

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2005 NOV 30 P 5:02
Loretta G. Whyte
CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

PATRICIA L. KONIE

*

CASE NO.

05 - 6310

VERSUS

*

SECTION:

SECT. F MAG. 3

**THE STATE OF LOUISIANA, THE
LOUISIANA STATE POLICE, THE
STATE OF CALIFORNIA, THE
CALIFORNIA HIGHWAY PATROL, AND
STATE TROOPERS AND/OR PATROLMEN
JOHN DOE AND RICHARD ROE**

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**COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

1.

This is an action for civil damages, including both of compensatory and exemplary damages, pre-judgment interest and taxable costs, including reasonable attorney's fees.

2.

Plaintiff in this action is Patricia L. Konie, a competent person of the full age of majority who, at all material times, was and now is a citizen of the State of Louisiana and a resident of the Parish of Orleans, State of Louisiana.

3.

Made defendants herein are the following:

Fee 250.
 Process _____
 Dktd _____
CtRmDep _____
Doc. No. _____

- a) The State of Louisiana and its agency and instrumentality,
- b) The Louisiana State Police; and
- c) The State of California and its agency and instrumentality,
- d) The California Highway Patrol; and their employees,
- e) Troopers and/or Patrolmen John Doe and Richard Roe.

4.

This Court has jurisdiction of the claims asserted herein pursuant to the provisions of 28 USC § 1331 and 28 USC § 1343. This Court has jurisdiction of the state law claims asserted herein pursuant to the provisions of 28 USC § 1367.

5.

On September 8, 2005, defendants, acting under color of State law in an official capacity, and in violation of federal and state law, wrongfully trespassed on premises legally occupied by plaintiff at 2348 Magazine Street, New Orleans, Louisiana, and committed the following additional torts against plaintiff, her person and her property:

- a) Assault and battery, including using excessive force under the circumstances;
- b) False imprisonment by illegally taking plaintiff into custody and transporting her to South Carolina, from which she did not return to New Orleans until October 13, 2005;
- c) Intentional infliction of emotional distress; and
- d) Conversion of legally owned property, to wit, a chrome 32 caliber Colt revolver, with a pearl handle, which has not been returned to plaintiff.

6.

By virtue of their having committed the above-identified torts against plaintiff and her property, defendants violated rights, privileges and immunities guaranteed to plaintiff under the Second, Fourth and Fourteenth Amendments of the United States Constitution, all in violation of 42 USC § 1983.

7.

In addition, certain of the defendants conspired to deprive plaintiff of rights, privileges and immunities guaranteed to plaintiff by the United States Constitution, all in violation of 42 USC § 1985.

8.

Further, certain of the defendants, who had full knowledge of their colleagues' conspiring to violate, and actually violating, plaintiff's constitutional rights, and committing torts against plaintiff's person and property, failed to intervene, all in violation of 42 USC § 1986.

9.

Defendants' acts and omissions were practiced with malice and/or with reckless disregard for plaintiff's federally protected rights, as well as her rights under state law.

10.

As a direct result of the above-described tortious and illegal conduct by defendants, plaintiff sustained severe and disabling personal injuries, including injuries to her face, nose, left eye, left shoulder, left arm and chest, among other injuries to her mind and body, for which surgery may be necessary, and causing plaintiff excruciating pain, suffering, mental anguish, humiliation and embarrassment.

11.

Plaintiff avers that the Court should exercise the discretion vested in it and order an award of reasonable attorney's fees to plaintiff as part of the taxable costs pursuant to the provisions of 42 USC § 1988, since the tortuous conduct complained of herein was clearly in excess of the power and jurisdiction of law enforcement officers.

12.

Plaintiff demands trial by jury of all issues.

WHEREFORE, Plaintiff prays for judgment in her favor, and against defendants, jointly, severally in solido, for the full amount of her damages, both compensatory and punitive, together with pre-judgment interest, costs and attorney's fees, and for all other just and equitable relief, including the return of her revolver.

**LAW OFFICES OF
ASHTON R. O'DWYER, JR., L.L.C.
Counsel for Plaintiffs**

By: 

Ashton R. O'Dwyer, Jr.
Bar No. 10166
One Canal Place
Suite 2670
New Orleans, LA 70130
Tel. (504) 561-6593

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PATRICIA L. KONIE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF ORLEANS
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

THE STATE OF LOUISIANA,
ET AL

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT BATON ROUGE EAST
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ASHTON R. O'DWYER, JR.
ONE CANAL PLACE - SUITE 2670
504-561-6561

ATTORNEYS (IF KNOWN)

SECT. F MAG. 3

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 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)

| 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 (Excl. 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 | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" 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 checked="" type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| 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 type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | |
| | | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | 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)) | |
| | | | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609 | |

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
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

CONSTITUTION AND 42 USC 1983, 1985, 1986

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

11/30/05

SIGNATURE OF ATTORNEY OF RECORD

Ashton R. O'Dwyer, Jr.

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