

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

BILLY DON WAFER,

Plaintiff,

v.

THOMAS COLEMAN,
Individually and in his official capacity as
Deputy Sheriff of Swisher County, Texas;
LARRY STEWART,
Individually and in his official capacity as
Sheriff of Swisher County, Texas; and
SWISHER COUNTY, TEXAS,

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

FEB 22 2001 D

CLERK, U.S. DISTRICT COURT
By AOA
Deputy

CIVIL ACTION NO. _____
2-01CV-0079J

PLAINTIFF'S ORIGINAL COMPLAINT

A. Introduction

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983, and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution against Deputy Sheriff Thomas Coleman and Sheriff Larry Stewart of the Swisher County Sheriff's Department, in their individual and official capacities, and against Swisher County, Texas.

2. It is alleged that Thomas Coleman and Larry Stewart conspired and did unlawfully arrest, prosecute, and harass Billy Don Wafer with discriminatory intent and under color of law. It is further alleged that Larry Stewart in his official capacity as Sheriff and chief law enforcement policymaker of Swisher County, Texas failed to properly hire, supervise and train Deputy Coleman whose propensity for dishonesty was

known or obvious to Sheriff Stewart. This action is also brought against Swisher County, Texas, which is sued as a person under 42 U.S.C. § 1983.

B. Parties

3. Plaintiff Billy Don Wafer is an individual who is a citizen of the State of Texas and a resident of Swisher County, Texas. Plaintiff is an African-American.

4. Defendant Thomas Coleman is an individual who is a citizen of the State of Texas and a resident of Ellis County, Texas. At all times relevant to this complaint, he was a duly appointed and acting Deputy Sheriff of Swisher County, Texas, acting under color of law, to wit, under the color of the statutes, ordinances, regulations, policies, customs and usages of Swisher County. He is sued individually and in his official capacity. He may be served with process at the Ellis County Courthouse, 300 S. Jackson St., Waxahachie, Texas 75165.

5. Defendant Larry Stewart is an individual who is a citizen of the State of Texas and a resident of Swisher County, Texas. At all times relevant to this lawsuit, he was employed as the Sheriff of Swisher County, Texas and was acting under color of law, to wit, under the color of the statutes, ordinances, regulations, policies, customs and usages of Swisher County and was the chief policymaker for law enforcement in Swisher County, Texas. He is sued individually and in his official capacity. He may be served with process at the Swisher County Courthouse, Tulia, Texas 79088-2297.

6. Defendant Swisher County, Texas is a political subdivision – a county – organized and existing under the laws of Texas and was the employer of Coleman and Stewart. It may be served with process by and through its County Judge, Harold Keeter, at the Swisher County Courthouse, Tulia, Texas 79088-2297.

C. Jurisdiction and Venue

7. The Court has jurisdiction over Plaintiff's 42 U.S.C. § 1983 claims pursuant to 28 U.S.C. §§ 1331 and 1343(3).

8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and 1392(a), because Defendants reside in this District and the cause of action arose in this District.

D. Facts

9. Defendant Stewart, at a time prior to January 1998, formulated a policy for Swisher County to harass, intimidate, reduce, and to the extent possible, effectively eliminate the county's African-American community through false arrests, indictments, and prosecutions under color of law. This policy, by virtue of Defendant Stewart's position, became and was at all times relevant to this lawsuit the official policy of Swisher County, Texas.

10. Defendant Stewart, as a means of enacting this policy, targeted numerous Swisher County citizens and others present in the county that he considered undesirable. Virtually all of the targeted citizens were African-American or were closely linked to the African-American community.

11. Among those African-American's subject to this policy was Plaintiff Billy Don Wafer.

12. In January 1998, Defendant Stewart took steps to enact the county's policy and caused Defendant Coleman to be hired as a Swisher County Deputy Sheriff using funds supplied by a regional "Task Force."

13. Defendant Coleman was hired to act as an “undercover agent.” His stated task was to develop evidence of criminal wrongdoing, specifically the buying and selling of illegal drugs. On information and belief, his actual task was to assist Defendant Stewart in executing the county’s policy of targeting African-Americans for arrest, indictment and prosecution for crimes they did not commit.

14. Defendant Coleman was not qualified to work as a law enforcement officer. Defendant Stewart was deliberately indifferent to Defendant Coleman’s lack of qualifications. Defendant Stewart knew, or should have known, that Defendant Coleman stood accused by another law enforcement agency of theft and official misconduct. Defendant Coleman’s record demonstrated a strong propensity for dishonesty making him utterly unsuited for the undercover work for which he was hired. Defendant Stewart disregarded the known or obvious risk that hiring Defendant Coleman would result in the deprivation of a third party’s federally protected rights.

