

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF INDIANA**

ANDREW PHILLIPS,
Plaintiff,

Vs.

J.T. WEBB,
THE CITY OF LAFAYETTE, INDIANA and
THE LAFAYETTE POLICE DEPARTMENT,
Defendants.

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, Andrew Phillips, ("Plaintiff") by counsel, for his complaint for damages against Defendants, Webb, the City of Lafayette, Indiana ("City"), and the Lafayette Police Department ("LPD"), alleges and states as follows:

INTRODUCTION

1. On the night of January 7, 2013, Plaintiff was at his residence at 807 South 29th Street in Lafayette, Indiana.
2. That LPD officers Webb and Dumbkowski arrived at this address to investigate a later determined false drug law violation.
3. That upon arrival of LPD officers Plaintiff stepped outside to speak with them when he was illegally searched for a firearm.
4. As a result, Plaintiff demands trial by jury and seeks damage pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution. Plaintiff also seeks damages for Battery.

PARTIES

5. Plaintiff is a citizen of Indiana and currently resides, and at all relevant times, did reside at 807 South 29th Street, Lafayette, Tippecanoe County, Indiana.
6. Defendants Webb and Dumbkowski is a citizen of Indiana and is, upon information and belief currently domiciled in the City of Lafayette, Tippecanoe County, Indiana. Both are employed with LPD.
7. Defendant city is a political subdivision ad defined by Indiana Code § 3-5-2-38 and is located in Tippecanoe County, Indiana.
8. Defendant LPD is a law enforcement agency that acts under authority and direction of City. LPD is located and functions within Tippecanoe County, Indiana. Law enforcement officers who are employed by LPD act as agents and/or employees of both City and LPD.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiff's federal law and constitutional claims pursuant to 28 U.S.C. § 133. These claims arise under the Court Amendment to the United States Constitution and 42 U.S.C. § 1983, and thus the Constitution and laws of the United States of America.
10. This Court has jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a). These claims share a common and operative facts with Plaintiff's federal claim and thus form part of the same case on controversy under Article III of the United States Constitution.
11. Pursuant to 28 U.S.C. §1391(b)(2) this Court, U.S. District Court for Northern District of Indiana, is the proper venue for this action because all events giving rise to the action occurred within this judicial district. The parties all reside within the Northern District of Indiana.

FACTUAL ALLEGATIONS

12. On January 7, 2013 at approximately 10:15pm, Plaintiff responded to a knock on his door.
13. LPD officers were at Plaintiff's door and wished to come in and search Plaintiff's residence.
14. Plaintiff denied entry and asked for a search warrant and LPD officers could not produce one; LPD officers requested that Plaintiff step outside to speak with them.
15. Plaintiff advised he would speak with LPD officers outside his residence but in his yard.
16. Plaintiff exited his residence and was then asked for identification, Plaintiff refused and asked why so many officers were present, Plaintiff was then told to remove his hands from his clothing.
17. Plaintiff was asked to consent to search after Plaintiff told LPD officers he had a gun inside; Webb draws gun puts it in low ready at Plaintiff's knees, Webb excited at word "gun;" Plaintiff calls father; Plaintiff did not submit to search and was physically spun around and had his hands placed above his head.
18. Plaintiff was then "patted down"/searched by Webb without Plaintiff's consent.
19. This search provided nothing.

COUNT 1: WEBB'S DEPRIVATION OF PLAINTIFF'S RIGHTS UNDER THE FOURTH AMENDMENT

20. Plaintiff's incorporates by reference the allegations of paragraphs 1 through 17 as if fully set forth herein.
21. Pursuant to the Fourth Amendment of the United States Constitution, Plaintiff has right to be free of unreasonable search and seizure.
22. When Webb entered Plaintiff's property, knocked on his door and Plaintiff went out of his residence, Plaintiff was searched by Webb without cause causing an unreasonable search.
23. At the time of Plaintiff's search the facts and circumstances within Webb's knowledge did not provide any basis to warrant a search.
24. With regard to any firearm, Plaintiff displayed no firearm on his person and even if he had by bearings arms on his property Plaintiff committed no crime as no license to carry a handgun is required on one's property. Indiana Code 35-47-2-1.
25. At no time did facts and circumstances that Plaintiff was "armed and dangerous" permitting a pat down by law enforcement.
26. Because no reasonable suspicion existed at the time of the search of Plaintiff, or at any other relevant time, no reasonable officer could have believed Webb's actions were within bounds of the law.

27. Webb is liable to Plaintiff in his individual capacity for deprivation of Plaintiff's right under the Court Amendment of this United States Constitution pursuant to 42 U.S.C. § 1983.

COUNT II: BATTERY

28. Plaintiff incorporates Paragraphs 1-25.
29. By intentionally touching Plaintiff's body in a rude, insolent, or offensive, harmful manner Webb did thereby inflict a battery upon Plaintiff.
30. There being no reasonable suspicion that Plaintiff was armed and dangerous this conduct was without justification and without legal authority.
31. Having inflicted such harm upon Plaintiff while acting as the agent (employee of LPD and City, and acting within the scope of employment of LPD and City, liability for the torturous conduct of Webb attaches to both City and LPD and no provisions of the ITCA immunizes Webb, City or LPD from such liability.

PUNITIVE DAMAGES

32. The actions of Webb as alleged were intentional, malicious, callous and committed with heedless disregard for their consequences.

WHEREFORE Plaintiff, Andrew Phillips, prays for the following:

- A. An award against Defendants for an amount that will compensate him for the injury.
- B. An award of punitive damages against Defendant's in an amount sufficient to punish Defendants for their actions and to deter others.
- C. An award of attorney fees where provided for by applicable law.
- D. Liquidated damages and court costs where provided for by applicable law.
- E. All other relieve that is just and proper.

JURY DEMAND

33. Plaintiff hereby respectfully demands a trial by jury in this matter.

Respectfully submitted,

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