

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE
4:19-cv-90-BO

DOMINIC FRANKS,

Plaintiff,

v.

BEAUFORT COUNTY SHERIFF'S
OFFICE; ERNIE COLEMAN, in his
individual capacity; KELLY COX, in
his individual capacity; CHARLIE ROSE,
in his individual capacity; WILLIAM
RAGLAND, in his individual capacity and
JOHN DOE 1-10,

Defendants.

ANSWER OF DEFENDANTS

NOW COME defendants Beaufort County Sheriff's Office, Ernie Coleman, Kelly Cox, Charlie Rose, and William Ragland, by and through counsel, and, responding to the plaintiff's Complaint, answer and allege as follows:

RESPONSE TO COMPLAINT FOR DAMAGES

Plaintiff Dominic Franks, who was fired from his position as a Beaufort County sheriff's deputy for unstable, aggressive, and unprofessional behavior, has made false allegations and defamatory statements in this Complaint against the defendants, who emphatically deny these allegations. Franks continued his unstable, aggressive, and unprofessional behavior after he was fired, has engaged in tortious and possibly criminal behavior in retaliation against former colleagues, and filed an unfounded complaint with the U.S. Equal Employment Opportunity Commission. After reviewing his charge of discrimination and the evidence, the United States

Department of Justice declined to file suit on Franks' behalf, but the EEOC, as required by law, issued Franks a letter allowing him to file this lawsuit.

In this lawsuit, Franks falsely alleges that he was subjected to a hostile work place, called racial epithets, and discriminated against when he created a hostile work environment for co-workers, engaged in assaultive and bizarre behavior, and made inappropriate, offensive, and racially provocative comments about black and white co-workers and residents of Beaufort County. Franks falsely alleges, and without evidence, that a Beaufort County deputy sheriff pointed a gun at him and called him racial epithets. Those allegations are denied and, except for self-serving plaintiff statements, there is no evidence that they occurred. Franks never reported these allegations to anyone at the Beaufort County Sheriff's Office, including his First Sergeant, an African-American and veteran officer who was the direct supervisor of the deputy whom Franks has falsely accused. Not until Franks was fired did he make allegations of racial discrimination even though, while he was a deputy, he filed many complaints about co-workers failing to perform duties or conducting personal business on official time.

The day after he was fired, Franks impersonated the identities of three Beaufort County sheriff's deputies with whom he had had altercations while employed and subscribed their work emails to websites for pornography, substance abuse addiction, and adulterous affairs, and also ordered a dump truck filled with sand to be delivered to the home of one of the deputies. Franks joined another law enforcement agency, but was soon asked to resign for unprofessional behavior. He later fired gunshots into his yard because, he claimed, he wanted to deter officers from planting marijuana plants on his property. Franks claimed that he had installed 24 surveillance cameras on his property to monitor intrusions, falsely claimed to be a federal law enforcement agent, and threatened private citizens who he believed supported the sheriff's office.

He recently threatened the former Democratic nominee for sheriff and falsely reported that a sheriff's deputy had engaged in excessive speeding, an allegation that was easily disproven by a recording system in the deputy's patrol car. With this backdrop of bizarre and unstable behavior, and fabricated allegations, the plaintiff filed this lawsuit.

The defendants now respond to the allegations in the Complaint as follows.

INTRODUCTION

1. It is admitted that the plaintiff is bi-racial, American, and a former Deputy of the Sheriff of Beaufort County. It is admitted that the plaintiff has brought this action pursuant to Title VII of the Civil Rights Act of 1964 against the Beaufort County Sheriff's Office, but it is denied that the Beaufort County Sheriff's Office has the legal capacity to be sued and thus denied that it can be a proper party to this lawsuit. It is admitted that the plaintiff also has asserted claims pursuant to 42 U.S.C. §§ 1981 and 1983 against the individual defendants in their individual capacities, but it is denied that the defendants are liable to the plaintiff. The remainder of the allegations of paragraph 1 are denied.

