R2R*****

When Marshall became more aggressive Office Hallmark attempted to gain custody of Marshall, and Marshall was resisting. I assisted Officer Maurer with maintaining control of Marshall's right arm and we were able to place Marshall's right arm in a handcuff. I had my body weight on the lower half of Marshall's body so that he could not kick me. I held onto Marshall's right arm that was handcuffed, and placed the other handcuff on his left hand.

*****R2R*****

Marshall advised multiple times that he was concerned about his bicycle:

SERIAL NUMBER #GS52714WMA
KENT 700C ROAD BIKE
21 SPEED BICYCLE GRN & BLK

Marshall stated he purchased the bicycle at Walmart with his own money.

I transported the bicycle to the East Sub for safekeeping. Prior to me submitting the bicycle I ran a background check on the serial number through communications. Communications advised me the above Bicycle returned stolen through NCIC through Miami PD. I submitted the bicycle as evidence at the East Sub.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

The value of the bicycle was approximately \$197 via Amazon.com.

I completed a Class B Cite and Release citation for the theft of the bicycle. The citation was signed by Marshall and was placed with personal items at Travis County Jail.

Officer Hallmark completed, and submitted the PC affidavit along with the Cite and Release Citation at Arrest Review.

NOI
SM8771



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 3

Follow Up Report # 3

ASSIGNMENT INFORMATION

Assigned To AP8128- MAURER, BRIAN
Capacity SUPPLEMENTAL
Assigned On OCT-06-2019 1748
Report Due On OCT-07-2019 (MON.)

Org Unit FRANK 200 REG IV PATROL
By AP8128 - MAURER, BRIAN

SUBMISSION INFORMATION

Submitted On OCT-06-2019 1900
Checked By AP3668 - HERRING, RYAN
Approved On OCT-11-2019 (FRI.)

By AP3668 - HERRING, RYAN

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Subject INITIAL CONTACT

Author AP8128 - MAURER, BRIAN

Related Date Oct-06-2019 18:22

On 10/6/2019 at approximately 1754hrs I, Officer Maurer #8128, responded to a check welfare call at the 7-11 gas station at 601 W Ben White Blvd Svrd EB. The call text included:

17:54:34 10/06/2019 AP8488 MALE ON THE EAST SIDE OF THE BUILDING.....SUICIDAL

17:54:41 10/06/2019 AP8488 SAYS HE WANTS TO BE SHOT BY POLICE

I arrived on scene immediately and located the subject sitting on the curb on the east side of the building. That subject was later identified as:

Partian, Marshall w/m [REDACTED] (ARRESTED)

I exited my patrol car approximately 60 feet away from Marshall and began to speak with him. Marshall was sitting next to two 24 ounce cans of beer, one of which was opened. I could see that his hands were empty, after which Marshall motioned with his hands to ask if smoking a cigarette was ok. I began to approach Marshall and introduced myself and asked him how I could help him out today. I then asked Marshall if I could frisk him for weapons and he was compliant and turned around and knelt on the ground. I attempted to put his hands behind his back for my own safety, but Marshall asked that I not place him into handcuffs and stated he would cooperate. I then frisked Marshall without incident and he sat back down on the curb for me.

Marshall then began to tell me about how his cell phone was broken, he had been hit recently by a vehicle while riding his bike and has received multiple injuries, he had been unable to refill he pain prescription medication from the hospital, and that now he had no means of getting to work tomorrow morning.

Marshall also made a statement that he wanted to kill himself but that he didn't have the courage to do so, which is why he called for police. Marshall stated that he only needed to make one move in order for us to shoot him. Marshall had also made a statement that when he gets this angry is the only time he resists police or assaults them.

Based on these statements, I requested that a CIT officer respond to the scene. Officer Hallmark arrived shortly afterwards and began to speak with Marshall. While speaking with Officer Hallmark, Marshall began to become increasingly agitated that he was not allowed to open his 2nd beer and drink it. Officer Hallmark attempted to explain multiple times that the hospital did not want Marshall to be intoxicated when he arrived for treatment.



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
LAW ENFORCEMENT USE ONLY
(LITIGATION HOLD**)**

Marshall then began to make statements of "I want my beer or we're gonna go the hard way".

Marshall then began to reach for his beer, at which time Officer Hallmark began to put his hands onto Marshall while telling him to put his hands behind his back.

*****RESPONSE TO RESISTANCE*****

I observed that Marshall was rolled onto his stomach with Officer Hallmark on top of him. I also observed that Marshall had placed both of his hands underneath his stomach despite the commands to put his hands behind his back. I then moved to Marshall's right side and grabbed onto his right wrist with both of my hands. Marshall was pulling his right hand underneath his body, however I was able to use both of my hands to pull his right wrist out from underneath his stomach and place it into the small of his back. I then was able to place his right wrist into handcuffs, at which time Officer Melero maintained control of Marshall's right wrist. I then transitioned over to Marshall's left side of his body and again grabbed onto his left forearm with both of my hands. I could feel Marshall tensing his arm muscles and providing defensive resistance in order to pin his left hand underneath his stomach. I attempted to pull his left arm out from underneath him but was initially not able to remove it from under his body. I pulled harder with both hands again and was then able to remove his left hand from underneath his stomach, at which time I pushed his left hand into the small of his back. Marshall's left wrist was then also placed into handcuffs.

*****END OF RESPONSE TO RESISTANCE*****

I later took 3 photos of Marshall, who stated that he would refuse to cooperate with us. Marshall did state that he was unhurt from the incident.

Sgt Shand was on scene for the incident and briefed.

Photos were uploaded into evidence.

NOI

BMM #8128



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 4

Follow Up Report # 4

ASSIGNMENT INFORMATION

Assigned To AP8104- BATHAM, MICHAEL

Capacity SUPPLEMENTAL

Org Unit DAVID 600 EVENINGS REG IV
PATROL

By AP8104 - BATHAM, MICHAEL

Assigned On OCT-06-2019 1748

Report Due On OCT-07-2019 (MON.)

SUBMISSION INFORMATION

Submitted On OCT-06-2019 1849

Checked By AP4830 - TRONCO, PAUL

Approved On OCT-11-2019 (FRI.)

By AP4830 - TRONCO, PAUL

FOLLOW UP CONCLUSION

Follow Up YES

Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Author AP8104 - BATHAM, MICHAEL

Related Date Oct-06-2019 18:38

On 10/6/19 at approx. 1800 hours I, Officer Batham #8104 responded to a combative subject at 601 W Ben White Blvd Svrdr Eb which was later arrested for PI among other things.

The subject was identified as:

PARTIAN, MARSHALL W/M

I arrived on scene after Partian was lying on the ground surrounded by Officers. I did not observe any use of force and helped walk Partian over to the patrol units and held his left arm while other officers searched him and placed him in the back of the patrol car.

I did not use any force on Partian at any time.

EOR

Batham #8104



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 5

Follow Up Report # 5

ASSIGNMENT INFORMATION

Assigned To AP7930- CANTU, CALEB

Capacity SUPPLEMENTAL

Org Unit DAVID 600 EVENINGS REG IV
PATROL

By AP7930 - CANTU, CALEB

Assigned On OCT-06-2019 1749

Report Due On OCT-07-2019 (MON.)

SUBMISSION INFORMATION

Submitted On OCT-06-2019 1929

Checked By AP4830 - TRONCO, PAUL

Approved On OCT-11-2019 (FRI.)

By AP4830 - TRONCO, PAUL

FOLLOW UP CONCLUSION

Follow Up YES

Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type INITIAL REPORT

Author AP7930 - CANTU, CALEB

Related Date Oct-06-2019 19:06

On 10/6/19 at approximately 6:15pm, I, Officer Cantu #7930 responded to a check welfare urgent. Subj stated he wanted police to shoot him.

More officers were requested to the scene due to Marshall being very agitated. When I arrived on scene I observed multiple officer controlling Marshall.

Marshall was on his side on the ground when I arrived while officers were placing handcuffs on him

I observed Marshall was very tense and after the handcuffs were on, he was still very agitated.

Marshall was placed in the back seat of a patrol vehicle

Officer Hallmark #6307 transported Marshall to the jail and I followed him without incident

NOI at this time
Officer Cantu #7930



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Follow Up Report # 6

Follow Up Report # 6

ASSIGNMENT INFORMATION

Assigned To AP7233- TURNER, DUSTIN
Capacity SUPPLEMENTAL
Assigned On OCT-06-2019 1749
Report Due On OCT-07-2019 (MON.)

Org Unit DAVID 300 REG IV PATROL
By AP7233 - TURNER, DUSTIN

SUBMISSION INFORMATION

Submitted On OCT-06-2019 2010
Checked By AP5671 - SHAND, DAVID
Approved On OCT-07-2019 (MON.)

By AP5671 - SHAND, DAVID

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Narrative Text

Type SUPPLEMENTS

Author AP7233 - TURNER, DUSTIN

Related Date Oct-06-2019 18:44

I Officer Turner #7233 responded to 601 W Ben White Blvd Svrdr EB on 10-6-19

I heard Sgt. Shand request more units for a combative subject. I was at the intersection of ben white/S 1st. When I arrived, I found numerous Officers working to control a subject who was laying on his stomach, and Officers were attempting to handcuff him, but he was resisting by attempting to pull away.

I walked over and grabbed one of the subject's hand to facilitate handcuffing. Once he was handcuffed, I let go, and stepped back from the subject.

The subject was acting belligerent, cursing, and still yelling about fighting us.

Sgt. Shand directed me to write this supplement.

NOI

DJT#7233



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Clearance Information

Agency AUSTIN POLICE DEPARTMENT (AP)
Cleared Status CLEARED BY ARREST - NOT APPLICABLE
Cleared On OCT-07-2019 (MON.)
Cleared By Officer 1 AP5671 - SHAND, DAVID
Org Unit SWEP3 - DAVID 300 REG IV PATROL
Approved By AP5671 - SHAND, DAVID
Org Unit SWEP3 - DAVID 300 REG IV PATROL
Complainant/Victim NO
Notified



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Related Event Details

USE OF FORCE DETAILS

UOF INCIDENT DETAILS

Date And Time Occured OCT-06-2019 1755

Reporting Officer AP5671 - SHAND, DAVID **Date Reported** OCT-06-2019 (SUN.)

Supervisor Notified AP4413 - BEALAND, CHRISTOPHER

Date And Time Notified OCT-06-2019 2108 **Supervisor Responded?** YES

Initial Contact Nature 4-DISPATCHED CALL [NON MV STOP]

Address 601 WEST BEN WHITE

SUBJECTS INVOLVED

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: JAN-17-1974)

Subject Resisted YES **Resistance Type** DEFENSIVE RESISTANCE, AGGRESSIVE RESISTANCE, PREPARATORY RESISTANCE

Subject Conduct EDP/MENTALLY UNSTABLE, SUSPECTED UNDER INFLUENCE OF ALCOHOL/DRUGS

Injury Description POSSIBLE INJURY TO THE LEFT OF FACE AND INJURY TO WRIST

Injury Type MINOR INJURY, NO COMPLAINT OF INJURY/PAIN

Photog. Serial # AP8128

Treatment TREATED BY JAIL MEDICAL STAFF

Transported To JAIL

OFFICERS INVOLVED

Officer Name SHAND, DAVID

Role In UoF INVOLVED IN THE UOF

Officer Injured YES

Injury Type NO COMPLAINT OF INJURY/PAIN

SUBJECT-OFFICER INTERACTION

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: ██████████)

Officer Name SHAND, DAVID

Reason For UoF NECESSARY TO EFFECT ARREST / DETENTION

Force Used 8404 LEVEL 4 R2R INCIDENT

Weapons Used WEAPONLESS (PRESSURE POINTS/KICKS/HAND)



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(LITIGATION HOLD**)**

USE OF FORCE DETAILS

UOF INCIDENT DETAILS

Date And Time Occured OCT-06-2019

Reporting Officer AP6307 - HALLMARK, JASON **Date Reported** OCT-06-2019 (SUN.)

Supervisor Notified AP5671 - SHAND, DAVID

Date And Time Notified OCT-07-2019 **Supervisor Responded?** YES

Initial Contact Nature 4-DISPATCHED CALL [NON MV STOP]

Address 601 W BEN WHITE BLVD SVRD EB

SUBJECTS INVOLVED

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: [REDACTED])

Subject Resisted YES **Resistance Type** DEFENSIVE RESISTANCE, AGGRESSIVE RESISTANCE, PREPARATORY RESISTANCE

Subject Conduct EDP/MENTALLY UNSTABLE, SUSPECTED UNDER INFLUENCE OF ALCOHOL/DRUGS

Injury Description POSSIBLE INJURY TO THE LEFT OF FACE AND INJURY TO WRIST

Injury Type MINOR INJURY, NO COMPLAINT OF INJURY/PAIN

Photog. Serial # AP8128

Treatment TREATED BY JAIL MEDICAL STAFF

Transported To JAIL

OFFICERS INVOLVED

Officer Name HALLMARK, JASON

Role In UoF INVOLVED IN THE UOF

Officer Injured YES

Injury Type NO COMPLAINT OF INJURY/PAIN

SUBJECT-OFFICER INTERACTION

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: [REDACTED])

Officer Name HALLMARK, JASON

Reason For UoF NECESSARY TO EFFECT ARREST / DETENTION

Force Used 8403 LEVEL 3 R2R INCIDENT

Weapons Used WEAPONLESS (PRESSURE POINTS/KICKS/HAND)

USE OF FORCE DETAILS

UOF INCIDENT DETAILS



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Date And Time Occured OCT-06-2019 1813

Reporting Officer AP8771 - MELERO, SHARDAY L **Date Reported** OCT-06-2019 (SUN.)