15. Defendant Coleman was nevertheless hired pursuant to a Swisher County policy of failing to adequately investigate the background of law enforcement agents before hiring them.

16. In January 1998, Defendants Stewart and Coleman conspired to carry out Swisher County’s policy of eliminating the county’s African-American population by having Defendant Coleman fabricate false evidence and testimony against targeted African-American citizens of the county.

17. Beginning in January 1998 and continuing over a period of approximately eighteen months, Defendant Coleman, acting in disguise as an itinerant construction

worker, and under color of law, began to fabricate false evidence and testimony against numerous African-American citizens of Swisher County, Texas.

18. Defendant Coleman's method was to make up accusations against targeted individuals as he went. The accusations against the accused were nearly identical in nature. Defendant Coleman would file false complaints stating that on a certain day, a certain individual sold him a relatively small quantity of drugs, usually powder cocaine.

19. Defendant Coleman did not use any of the standard methods of documenting the alleged crimes. No surveillance was conducted, no videotapes or audiotapes were made, and no photographs were taken. Defendant Coleman's only method of documenting the alleged sale of drugs was to take a small amount of the alleged substance to the regional task force and make some brief notes regarding the alleged perpetrator. Defendant Stewart or his agents would hold the accusations for use at a later time.

20. Defendant Stewart knew and approved of Defendant Coleman's clearly flawed investigative methods. Defendant Stewart was deliberately indifferent to properly supervising and monitoring Defendant Coleman's conduct as an undercover agent. As such Defendant Stewart acted in accordance with Swisher County's policy and custom of inadequately supervising its law enforcement personnel.

21. Over the next year and a half, Defendant Coleman had made over 100 accusations against at least 41 different targeted citizens. On the sole basis of Defendant Coleman's false testimony and fabricated evidence, grand jury indictments were procured against dozens of people.

22. One of the falsely accused was Plaintiff Billy Don Wafer.

23. On or about July 23, 1999, a pre-dawn raid was made on the homes of the accused in Tulia, Texas. Approximately 10% of the African-American population of Tulia was put behind bars, all on the basis of Defendant Coleman's accusations.

24. Plaintiff Billy Don Wafer was among those falsely arrested. At no time did Defendant Stewart or Defendant Coleman have probable cause for the arrest of Plaintiff and there was no legal cause or excuse to seize the person of Plaintiff. The warrant for Plaintiff's arrest was obtained through the use of false statements and fabricated evidence.

25. The specific allegation against Plaintiff was that he had arranged for the sale of cocaine to Defendant Coleman on January 18, 1999. This allegation was entirely false.

26. Defendants Coleman and Stewart both knew that the allegations against Plaintiff were false. Nevertheless, Plaintiff was indicted and arrested because of his race and despite the fact of his innocence.

27. Plaintiff was kept in jail from approximately July 23, 1999 to July 29, 1999. Plaintiff paid approximately \$700.00 to a bonding company in order to secure his release on \$25,000.00 bail.

28. Plaintiff's bonding company eventually surrendered his bond and Plaintiff was put back in jail held until March 23, 2000, when bond was again arranged. During his second period in jail, Plaintiff arranged for another bonding company in Amarillo, Texas to post a bond in exchange for \$500.00. During his stay in jail Plaintiff lost his job and the ability to pay for a home that he and his family had arranged to buy.

29. After his release, nearly a year and a half of legal proceedings took place while Plaintiff was kept in a constant state of fear, anxiety, and worry over his fate.

30. Following a judicial determination that the allegations against Plaintiff were unfounded, Plaintiff's indictment was eventually dismissed. However, irreparable damage to Plaintiff had already been done.

31. In securing the indictment, arrest and prosecution of Plaintiff, Defendants Coleman and Stewart were motivated in whole or in part by Plaintiff's race and thereby acted with discriminatory intent. Defendants Coleman's and Stewart's actions toward Plaintiff were further done in accordance with Swisher County, Texas policy to harass, intimidate, reduce, and to the extent possible, effectively eliminate the county's African-American community through false arrests, indictments, and prosecutions under color of law.