It is specifically denied that the plaintiff was subjected to hostile, abusive, racist, or unsafe work conditions and specifically denied that he was called any racial epithet, including those described in paragraph 1 of the Complaint, by any member of the Beaufort County Sheriff's Office. It is specifically denied that defendant William Ragland pointed a gun at the plaintiff. It is also specifically denied that the plaintiff ever reported any of the incidents alleged in paragraph 1 to any person at the Beaufort County Sheriff's Office or that he filed any complaints about the same; rather, the plaintiff never made any complaint to anyone at the sheriff's office about any such incident and made no such allegations until he was fired.

It is denied that the plaintiff suffered adverse employment actions as a result of any discriminatory or unlawful act on the part of anyone at the Beaufort County Sheriff's Office. It is further denied that the plaintiff resigned; rather, he was fired because of his poor performance and unstable behavior. It is further denied that the plaintiff was subjected to harassment and retaliation following his termination or after he filed his charge with the Equal Employment Opportunity Commission.

Except as otherwise admitted, the allegations in paragraph 1 are denied.

JURISDICTION AND VENUE

2. It is admitted that the plaintiff brings this Complaint pursuant to Title VII of the Civil Rights Act of 1964, as amended and codified at 42 U.S.C. § 2000e et. seq., and 42 U.S.C. §§ 1981 and 1983, but it is denied that the defendants are liable to the plaintiff in any way. It is admitted that this Court has original jurisdiction pursuant to 28 U.S.C. § 1331, but it is denied that this court has supplemental jurisdiction over any state-law claims because the plaintiff has not asserted any state-law claims over which such jurisdiction would exist. It is admitted that venue in the Eastern District is proper under 28 U.S.C. § 1391. It is admitted that the plaintiff filed a discrimination charge with the U.S. Equal Employment Opportunity Commission on February 23, 2017, that the EEOC investigated the charge, and that the plaintiff received a right-to-sue letter from the EEOC in which he was informed: "Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes." It is further admitted that the U.S. Department of Justice informed the plaintiff that it would not file a lawsuit on his behalf. The defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations about when the plaintiff received said letter, and

thus any allegations about said date or whether this Complaint was filed within 90 days of receipt are denied. Except as otherwise admitted, the allegations of paragraph 3 are denied.

PARTIES

4. [sic] The allegations of the paragraph numbered incorrectly as paragraph 4 are admitted upon information and belief.

5. It is admitted that the plaintiff served as a deputy sheriff in the Beaufort County Sheriff's Office, but it is denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper party to this lawsuit. Except as otherwise admitted, the allegations of paragraph 5 are denied.

6. The allegations of paragraph 6 are admitted.

7. The allegations of paragraph 7 are admitted.

8. The allegations of paragraph 8 are admitted.

9. It is denied that defendant Ragland is currently a deputy sheriff in the Beaufort County Sheriff's Office, but the remainder of the allegations of paragraph 9 are admitted.

10. The allegations of paragraph 10 are denied.

ALLEGED BACKGROUND FACTS

11. It is admitted that the plaintiff is a resident of Beaufort County, served on active duty in the United States Army for four years, and received an honorable discharge, but the defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 11 and therefore the same are denied.

12. It is admitted that, following military service, the plaintiff completed Basic Law Enforcement Training (BLET) at Beaufort County Community College and, at the encouragement of defendant Chief Deputy Charlie Rose, submitted an application for

employment to the Sheriff. It is admitted that the plaintiff underwent entry-level psychological evaluation prior to his appointment as a deputy sheriff and that said testing concluded that he would be “adequate” for the job. The remainder of the allegations of paragraph 12 are denied.

13. The allegations of paragraph 13 are admitted.

14. The allegations of paragraph 14 are denied. Rather, it is admitted that, in in his 20 months as a deputy sheriff, the plaintiff served 336 papers, or about only 17 documents a month.

