

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) DEVON SULLIVAN,	)
	)
Plaintiff,	)
	)
vs.	)
	)
(1) MATTHEW BURLESON,	)
(2) AJ SOLIS JR,	)
(3) GARRETT DUNLAP,	)
(4) DANNY DUPONT, and	)
(5) ANDY SIMMONS,	)
	)
Defendants.	)

Case No.: 18-CV-223-KEW  
Jury Trial Requested

**COMPLAINT**

**COMES NOW** the Plaintiff, Devon Sullivan, by and through the undersigned attorney, and for his Complaint against the above-named Defendants alleges and avers as follows:

**Introduction**

1. This action seeks to vindicate the Plaintiff’s rights under the Fourth Amendment to the Constitution of the United States. The Plaintiff was deprived of those rights by the Defendants, who, under color of the law of the State of Oklahoma, engaged in an invasion and search of the Plaintiff’s home without a warrant or other reasonable grounds and seized property belonging to the Plaintiff. For this violation of his rights, the Plaintiff requests any and all relief allowed under 42 U.S.C. § 1983.

**Parties**

2. The Plaintiff, Devon Sullivan, is an adult male and resident of the City of Muskogee, Oklahoma.

3. Defendant Matthew Burleson is an adult male who, at all times relevant to this Complaint, was a law enforcement officer employed by the City of Muskogee Police Department. In all respects set forth in this Complaint, Defendant Matthew Burleson acted under color of the law of the State of Oklahoma. Defendant Matthew Burleson is sued in his individual and official capacities.

4. Defendant A.J. Solis Jr. is an adult male who, at all times relevant to this Complaint, was a law enforcement officer employed by the City of Muskogee Police Department. In all respects set forth in this Complaint, Defendant A.J. Solis Jr. acted under color of the law of the State of Oklahoma. Defendant A.J. Solis Jr. is sued in his individual and official capacities.

5. Defendant Garrett Dunlop is an adult male who, at all times relevant to this Complaint, was a law enforcement officer employed by the City of Muskogee Police Department. In all respects set forth in this Complaint, Defendant Dunlop acted under color of the law of the State of Oklahoma. Defendant Garrett Dunlop is sued in his individual and official capacities.

6. Defendant Danny Dupont is an adult male who, at all times relevant to this Complaint, was a law enforcement officer employed by the City of Muskogee Police Department. In all respects set forth in this Complaint, Defendant Danny Dupont acted under color of the law of the State of Oklahoma. Defendant Danny Dupont is sued in his individual and official capacities.

7. Defendant Andy Simmons is an adult male who, at all times relevant to this Complaint, was a law enforcement officer employed by the City of Muskogee Police Department. In all respects set forth in this Complaint, Defendant Andy Simmons acted under color of the law of the State of Oklahoma. Defendant Andy Simmons is sued in his individual and official capacities.

### **Jurisdiction and Venue**

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for the deprivation of rights secured by the Constitution and laws of the United States.

9. Venue properly lies in the Eastern District of Oklahoma under 28 U.S.C. § 1391(b) as all the Defendants reside within the Eastern District of Oklahoma and a substantial part of the events giving rise to this action occurred within this District.

### **Facts**

10. On July 19, 2016, Plaintiff Sullivan was in his residence at Berwick Apartments, apartment B6 at 3300 East Hancock Street within the City of Muskogee, Oklahoma. At the time, Plaintiff Sullivan was a reserve officer with the City of Muskogee Police Department.

11. At approximately 3:00 p.m., Plaintiff Sullivan saw two suspicious vehicles and associated persons in the parking lot of his apartment building. After watching the persons within and around the vehicles, Plaintiff Sullivan came to the conclusion that the persons may be selling and buying controlled substances.

12. Plaintiff Sullivan then called police department dispatch, identifying himself by his unit number, which was 815.

13. Plaintiff Sullivan told the dispatcher he needed any available units to proceed to Berwick Apartments. When the dispatcher asked why, Plaintiff Sullivan told the dispatcher of the vehicles in the parking area and that he suspected the occupants were trying to sell "CDS." Plaintiff Sullivan also provided the dispatcher with a description of the vehicles and the tag number for one of the vehicles.

14. When the dispatcher asked “You advised they shot at you?”, Plaintiff Sullivan responded, “Oh no, they, uh, tried to sell, attempted, to sell CDS and they, uh, were wandering around the premises.”

15. Defendant Burleson was on duty at the time and heard this radio traffic between Plaintiff Sullivan and the dispatcher. Defendant Burleson and another police officer, Officer Hackett, then proceeded to Berwick Apartments.

16. While en route, Defendant Burleson learned that the call about the suspected drug sale came from Plaintiff Sullivan. Defendant Burleson asked Sullivan to call him so that he could get more information.

17. Also while en route, Defendant Burleson received a call from Lt. Devin Beach and Deputy Chief Chad Farmer, who informed him that Plaintiff Sullivan was going through “marriage issues” and could possibly be unstable.

18. Defendant Burleson then got a call from Plaintiff Sullivan, who informed Defendant Burleson that he had not been shot at and that the purpose of the call was Plaintiff Sullivan’s suspicion that there were persons selling controlled substances at the apartment parking lot.

19. Defendant Burleson then asked Plaintiff Sullivan to meet him at a Kum N Go Store located in the vicinity of Berwick Apartments at York and Hancock Streets in Muskogee.

20. Defendant Burleson proceeded to the Kum N Go Store where he met four other police officers, including Defendant Solis and Defendant Dunlap.

