

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01177-LTB

DAKOTA TYLER MCGRATH,

Plaintiff,

v.

FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS, in his individual
capacity,

Defendant.

**DEFENDANT’S ANSWER, DEFENSES, AFFIRMATIVE DEFENSES, AND JURY
DEMAND TO PLAINTIFF’S COMPLAINT FOR DAMAGES AND JURY DEMAND**

Defendant Fort Collins Police Services Officer Nick Rogers,¹ through his counsel, Thomas J. Lyons and Matthew J. Hegarty of Hall & Evans, L.L.C., hereby submits his Answer, Defenses, Affirmative Defenses, and Jury Demand to Plaintiff’s Complaint for Damages and Jury Demand (“Complaint”), and admits, denies, and avers as follows:

RESPONSE TO “INTRODUCTION”

1. Paragraph 1 of the Complaint is a purely prefatory statement containing a wide variety of legal conclusions and self-serving statements from Plaintiff Dakota Tyler McGrath (“Plaintiff”), to which no response is required. To the extent any allegations in Paragraph 1 are deemed factual in nature, Defendant denies Plaintiff suffered any compensable injury, damage, or loss as a direct result of his actions, denies Plaintiff is entitled to any of the relief listed as being sought in Paragraph 1, denies he acted

¹ Incorrectly identified in the Complaint as “Nick Rodgers.”

inappropriately or without lawful authority in any interaction respecting Plaintiff, and specifically denies his conduct was willful or wanton in any respect. To the extent any further response is required, Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 1, and on that basis denies them.

RESPONSE TO “JURISDICTION AND VENUE”

2. Defendant admits Plaintiff contends his constitutional rights allegedly were violated, but states Plaintiff’s claims are without merit and Plaintiff is not entitled to any of the relief he seeks in the Complaint to the extent alleged in Paragraph 2 of the Complaint. Defendant admits this Court has jurisdiction over matters involving federal questions pursuant to 28 U.S.C. § 1331 but denies 42 U.S.C. § 1983 provides an independent basis for this Court’s jurisdiction, to the extent Plaintiff may assert such claims in proper fashion to the extent alleged in Paragraph 2. Defendant denies all other allegations in Paragraph 2 while noting that federal rules and statutes speak for themselves.

3. Defendant does not contest the propriety of venue in this matter to the extent asserted in Paragraph 3 of the Complaint, but states Plaintiff’s claims are without merit and Plaintiff is not entitled to any of the relief he seeks in the Complaint to the extent alleged in Paragraph 3 of the Complaint. To the extent the remaining allegations in Paragraph 3 are deemed factual in nature, Defendant lacks knowledge or information sufficient to admit or deny them, and on that basis denies them.

4. The allegations in Paragraph 4 of the Complaint are conclusory and seek to state an objectionable legal conclusion, to which no response is required. To the extent the remaining allegations in Paragraph 4 are deemed factual in nature, Defendant lacks knowledge or information sufficient to admit or deny them, and on that basis denies them.

RESPONSE TO “JURY TRIAL DEMANDED”

5. In response to Paragraph 5 of the Complaint, Defendant states Plaintiff appears to invoke the right to trial by jury.

RESPONSE TO “PARTIES”

6. On information and belief, Defendant admits Plaintiff resided in Larimer County, Colorado, during the time period relevant to his Complaint. However, Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 6 of the Complaint, and on that basis denies them.

7. Responsive to the allegations in Paragraph 7 of the Complaint, Defendant admits he was a United States citizen domiciled in Colorado and was employed by the Fort Collins Police Services during the time period relevant to the Complaint.

8. The allegations in Paragraph 8 of the Complaint are conclusory and seek to state objectionable legal conclusions, and therefore no response is required. To the extent the allegations are deemed factual in nature, Defendant admits he was acting in the course and scope of his employment with the Fort Collins Police Services during the timeframe relevant to the Complaint but denies any liability in his individual capacity. To the extent any further response is required to the remaining allegations in Paragraph 8, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

RESPONSE TO “FACTUAL ALLEGATIONS”

9. Responsive to the allegations in Paragraph 9 of the Complaint, Defendant admits about 06:59 PM on October 20, 2016, he heard a dispatch call informing officers of an alleged assault perpetrated by Plaintiff on an individual stating Plaintiff was his

brother. To the extent any further response is required to the remaining allegations in Paragraph 9, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

10. Responsive to the allegations in Paragraph 10 of the Complaint, Defendant admits during the dispatch call referenced above in Paragraph 9 he heard Plaintiff was alleged to have headbutted the individual in question. To the extent any further response is required to the remaining allegations in Paragraph 10, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

