

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

**RESPONSE IN OPPOSITION TO DEFENDANTS’
MOTION TO SET ASIDE CLERK’S ENTRY OF DEFAULT**

I. Introduction

Plaintiff Ernest Taylor instituted this action on September 3, 2013. [Doc. 1]. On October 22, 2013, service upon Defendants The City of Baton Rouge, Mary Roper, Carl Dabadie, Jr., Lisa Freeman, Patrick Wenneman, and James Thomas (referred to collectively as “Defendants”) was waived by James L. Hilburn of the East Baton Rouge Parish Attorney’s Office. [Doc. 3]. The waiver included an acknowledgement that the Defendants must file an answer, or otherwise defend the suit within 60 days from September 9, 2013 (November 8, 2013). *Id.* Thereafter, on April 16, 2014, more than seven months after the filing of Plaintiff’s Complaint, Plaintiff moved for entry of default due to Defendants’ failure to answer or otherwise defend. [Doc. 15]. The Clerk granted Plaintiff’s request for entry of default the same day. [Doc. 17].

On April 22, 2014 Defendants filed a Motion to Set Aside Clerk’s Entry of Default pursuant to Fed. R. Civ. P. 55(c). [Doc. 22]. For the reasons that follow, Defendants’ Motion should be DENIED.

II. Relevant Facts

A. Course of Proceedings and Interactions of Counsel

On or about September 9, 2013, counsel for Plaintiff, Terrence J. Donahue, Jr. (“Donahue”), mailed a copy of the Complaint and Summons in this action, along with a request for waiver of service to Defendants. *See* Affidavit of Terrence J. Donahue, Jr. (“Donahue Affidavit”), attached as Exhibit A. The documents were received by Defendants on September 10, 2013 – the following day. *Id.*; U.S. Postal Service Documentation, attached hereto as Exhibit B. Thereafter, on October 15, 2013, Donahue spoke with Mr. James Hilburn (“Hilburn”) of the East Baton Rouge Parish Attorney’s Office, who indicated that the Office of the Parish Attorney would be representing Defendants, and waiving service on their behalf. Ex. A, Donahue Affidavit. Hilburn also indicated a desire to coordinate the defense of Plaintiff’s civil claims with the prosecution of the criminal charges pending against Plaintiff in Baton Rouge City Court. *Id.* Throughout November and early December, Donahue and Hilburn engaged in discussions attempting to determine the entity charged with prosecuting the criminal charges against Mr. Taylor. *Id.*

On December 11, 2013, Donahue sent e-mail correspondence to Hilburn stating the following:

I have exchanged e-mails with Mr. [Kurt] Wall who has indicated that the AG’s office currently does not intend to prosecute the charges against Mr. Taylor. Mr. Wall indicated that despite the recusal order, they have received nothing from the City Prosecutor or Parish Attorney’s offices that would enable them to prosecute any charges, or comply with any discovery requests. Mr. Wall said he could offer no information, and therefore felt that meeting with us would be a futile exercise.

As a result, I think it necessary to move forward with Mr. Taylor’s claims in federal court even though you may be unable to coordinate your efforts with the prosecution of the criminal charges (which appear to have been abandoned). If you have time this week or next, I would like to speak with you about beginning to perform some preliminary discovery, getting an answer or some form of

appearance on the record, and also discuss submitting a status report to the magistrate. The form issued by the court is attached.

See December 11, 2013 E-mail Correspondence, attached as Exhibit C. Hilburn and Donahue held a telephone conference the following day wherein Hilburn indicated that an answer to Plaintiff's complaint would be filed in the near future. Ex. A, Donahue Affidavit. Hilburn also indicated that a motion to dismiss certain defendants on immunity grounds would likely be filed as well. *Id.*

Thereafter, on February 24, 2014, Donahue again sent e-mail correspondence to Hilburn inquiring as to whether there had been progress on making the filings with the Court. *See* February 24, 2014 E-mail Correspondence, attached as Exhibit D. On March 5, 2014, Hilburn sent an e-mail to Donahue stating that Tedrick Knightshead ("Knightshead") would be "taking over the file" relating to Mr. Taylor's case, due to Hilburn's retirement from the Parish Attorney's Office. *See* March 5, 2014 E-mail Correspondence, attached as Exhibit E. Thereafter, Donahue attempted to contact Knightshead by telephone on numerous occasions regarding Mr. Taylor's case, leaving messages with Michelle Bailey of the Parish Attorney's Office. Ex. A, Donahue Affidavit. Donahue also sent paper copies of filings made with the Court to Knightshead's attention at the East Baton Rouge Parish Attorney's Office. *Id.* Despite repeated attempts to engage, Donahue received no response or other contact from the Parish Attorney's Office, and on April 16, 2013, he filed a Motion for Entry of Default. *Id.*