15. The allegations of paragraph 15 are admitted; however, only one of the two individuals to whom Franks provided aid survived.

16. The allegations of paragraph 16 are denied. It is specifically denied that defendant Ragland pointed his gun at the plaintiff, called him the “n” word, or used any other racial epithet toward or about the plaintiff. It is also specifically denied that any deputy saw any such incident.

17. The allegations of paragraph 17 are denied. It is specifically denied that defendant Ragland pointed his gun at the plaintiff, called him the “n” word, or used any other racial epithet toward or about the plaintiff. It is also specifically denied that any deputy saw any such incident.

18. The allegations of paragraph 18 are denied, except it is admitted that defendant Coleman, with justification, once referred to the plaintiff’s behavior as psychologically unbalanced.

19. The allegations of paragraph 19 are denied. It is expressly denied that the plaintiff ever made any complaint to anyone at the Beaufort County Sheriff’s Office, including but not limited to Lt. Kelly Cox.

20. The allegations of paragraph 20 are denied. It is expressly denied that defendant Ragland ever used any racial epithet, including the word described in paragraph 20, to describe the plaintiff or Treven Franks. It is further denied that Treven Franks ever sued defendant Ragland or that Ragland would have asserted such a falsehood. As evidenced by the complaint filed by Treven Franks, Ragland was not a defendant in *Treven Franks et. al. v. City of Washington*, 4:30-CV-00013-H, the case cited in paragraph 20, and thus this allegation is demonstrably false.

21. It is admitted that Treven Franks sued the City of Washington and the Washington Police Department in 2003, but it is denied that he sued William Ragland and denied that he made any allegations in the complaint against William Ragland. It is admitted that the contents of the complaint speak for themselves, but the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in said complaint and therefore any allegations contained therein are denied. Except as otherwise admitted, the allegations of paragraph 21 are denied.

22. It is denied that the plaintiff reported any alleged conduct of defendant Ragland. It is further denied that the plaintiff was subjected to duty assignments that were not assigned to other deputies. It is admitted that the plaintiff, like all deputies, may have been required to work 13 hours straight on a shift at a hospital in Greenville, North Carolina, if he had custody of an inmate or patient, and that this is common for all deputies. Deputies work 12-hour shifts and are required to remain on duty beyond shift times if the circumstances require. It is further admitted that the plaintiff, like every sheriff's deputy, was often required to work certain sections of the county for several days straight at a time or longer. Deputies are assigned to patrol specific sectors of the county and are expected to know those sectors and remain in them in most cases.

It is denied that the plaintiff was restricted from leaving his assigned sector of the county to get meals or relief and denied that no other deputies were restricted to their assigned patrol sectors of the county. Deputies are expected to remain in their assigned patrol sectors, absent special circumstances, so they can respond to calls in their sectors, but the plaintiff often violated this requirement without any justifiable reason so that he could be with Michael Sheppard, a deputy who patrolled in another sector and with whom Franks had an unusually close relationship. It is admitted that, because Franks' actions left his sector without coverage from the sheriff's office, Franks was ordered to patrol in his sector like all deputies so that his sector would have a deputy to patrol and respond to calls.

23. It is admitted that the plaintiff was disciplined and suspended for one day without pay for an incident on December 8, 2016, at Beaufort County Community College during which he raised his voice and yelled profanities at fellow officers in a classroom in which they were receiving professional training. The remainder of the allegations of paragraph 23 are denied.

24. The allegations of paragraph 24 are denied. It is admitted that the plaintiff was disciplined for an incident at which he used profanity toward Deputy Kevin Sitterson during an emergency call – an incident reported by an emergency medical technician who worked for another agency – but it is denied that he was disciplined for using profanity; rather, the plaintiff was disciplined because he deliberately turned off his body camera during the incident. It is further denied that Deputy Sitterson was fired from the City of Plymouth Police Department and denied that he struck a man who was handcuffed. Except as otherwise admitted, the allegations of paragraph 24 are denied.