21. At approximately 3:45 p.m., Defendant Simmons heard the radio traffic involving Plaintiff Sullivan and the dispatcher, and he and Lt. Pearson drove to the east side of the Kum N Go Store at York and Hancock.

22. Also at approximately 3:45 p.m., Defendant Dupont heard the radio traffic reporting suspicious activity at the Berwick Apartments and began driving his police vehicle toward the scene. Defendant Dupont believed that the officers were meeting at a church just west of Berwick Apartments on Hancock Street and drove into the church parking lot. When he arrived, he saw Plaintiff Sullivan, carrying a backpack, running toward his police vehicle. Defendant Dupont then exited his vehicle.

23. Plaintiff Sullivan then opened the back door of Defendant Dupont's vehicle and threw in his backpack. Defendant Dupont asked Plaintiff Sullivan what was going on, but did not understand Plaintiff Sullivan's response.

24. Plaintiff Sullivan then got in the front seat of Defendant Dupont's vehicle, and as he did so he placed a black pistol on his lap. Defendant Dupont grabbed the pistol and threw it under the front passenger seat. They then drove to the Kum N Go Store at York and Hancock.

25. As Defendant Dupont pulled into the store's parking lot, Defendants Simmons and Pearson also were pulling into the parking lot in their police vehicle. Plaintiff Sullivan then stepped out of Defendant Dupont's vehicle and began speaking with Defendant Simmons. Defendant Simmons noticed that Plaintiff Sullivan had on a ballistic vest, was sweating, and appeared relieved to see him and the other officers.

26. Defendant Simmons also saw that Plaintiff Sullivan had a gun in a belt holster and asked Plaintiff Sullivan to put his hands on the car so Defendant Simmons could take custody of the gun. Plaintiff Sullivan complied and Defendant Simmons took possession of the gun in the holster.

27. Soon thereafter, Defendant Burleson arrived at the scene and began questioning Plaintiff Sullivan about his well-being.

27. Defendants Burleson and Simmons then became aware that Plaintiff Sullivan had another firearm in his front pants pocket. Plaintiff Sullivan allowed Defendant Simmons to take this firearm as well. Defendant Simmons then handed both firearms to Defendant Dupont.

28. Defendant Burleson then began to search Plaintiff Sullivan for additional weapons and while doing so Plaintiff Sullivan informed him that he had a knife in another pocket and allowed Defendant Burleson to retrieve that as well.

29. While taking the knife from Plaintiff Sullivan's pocket, Defendant Burleson found a white bottle that contained 9 white oblong pills. Defendant Burleson identified the pills as controlled substances and took possession of them.

30. Defendant Burleson then went to Plaintiff Sullivan's apartment building with the purpose of clearing the apartment. Once he arrived at Berwick Apartments, Defendant Burleson obtained a key to Plaintiff Sullivan's apartment from the office.

31. Without the consent of Plaintiff Sullivan, Defendant Burleson entered Plaintiff Sullivan's apartment and began to search the apartment.

32. Thereafter, Defendants Simmons, Solis, Dunlap and Dupont came to the apartment and assisted in the search of the apartment and seizure of property located within it. Defendant Simmons also brought Plaintiff Sullivan back to his apartment.

33. After he had already entered Plaintiff Sullivan's apartment and begun to search it and seize property located therein, Defendant Burleson presented Plaintiff Sullivan with a form titled "WAIVER OF DEMAND FOR SEARCH WARRANT." The form recites that Devon Sullivan was informed of his constitutional rights and that he authorizes police to conduct a search of his residence, and was signed by Plaintiff Sullivan.

34. Plaintiff Sullivan alleges and avers that the WAIVER OF DEMAND FOR SEARCH WARRANT did not provide the Defendants with effective consent to search his apartment and seize property found therein because it was obtained after the Defendants had already entered the Plaintiff's residence without consent, warrant, or other lawful basis and that any consent was the result of this prior unlawful conduct by the Defendants and was otherwise involuntary and ineffective to consent to the search of the premises.

35. During the search, the Defendants found and confiscated approximately 30 firearms, all of which were legally obtained and possessed by Plaintiff Sullivan.

36. Plaintiff Sullivan was thereafter charged with illegal possession of controlled dangerous substances in violation of the law of the State of Oklahoma as a result of his possession of the 9 pills seized by Defendant Burleson. All charges were resolved in favor of Plaintiff Sullivan based on proof that he had valid prescriptions for the substances he possessed.

### **First Cause of Action**

#### **Deprivation of Fourth Amendment Rights – 42 U.S.C. § 1983**

37. The Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1-36 above.

38. The Defendants, acting individually and in concert, conducted a warrantless search of the Plaintiff's residence on July 19, 2016, which was unreasonable and not justified by any exception to the requirement of a warrant for searches imposed by the Fourth Amendment to the United States Constitution.

39. The Defendants, acting individually and in concert, executed a warrantless seizure of property belonging to and located within the residence of the Plaintiff on July 19, 2016, and

such warrantless seizure was unreasonable and not justified by any exception to the requirement of a warrant for seizures imposed by the Fourth Amendment to the United States Constitution.

40. In conducting the search and seizures of the Plaintiff's property, the Defendants acted under color of the law of the State of Oklahoma.

41. As a result of the deprivation of the Plaintiff's Fourth Amendment rights, he has suffered damages for which he is entitled to relief under 42 U.S.C. § 1983.

**Prayer for Relief**

42. WHEREFORE, based on the foregoing, the Plaintiff prays that this Court grants him all relief to which he is entitled under 42 U.S.C. § 1983 and all other applicable provisions of law, including money damages in an amount to be determined at trial, costs, and attorneys' fees under 42 U.S.C. § 1988.

Respectfully submitted,

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