Supervisor Notified AP5671 - SHAND, DAVID

Date And Time Notified OCT-07-2019 1813 **Supervisor Responded?** YES

Initial Contact Nature 4-DISPATCHED CALL [NON MV STOP]

Address 601 W BEN WHITE BLVD SVRD EB

SUBJECTS INVOLVED

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: ██████████)

Subject Resisted YES **Resistance Type** DEFENSIVE RESISTANCE, AGGRESSIVE RESISTANCE, PREPARATORY RESISTANCE

Subject Conduct EDP/MENTALLY UNSTABLE, SUSPECTED UNDER INFLUENCE OF ALCOHOL/DRUGS

Injury Description POSSIBLE INJURY TO THE LEFT OF FACE AND INJURY TO WRIST

Injury Type MINOR INJURY, NO COMPLAINT OF INJURY/PAIN

Photog. Serial # AP8128

Treatment TREATED BY JAIL MEDICAL STAFF

Transported To JAIL

OFFICERS INVOLVED

Officer Name MELERO, SHARDAY L

Role In UoF INVOLVED IN THE UOF

Officer Injured YES

Injury Type NO COMPLAINT OF INJURY/PAIN

SUBJECT-OFFICER INTERACTION

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: ██████████)

Officer Name MELERO, SHARDAY L

Reason For UoF NECESSARY TO EFFECT ARREST / DETENTION

Force Used 8404 LEVEL 4 R2R INCIDENT

Weapons Used WEAPONLESS (PRESSURE POINTS/KICKS/HAND)

USE OF FORCE DETAILS

UOF INCIDENT DETAILS

Date And Time Occured OCT-06-2019 1821

Reporting Officer AP8128 - MAURER, BRIAN **Date Reported** OCT-06-2019 (SUN.)

Supervisor Notified AP5671 - SHAND, DAVID



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Date And Time Notified OCT-06-2019 1822 **Supervisor Responded?** YES

Initial Contact Nature 4-DISPATCHED CALL [NON MV STOP]

Address 601 W BEN WHITE SVRD EB

SUBJECTS INVOLVED

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: [REDACTED])

Subject Resisted YES **Resistance Type** DEFENSIVE RESISTANCE, AGGRESSIVE RESISTANCE, PREPARATORY RESISTANCE

Subject Conduct EDP/MENTALLY UNSTABLE, SUSPECTED UNDER INFLUENCE OF ALCOHOL/DRUGS

Injury Description POSSIBLE INJURY TO THE LEFT OF FACE AND INJURY TO WRIST

Injury Type MINOR INJURY, NO COMPLAINT OF INJURY/PAIN

Photog. Serial # AP8128

Treatment TREATED BY JAIL MEDICAL STAFF

Transported To JAIL

OFFICERS INVOLVED

Officer Name MAURER, BRIAN

Role In UoF INVOLVED IN THE UOF

Officer Injured YES

Injury Type NO COMPLAINT OF INJURY/PAIN

SUBJECT-OFFICER INTERACTION

Subject Name ARRESTED # 1 - PARTIAN, MARSHALL, R (DOB: [REDACTED])

Officer Name MAURER, BRIAN

Reason For UoF NECESSARY TO EFFECT ARREST / DETENTION

Force Used 8404 LEVEL 4 R2R INCIDENT

Weapons Used WEAPONLESS (PRESSURE POINTS/KICKS/HAND)



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
LAW ENFORCEMENT USE ONLY
(**LITIGATION HOLD**)

Related Property Report(s)

REPORT INFORMATION

Property Report # 2723552
Case Status LOST/STOLEN
Submitted On OCT-06-2019 By MELERO, SHARDAY L

RELATED EVENTS

Offense GO 2019 - 2791435

Related Items 1

BICYCLE - EVIDENCE

Status RECOVERED
Tag # 2723552 - 1 Type ROAD
Make KENT Model # ROADTECH
Serial # GS52714WMA
Value \$1.00
Color BLACK, GREEN
Description STOLEN OUT OF FLORIDA
Recovered Date OCT-06-2019 Recovered Value \$1.00
Flags EVIDENCE
Current Location BR 66



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

REPORT INFORMATION

Property Report # 2723549

Case Status SAFEKEEPING

Submitted On OCT-06-2019

By MELERO, SHARDAY L

RELATED EVENTS

Offense GO 2019 - 2791435

Related Items 0



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Related Attachment - DIGITAL IMAGE

Description BIKE SN

Reference Number





AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

Related Attachment - ATTCHMENTS

Description	EMAIL FROM EVIDENCE
Reference Number	

The attached file cannot be included in this hardcopy.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

(**LITIGATION HOLD**)

*** END OF HARDCOPY ***

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN
Plaintiff,

v.

**JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,**
Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-DM

DECLARATION OF OFFICER JASON HALLMARK

STATE OF TEXAS
COUNTY OF _____

I, Jason Hallmark, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. I am over 21 years of age, of sound mind, and fully competent to testify. I am currently and at all relevant times was employed by the City of Austin Police Department as a Police Officer (AP6307 - HALLMARK, JASON).

2. On October 6, 2019, I responded as CIT (Crisis Intervention Team) to 601 W Ben White Blvd. The original caller stated a man was on the East side of the 7-11 who stated he wanted the police to kill him. Officers arrived and identified the subject as Marshal Partain. When I arrived it was explained to me that Partain was suicidal and wanted suicide by cop since he was not sure he could kill himself.

3. I prepared a report setting out the events of my R2R encounter with Mr. Partain. The Subject is noted as “R2R” which means Response to Resistance. My narrative is included as part of the Austin Police Department General Offense Report GO# 2019-2791435, pages 5 -7,

and 28. With the exception of the date (It was October 6, 2019 instead of October 7, 2019), it is true and correct.

4. A true and correct copy of General Offense Report GO# 2019-2791435 is attached to this Declaration as Exhibit 1.

5. As noted on page 3 of the General Offense Report, Mr. Partain was arrested for Public Intoxication and for Resisting Arrest. He was not arrested for the bicycle. He was given a “cite and release” citation, which is like a traffic ticket under class B misdemeanor citation criteria. I prepared and submitted Probable Cause affidavits in support of charges for Resisting Arrest, Class A, and Public Intoxication Class C. In addition, Officer Melero (AP8771) ran a background check on the bicycle serial number through communications and learned that it was registered with the National Crime Information Center (NCIC) through the Miami Police Department as stolen. Consequently, she prepared a Class B Cite and Release citation for the possession of the bicycle. The citation was signed by Mr. Partain and I submitted the PC affidavits for Resisting Arrest, Class A, and Public Intoxication, Class C, along with the Cite and Release Citation for the bicycle. The Cite and Release Citation was not related to his arrest on October 5, 2019, but was put in a separate box for delivery to the Travis county clerk.

6. After October 6, 2019, I have not had any further contact or interaction with Mr. Partain or any matters related to him. I was not involved with and do not have any knowledge about Mr. Partain’s allegations and statements about being arrested in January 2021 on charges brought against him by Travis County related to bicycle theft.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 31st day of May, 2022.

/s/ Jason Hallmark by /s/ Monte Barton
Legal Counsel for Jason Hallmark, with permission
AP6307 JASON HALLMARK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN
Plaintiff,

v.

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

APPENDIX OF EXHIBITS
IN SUPPORT OF
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Defendant police officers, Jason Hallmark and Sharday Melero, support their Motion for Summary Judgment with the following Exhibits. Exhibits C and D will be delivered to the Court and made a part of the record on June 1, 2022:

Exhibit “A” -- Declaration of Officer Sharday Melero (with Exhibit 1 - General Offense Report GO# 2019-2791435, incorporated herein by reference.

Exhibit “B” -- Exhibit B - Declaration of Officer Jason Hallmark, incorporated herein by reference.

Exhibit “C” - BWC video Officer Melero, incorporated herein by reference and *will be delivered to the Court and made a part of the record on June 1, 2022*].

Exhibit “D” - BWC video Officer Hallmark, incorporated herein by reference and *will be delivered to the Court and made a part of the record on June 1, 2022*].

RESPECTFULLY SUBMITTED, this the 31st day of May, 2022.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton Jr.

MONTE L. BARTON JR.

Assistant City Attorney

State Bar No. 24115616

monte.barton@austintexas.gov

City of Austin-Law Department

Post Office Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-2409

Facsimile: (512) 974-1311

Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 9th day of February, 2022.

To be followed Via First Class Mail:

Mr. Marshall Partain
c/o Liberty Lawn Care
2111 RR 1869
Liberty Hill, TX 78642

PRO SE

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.
Counsel for Defendants

RECEIVED

JUN 13 2022

FILED

JUN 13 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY Jane J. [Signature]
DEPUTY

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

District Clerk's Office
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

Re: 1:21-cv-829-RP

Dear District Clerk:

With all due respect, my new mailing address is as follows:

Marshall R. Partain #902729
Hays County Jail
1307 Whiland Rd.
San Marcos, TX 78666

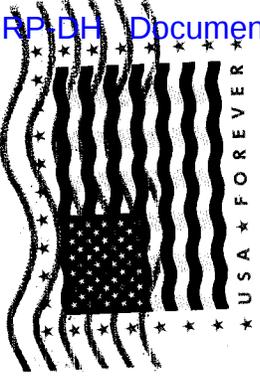
Thank you very much for your time and assistance.

Sincerely,

Marshall Partain
Plaintiff - pro se

Marshall R. Partain #902729
Hays County Jail
1307 Ukland Rd.
San Marcos, TX 78666

Hays County Jail
AUSTIN TX 786
HAYES MARIO GRANDE DISTRICT
10 JUN 2022 PM 4 L



SEARCHED INDEXED
SERIALIZED FILED
JUN 13 2022
FBI - AUSTIN

District Clerk's Office
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

78701-981275



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN,
(Travis Co. No. 21-12336)
Plaintiff,

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. A-21-CV-829-RP

v.

OFFICERS J. HALLMARK AND
OFFICER S. MALERO,
Defendant.

NOTICE OF FILING
DEFENDANTS' SUPPLEMENTAL EXHIBIT "B"
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DOC #35]

To: Plaintiff, Marshall Ray Partain, Pro Se, c/o Hays County Jail, 1307 Umland Rd., San Marcos, TX 78666.

Defendants hereby give notice of filing and service of DEFENDANTS' SUPPLEMENTAL EXHIBIT "B" TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DOC #35]. Supplemental Exhibit "B" is attached hereto. It is the sworn Declaration of co-defendant, Officer Jason Hallmark. It replaces the previous version for which Officer Hallmark had authorized undersigned defense counsel to digitally "sign" the declaration on his behalf, while Officer Hallmark was out of town for a few days.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS
CERTIFICATE OF SERVICE

This is to certify that I served the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this Tuesday, June 21, 2022.

Via U.S. First Class mail:

Marshall Ray Partain, #902729

Hay County Jail

1307 Uhland Rd.

San Marcos, TX 78666

PLAINTIFF PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN
Plaintiff,

v.

JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,
Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-DM

DECLARATION OF OFFICER JASON HALLMARK

STATE OF TEXAS
COUNTY OF TRAVIS

I, Jason Hallmark, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. I am over 21 years of age, of sound mind, and fully competent to testify. I am currently and at all relevant times was employed by the City of Austin Police Department as a Police Officer (AP6307 - HALLMARK, JASON).

2. On October 6, 2019, I responded as CIT (Crisis Intervention Team) to 601 W Ben White Blvd. The original caller stated a man was on the East side of the 7-11 who stated he wanted the police to kill him. Officers arrived and identified the subject as Marshal Partain. When I arrived it was explained to me that Partain was suicidal and wanted suicide by cop since he was not sure he could kill himself.

3. I prepared a report setting out the events of my R2R encounter with Mr. Partain. The Subject is noted as "R2R" which means Response to Resistance. My narrative is included as part of the Austin Police Department General Offense Report GO# 2019-2791435, pages 5 -7,

and 28. With the exception of the date (It was October 6, 2019 instead of October 7, 2019), it is true and correct.

4. A true and correct copy of General Offense Report GO# 2019-2791435 is attached to this Declaration as Exhibit 1.

5. As noted on page 3 of the General Offense Report, Mr. Partain was arrested for Public Intoxication and for Resisting Arrest. He was not arrested for the bicycle. He was given a "cite and release" citation, which is like a traffic ticket under class B misdemeanor citation criteria. I prepared and submitted Probable Cause affidavits in support of charges for Resisting Arrest, Class A, and Public Intoxication Class C. In addition, Officer Melero (AP8771) ran a background check on the bicycle serial number through communications and learned that it was registered with the National Crime Information Center (NCIC) through the Miami Police Department as stolen. Consequently, she prepared a Class B Cite and Release citation for the possession of the bicycle. The citation was signed by Mr. Partain and I submitted the PC affidavits for Resisting Arrest, Class A, and Public Intoxication, Class C, along with the Cite and Release Citation for the bicycle. The Cite and Release Citation was not related to his arrest on October 5, 2019, but was put in a separate box for delivery to the Travis county clerk.