25. The allegations of paragraph 25 are denied, except it is admitted that the plaintiff was informed on February 8, 2017, that he would be fired as a result of his third major

disciplinary write-up in eight months. The third violation stemmed from loud verbal threats of physical force the plaintiff made to another sheriff's deputy in a public parking lot between the courthouse and the sheriff's office with other deputies present. Upon information and belief, the plaintiff also committed other violations of sheriff's office policy, including disabling his patrol car's dashboard camera so it would not activate when he drove between 75 mph and 150 mph.

26. It is admitted that the plaintiff submitted a letter of resignation as a deputy sheriff for Beaufort County immediately after he was told that he would be terminated and further admitted that it was dated February 9, 2017. The remainder of the allegations of paragraph 26 are denied. It is specifically denied that the plaintiff was subjected to stress, pain, suffering, or duress as described in this Complaint; denied that he was subjected to a racist or hostile work environment; and denied that he was subjected to harassment, intimidation, threats, or abuse. Except as otherwise admitted, the allegations of paragraph 26 are denied.

27. The allegations of paragraph 27 are denied. Rather, it is admitted that the incident described in paragraph 27 was captured on video from surveillance cameras the plaintiff installed on his private vehicle. It is further admitted that during this incident the plaintiff identified Ragland's patrol car from afar, chased it down at a high rate of speed, sprayed windshield wiper fluid on the patrol car as he passed, slowed down in front of Ragland so as to require Ragland to pass the plaintiff's car, and laughed and joked with his friend Michael Sheppard, a former deputy, on the telephone as he drove by Ragland. It is further admitted that the plaintiff then called 911 to report his fabricated version of events. It is denied that Ragland used any profanity during this incident or made any inappropriate gesture, including raising his middle finger. Except as otherwise admitted, the allegations of paragraph 27 are denied.

28. The allegations of paragraph 28 are denied. It is admitted that the incident described in paragraph 28 was captured on video from surveillance cameras the plaintiff installed on his private vehicle. It is further admitted that, during the incident described in paragraph 28, the plaintiff spotted two sheriff's cars, approached them at a high rate of speed, harassed them by moving close to them and around them, and blew his horn at them. Except as otherwise admitted, the allegations of paragraph 28 are denied.

29. It is denied that defendant Ragland has a history of engaging in inappropriate behavior while on duty. It is admitted that the plaintiff, without Ragland's permission, video-recorded a private conversation that Ragland was having with a friend on a smart phone and posted video of this conversation on the internet without the permission of either party to the conversation, and that the contents of this recording speak for themselves. It is denied that this conversation was directed at the plaintiff, had anything to do with the plaintiff, is relevant to any of the actions contained in the plaintiff's Complaint, or is evidence of any improper treatment of the plaintiff. Except as otherwise admitted, the allegations of paragraph 29 are denied.

30. The allegations of paragraph 30 are denied.

CLAIMS FOR RELIEF

COUNT ONE

HOSTILE WORK ENVIRONMENT/RACIALLY [sic] HARASSMENT/RETALIATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. § 2000e ET. SEQ.

(Defendant Beaufort County Sheriff's Office)

30. The defendants incorporate by reference their responses to paragraphs 1 through 31 as if fully set forth herein.

32. The allegations of paragraph 32 are denied. It is specifically denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper defendant.

33. The allegations of paragraph 33 are denied. It is specifically denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper defendant.

34. The allegations of paragraph 34 are denied. It is specifically denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper defendant.