B. The Criminal Case – *City of Baton Rouge v. Ernest Taylor*

While largely irrelevant for the purposes of Defendants' Motion, the course of the

criminal charges levied against Ernest Taylor as a result of the events of October 13, 2012, merits brief discussion. Three separate criminal charges were filed against Ernest Taylor in Baton Rouge City Court as a result of the events described in Plaintiff's Complaint: (1) violation of Baton Rouge Code of Ordinances §13:95.3 – POSS WPN WHERE ALCOHOL SOLD/CC (Primary Offense); (2) violation of Baton Rouge Code of Ordinances §13:108 – RESISTING AN OFFICER/CC; and (3) violation of Baton Rouge Code of Ordinances §11:283 – HEADLIGHTS REQUIRED/CC. *See City of Baton Rouge v. Ernest Taylor*, Baton Rouge City Court, Case No. 12-CR-106939S; [Doc. 1-1], pp. 2-4.

On October 29, 2013 Plaintiff filed a Motion to Quash the criminal charges then pending against him. *See* File Stamped Copy of Motion to Quash, attached hereto as Exhibit F. The City Prosecutor's office filed no response to the motion to Quash, but filed a motion to recuse itself from the criminal case as a result of this suit, which the Court granted. *City of B.R. v. Ernest Taylor, supra*. Subsequently, a representative of the Louisiana Attorney General's Office, Mr. Jeff Traylor, appeared on behalf of the City of Baton Rouge in connection with the criminal case. The Louisiana Attorney General's Office also filed no response in defense of the criminal charges brought against Mr. Taylor. On April 28, 2014 – the date on which Plaintiff's Motion to Quash was to be heard, and trial of the criminal charges was scheduled to occur – the Attorney General's Office dismissed all of the charges brought against Mr. Taylor.¹

III. Law and Argument

A. Standard of Law

¹ Despite this fact, The City of Baton Rouge has not relinquished possession of Plaintiff's lawfully held firearms.

Fed. R. Civ. P. 55(c) provides that a court may set aside an entry of default for “good cause.” *See also, Baldwin v. Taishang Gypsum Co., Ltd. (In re Chinese-Manufactured Drywall Prods. Liab. Litig.)*, 742 F.3d 576, 594 (5th Cir. 2014); citing *Lacy v. Sitel Corp.*, 227 F.3d 290, 291-292 (5th Cir. 2000). To determine whether the “good cause” requirement of Fed. R. Civ. P. 55(c) has been satisfied courts consider three factors: (1) whether the default was wilful; (2) whether setting aside the default judgment would prejudice Plaintiffs; and (3) whether the defendant has presented a meritorious defense. *In re Chinese-Manufactured Drywall*, 742 F.3d at 594.

“A finding of willful default ends the inquiry, for when the court finds an intentional failure of responsive pleadings there need be no other finding.” *Id.*, quoting *Lacy* at 292. Where a defendant’s neglect is at least a partial cause of its failure to respond, the defendant has the burden to convince the court that its neglect was excusable, rather than wilful, by a preponderance of the evidence. *Id.*, citing *Rogers v. Hartford Life & Accident Ins. Co.*, 167 F.3d 933, 939 (5th Cir. 1999); *In re OCA, Inc.*, 551 F.3d 359, 372 (5th Cir. 2008). The inquiry of whether a defendant’s failure to respond was wilful properly focuses on the time period before the entry of default. *Id.* Thus, a defendant’s prompt response to a suit after being placed in default cannot cure a default resulting from wilful conduct or inexcusable neglect. *Id.*

B. Defendants Have Not Shown The Failure to Respond Was Not Wilful

As stated above, in order to have the Clerk’s entry of default set aside pursuant to Fed. R. Civ. P. 55(c), Defendants must establish by a preponderance of the evidence that their failure to respond was not wilful. A wilful default is an intentional failure to respond to litigation. *See e.g., Scott v. Carpanzano*, 2014 U.S.App. LEXIS 1489, *15 (5th Cir. 2014) (unpublished) citing

In re OCA, Inc., supra. Whether a defendant's failure to answer was willful is a factual determination to be made by the Court. *In re OCA, Inc.*, 551 F.3d at 367. To determine whether a defendant's default was willful, a court is required to make a factual determination that may include consideration of the contact between counsel for the parties prior to the entry of the default judgment. *Id.* at 372.