6. After October 6, 2019, I have not had any further contact or interaction with Mr. Partain or any matters related to him. I was not involved with and do not have any knowledge about Mr. Partain's allegations and statements about being arrested in January 2021 on charges brought against him by Travis County related to bicycle theft.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 21st day of June, 2022.



AP6307 JASON HALLMARK

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

FILED

JUN 23 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

MARSHALL RAY PARTAIN,

Plaintiff,

RECEIVED

JUN 23 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY

CIVIL ACTION No. 1:21-cv-829-RP

V.

JASON HALLMARK, AP# 6307,

SHARDAY MELERO, AP# 8771,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE U.S. DISTRICT JUDGE ROBERT PITMAN:

With all due respect, Your Honor, Plaintiff received a copy of Defendants' motion for summary judgment on June 17, 2022, and requests for said motion to be denied; or, in the alternative, deferred, and in support thereof would show:

1. Defendants' motion for summary judgment is untimely filed, as all dispositive motions were due before the date on which defense counsel filed his motion. (May 31, 2022).
2. Plaintiff is afflicted with mental illness and chronic alcoholism and is off his medication; he's currently incarcerated for trespassing (class B). As a result of his illness, he left his backpack at the office of his former employer in Liberty Hill, TX, which contains all of his exhibits/evidence, such as affidavits and bank statements. In order to present facts essential to justify opposition to this court, Plaintiff's requesting time to procure his backpack in accordance with Fed. R. Civ. Proc. Rule 56(d). WHEN FACTS

3. Plaintiff contends that Defendant Melero (previously misspelled by Plaintiff as "Nelero"), **NEVER** issued him a "cite and release" citation. Under **FACTUAL-BACKGROUND** on page 3 of 11 (ending on pg. 4 of 11), Defendant Melero falsely claims that "The citation was acknowledged and signed by Mr. Partain"; yet no such signed copy of the citation was submitted by defense counsel, because it does not exist. Moreover, on pg. 31 of 35, under **BICYCLE-EVIDENCE**, Defendant Melero listed the value of the bicycle as \$1.00.
4. Additionally, on page 8 of 35, Officer Kenneth Lundberg AP# 7317, stated that Plaintiff's bicycle had been in the evidence room of the East Substation from Oct. 6, 2019 to Nov. 18, 2021, without a Serial Number on the property report. When the serial no. was allegedly verified, it was taken from a "**sticker**" which was attached to the frame of the bike. Plaintiff contends that the **true** serial no. of the bike is engraved in the metal of the frame. Further, from Nov. 2019 to Aug. 2021, Plaintiff repeatedly, desperately wrote to A.P.D. and the Internal Affairs Division about his bike, all to no avail. It wasn't until he filed suit that A.P.D. looked into his bicycle. Also, "**Litigation**" for Plaintiff's bicycle began in Sept. 2021... from Jan. 2021 until Sept. 2021, Plaintiff made numerous attempts to obtain his bike after the theft charge was rightfully dismissed in Travis Co. court-at-law #5. This entire case reeks of incompetence, indifference, and a cover-up.
5. Furthermore, on pg. 10 of 35, Legal Liaison Detective Veneza Bremaer, AP# 4191, claimed to call Miami P.D. and spoke to "**a person**" in property crimes who stated they have no interest in the bike. Who was this person? Where are the official Miami P.D. documents that prove this bicycle was stolen from this fictitious "**Levi Looney**"? Where's an affidavit from the alleged owner of the bike? Defense counsel has proven nothing... merely words.

6. Plaintiff contends that the Declaration of Officer Jason Hallmark is **invalid** because it does not list the "county" in which the Declaration was made. Secondly, on pg. 2 of said declaration, he wrote: "The cite and Release Citation was not related to his arrest on October 5, 2019 (sic) but was put in a separate box for delivery to the Travis County Clerk." Defendant Hallmark just gave the reason why ^{Plaintiff} I was arrested/magistrated for a theft-charge (Class B) in Jan. 2021, nearly 15-mths. after his bicycle was unlawfully seized. It's quite apparent that Defendant Hallmark was vindictive and malicious, as he mentioned Plaintiff being on parole in his affidavits for arrest (even though at the time Plaintiff had no parole warrant); and Defendant Hallmark did in fact email the Texas Board of Pardons and Paroles in an effort to have Plaintiff's parole revoked, which was instead modified. Nonetheless, is it typical, standard-operating procedure for arresting officers to email the Board of Pardons and Paroles (or the probation depts.) of arrests they've made? Is it routine procedure to put cite and release citations in a delivery box for the county clerk rather than have ^{the} individual who was issued the citation/ticket go before a Municipal court judge or justice of the peace? Why issue a citation for a Class B Theft yet arrest Plaintiff for a Class C Public Intoxication? Since Nov. 2017, both defendants (Hallmark and Meters) have deprived him of his 1st Amendment right to ^{petition} redress the government for a redress of grievances. (Internal Affairs Div, as well.)

7. Regarding the video of the arrest on Oct. 6, 2019, it reveals **NOTHING** about the bicycle being stolen from Miami, FL. Rather, it shows a drunk, mentally-ill **civilian** with PTSD, on the verge of suicide. Is it **REASONABLE** to seize Plaintiff's bike for nearly three (3) yrs. when it has been in litigation for only nine (9) mths.? A.P.D. has implicated Miami P.D. in this claim and Plaintiff demands official documents/affidavits from Miami P.D. and the fictitious "Levi Looney".

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this honorable court will deny defendants' motion for summary judgment due to it being untimely-filed; even after they were given two (2) extensions of time in which to file their dispositive motion.

In the alternative, Plaintiff prays that this court will grant him some time to procure his exhibits/evidence, which are in his backpack located at Liberty Lawn Care's office in Liberty Hill, TX, pursuant to the Fed. Rules of Civil Proc. Rule 56(d); Plaintiff prays for any and all relief that this court deems as fair and just.

Dated: June 18, 2022

Respectfully submitted,

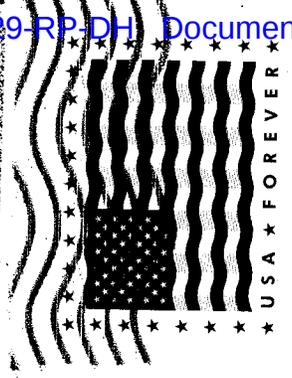
Marshall R. Partain
Marshall Ray Partain

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, hereby certify that a true and ^{correct} copy of the foregoing Plaintiff's Response to Defendants' Motion for Summary Judgment has been served upon the defendants by placing same in regular U.S. mail to: Monte L. Barton, Jr., Assistant City Attorney, City of Austin - Law Dept., P.O. Box 1546, Austin, TX, 78767-1546, on this the 18th day of June, 2022.

Marshall R. Partain
Plaintiff - pro se

Marshall R. Bertain #902707
Hays County Jail
1307 Ukland Rd.
San Marcos, TX
78666



AUSTIN TX 786
RIO GRANDE DISTRICT
21 JUN 2022 PM 3 L

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

Hays County Jail

SCREENED BY CSO
JUN 23 2022

78701-981275

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN
Plaintiff,

v.

**JASON HALLMARK, AP# 6307,
SHARDAY NELERO, AP# 8771,**
Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

**DEFENDANTS’ REPLY
IN SUPPORT OF MOTION TO DISMISS
AND, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant police officers, Jason Hallmark (AP #6307) and Sharday Melero (AP #8771) file this reply in opposition to [Doc #38], which is titled: “Plaintiff’s Response to Defendants’ Motion for Summary Judgment.”

Defendants renew and fully adopt and incorporate their original motion [Doc #35] and respectfully move the Court to grant summary judgment in their favor because they are immune from suit. There is no genuine dispute as to any material fact and the movants are entitled to judgment as a matter of law.” FED. R. CIV.P .56(a). This is so even when the evidence is viewed in the light most favorable to the non-moving party. *TIG Specialty Ins. Co. v. Pinkmonkey.com, Inc.*, 375 F.3d 365, 369 (5th Cir. 2004).

The non-movant (Plaintiff) has not gone beyond the pleadings or submitted affidavits, or any other form of evidence or designated specific facts showing that there is a “genuine issue for trial.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324(1986). Instead, the non-movant (Plaintiff)

has merely rested on the allegations in the complaint and his various filings and submitted bald allegations and excerpts of the General Offense Report submitted by Defendants in support of their original Motion [Doc #35-2]. This is wholly insufficient. *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1263 (5th Cir. 1991), cert. denied, 502 U.S. 1059 (1992); *see also Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (1996) (“[P]leadings are not summary judgment evidence.”). Furthermore, “[n]either ‘conclusory allegations’ nor ‘unsubstantiated assertions’ will satisfy the non-movant’s burden.” *Id.* (citation omitted).

For the reasons explained previously in Defendants’ original motion [Doc #35], Plaintiff’s claims are frivolous, fail to state a claim on which relief may be granted, and seek monetary relief against Defendants who are immune from such relief via qualified immunity. *Macias v Raul A (Unknown), Badge no. 153*, 23 F.3d 94, 97 (5th Cir. 1994).

In this case, defendant police officers, Jason Hallmark (AP #6307) and Sharday Melero (AP #8771), did not violate clearly established law but were in fact following clearly established law. The overwhelming weight of the evidence established that the defendants are entitled to qualified immunity. Defendants respectfully submit that this lawsuit must be dismissed with prejudice because Plaintiff’s claims fail to state a claim against these individual defendants on which relief may be granted.

After October 6, 2019, neither defendant (Officer Melero or Officer Hallmark) are aware of any further contact or interaction with Mr. Partain or any matters related to him. They were not involved with and do not have any knowledge about Mr. Partain’s allegations and statements about being arrested in January 2021 on charges brought against him by Travis County related to bicycle theft. See the sworn Declaration of Officer Melero [Doc 35-2] and the General Offense Report GO# 2019-2791435, attached to the Declaration as Exhibit 1. See also the sworn

Declaration of Officer Hallmark [Doc 37] and incorporated by reference.

Because Officers Hallmark and Melero are sued in their individual capacities, they assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5th Cir. 2016). Consequently, the burden is on Plaintiff to plead sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5th Cir. 1999). “The Supreme Court has characterized the doctrine as protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Cozzo v. Tangipahoa Parish Council-President Gov't*, 279 F.3d 273, 284 (5th Cir. 2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

“The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity is determined by following a two-part analysis. First, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a “clearly established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). Second, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law.

Saucier v. Katz, 533 U.S. 194, 202 (2001). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). When a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

As discussed above, qualified immunity protects government officials from civil damages liability when their actions could reasonably have been believed to be legal. *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc). “Even if the government official's conduct violates a clearly established right, the official is nonetheless entitled to qualified immunity if his conduct was objectively reasonable.” *Wallace v. Cnty. of Comal*, 400 F.3d 284, 289 (5th Cir. 2005). A defendant's acts are held to be objectively reasonable unless all reasonable officials in the defendant's circumstances would have then known that the defendant's conduct violated the plaintiff's asserted constitutional or federal statutory right. *Cozzo*, 279 F.3d at 284 (quoting *Thompson v. Upshur Cnty.*, 245 F.3d 447, 457 (5th Cir. 2001)).

“Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions . . . and protects all but the plainly incompetent.” *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2085 (2011).

It was reasonable for Officer Melero and Officer Hallmark to detain Plaintiff under the suspicious circumstances. And it was reasonable for Officer Melero to follow usual police methods to run a background check on the serial number of the bicycle through Austin Police Department communications. And it was reasonable to submit the bicycle as evidence to APD

when Communications advised that the Bicycle was identified as stolen by the National Crime Information Center (NCIC) through the Miami Police Department.

“An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law.” *Evett v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, Hallmark and Melero did not violate clearly established law but were in fact following clearly established practices. The overwhelming weight of the evidence establishes that Hallmark and Melero are entitled to qualified immunity.

When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the conduct and actions of Officer Hallmark and Officer Melero were objectively reasonable under the circumstances.

PRAYER

Accordingly, Defendants respectfully request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiff’s claims against the Defendants with prejudice and with all costs assessed to the Plaintiff.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409
Facsimile: (512) 974-1311
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, VIA ECF in compliance with the Rules of Federal Procedure, this 1st day of July, 2022.

To be followed Via First Class Mail:

Mr. Marshall Partain #902729
Hays County Jail
1307 Uhland Rd.
San Marcos, TX 78666

PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

AUG 11 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY CC
DEPUTY CLERK

MARSHALL RAY PARTAIN,
Plaintiff,

v.

JASON HALLMARK, AP# 6307,
SHARDAY MELERO, AP# 8771,
Defendants.