11. Responsive to the allegations in Paragraph 11 of the Complaint, Defendant admits he was dispatched approximately 06:59 PM respecting the dispatch call referenced above in Paragraph 9 and he arrived at or near Plaintiff's location approximately 07:05 PM. To the extent any further response is required to the remaining allegations in Paragraph 11, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

12. Responsive to the allegations in Paragraph 12 of the Complaint, Defendant admits he stepped out of his patrol car, called to Plaintiff, and instructed Plaintiff to come towards him, but Plaintiff did not heed this instruction. To the extent any further response is required to the remaining allegations in Paragraph 12, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

13. Responsive to the allegations in Paragraph 13 of the Complaint, Defendant admits that after he gave Plaintiff multiple commands but Plaintiff did not heed any such command, Plaintiff walked into a nearby alley and Defendant followed with the intent to arrest Plaintiff. To the extent any further response is required to the remaining allegations

in Paragraph 13, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

14. Responsive to the allegations in Paragraph 14 of the Complaint, Defendant admits at this point he saw another officer arrive on scene behind him and utilize one or more lights on his vehicle to light the alleyway.

15. Responsive to the allegations in Paragraph 15 of the Complaint, Defendant admits that after hearing Plaintiff's expression of intent not to comply in response to Defendant's directives to Plaintiff to stop and after the arrival of the officer referenced above in Paragraph 14, Defendant closed the distance between himself and Plaintiff and delivered a single two-handed strike with his straight baton upon the area of Plaintiff's left shoulder or left scapula, which took Plaintiff off his feet. Defendant denies the baton was made of steel. To the extent any further response is required to the remaining allegations in Paragraph 15, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

16. Responsive to the allegations in Paragraph 16 of the Complaint, Defendant admits he delivered a single strike with his straight baton to Plaintiff's right shin area. Defendant affirmatively states he delivered only the single strike and no further strikes. Defendant denies the remaining allegations in Paragraph 16 of the Complaint.

17. Responsive to the allegations in Paragraph 17 of the Complaint, Defendant admits he observed a single circular impact mark along Plaintiff's right shin area. To the extent any further response is required to the remaining allegations in Paragraph 17, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

18. Responsive to the allegations in Paragraph 18 of the Complaint, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

19. Responsive to the allegations in Paragraph 19 of the Complaint, Defendant denies Plaintiff suffered any compensable injury, damage, or loss as a result of his actions. To the extent any further response is required to the remaining allegations in Paragraph 19, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

RESPONSE TO “FIRST CLAIM FOR RELIEF”

20. Responsive to the allegations in Paragraph 20 of the Complaint, Defendant incorporates by this reference his responses to all previous paragraphs.

21. The allegations in Paragraph 21 of the Complaint are conclusory and seek to state objectionable legal conclusions, and therefore no response is required. To the extent the allegations are deemed factual in nature, Defendant admits he was acting in the course and scope of his employment with the Fort Collins Police Services during the timeframe relevant to the Complaint but denies any liability in his individual capacity. To the extent any further response is required to the remaining allegations in Paragraph 21, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

22. The allegations in Paragraph 22 of the Complaint are conclusory and seek to state objectionable legal conclusions, and therefore no response is required. To the extent the allegations are deemed factual in nature, Defendant admits he is a natural person. To the extent any further response is required to the remaining allegations in

Paragraph 22, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

23. Defendant denies the allegations in Paragraph 23 of the Complaint.

24. The allegations in Paragraph 24 of the Complaint are conclusory and seek to state an objectionable legal conclusion, and therefore no response is required. To the extent the allegations are deemed factual in nature, Defendant denies Plaintiff suffered any compensable injury, damage, or loss as a result of his actions, specifically denies his conduct was willful or wanton in any respect, and denies Plaintiff is entitled to any of the relief listed as being sought in Paragraph 24. To the extent any further response is required to the remaining allegations in Paragraph 24, Defendant is without knowledge or information sufficient to admit or deny them, and on that basis denies them.

25. The allegations in Paragraph 25 of the Complaint are conclusory and seek to state an objectionable legal conclusion, and therefore no response is required. To the extent the allegations are deemed factual in nature, Defendant denies Plaintiff suffered any compensable injury, damage, or loss as a result of his actions and denies Plaintiff is entitled to any of the relief listed as being sought in Paragraph 25. To the extent any further response is required to the remaining allegations in Paragraph 25, Defendant denies all other allegations in Paragraph 25 while noting that federal rules and statutes speak for themselves.