Here, Defendants present the Court with absolutely nothing to indicate that the failure to respond to this litigation was anything other than willful. Rather, Defendants only assert that setting aside the entry of default is appropriate because a determination of Plaintiff's damages may require the Court to "conduct hearings or make referrals" and because "defaults are generally disfavored." As the Fifth Circuit has made abundantly clear, such conclusory arguments are an insufficient basis upon which to set aside an entry of default. Defendants made absolutely no effort to show that their failure to respond was not willful, and as a result, their Motion should be denied.

C. Setting Aside the Default Would Prejudice Plaintiff

Despite the fact that Defendants never requested an extension of the time in which to answer or otherwise defend this case, they did discuss proposed dates for a scheduling order to be entered by the Court. *See* [Doc. 9] (jointly agreed-upon scheduling order proposal). It was not until the deadlines that Defendants had agreed to comply with began to expire – with absolutely no attempts by Defendants to defend this suit or respond to Plaintiff's attempts to engage – that an entry of default was sought.

The result is that Defendants' failure to plead or otherwise defend themselves in this case has prejudiced Plaintiffs in that substantive deadlines appearing in the Scheduling Order issued

by the Court have already expired without Defendants' participation or compliance. *See* [Doc. 10]. For example, the deadline for the parties to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) expired on April 14, 2014 – two days before Plaintiff moved for the Clerk's Entry of Default. *See* Ex. A, Donahue Affidavit While Defendants have moved to set aside the properly obtained Clerk's default, Plaintiff has still not received the disclosures required by the Scheduling Order and the Federal Rules of Civil Procedure. *Id.* In addition, the Scheduling Order set a deadline to amend pleadings for April 28, 2014. However, Plaintiff's ability to identify all of the actors involved in the events underlying this lawsuit has been severely hampered by Defendants' refusal to engage even in preliminary discovery. As a result, Plaintiff has been unable to identify the "Jane Doe" defendant identified in his Complaint, despite counsel for Defendants' representation that this individual's identity would be provided. *See* Ex. E, pg. 2.

D. Defendants Have Not Presented a Meritorious Defense

Just as Defendants have failed to come forward with any proof that their failure to respond to this litigation was not wilful, so have they failed to produce anything that would support a finding that there exists a meritorious defense to Plaintiff's claims. *See In re Chinese Drywall, supra.* While Defendants filed an answer to Plaintiff's complaint *after* being placed in default, "default at that point could not be cured simply by the filing of an untimely answer." *See e.g., DirecTV, Inc. v. Young*, 195 Fed. Appx. 212, *9 (5th Cir. 2006) (unpublished). Defendants Answer in this case was filed well after the applicable deadline and after the Clerk had entered default, and is therefore subject to being stricken from the record. *See id.*²

Furthermore, even *if* the Court were to consider the untimely answer filed on behalf of

²To this end, Plaintiff has filed a Motion to Strike Defendants' Answer concurrently herewith.

Defendants, the result would remain the same. Unlike the determination of whether a defendant's default was wilful, whether the defaulting party has shown that he has a meritorious defense has nothing to do with the reason or excuse for defaulting, yet it is considered an important factor in determining whether to overturn a default. *See Waggoner v. United States (In re Waggoner)*, 2007 Bankr. LEXIS 3546, 11-12 (Bankr. N.D. Tex. 2007); citing *Moldwood Corp. v. Stutts*, 410 F.2d 351, 352 (5th Cir. 1969) (holding that a district court, which refused to set aside a default judgment on petition of defendant who made no suggestion that he had a meritorious defense, did not abuse its discretion). Courts have repeatedly held that relief from default should not be granted in absence of showing the existence of a meritorious defense -- presumably on the theory that setting aside a default does not serve the interests of justice if doing so would not affect the outcome of the suit. *Id.*; citing *McCloskey & Co. v. Eckart*, 164 F.2d 257, 258 (5th Cir. 1947); *Consol. Masonry & Fireproofing, Inc. v. Wagman Constr. Corp.*, 383 F.2d 249, 251-52 (4th Cir. 1967).