CIVIL ACTION NO. 1:21-cv-829-RP

RECEIVED

AUG 11 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY JA

PLAINTIFF'S RESPONSE TO DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Marshall Ray Partain, hereinafter referred to as "Plaintiff" in the above-styled and numbered cause, and files this, his response in opposition to "Defendants' Reply In Support of Motion To Dismiss And, In The Alternative, Motion For Summary Judgment," and in support thereof would show:

1. Plaintiff received Defendants' Reply In Support of Motion To Dismiss on August 5, 2022; which was filed electronically with this court on July 1, 2022; Plaintiff contends that said reply is basically a verbatim recital of defense counsel's untimely filed Motion for Summary Judgment. Moreover, Plaintiff asserts that the information and exhibits that the Defendants submitted in support of their untimely filed Motion for Summary Judgment makes the Plaintiff's claims true, self-evident, requiring no proof or explanation. In any case, Plaintiff is in the process of procuring his

proof-of-purchase of his bicycle from Wal-Mart, along with an affidavit and bank statement from Wells Fargo bank; and said "proof" will be forthcoming to this honorable court within the next ten (10) days...

However, Plaintiff further contends that even after he submits proof-of-purchase and affidavits/court documents that will prove that said bicycle was not stolen from Miami, FL, the Defendants will still claim that they had "probable-cause" to confiscate, seize his bicycle and charge him with theft because Miami Police Dept. listed the bike as stolen... yet the Defendants have NOT produced a scintilla of official documentation from Miami Police-Dept., nor any affidavit from the fictitious Levi Looney.

Plaintiff contends that defense counsel has not met the standard of proof necessary to establish that Plaintiff stole said bicycle; that the bicycle was listed as stolen by Miami Police Dept.; and for that the "sticker" of a serial-number on the bike matches the serial number etched into the frame of the bike.

2. Defendant Melero (previously misspelled by Plaintiff as "Nelero") falsely claims that Plaintiff was issued a citation for a class "B" misdemeanor theft; and that Plaintiff signed it. Defense counsel conveniently does not address the issue of a "signed citation", because it does not exist. Secondly, defense counsel does not address the fact that Plaintiff's bike sat in A.P.D.'s evidence room for nearly two (2) years, unlawfully impounded without Defendant-Melero properly filling out the requisite forms; and erroneously listing the value of the bike as \$1.00.
3. Defendants' reply makes no mention of Defendant Hallmark's communications with the Texas Board of Pardons & Paroles **AFTER** October 6, 2019, in a malicious, vindictive effort to have Plaintiff's parole revoked. Additionally, defense-counsel has not addressed the fact that Plaintiff wrote both defendants

(and the Internal Affairs Division) from Nov. 2019 to Aug. 2021, in a futile effort to resolve his claim without court intervention; neither the Defendants nor the Internal Affairs Division replied to his letters.

4. Defendants' reply fails to address why they arrested and booked the Plaintiff for a petty class "c" misdemeanor yet issued him a citation (allegedly) for a class "B" misdemeanor... was it gross incompetence to arrest Plaintiff for Public Intoxication but then write him a "ticket" for theft of property? Or are the Defendants trying to **cover-up** for their unlawful, malicious, and deliberate deprivation of Plaintiff's property in violation of his civil, God-given Constitutional rights? Furthermore, Defendant Hallmark did not explain why he placed a "citation" in a box for the Travis County Clerk's office (misdemeanor section).

PRAYER

Accordingly, Plaintiff respectfully requests that this honorable court will deny Defendants' Motion to Dismiss / Motion for Summary Judgment, and allow this meritorious case to go before a trial by jury, in the best interests of justice.

Plaintiff prays for any and all relief this court deems as fair and just.

DATED: August 6, 2022

RESPECTFULLY SUBMITTED,

Marshall R. Partain
Marshall Ray Partain

CERTIFICATE OF SERVICE

I, Marshall Ray Partain, Travis Co. Sheriff's office #2214303, do hereby certify that a true and correct copy of the foregoing Plaintiff's - Response to Defendants' Reply In Support of Motion to Dismiss was served upon the Defendants by placing same in regular U.S. mail to: Monte L. Barton, Jr., Asst. City Attorney, City of Austin - Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 6th day of August, 2022.

Marshall R. Partain
Marshall Ray Partain #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Marshall R. Partain #2314303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX
78617

2022
AUG 11 9 06
SCREENED BY JCS

AUSTIN TX 786
P.O. GRANDE DISTRICT
9 AUG 2022 PM 3 L



Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX
78701

78701-9812750



August 6, 2022

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Suite 1100
Austin, TX 78701

RECEIVED

AUG 11 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

RE: CASE NO. 1:21-CV-829-RP

Dear Clerk:

Enclosed please find two(2) copies of Plaintiff's Response To Defendants' Reply In Support Of Motion To Dismiss, a total of eight (8) pgs. Please file these documents at your earliest convenience and bring same to the attention of the court.

Additionally, I'm respectfully requesting a copy of the Civil Docket for the above-referenced case number.

As always, thank you very much for your assistance.

Yours truly,

Marshall R. Portain

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

AUG 26 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY W DEPUTY

MARSHALL RAY PARTAIN,
Plaintiff,

v.

JASON HALLMARK, AP#6307,
SHARDAY MELERO, AP#8771,
Defendants.

CIVIL ACTION No. 1:21-cv-829-RP-DH

PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff received notice from the Court on August 18, 2022, that his emergency motion for extension of time to file his exhibits was GRANTED. Since August 8, 2022, Plaintiff has (partially) supplemented Exhibits A through H in support of his response to Defendants' motion for summary judgment. In this supplemental response, Plaintiff respectfully submits Exhibits I through M and would reiterate the following:

1. Defendants rely on unproven, unsubstantiated allegations that Miami Police Department ("MPD") reported Plaintiff's bike as stolen, stating they had probable cause to seize it. Yet Defendants have failed to produce ANY official documentation from MPD, or even a sworn affidavit from the alleged owner, Levi Looney. Moreover, the "citation" that Defendants claim to have issued Plaintiff has not been produced; which is a critical element to prove he was afforded due process when his bike was seized by the Defendants and kept by A.P.D. for nearly three (3) years.

Furthermore, a detective with A.P.D. claims to have "spoken to 'a person' with M.P.D. - with property crimes division", but fails to state who that person was - no name or badge number was given by the A.P.D. detective.

2. Defendants erroneously rely on a "sticker", which was attached to the bike by Wal-Mart so that the bike could be scanned at the checkout counter for its price, as the serial number for the bike. Plaintiff contends that the Defendants' preposterous behavior is not protocol when determining whether or not a bicycle is stolen; as the serial number is engraved on the metal of the bike. Interestingly, Defendants refuse to reveal whether or not the "sticker" on the bike matches the engraved serial number on the bike... Plaintiff asserts that their silence speaks volumes.
3. Plaintiff further asserts that "perjury is committed when a person, in any official proceeding, makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made." In this case, Defendants are intentionally misrepresenting the facts and they're continuing to conceal facts and evidence (the bike is in A.P.D.'s evidence room and A.P.D. won't allow Plaintiff to take photos of the engraved serial number), as well ^{as} making false statements. Is there a sufficient deterrent to lying that is enforceable by this Court?
4. Plaintiff is submitting Exhibits I through L so that this honorable court will be aware of the harassment a mental anguish he is suffering at the hands of law-enforcement officials as a result of filing this lawsuit; although Travis Co. Sheriff's Office and APD are separate legal entities, they stick together with the "us against them" mentality. Regarding Exhibit K, Plaintiff was indignant after Correctional Officer Segura #4857, INTENTIONALLY allowed another inmate to open his sealed mail from this Court, which the mailroom had wrote with a permanent red-marker across the front of the envelope: MARSHALL - RAY PARTAIN c4-106-C. The inmate that C.O. Segura #4857 allowed to open and walk off with Plaintiff's mail, Robert Hardiman, is in cell c4-105-B, and the separate calls

are located right in front of her desk... yet to avoid the drama of a Kangaroo Court, Plaintiff signed for seven-days lock-up/solitary confinement rather than possibly receiving thirty-days of lock-up - the maximum.

Plaintiff submitted Exhibits I through L so that this court will know that each day he is struggling, battling (via complaints) to receive his legal^{mail}, but much to his misfortune, his hands are tied... no pun intended.

In conclusion, Plaintiff vehemently denies that he stole his bike from Miami, FL. Rather, he purchased it at Wal-Mart after his release from prison on September 5, 2019; his bike was purchased on September 8, 2019, three-days after his release so that he'd have transportation for work. (Please see Exhibit M which shows a release date of 09/05/2019.) Moreover, it's implausible that said A.P.D. officers made a "mistake" in unlawfully seizing his bike; and Plaintiff asserts that he should be allowed to go to trial and have his day in court, thus proving said A.P.D. officers acted maliciously and sadistically.

PRAYER

Accordingly, Plaintiff prays that this honorable Court will **GRANT** his Motion for Judgment on the Pleadings (Summary Judgment) and **DENY** Defendants' Motion for Summary Judgment, in the best interest of justice.

In the alternative, Plaintiff prays that this Court will allow this valid claim to proceed to trial.

DATED: August 21, 2022

RESPECTFULLY SUBMITTED,

Marshall R. Partain
Marshall Ray Partain

CERTIFICATE OF SERVICE

I, Marshall Rae Partain, Travis Co. Sheriff's Office #2214303, hereby certify that a true and correct copy of the foregoing Plaintiff's Supplemental Response to Defendants' Motion for Summary Judgment has been served upon the defendants by placing same in regular U.S. mail to: Monte L. Barton, Jr., Asst. City Attorney, City of Austin - Law Dept., P.O. Box 1546, Austin, TX 78767-1546, on this the 21st day of August, 2022.

Marshall R. Partain
Plaintiff - pro se

8/19 1930

TRAVIS COUNTY SHERIFF'S OFFICE DISCIPLINARY BOARD WAIVER

EXHIBIT K

INSTRUCTIONS: Fill in all spaces provided. If not applicable, show N/A

Bkg No: 2214303

Housing: 02 C 10B

Incident Dt.: 8/18/2022 06:39

INCIDENT NO: 220005821

INMATE NAME: PARTAIN, MARSHALL RAY

You are charged with the following rule violation(s):

Violation 2 **MLRTFWOD**

Violation 3 **MJ-DISJLACT**

COPY

EXHIBIT I

olation (MN)
ages for not more than 15 days
1 for not more than 15 days

Inmate Request Complaint Grievance

Date: 08-17-2022 Reviewed by (Employee Initials & #): _____

To: Mailroom Staff

RETURN TO INMATE

From: Marshall Partain

D.O.B. 01-17-1974

Building/Unit/Cell: 12C4106C

Booking #: 2214303

eing afforded that opportunity
N.

Pursuant to Title 28 United States Secs. 1701, 1702, 1705, 1708, and 1725 (as well as Domestic Mail Manual Sec. 151.1), it is a federal crime to "obstruct or retard the mail" (or to unlawfully detain my mail) before it is delivered to me. I have an active federal lawsuit, 1:21-cv-829-RP, and the jail is causing me to miss "deadlines" with their lack of effort and/or staff shortage... or, worse, due to jail staff's malicious conduct and deliberate indifference. I request an immediate investigation into this matter.

- M. Partain

own: _____

ker status for _____ days

A Ben

(s) and accept the sanctions listed
ction may be considered for

792 8/19/22 2:29
Date/Time

(s) - _____
Date/Time

Date: 8/18/22

792 Entered into Tib: _____

Staff Action/Response

Responding Employee Name & Number _____

Date _____

White copy: Return to Inmate

Yellow copy: Inmate Incarceration File

RECEIVED

EXHIBIT J

TRAVIS COUNTY SHERIFF'S OFFICE
NOTICE OF DISCIPLINARY BOARD



COPY

AUG 26 2022
CLERK, U.S. DISTRICT COURT,
WESTERN DISTRICT OF TEXAS
INSTRUCTIONS: Fill in all spaces provided. If not applicable, show N/A
BY: DEPUTY CLERK

INMATE NAME: PARTAIN, MARSHALL RAY Bkg No 2214303 HOUSING 02-C-10B Incident # 220005821

Incident Date: 08/18/2022 Incident Time: 06:39 Hazard(s):

You are charged with the following rule violation(s):

- Violation 1 MJ-DISSTAFF Violation 2 MJ-RTFWOD Violation 3 MJ-DISJLACT
- Violation 4 Violation 5

Was Ofcr's Immediate Supervisory Action offered? YES NO Has MH been emailed regarding move? YES NO

Summary of Incident: Summary of charges from Incident Report. All victims and/or witness names will be redacted. Include all charges.

★

MJ-DISSTAFF You became upset and started cursing towards me when you noticed another inmate had signed for your mail. I apologized and explained it was a mistake. You continued to curse and demanded the Sergeant.

MJ-RTFWOD I directed you two times to return to your assigned bed and you refused.

C.O. Segura #4857

MJ-DISJLACT Your behavior stopped me from being able to pass out the rest of the mail to the unit.

I have received twenty-four (24) hour notice of my hearing.

Marshall Partain Inmate's Signature Date: 8-18-22 Time: 1909

DATE SERVED: 8-18-22 TIME SERVED: 1909 LOCATION SERVED: 12CS

SERVED BY: [Signature] #6237
Officer's Signature & Employee #

You will be scheduled to appear at a Disciplinary Hearing within 7 days after this document is served.