35. The allegations of paragraph 35 are denied.

COUNT TWO

ALLEGED VIOLATION OF 42 U.S.C. § 1983 **HOSTILE WORK ENVIRONMENT BASED ON RACE, COLOR, AND NATIONAL ORIGIN** **UNDER 42 U.S.C. § 1981**

(Defendants Ragland, Coleman, Cox, and Rose, in their individual capacities)

36. The defendants incorporate by reference their responses to paragraphs 1 through 35 as if fully set forth herein.

37. It is admitted that the contents of 42 U.S.C. § 1983 speak for themselves.

38. It is admitted that the contents of 42 U.S.C. § 1981 speak for themselves.

39. The allegations of paragraph 39 are denied.

40. The allegations of paragraph 40 are denied.

41. The allegations of paragraph 41 are denied.

42. The allegations of paragraph 42 are denied.

43. The allegations of paragraph 43 are denied.

44. The allegations of paragraph 44 are denied.

45. The allegations of paragraph 45 are denied.

COUNT THREE

RETALIATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. § 2000E ET. SEQ.

(Defendant Beaufort County Sheriff's Office)

46. The defendants incorporate by reference their responses to paragraphs 1 through 45 as if fully set forth herein.

47. The allegations of paragraph 47 are denied. It is specifically denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper defendant.

48. The allegations of paragraph 48 are denied. It is specifically denied that the Beaufort County Sheriff's Office has the legal capacity to be sued or is a proper defendant.

COUNT FOUR

ALLEGED VIOLATION OF 42 U.S.C. § 1983 RETALIATION UNDER 42 U.S.C. § 1981

(Defendants Ragland, Coleman, Cox, and Rose, in their individual capacities)

49. The defendants incorporate by reference their responses to paragraphs 1 through 48 as if fully set forth herein.

50. The allegations of paragraph 50 are denied.

PRAYER FOR RELIEF

It is denied that the plaintiff is entitled to any relief from the defendants in this matter.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The plaintiff's Complaint fails to state a claim for which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Second Affirmative Defense

The defendants plead qualified immunity as a bar to the plaintiff's claims; and, to the extent that the plaintiff claims to have asserted any claim under state law, the defendants plead sovereign and/or governmental immunity and public officer's immunity for any such claims.

Third Affirmative Defense

As a matter of law, the Beaufort County Sheriff's Office does not have the legal capacity to be sued and must be dismissed as a defendant from this case.

Fourth Affirmative Defense

Defendants plead all applicable statutes of limitation as a bar to the plaintiff's claims.

Fifth Affirmative Defense

The plaintiff's claims are barred to the extent that he has failed to exhaust his administrative remedies.

Sixth Affirmative Defense

The plaintiff has failed to mitigate his alleged damages.

Seventh Affirmative Defense

Some or all of the plaintiff's claims are barred because they are not within the scope of the EEOC Charge.

Eighth Affirmative Defense

The defendant Sheriff, as the sole hiring and firing authority of Beaufort County sheriff's deputies, had legitimate, non-discriminatory reasons for firing the plaintiff, including but not limited to at least nine disciplinary violation reports, three of which were major.

Ninth Affirmative Defense

As to the plaintiff's request for attorneys' fees, this action is unreasonable, frivolous, meritless, and/or vexatious, and, judged by the reasonable person standard, the plaintiff should be aware that it is so. The defendants are entitled to receive reasonable attorneys' fees and costs incurred as a result of this action.

WHEREFORE, having answered the plaintiff's Complaint, the defendants pray that the Court order that the plaintiff have and recover nothing from the defendants in this action; that the costs of this action, including attorneys' fees, be taxed against the plaintiff; that the defendants be awarded reasonable attorneys' fees and costs incurred in the defense of this action pursuant to 42 U.S.C. § 1988; that there be a trial by jury of any remaining triable issues; and that the Court grant the defendants such other and further relief as is deemed just and proper.

Respectfully submitted, this 30th day of July, 2019.

/s/ Christopher J. Geis
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for defendants in this matter, and is a person of such age and discretion as to be competent to serve process.

That on July 30, 2019, he served a copy of the attached **ANSWER OF DEFENDANTS** by placing said copy in a first class postpaid envelope and addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina.

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