E. Constitutional Violations and Damages

32. Paragraphs 1 through 29 are incorporated herein by reference as though fully set forth.

33. As a direct and proximate result of the said acts of Defendant Coleman, Defendant Stewart and Defendant Swisher County, Texas, Plaintiff Billy Don Wafer suffered the following injuries and damages:

- a. Violation of his established and well settled constitutional rights as protected by the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure of his person;

- b. Violation of his established and well settled constitutional rights as protected by the Fourteenth Amendment to the United States Constitution to equal protection of the laws;
- c. Violation of his established and well settled constitutional rights as protected by the Fifth and Fourteenth Amendments to the United States Constitution to due process of law;
- d. Loss of his physical liberty;
- e. Physical pain and suffering;
- f. Mental anguish and emotional distress;
- g. Lost wages and loss of earning capacity; and
- h. Damage to his credit and reputation.

34. The conduct of the Defendants demonstrated deliberate indifference toward the rights of the Plaintiff. The intentional, malicious, and willful nature of such conduct by the Defendants, and the conscious disregard of Plaintiff's rights and welfare supports the imposition of punitive damages.

35. It was necessary for Plaintiff to hire the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiff is entitled to an award of attorney's fees and costs under 42 U.S.C. § 1988.

F. Causes of Action

COUNT I – 42 U.S.C § 1983 Against Thomas Coleman

36. Paragraphs 1 through 35 are incorporated herein by reference as though fully set forth.

37. Plaintiff Billy Don Wafer claims damages for the injuries set forth above under 42 U.S.C. § 1983 against Defendant Thomas Coleman for violation of his constitutional rights under color of law.

COUNT II – 42 U.S.C § 1983 Against Larry Stewart

38. Paragraphs 1 through 35 are incorporated herein by reference as though fully set forth.

39. Plaintiff Billy Don Wafer claims damages for the injuries set forth above under 42 U.S.C. § 1983 against Defendant Larry Stewart for violation of his constitutional rights under color of law.

COUNT III – 42 U.S.C § 1983 Against Swisher County, Texas

40. Paragraphs 1 through 35 are incorporated herein by reference as though fully set forth.

41. Sheriff Stewart as chief policymaker for law enforcement developed and maintained policies or customs in Swisher County, Texas that exhibited deliberate indifference to the constitutional rights of persons in Swisher County, and which caused the violation of Plaintiff Wafer's rights.

42. Sheriff Stewart as chief policymaker for law enforcement developed and maintained a policy and/or customs in Swisher County, Texas to harass, intimidate, reduce, and to the extent possible, effectively eliminate the county's African-American community through false arrests, indictments, and prosecutions.

43. As a result of the above described policy and custom, law enforcement officers of Swisher County, Texas, including Defendants Coleman and Stewart,

unlawfully arrested, indicted and prosecuted numerous citizens of Swisher County, Texas, including Plaintiff Billy Don Wafer.

44. Sheriff Stewart as chief policymaker for law enforcement developed and maintained a policy and/or customs in Swisher County, Texas to inadequately investigate the background of Thomas Coleman, thereby failing to adequately protect its citizens against constitutional violations by Thomas Coleman.

45. Sheriff Stewart as chief policymaker for law enforcement developed and maintained a policy and/or customs in Swisher County, Texas to inadequately train and supervise its Thomas Coleman, thereby failing to adequately discourage further constitutional violations on the part of Thomas Coleman.

46. As a result of the above described policies and customs, Defendant Coleman, believed that his actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

47. The above described policies and customs demonstrated a deliberate indifference on the part of Sheriff Larry Stewart and Swisher County, Texas to the constitutional rights of persons within the County, and were the cause of the violations of Plaintiff's rights alleged herein.

G. Prayer for Relief

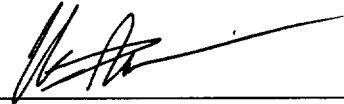
48. WHEREFORE, the Plaintiff asks for judgment against each Defendant pursuant to each cause of action, singularly and collectively, for:

- a. Compensatory damages;
- b. Punitive damages;

- c. Reasonable attorney's fees and costs of suit;
- d. Prejudgment and Post-judgment interest; and
- e. All other relief as this Court may deem appropriate.

Respectfully submitted,

HOFFMAN, SHEFFIELD & SAUSEDA
1008 S. Madison
Amarillo, Texas 79101
Telephone: (806) 376-8903
Telecopier: (806) 376-5345



Chris Hoffman
State Bar No. 24002299
Tim Hoffman
State Bar No. 09788600

CO – COUNSEL:

JEFF BLACKBURN, ATTORNEY AT LAW
718 W. 6TH Street
Amarillo, Texas 79102
Telephone: (806) 371-8333
State Bar No. 02385400