If you are subsequently found guilty at the Disciplinary Hearing of one or more of the violations listed above the following sanctions may be imposed:

Major Violation (MJ)	Minor Violation (MN)
<input checked="" type="checkbox"/> Loss of Program status for up to duration of stay	<input checked="" type="checkbox"/> Loss of any or all privileges for not more than 15 days
<input checked="" type="checkbox"/> Loss of any or all privileges for not more than 30 days	<input checked="" type="checkbox"/> Disciplinary separation for not more than 15 days
Loss of correspondence privileges (general correspondence only) if the violation involved correspondence rules, for not more than 30 days	
<input checked="" type="checkbox"/> Disciplinary separation for not more than 30 days	
Loss of Inmate worker status for up to duration of stay	
<input checked="" type="checkbox"/> Loss of Good conduct credits, all or a portion thereof earned before the incident	
<input checked="" type="checkbox"/> The pecuniary cost incurred for damages to jail property.	

During the Disciplinary Board Hearing you may present testimony, evidence and witnesses on your own behalf. Witnesses are strictly limited to persons having firsthand knowledge of the violation(s) charged and those needed by the Board to decide the case. Should you or your witnesses become disruptive during the hearing, you or they may be removed and the hearing will continue in your or their absence. For purposes of Building Security or witness safety, written statements from witnesses may be submitted in your defense. If you need help in preparing your case, you have the right to request a lay representative (inmate) to assist you; refer to the Inmate Handbook for procedures.

(EXHIBIT pg 2)

TRAVIS COUNTY SHERIFF'S OFFICE NOTICE OF DISCIPLINARY BOARD

COPY

INSTRUCTIONS: Fill in all spaces provided. If not applicable, show N/A

I request the following Lay Representative(s) with the understanding that he/she may not be accepted by the board.

Lay Representative/Unit: _____

I request the following witnesses give statements to be presented at my hearing.

Witness: _____
INMATE'S NAME (Circle) (Written Testimony Attached) BOOKING# CURRENT HOUSING

Witness: _____
INMATE'S NAME (Circle) (Written Testimony Attached) BOOKING# CURRENT HOUSING

Witness: _____
INMATE'S NAME (Circle) (Written Testimony Attached) BOOKING# CURRENT HOUSING

117 6052
No witnesses

Copy served to inmate date/time: 8-18-22 @ 1912 Officer Init/Emp #: MJ6232

Rec'd 11/10/22
11-10-22
PAGE 2 OF 2

EXHIBIT L

Inmate Request Complaint Grievance

Date: 08/20/2022 Reviewed by (Employee Initials & #): OL6073

To: Post officer - Unit C

RETURN TO INMATE

From: Marshall Partain

D.O.B. 01-17-1974

Building/Unit/Cell: 02-c-10B

Booking #: 2214303

Please provide me with the Name and Employee #
of the correctional officer who wrote me up
for Incident # 220005821. Thanks.

- m. Partain

Staff Action/Response

Segue # 4857

[Signature]
Responding Employee Name & Number

8-20-22
Date

White copy: Return to Inmate

Yellow copy: Inmate Incarceration File

COPY: FILE

EXHIBIT M



Texas Department of Criminal Justice
Parole Division
ASSESSMENT REPORT

Name: PARTAIN, MARSHALL RAY TDCJ #: 02311988 SID #: 04466004

Instant Offense(s): DWI 3RD/MORE

Current Special Conditions: O.01, O.03, O.18, O.22, P, S, O.44, T

Section I

Prior Criminal History: Juvenile: None

Adult Incarcerations: 11/1997 - Retaliation - 7 YRS TDCJ-ID (FELONY) - Paroled 11/1999 - Revoked 02/2000. 11/2000 - Driving while Intoxicated - 10 YRS TDCJ-ID (FELONY) - Paroled 8/2004 - Revoked - 3/2006. 12/2010 - Aslt Family Violence Strangulation- 3 YRS TDCJ-ID (FELONY) - Released M/S 8/2012 - ISF - 10/2012. 05/2017 - UUV (MISD) - 9 MTHS TDCJ-SJ - Discharged 2/2018.

★ Release Date: 09/05/2019 Discharge Date: 06/19/2023

Section II

TRAS Supervision Level: HIGH Caseload: SNOP HWH: Yes No
(Special needs offender program)

Section III

A. Employment

1. If employed, name of employer: Unemployed
Length of employment: _____
 Verified Not Verified _____

2. If unemployed, how long: Since 05/30/2021 - was at Liberty Lawn Care
Reason: Unknown

August 21, 2022

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

RE: CASE No. 1:21-cv-829-RP-DH

Dear Clerk:

Enclosed please find my PLAINTIFF'S ~~MOTION~~ SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, a total of 4-pages. I've also included Exhibits I through M, a total of 6 pages... Exhibit J consists of 2-pages. Please file these documents and bring to the attention of the court at your earliest convenience. Also, my daughter's mom, Alaya Selby, who also submitted an Affidavit to this court, welcomes the Court to contact her if the court has any further questions about my bicycle. Listed below is her pertinent information:

Alaya Michelle Selby (512) 947-4146
alaya.selby1@gmail.com

Please send me a copy of the Civil Docket for this case number and thanks in advance for your assistance.

Sincerely,
Marshall R. Partain

Marshall R. Partain # 2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Clerk of Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701
SCREENED BY CSO
AUG 26 2022



7870133812 0005



August 24, 2022

RECEIVED

AUG 29 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY

Clerk of Court
United States District Court
Western District of Texas- Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

FILED

AUG 29 2022

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY CLERK

RE: CASE NO. 1:21-cv-829-RP-DH

TO THE HONORABLE MAGISTRATE JUDGE DUSTIN M. HOWELL:

May it please the court, enclosed are **Exhibits O through R**, which I believe are pertinent and relevant to my claim. It's interesting to note that after filing about 3-grievances/complaints on the mailroom, I was then placed in solitary confinement after becoming irate when C.O. Segura #4857 allowed another inmate to open my legal mail from this Court (that grievance is pending). Due to the deadline and the jail's response "about the delay of U.S.P.S.", I'm sending my exhibits as soon as I receive them.

Further, C.O. Tran #6055, recently told me that my backpack is not listed in my property inventory here at the jail. As stated in my original complaint, A.P.D. has their subtle ways to retaliate and harass me; and seem to continue doing so. (Please see Exhibit R.)

Thank you for your time, Your Honor.

Respectfully submitted,
Marshall K. Partain
Marshall Ray Partain - Plaintiff

Exhibit 0



Sally Hernandez, Travis County Sheriff
MEMORANDUM

Date: 8/23/2022

To: Partain, Marshall 22-14303

From: J. Perkins #3467, Grievance Sergeant

I have received your grievance dated 8/8/2022 concerning your legal mail.

We have no control over Mail until it arrives on Complex. Once mail arrives on Complex, it is sorted and sent out. The legal mail for that day was post marked 8/2/2022 it arrived on complex and was scanned in on 8/8/2022, the same day you signed for it.

Grievance unfounded

Exhibit P



Sally Hernandez, Travis County Sheriff
MEMORANDUM

Date: 8/23/2022

To: Partain, Marshall 22-14303

From: J. Perkins #3467, Grievance Sergeant

I have received your grievance dated 8/16/2022 concerning your legal mail. Your legal mail was post marked 8/11/2021 and was received by the TCSO mail room on 8/16/2022. The letter was then delivered and signed for by you on 8/17/2022. Grievance unfounded.

~~OC 1075~~ 126119

Exhibit Q

Inmate

Request

Complaint

Grievance

Date: 08-16-2022 Reviewed by (Employee Initials & #): CTBOSS

To: Records Dept. / Property

RETURN TO INMATE

From: Marshall R. Partain

D.O.B. 01-17-1974

Building/Unit/Cell: ~~1204-066~~ 126-119

Booking #: 2214303

I was booked in on July 19, 2022, by A.P.D. for a parole warrant. The APD officer who transported me left my grey "backpack" in the trunk of his car.

I need the name and badge # of said officer who booked me into Travis Co. Jail as soon as possible. Thanks.

— M. Partain

Staff Action/Response

For APD Property call

512-974-5151

Arrested on 7-19-2022 @
Agcy Case # A222000768 114:36

You just need date & time

Agency Case #
Mx 6094

8.22.22

Responding Employee Name & Number

Date

White copy: Return to Inmate

Yellow copy: Inmate Incarceration File

August 24, 2022

Austin Police Headquarters
Complaints Dept.
715 E. 8th St.
Austin, TX 78701

RE: MISSING BACKPACK; AGENCY# 222 000 768

To whom It May Concern:

The purpose of this complaint is to retrieve my "gray backpack," which I've recently been informed is not in my property here at Travis Co. Correctional Complex.

I was arrested on July 19, 2022, at about 14:36, by Austin Police Dept. in front of the H.E.B "convenience store" on Riverside Dr.. To the best of my knowledge, my backpack was placed in the trunk of the unit which transported me to the Travis Co. Jail; and upon arrival, I do not recall the arresting-officer retrieving my backpack from his vehicle.

Please investigate at your earliest convenience and thanks for any and all assistance in this urgent matter.

Sincerely,

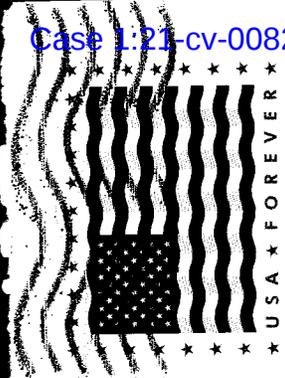
Marshall R. Partain
Marshall Ray Partain #2214303
Travis Co. Correctional Complex

COPIES: U.S. DISTRICT COURT - AUSTIN DIVISION
ASST. CITY ATTORNEY MONTE L. BARTON, JR.; CITY OF AUSTIN - LAW DEPT.

Marshall R. Partain #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

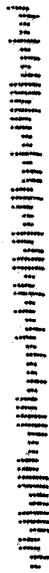
SCREENED BY CSO
AUG 29 2022

AUSTIN TX 786
RIO GRANDE DISTRICT
26 AUG 2022 PM 2



Clerk of Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th, Ste. 1100
Austin, TX 78701

78701-381275



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN

Plaintiff,

v.

JASON HALLMARK, AP# 6307,

SHARDAY NELERO, AP# 8771,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

DEFENDANTS’ RESPONSE
OPPOSING PLAINTIFF’S
MOTION TO COMPEL AS BEING MOOT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant police officers, Jason Hallmark (AP #6307) and Sharday Melero (AP #8771) file this reply in opposition to [Doc #48], which is titled: Plaintiff’s “Motion To Compel Production of Documents.”

Introduction

Defendants renew and fully adopt and incorporate their original motion [Doc #35] and their Reply in support of Summary Judgment [Doc # 39] and respectfully move the Court to grant summary judgment in their favor because they are immune from suit. There is no genuine dispute as to any material fact and the movants are entitled to judgment as a matter of law.” FED. R. CIV.P .56(a).

RESPONSE OPPOSING PLAINTIFF’S MOTION TO COMPEL AS BEING MOOT

Defendants respectfully oppose Plaintiff’s Motion to Compel [Doc #48] on the basis that it seeks the production of documents and things which either no longer exist or which have already been made available to Plaintiff, as follows:

1. Plaintiff requests a copy of the Class B Cite and Release citation regarding the Kent bicycle referenced in Defendants' original motion for summary judgment [Doc #35] and their Reply in support of Summary Judgment [Doc # 39]. The originals and all copies were disposed of in accordance with the regular document retention practices of APD and the Travis County Clerk's office. Defendants have not been able to locate and are not aware of any available copies.

2. As for the bicycle, as noted in the attached letter to Plaintiff dated August 26, 2022, the City has already made it available to the Plaintiff upon receipt on August 26, 2022 of the Notice of Electronic Filing regarding [Doc #49], the Affidavit of Ms. Alaya Selby. A copy of the August 26, 2022 letter to Plaintiff is attached as Exhibit 1. A copy of the Notice of Electronic Filing regarding [Doc #49] is attached as Exhibit 2.

PRAYER

Accordingly, Defendants respectfully submit that Plaintiff's motion has become moot, and request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiff's claims against the Defendants with prejudice and with all costs assessed to the Plaintiff.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409
Facsimile: (512) 974-1311
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, VIA ECF in compliance with the Rules of Federal Procedure, this 1st day of September, 2022.

Via U.S. First Class:

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

PLAINTIFF PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.
Counsel for Defendants

Exhibit 1



City of Austin

Law Department

City Hall, 301 West 2nd Street, P.O. Box 1546
Austin, Texas 78767-1546

Writer's Direct Line
(512) 974-2409

Writer's Fax Line
(512) 974-1311

August 26, 2022

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, Texas 78617

RE: Civil Action No. A-21-CV-829-RP; *Partain v. Hallmark, et al*; *U.S.D.C.*

Dear Mr. Partain:

We have this day received a copy from the Court of "The Affidavit of Alaya Selby" [DOC #49]. Upon receipt and review, and consideration of the file information, I write to advise you that the green Kent bicycle which is the subject of this lawsuit is available to be released by the Austin Police Department to you or an authorized representative, upon a showing of proper identification and an acknowledgment receipt.