RESPONSE TO “WHEREFORE’ CLAUSE”

26. Defendant denies all allegations following the word “Wherefore” on page 5 of the Complaint and denies Plaintiff is entitled to any of the relief listed as being sought in the “Wherefore” clause or any of the bullet points listed under that clause.

STATEMENT OF DENIAL OF ALLEGATIONS NOT SPECIFICALLY ADMITTED

27. Defendant expressly denies any and all allegations set forth in the Complaint but not specifically admitted in this Answer.

DEFENSES AND AFFIRMATIVE DEFENSES

28. PREFATORY STATEMENT: Counsel has not had an opportunity to participate in discovery through the close of the discovery period in this case or conduct a full investigation into this case's facts. Thus, the defenses set forth below are pled alternatively under Fed.R.Civ.P. 8(d). Defendant will withdraw or modify any defense as may be required under Fed.R.Civ.P. 11 if it is revealed after the discovery period concludes that Defendant cannot prevail in such defense.

29. The Complaint may fail to state a claim on which relief may be granted.

30. Plaintiff may not be entitled to any relief being sought or claimed in the Complaint under one or more of the legal theories asserted therein.

31. To any extent the Court concludes Defendant acted under color of state law with respect to Plaintiff, Defendant is entitled to absolute immunity or qualified immunity, or both such immunities, as well as common law and statutory immunities, with respect to some or all of Plaintiff's claims against him.

32. Plaintiff's claims against Defendant, or some of them, are barred in whole or in part by the failure of personal participation on the part of Defendant.

33. On information and belief, Plaintiff failed to mitigate his damages, if any.

34. On information and belief, some or all of Plaintiff's injuries and damages, if any, were either due to a preexisting condition, or were not aggravated by any act or

omission of Defendant, or were not proximately caused by or related to any act or omission of Defendant.

35. All or part of Plaintiff's claims never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983.

36. At all relevant times, Defendant acted in accordance with all common law, statutory, and constitutional obligations, and without any intent to cause Plaintiff harm.

37. At all relevant times, Defendant lacked the requisite intent to establish any claim against him of willful and wanton conduct, and indeed Defendant also possesses or possessed a reasonable good faith belief in the lawfulness of all his conduct, and Plaintiff's claims fail to establish any basis to conclude Defendant acted in a willful and wanton manner.

38. Plaintiff's injuries, damages, or losses, if any, may have been proximately caused in whole or in part by his own acts or omissions, either in combination with one another or independent of one another.

39. Plaintiff's injuries, damages, or losses, if any, may have been proximately caused by the acts or omissions of third parties over whom Defendant possessed no ability to control or right of control.

40. To any extent, any act or omission on the part of Defendant was in any way involved in any detention of Plaintiff by anyone, any act or omission by Defendant was privileged under applicable law, including the privilege of police officers to use reasonable physical force to effect an arrest, keep a subject in custody, and defend himself or others.

41. In all respects, Defendant behaved in accordance with applicable legal authority in all acts or omissions associated with Plaintiff, negating any claim of liability asserted by Plaintiff against him.

42. Plaintiff is not entitled to, and may not recover, duplicative damages.

43. Plaintiff's claims may be barred in whole or in part by the doctrines of consent, estoppel, waiver, or unclean hands.

44. Defendant never breached any obligation or responsibility to anyone associated with any property or liberty interest of any party in relation to this matter.

45. Defendant acted in accordance with all contractual and legal obligations.

46. To any extent Plaintiff seeks equitable or injunctive relief in the Complaint, Plaintiff cannot satisfy all or some of the prerequisites to a grant of equitable or injunctive relief in this matter and any request for injunctive relief is moot.

47. Defendant is not liable for any punitive damages under state or federal law.

48. Defendant reserves his right to assert other or additional defenses and affirmative defenses as may become known in the course of these proceedings.

DEFENDANT'S JURY DEMAND

49. Defendant likewise demands trial by jury pursuant to Fed.R.Civ.P. 38(b).

WHEREFORE, having answered all allegations of the Complaint that require a response, Defendant Fort Collins Police Services Officer Nick Rogers moves the Court for an Order dismissing all elements of all claims against him in complete and total fashion, awarding him costs and attorney fees, and granting such other and further relief

as the Court deems just and appropriate.

Respectfully submitted this 13th day of June, 2017.

s/ Matthew J. Hegarty

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that, on this 13th day of June, 2017, I electronically filed the foregoing **DEFENDANT'S ANSWER, DEFENSES, AFFIRMATIVE DEFENSES, AND JURY DEMAND TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND JURY DEMAND** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email address:

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