Please note the following: The APD evidence room is located at – 4708 E. Martin Luther King Jr. Blvd, Austin, TX 78721.

Evidence tag # #2723552-1 is associated with the bike.

The evidence room is open to the public Tuesday – Thursday by appointment. The main phone number is 512-974-5151.

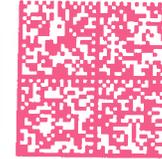
Sincerely yours,

/s/Monte L. Barton Jr.
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Direct 512- 974-2409
monte.barton@austintexas.gov

CITY OF AUSTIN
P.O. BOX 1546
AUSTIN, TEXAS 78767 - 1546

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, Texas 78617

FIRST-CLASS



PTNEY BOWES
US POSTAGE
02 1P \$ 000.57⁰
0001184962 AUG 26 2022
MAILED FROM ZIP CODE 78701

Exhibit 2

1:21-cv-00829-RRP-DH

August 17, 2022

RECEIVED

AUG 22 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY

Clerk of Court

United States District Court

Western District of Texas - Austin Division

501 W. 5th St., Suite 1100

Austin, TX 78701

RE: EXHIBITS G and H

Dear Clerk:

Enclosed please find my exhibits of proof-of-purchase of my bicycle which I received from my daughter's mom in Cedar Park, TX: Exhibit G is two(2) pgs. of a bank statement from Wal-Mart Store #1129, located at 13201 RR 620N, Austin, TX 78717; Exhibit H is her Affidavit (her cell # is (512) 947-464146).

Please bring same to the attention of the court at your earliest convenience.
Thank you so much for all of your assistance and service.

Yours truly,

Marshall R. Partain

Wells Fargo Everyday Checking

September 9, 2019 ■ Page 1 of 6



ALAYA M SELBY
[REDACTED] RD APT 121
CEDAR PARK TX 78613-6505

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-TO-WELLS (1-800-869-3557)

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (6 am to 7 pm PT, M-F)

Online: wells Fargo.com

Write: Wells Fargo Bank, N.A. (808)
P.O. Box 6995
Portland, OR 97228-6995

You and Wells Fargo

Thank you for being a loyal Wells Fargo customer. We value your trust in our company and look forward to continuing to serve you with your financial needs.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wells Fargo.com or call the number above if you have questions or if you would like to add new services.

- | | | | |
|--------------------|-------------------------------------|-----------------------|-------------------------------------|
| Online Banking | <input checked="" type="checkbox"/> | Direct Deposit | <input checked="" type="checkbox"/> |
| Online Bill Pay | <input type="checkbox"/> | Auto Transfer/Payment | <input type="checkbox"/> |
| Online Statements | <input checked="" type="checkbox"/> | Overdraft Protection | <input type="checkbox"/> |
| Mobile Banking | <input checked="" type="checkbox"/> | Debit Card | |
| My Spending Report | <input checked="" type="checkbox"/> | Overdraft Service | <input checked="" type="checkbox"/> |

Activity summary

Beginning balance on 8/8	\$149.02
Deposits/Additions	3,351.29
Withdrawals/Subtractions	- 3,337.58
Ending balance on 9/9	\$162.73

Account number: [REDACTED] 20

ALAYA M SELBY

Texas/Arkansas account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): [REDACTED]

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

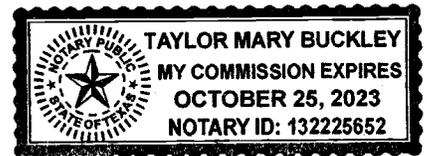
PAGE 1 OF 2

AFFIDAVIT OF ALAYA SELBY

I, Alaya Selby, am competent and of sound mind to make the following statement: I do solemnly swear that I currently reside at 12600 Avery Ranch Blvd., Apt #736, Cedar Park, TX, 78613, and on or about September 8, 2019, I purchased a bicycle from Wal-Mart store #1129 for my daughter's father, Marshall Ray Partain, with my Wells Fargo debit card number 1289 for the amount of \$160.21. (At the time of purchase my address was 1700 Bagdad Rd., Apt #121, Cedar Park, TX, 78613.)

Alaya Selby
Affiant

THE STATE OF TEXAS
COUNTY OF TRAVIS

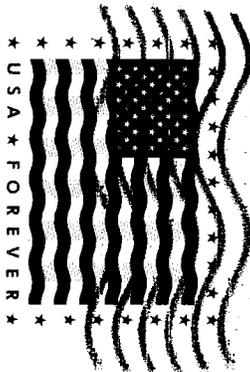


Sworn to and subscribed before me by affiant on this day: 8/08/2022

My commission expires on: 10/25/2023 Taylor Mary Buckley
NOTARY PUBLIC

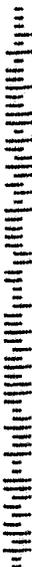
Marshall R. Partain #2214303
Travis Co. Correctional Complex
3614 Bill Rice Rd.
Del Valle, TX 78617

AUSTIN TX 786
RIO GRANDE DISTRICT
19 AUG 2022 PM 3 L



Clerk of Court
United States District Court
Western District of Texas - ~~AUSTIN~~ DIVISION
501 W. 5th St., Suite 11082 2022
Austin, TX 78701

78701-381275



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARSHALL RAY PARTAIN

Plaintiff,

v.

JASON HALLMARK, AP# 6307,

SHARDAY NELERO, AP# 8771,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:21-cv-829-RP

DEFENDANTS' AMENDED RESPONSE
OPPOSING PLAINTIFF'S
MOTION TO COMPEL AS BEING MOOT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant police officers, Jason Hallmark (AP #6307) and Sharday Melero (AP #8771) file this reply in opposition to [Doc #48], which is titled: Plaintiff's "Motion To Compel Production of Documents."

Introduction

Defendants renew and fully adopt and incorporate their original motion [Doc #35] and their Reply in support of Summary Judgment [Doc # 39] and respectfully move the Court to grant summary judgment in their favor because they are immune from suit. There is no genuine dispute as to any material fact and the movants are entitled to judgment as a matter of law." FED. R. CIV.P .56(a).

RESPONSE OPPOSING PLAINTIFF'S MOTION TO COMPEL AS BEING MOOT

Defendants respectfully oppose Plaintiff's Motion to Compel [Doc #48] on the basis that it seeks the production of documents and things which either no longer exist or which have already been made available to Plaintiff, as follows:

1. Plaintiff requests a copy of the Class B Cite and Release citation regarding the Kent bicycle referenced in Defendants' original motion for summary judgment [Doc #35] and their Reply in support of Summary Judgment [Doc # 39]. The originals and all copies were disposed of in accordance with the regular document retention practices of APD and the Travis County Clerk's office. Defendants have not been able to locate and are not aware of any available copies.

2. As for the bicycle, as noted in the attached letter to Plaintiff dated August 26, 2022, the City has already made it available to the Plaintiff upon receipt on August 26, 2022 of the Notice of Electronic Filing regarding [Doc #49], the Affidavit of Ms. Alaya Selby. A copy of the August 26, 2022 letter to Plaintiff is attached as Exhibit 1. A copy of the Notice of Electronic Filing regarding [Doc #49] is attached as Exhibit 2.

PRAYER

Accordingly, Defendants respectfully submit that Plaintiff's motion has become moot, and request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiff's claims against the Defendants with prejudice and with all costs assessed to the Plaintiff.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409
Facsimile: (512) 974-1311
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, VIA ECF in compliance with the Rules of Federal Procedure, this 1st day of September, 2022.

Via U.S. First Class:

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

PLAINTIFF PRO SE

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.
Counsel for Defendants

Exhibit 1



City of Austin

Law Department

City Hall, 301 West 2nd Street, P.O. Box 1546
Austin, Texas 78767-1546

Writer's Direct Line
(512) 974-2409

Writer's Fax Line
(512) 974-1311

August 26, 2022

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, Texas 78617

RE: Civil Action No. A-21-CV-829-RP; *Partain v. Hallmark, et al*; *U.S.D.C.*

Dear Mr. Partain:

We have this day received a copy from the Court of "The Affidavit of Alaya Selby" [DOC #49]. Upon receipt and review, and consideration of the file information, I write to advise you that the green Kent bicycle which is the subject of this lawsuit is available to be released by the Austin Police Department to you or an authorized representative, upon a showing of proper identification and an acknowledgment receipt.

Please note the following: The APD evidence room is located at – 4708 E. Martin Luther King Jr. Blvd, Austin, TX 78721.

Evidence tag # #2723552-1 is associated with the bike.

The evidence room is open to the public Tuesday – Thursday by appointment. The main phone number is 512-974-5151.

Sincerely yours,

/s/Monte L. Barton Jr.
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Direct 512- 974-2409
monte.barton@austintexas.gov

CITY OF AUSTIN
P.O. BOX 1546
AUSTIN, TEXAS 78767 - 1546

FIRST-CLASS



PTNEY BOWES
US POSTAGE
02 1P **\$ 000.57⁰**
0001184962 AUG 26 2022
MAILED FROM ZIP CODE 78701

Marshall Ray Partain, #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, Texas 78617

Exhibit 2

From: TXW_USDC_Notice@txwd.uscourts.gov <TXW_USDC_Notice@txwd.uscourts.gov>
Sent: Friday, August 26, 2022 11:44 AM
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:21-cv-00829-RP-DH Partain v. Hallmark et al Letter/Correspondence

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 8/26/2022 at 11:44 AM CDT and filed on 8/22/2022

Case Name: Partain v. Hallmark et al

Case Number: [1:21-cv-00829-RP-DH](#)

Filer: Marshall Ray Partain

Document Number: [49](#)

Docket Text:

[Letter/Correspondence from Marshall Ray Partain re: Exhibits G and H. \(pg\)](#)

1:21-cv-00829-RP-DH Notice has been electronically mailed to:

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:21-cv-00829-RP-DH Notice has been delivered by other means to:

Marshall Ray Partain
2214303
Travis County Jail
3614 Bill Price Road
Del Valle, TX 78617

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=8/26/2022] [FileNumber=27253569-0] [48f03e9b652ab38e7a8b7ca7b8a31d0a079ef0b4572a05fec8341b0bac417a4987b5483e3e7c266afc189bfd21802ab39f2f8d5333487293da78cc64a981601]]

1:21-cv-00829-RRP-DH

August 17, 2022

RECEIVED

AUG 22 2022

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY

Clerk of Court

United States District Court

Western District of Texas - Austin Division

501 W. 5th St., Suite 1100

Austin, TX 78701

RE: EXHIBITS G and H

Dear Clerk:

Enclosed please find my exhibits of proof-of-purchase of my bicycle which I received from my daughter's mom in Cedar Park, TX: Exhibit G is two(2) pgs. of a bank statement from Wal-Mart Store #1129, located at 13201 RR 620N, Austin, TX 78717; Exhibit H is her Affidavit (her cell # is (512) 947-464146).

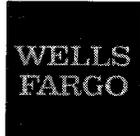
Please bring same to the attention of the court at your earliest convenience.
Thank you so much for all of your assistance and service.

Yours truly,

Marshall R. Partain

Wells Fargo Everyday Checking

September 9, 2019 ■ Page 1 of 6



ALAYA M SELBY
[REDACTED] RD APT 121
CEDAR PARK TX 78613-6505

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-TO-WELLS (1-800-869-3557)

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (6 am to 7 pm PT, M-F)

Online: wells Fargo.com

Write: Wells Fargo Bank, N.A. (808)
P.O. Box 6995
Portland, OR 97228-6995

You and Wells Fargo

Thank you for being a loyal Wells Fargo customer. We value your trust in our company and look forward to continuing to serve you with your financial needs.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wells Fargo.com or call the number above if you have questions or if you would like to add new services.

- | | | | |
|--------------------|-------------------------------------|-----------------------|-------------------------------------|
| Online Banking | <input checked="" type="checkbox"/> | Direct Deposit | <input checked="" type="checkbox"/> |
| Online Bill Pay | <input type="checkbox"/> | Auto Transfer/Payment | <input type="checkbox"/> |
| Online Statements | <input checked="" type="checkbox"/> | Overdraft Protection | <input type="checkbox"/> |
| Mobile Banking | <input checked="" type="checkbox"/> | Debit Card | <input type="checkbox"/> |
| My Spending Report | <input checked="" type="checkbox"/> | Overdraft Service | <input checked="" type="checkbox"/> |

Activity summary

Beginning balance on 8/8	\$149.02
Deposits/Additions	3,351.29
Withdrawals/Subtractions	- 3,337.58
Ending balance on 9/9	\$162.73

Account number: [REDACTED] 20

ALAYA M SELBY

Texas/Arkansas account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): [REDACTED]

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

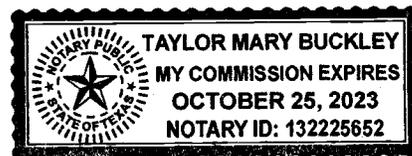
PAGE 1 OF 2

AFFIDAVIT OF ALAYA SELBY

I, Alaya Selby, am competent and of sound mind to make the following statement: I do solemnly swear that I currently reside at 12600 Avery Ranch Blvd., Apt #736, Cedar Park, TX, 78613, and on or about September 8, 2019, I purchased a bicycle from Wal-Mart store #1129 for my daughter's father, Marshall Ray Partain, with my Wells Fargo debit card number 1289 for the amount of \$160.21. (At the time of purchase my address was 1700 Bagdad Rd., Apt #121, Cedar Park, TX, 78613.)

Alaya Selby
Affiant

THE STATE OF TEXAS
COUNTY OF TRAVIS



Sworn to and subscribed before me by affiant on this day: 8/08/2022

My commission expires on: 10/25/2023 Taylor Mary Buckley
NOTARY PUBLIC

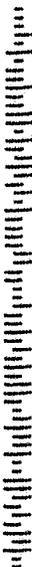
Marshall R. Partain #2214303
Travis Co. Correctional Complex
3614 Bill Rice Rd.
Del Valle, TX 78617

AUSTIN TX 786
RIO GRANDE DISTRICT
19 AUG 2022 PM 3 L



Clerk of Court
United States District Court
Western District of Texas - ~~AUSTIN~~ DIVISION
501 W. 5th St., Suite 11082 2022
Austin, TX 78701

78701-381275



August 30, 2022

RECEIVED
SEP 2 2022
CLERK U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
DEPUTY

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

FILED
SEP 2 2022
CLERK U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY
DEPUTY

RE: CASE No. 1:21-cv-829-RP-DH

TO THE HONORABLE MAGISTRATE JUDGE DUSTIN M. HOWELL:

May it please the court, the enclosed Exhibits S, T, and U conclude my exhibits in support of my Motion for Judgment on the Pleadings (Summary Judgment), and my Response to Defendants' Motion for Summary Judgment, as the "deadline" is tomorrow (Aug. 31, 2022)

The enclosed exhibits S, T, and U are all self-explanatory; unless defense counsel or this honorable court require a more in depth explanation.

Your Honor, I thank you from the bottom of my heart for treating me fairly and allowing my claim to be heard, sir.

RESPECTFULLY SUBMITTED,

Marshall R. Partain
Marshall Ray Partain
Plaintiff - pro se

copy: Atty. Monte L. Barton, Jr.

Exhibit U

Inmate Request Complaint Grievance

Date: 08/24/2022 Reviewed by (Employee Initials & #): PT6227

To: Property officer

RETURN TO INMATE

From: Marshall R. Partain

D.O.B. 01-17-1974

Building/Unit/Cell: 12G119

Booking #: 2214303

Please let me know if there is a
"gray backpack" in my property.
Thank you.

-M. Partain

Staff Action/Response

There is no "gray backpack"
listed on your personal property
list.

P. Troche #6227
Responding Employee Name & Number

8-24-22
Date

White copy: Return to Inmate

Yellow copy: Inmate Incarceration File

Incident Date: 08/18/2022

Exhibits

Inmate Request Complaint Grievance

Date: 08/21/2022 Reviewed by (Employee Initials & #): MSB

To: Grievance Officer

RETURN TO INMATE

From: Marshall Partain

D.O.B. 01-17-1974

Building/Unit/Cell: 02-C-10B

Booking #: 2214303

To avoid the jail's "Kangaroo Court" disciplinary proceedings, I signed for the offered punishment despite the fact C.O. Segura #4857 lied.

- 1) Prior to C.O. Segura giving my legal mail to another inmate to open and sign for, I went to her desk and pointed to said letter, stating that it had my name on it. She then said to go to my bunk, she had not called me yet. She then called Robert Hardman C7-105-B for my mail; which he signed for, walked off, and read my legal mail. I never cussed her out. I believe she intentionally acted with malice.
- 2) I did ask for a Sgt. because I was appalled by her misconduct; and
- 3) She was done passing out mail at the time of the incident. Please review camera footage. Thanks. M. Partain

Staff Action/Response

See attached

Perkins 3467
Responding Employee Name & Number

8/24/2022
Date

White copy: Return to Inmate

Yellow copy: Inmate Incarceration File



Sally Hernandez, Travis County Sheriff
MEMORANDUM

Date: 8/29/2022

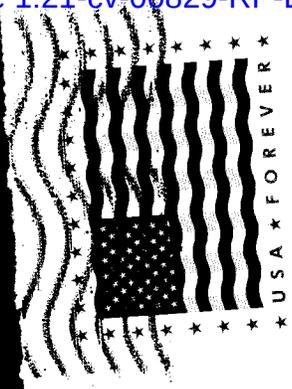
To: Partain, Marshall 22-14303

From: J. Perkins #3467, Grievance Sergeant

I have received your grievance dated 8/21/2022 concerning your legal mail. I have forwarded your grievance to the building 12 supervisors, and I have received a response from Sgt. Everill.

Officer Segura did originally give the legal mail to the wrong inmate. She did admit the mistake to her Sgts, the same day. The issue was corrected immediately once she realized she had made the error. Founded and resolved.

No evidence exists to support that it was intentional or retaliatory. Unfounded



AUSTIN TX 786
RIO GRANDE DISTRICT
31 AUG 2022 PM 3 L

Marshall R. Partain #2214303
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701

SCREENED BY CSO
SEP 07 2022



78701-381275

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN

V.

**OFFICER JASON HALLMARK
and OFFICER SHARDAY MELERO**

§
§
§
§
§
§

A-21-CV-829-RP

ORDER

Before the Court are Plaintiff's complaint brought pursuant to 42 U.S.C. § 1983, Plaintiff's Motion for Judgment on the Pleadings, Defendants' Motion for Summary Judgment, Plaintiff's response, Defendant's reply, and the supplemental responses filed by both parties. Plaintiff, proceeding *pro se*, has been granted leave to proceed *in forma pauperis*. After consideration of the above-referenced pleadings, the Court grants summary judgment in favor of Defendants.

I. BACKGROUND

At the time Plaintiff filed his original complaint, he was confined in the Travis County Correctional Complex. During the pendency of this lawsuit, which was filed in September 2021, Plaintiff was transferred to a halfway house in Travis County and apparently released. He was later arrested and confined in Williamson County. After discharging a short sentence in Williamson County, he was arrested in Hays County. Public records indicate the Hays County District Attorney declined to prosecute Plaintiff, and Plaintiff was released on July 7, 2022. On July 28, 2022, the Court received notice from Plaintiff that he was confined in the Travis County Correctional Complex, presumably pending the revocation of his parole. On September 12, 2022, Plaintiff

confirmed his parole was revoked and he was returned to the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ).

In his complaint, Plaintiff alleges Officers Hallmark and Melero arrested him on October 4, 2019, for resisting arrest and public intoxication, and seized his bicycle. At the time of his arrest, Plaintiff was on parole. Plaintiff indicates his parole was revoked and he was returned to TDCJ for approximately 14 months.

Plaintiff asserts, after his release from TDCJ, he was charged with the theft of his own bicycle. According to Plaintiff, Officer Melero ran the bicycle's serial number and falsely claimed that the bicycle was stolen from Miami, Florida. Plaintiff asserts the "bogus charge" was dismissed, but police did not return the bicycle he values at \$168.00.

Plaintiff sues Officers Hallmark and Melero. He requests the Court to enjoin the City of Austin or the Austin Police Department from harassing him about his bike and to return his bike. He also seeks \$25,000 in compensatory damages and \$25,000 in punitive damages.

Plaintiff moves the Court for a judgment on the pleadings. He contends the defendants' answer to his complaint is insufficient. Plaintiff makes clear his complaint against the officers is for taking his bike and failing to return it.

II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants move for summary judgment and assert their entitlement to qualified immunity. They provide the Court with videos of Plaintiff's arrest.

The summary judgment evidence shows Defendants responded to an Urgent Check Welfare call. Plaintiff made the call and stated he was suicidal and wanted to be shot by police. Defendant Hallmark, a mental health officer, arrived on scene and advised Plaintiff he wanted to take him to

the hospital. Plaintiff's demeanor changed and became aggressive when Defendant Hallmark would not allow Plaintiff to continue drinking beer in the convenience store's parking lot. Defendants arrested Plaintiff for public intoxication and resisting arrest.

At the time of his arrest, Plaintiff expressed concern over his bicycle. Defendants informed Plaintiff they would take his bicycle for safekeeping. Due to Plaintiff's agitated state, Defendant Hallmark transported Plaintiff to jail rather than a hospital, and Defendant Melero transported the bicycle to the police station.

Later, Defendant Melero ran a background check on the serial number attached to the bicycle. The bicycle was identified as stolen by the National Crime Information Center (NCIC) through the Miami Police Department. Defendant Melero submitted the bicycle as evidence at the East Substation. She states she completed a Class B Cite and Release Citation for the theft of the bicycle. She claims the citation was acknowledged and signed by Plaintiff. Defendant Hallmark avers he submitted probable cause affidavits for Resisting Arrest, Class A, and Public Intoxication, Class C, along with the Cite and Release Citation for the bicycle.¹ Neither officer is aware of any further contact or interaction with Plaintiff or any matters related to him after their involvement on October 4, 2019.

Defendants claim they acted reasonably when they detained Plaintiff. They also claim it was reasonable for Defendant Melero to follow usual police methods to run a background check on the

¹ Defendants did not include the citation in the summary judgment evidence. In their response to Plaintiff's Motion to Compel, Defendants state the original and all copies of the Cite and Release Citation were disposed of in accordance with the regular document retention practices of APD and the Travis County Clerk's Office.

serial number of the bicycle and submit the bicycle as evidence when she was advised the bicycle was identified as stolen.

III. PLAINTIFF'S RESPONSE

In his response, Plaintiff asserts Defendants' motion should be denied as untimely.² Plaintiff denies Defendant Melero issued a Cite and Release Citation and points out the citation is not included in the summary judgment evidence. Plaintiff also asserts that the true serial number of the bicycle is engraved in the metal frame and the police relied on the serial number on a sticker on the bicycle. Finally, Plaintiff argues Defendants failed to prove that the bicycle was stolen in Miami.

The Court granted Plaintiff an extension to file additional summary judgment evidence. Plaintiff submitted the affidavit of Ms. Alaya Selby, the mother of Plaintiff's daughter. She states she purchased the bicycle in question for Plaintiff. She further states she purchased the bicycle at Walmart #1129 for \$160.21 on or about September 8, 2019. According to Plaintiff, Ms. Selby purchased the bicycle shortly after his release from prison so that he would have transportation for work.

IV. DEFENDANTS' REPLY

Upon receipt of Ms. Selby's affidavit, counsel for Defendants notified Plaintiff that his bicycle is available to be released by the Austin Police Department to Plaintiff or an authorized representative.

² Defendants' motion is timely. May 30, 2022, was a federal holiday. Therefore Defendants' motion was due on May 31, 2022, the day it was filed.

V. ANALYSIS

A. Summary Judgment Standard

“Summary judgment must be granted ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Trammell v. Fruge*, 868 F.3d 332, 338 (5th Cir. 2017) (quoting FED. R. CIV. P. 56(a)). The court views the facts in the light most favorable to the non-moving party and draw all reasonable inferences in the non-movant’s favor. *Hanks v. Rogers*, 853 F.3d 738, 743 (5th Cir. 2017) (quoting *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009)).

“A qualified immunity defense alters the usual summary judgment burden of proof. Once an official pleads the defense, the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official’s allegedly wrongful conduct violated clearly established law.” *Id.* at 744 (quoting *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010)).

B. Qualified Immunity

“Qualified immunity shields public officials sued in their individual capacities from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Kokesh v. Curlee*, 14 F.4th 382, 391 (5th Cir. 2021) (cleaned up). “The qualified immunity inquiry includes two parts. In the first we ask whether the officer’s alleged conduct has violated a federal right; in the second we ask whether the right in question was ‘clearly established’ at the time of the alleged violation, such that the officer was on notice of the unlawfulness of his or her conduct.” *Cole v. Carson*, 935 F.3d 444, 451 (5th Cir. 2019) (*en banc*). The court need not decide the first question before the second, and

it may decide the case solely on the basis that the right was not clearly established. *Pearson v. Callahan*, 555 U.S. 223, 236–37 (2009).

C. Constitutional Violations

Plaintiff claims his bicycle was illegally seized and he was denied due process and equal protection of the law. Plaintiff fails to establish that Defendants violated his clearly established constitutional rights.

The due process clause of the 14th Amendment protects citizens from acts of government that “deprive any person of life, liberty or property, without due process of law[.]” U.S. CONST. amend. XIV, § 1; *Daniels v. Williams*, 474 U.S. 327, 331 (1986). In order to prove his due process rights were violated, Plaintiff must show “that [he] has asserted a recognized liberty or property interest within purview of Fourteenth Amendment and that [he] was intentionally or recklessly deprived of that interest, even temporarily, under color of state law.” *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450 (5th Cir.1994).

To state a claim under the Equal Protection Clause, a § 1983 plaintiff must either allege that a state actor intentionally discriminated against him because of membership in a protected class or he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Gibson v. Tex. Dep’t of Ins.—Div. of Workers’ Comp.*, 700 F.3d 227, 238 (5th Cir. 2012) (citation omitted).

At the time of his arrest, the police were faced with leaving Plaintiff’s bicycle unattended in the convenience store parking lot or taking the bicycle to the police station for safekeeping. Neither police officer violated Plaintiff’s constitutional rights by taking the bicycle to the police station for safekeeping. Defendant Melero also did not violate Plaintiff’s constitutional rights by turning the

bicycle in as evidence after she was notified the bicycle was reported stolen. Neither officer had any involvement in the theft charge being filed in January 2021 and Plaintiff's attempts to reclaim his bicycle. Additionally, Plaintiff makes no allegation that he is a member of a protected class or that he was treated in a manner different from other similarly situated individuals. Accordingly, both Defendants Hallmark and Melero are protected by qualified immunity and are entitled to summary judgment.

The Austin Police Department notified Plaintiff the bicycle in question is available to be released to Plaintiff or an authorized representative and described the procedure for release. The Court advises Plaintiff to make arrangements with an authorized representative to retrieve his bicycle. Plaintiff is not entitled to further relief.

It is therefore **ORDERED** that the Motion for Summary Judgment, filed by Defendants on May 31, 2022, is **GRANTED**.

It is further **ORDERED** that the Motion for Judgment on the Pleadings, filed by Plaintiff on April 20, 2022, is **DENIED**.

SIGNED on September 14, 2022.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a long horizontal line extending to the right.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARSHALL RAY PARTAIN

V.

**OFFICER JASON HALLMARK
and OFFICER SHARDAY MELERO**

§
§
§
§
§

A-21-CV-829-RP

FINAL JUDGMENT

Before the Court is the above-entitled cause. Upon review of the entire case file and this Court's Order which granted Defendants' Motion for Summary Judgment, the Court renders the following Final Judgment.

IT IS HEREBY ORDERED that Plaintiff Marshall Ray Partain shall **TAKE NOTHING** in this cause against Defendants Jason Hallmark and Sharday Melero.

IT IS FINALLY ORDERED that the above entitled cause of action is hereby **CLOSED**.

SIGNED on September 14, 2022.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

OCT 31 2022
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY

FILED

OCT 31 2022
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

CASE NO. 4:21-cv-829K

MARSHALL RAY PARTAIN,
Plaintiff,

v.

JASON HALLMARK and
SHARDAY MELERO,
Defendants

NOTICE OF APPEAL

Plaintiff appeals to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this case on September 13, 2022, which granted summary judgment to the Defendants.

Plaintiff received said Final Judgment on September 29, 2022, while in TDCJ in Huntsville, TX, and was RELEASED the same day. Therefore, this Notice of Appeal is timely due to Plaintiff not receiving this Court's Final Judgment until on or about September 29, 2022, as evidenced with the Holliday Unit mailroom's "log" for legal mail.

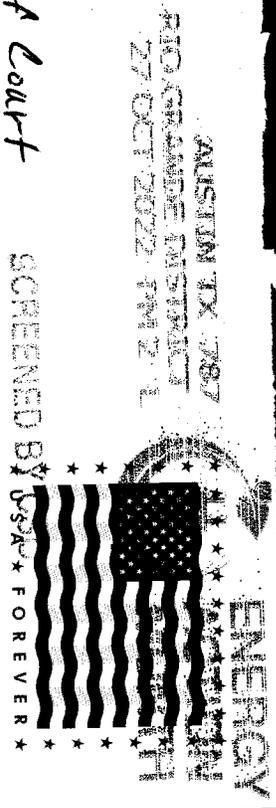
Date: October 26, 2022

Respectfully submitted,

Marshall R. Partain
Marshall Ray Partain

Marshall R. Partain # 2221063
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Clerk of Court
U.S. District Court OCT 31 2022
Western District of Texas - Austin Division
501 W. 5th St., Ste. 1100
Austin, TX 78701



78701-981275



RECEIVED IN THE UNITED STATES DISTRICT COURT

NOV 21 2022

FOR THE WESTERN DISTRICT OF TEXAS

FILED

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

AUSTIN DIVISION

NOV 21 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

MARSHALL RAY PARTAIN,
Plaintiff,

CIVIL ACTION No. 1:21-cv-829

V.
JASON HALLMARK and
SHARDAY MELERO,
Defendants.

NOTICE OF APPEAL

Notice is hereby given that Marshall Ray Partain, Plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered by this court on the 13th day of September, 2022, which Plaintiff received on or about September 29, 2022, while at the TDEJ-Holiday Unit.

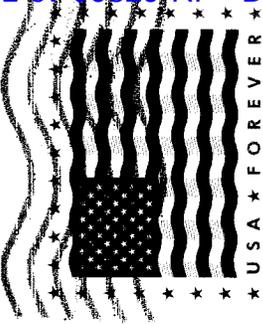
Plaintiff hereby requests permission to appeal in forma pauperis and requests the Clerk of Court to furnish appropriate forms and instructions on how to proceed with his appeal.

Dated: November 16, 2022

Respectfully submitted,

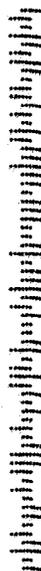
Marshall R. Partain
Marshall Ray Partain
Pro se

Marshall R. Partain # 222-1063
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617



AUSTIN TX 786
POST OFFICE DISTRICT
18 NOV 2022 PM 2 L

Clerk of Court
United States District Court
Western District of Texas - Austin Division
501 W. 5th St., Suite 1100
Austin, TX 78701



78701-981275

United States Court of Appeals

**FIFTH CIRCUIT
OFFICE OF THE CLERK**

**LYLE W. CAYCE
CLERK**

FILED

February 24, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Jay Vicha
DEPUTY

**TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130**

February 24, 2023

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 22-50959 Partain v. Hallmark
USDC No. 1:21-CV-829

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: Lisa E. Ferrara, Deputy Clerk
504-310-7675

cc:

Mr. Monte Lewis Barton Jr.
Mr. Marshall Ray Partain

United States Court of Appeals
for the Fifth Circuit

No. 22-50959

FILED

February 24, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Jay Vicha
DEPUTY

MARSHALL RAY PARTAIN,

Plaintiff—Appellant,

versus

OFFICER JASON HALLMARK, *Badge #6307 Austin Police Department;*
OFFICER SHARDAY MELERO, *Badge #8771 Austin Police Department,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-829

UNPUBLISHED ORDER

Before ELROD, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, [230 F.3d 167, 169](#) (5th Cir. 2000). Pursuant to [28 U.S.C. § 2107\(a\)](#) and [Federal Rule of Appellate Procedure 4\(a\)\(1\)\(A\)](#), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.



Certified as a true copy and issued
as the mandate on Feb 24, 2023

Attest: Jyle W. Coyle
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 22-50959

In this prisoner civil rights case, the district court entered a final judgment dismissing the complaint on September 14, 2023. Therefore, the final day for filing a timely notice of appeal was October 14, 2023.

Plaintiff filed two *pro se* notices of appeal. The first is dated October 26, 2022 and stamped as filed on October 31, 2022. The second is dated November 16, 2022 and stamped as filed on November 21, 2022. Because the notices of appeal are dated October 26, 2022 and November 16, 2022, they could not have been deposited in the prison's mail system within the prescribed time. See FED. R. APP. P. 4(c)(1) (prisoner's *pro se* notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED

No. 22-50959

FEB 27 2023

MARSHALL RAY PARTAIN

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY [Signature] DEPUTY CLERK
Plaintiff - Appellant

Versus

OFFICER JASON HALLMARK, Badge #6307 Austin Police Department;
OFFICER SHARDAY MELERO, Badge #8771 Austin Police Department,

Defendants - Appellees.

MOTION TO RECONSIDER

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, Marshall Partain, hereinafter referred to as "Appellant" in the above-styled and numbered case, and files this, his motion to reconsider, pursuant to the **FED. R. APP. P. - Rule 27(b)**, and in support thereof would respectfully show:

1. Appellant received this court's dismissal for want of jurisdiction on February 22, 2023. On or about September 28, 2022, Appellant received the district court's FINAL-JUDGMENT dismissing his claim while he was an inmate at the Holliday Unit in Huntsville, TX. Appellant was released from the Holliday Unit (TOCJ-CID) the following day on September 29, 2022.
2. Appellant contends that he is a layman at law and afflicted with severe mental illness; he has previously moved for appointment of counsel in both

district court and this honorable court to no avail. Nonetheless, the district court may extend the time to file a notice of appeal under the provisions of the FED. R. APP. P. Rule 4(a)(5)(A)(ii), which states:

"(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." (Emphasis added.)

In this case, the district court is well aware of Appellant's extensive incarcerations due to his mental illness; and has previously granted him extensions of time to file for "good cause".

3. According to the Bouvier Law Dictionary (2012 Edition) tolling is defined as "the time that is lost may be considered to be added to the end of the time that otherwise would have been allowed;" it may also mean "to stop the running of a time period." Appellant attests that he believed that he had 30-days in which to file his Notice of Appeal after RECEIPT of the district court's dismissal. Why it took nearly two (2) weeks for the clerk to serve the Appellant/Defendant remains a mystery... and caused him harm.
4. Under the FED. R. APP. P. Rule 25(a)(2)(iii), it states (in pertinent part) that "the court of appeals may exercise its discretion to permit the later filing..." Appellant mailed his initial notice of appeal on Oct. 26, 2022; a mere 12-days after the deadline which he erroneously thought had been extended due to EQUITABLE TOLLING. To avoid a travesty of justice, in the best interests of society and the Appellant, he beseeches this court to exercise its discretion and hear his meritorious appeal from the district court's ruling.

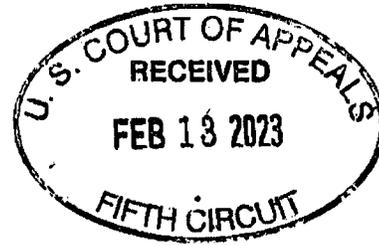
PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant implores this honorable court to grant his motion to reconsider and permit his untimely notice of appeal.

DATED: February 23, 2023

RESPECTFULLY SUBMITTED,
Marshall R. Partain
Marshall Ray Partain

22-50959

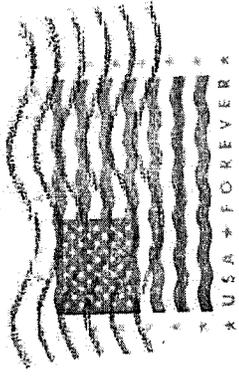


Mr. Marshall Ray Partain
#2112336
Avalon - Austin Transitional Center
3154 E. Highway 71
Del Valle, TX 78617

Marshall R. Partain # 2221063
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Texas Commission on Judicial Conduct
P.O. Box 12265
Austin, TX 78711

Received by
NOV 03 2022
State Commission on
Judicial Conduct



AUSTIN TX 786
RIO GRANDE DISTRICT
1 NOV 2022 PM 3 L

78711-226565

COPY

RECEIVED

Feb. 23, 2023

FEB 27 2023

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY

Clerk of Court

U.S. District Court

Western District of Texas - Austin Division

501 W. 5th St., Ste. 1100

Austin, TX 78701

Re: Motion to Reconsider

Dear Clerk:

Enclosed please find a copy of my motion to reconsider. I ran out paper and ink, so I had to make do with what I have. I have served a copy of same to opposing counsel, Monte L. Barton, Jr.; and the 5th Circuit received the best version of said motion - in ink.

Thanks for your time and assistance.

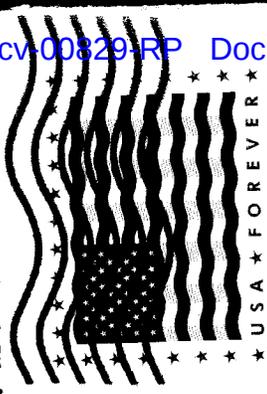
Sincerely,

Marshall Partain

02/27/23

Marshall R. Partain #2301894
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

AUSTIN TX 786
RIO GRANDE DISTRICT
24 FEB 2023 PM 3 L



Clerk of Court
U.S. District Court
Western District of Texas - Austin Division
501 W. 8th St., Ste. 1100
Austin, TX 78701

SCREENED BY C...
FEB 27 2023

78701-381275



UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF TEXAS

Philip J. Devlin, Clerk

501 West Fifth Street, Suite 1100
Austin, Texas 78701
512-916-5896

February 28, 2023

Marshall Ray Partain
#2301898
Travis Co. Correctional Complex
3614 Bill Price Rd.
Del Valle, TX 78617

Re: Partain v. Hallmark et al.
USDC Case No. 1:21-cv-00829-RP
USCA Case No. 22-50959

Dear Mr. Partain:

Our office received the enclosed pleading which is being returned to you.

Although this document is addressed to our court on the envelope, the pleading style and case number indicate that it has been incorrectly sent to our office and should instead be sent directly to the Fifth Circuit Court of Appeals:

U.S. Court of Appeals for the 5th Circuit
600 South Maestri Place
New Orleans, LA 70130

Sincerely,

JMV
By: Deputy Clerk

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 03, 2023

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 22-50959 Partain v. Hallmark USDC
No. 1:21-CV-829 RP

Dear Mr. Devlin,

We have received the Supreme Court order denying certiorari. We previously sent you the judgment issued as mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675