In order to establish the existence of a meritorious defense, conclusory statements that such a defense exists are generally held to be an insufficient showing. *Id.* Instead, a defendant establishes the existence of a meritorious defense through "definite factual allegations with supporting record evidence that, if believed at trial, would lead to a result contrary to that achieved by the default." *Jenkins & Gilchrist a Prof'l Corp. v. Groia & Co.*, 542 F.3d 114, 122 (5th Cir. 2008).

Here, Defendants' untimely Answer offers nothing more than repeated conclusory assertions, and is completely devoid of any factual assertions whatsoever. In addition, Defendants offer no argument in defense of the city ordinance pursuant to which they arrested

Ernest Taylor and confiscated his lawfully-held firearms. No entity involved with either the civil or criminal cases has ever attempted to argue the constitutionality of §13:95.3. As with the other factors considered, the consideration of whether Defendants have shown the existence of a meritorious defense argues against setting aside the default entered in this case.

IV. Conclusion

As set forth above, Defendants' Motion to Set Aside Clerk's Entry of Default completely ignores the requirements that must be met for the relief requested. As Defendants have failed to carry the burden imposed by Fed. R. Civ. P. 55(c), their Motion should be DENIED.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
TERRENCE J. DONAHUE, JR.
McGlynn, Glisson, & Mouton
340 Florida Street
Baton Rouge, Louisiana 70802-1909
(225) 344-3555
Bar Roll No.: 32126

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system on this, the 3rd day of May, 2014.

s/ Terrence J. Donahue, Jr.
Terrence J. Donahue, Jr.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR

Plaintiff,

VS.

THE CITY OF BATON ROUGE, ET AL.

Defendants.

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§

CIVIL ACTION

NO. 13-579-BAJ-RLB

EXHIBIT A
AFFIDAVIT OF TERRENCE J. DONAHUE, JR.

I, Terrence J. Donahue, Jr., declare as follows, under penalty of perjury:

1. I am over eighteen years of age and a resident of Baton Rouge, Louisiana. Unless I state otherwise, I have personal knowledge of the matters stated in this affidavit, and, if called as a witness, I could competently testify to the facts appearing herein..

2. This declaration is offered in support of Plaintiffs' Response to Defendants' Motion to Set Aside Clerk's Entry of Default, and also Plaintiff's Motion to Strike Defendants' Answers, filed concurrently herewith.

3. On or about September 9, 2013, I sent copies of Plaintiff's Original Complaint, Summons, and a form requesting waiver of service to defendants The City of Baton Rouge, Mary Roper, Carl Dabadie, Jr., Lisa Freeman, Patrick Wenneman, and James Thomas (referred to collectively as "Defendants") via certified U.S. Mail.

4. I subsequently received return receipts from the U.S. Postal Service indicating that delivery of the items identified in ¶3 to Defendants on September 10, 2013.

5. Attached hereto as Exhibit B are true and correct copies of the signed return receipts and a printout of the U.S. Postal Service's website showing delivery of the documents identified in ¶3 on September 10, 2013.

6. Thereafter, on October 15, 2013, I spoke with Mr. James Hilburn of the East Baton Rouge Parish Attorney's Office, who indicated that his office would be representing Defendants, and that service would be waived on their behalf.

7. During the October 15, 2013 conversation, and later discussions, Mr. Hilburn indicated his desire to coordinate the defense of the claims appearing in Plaintiff's complaint with Mr. Taylor's criminal prosecution in Baton Rouge City Court for charges arising from the same incident forming the basis of the present lawsuit.

8. In an attempt to assist Mr. Hilburn with his desired coordination, I made numerous visits to the Baton Rouge City Prosecutor's Office, and contacted the office of the District Attorney for East Baton Rouge Parish and the Attorney General for the State of Louisiana in an attempt to determine whether prosecution of the criminal claims was ongoing, and who, if anyone, was responsible for their prosecution.

9. On December 11, 2013, I contacted Mr. Hilburn to inform him that the Louisiana Attorney General's Office had indicated its intent not to pursue the criminal charges levied against Mr. Taylor in Baton Rouge City Court. I informed Mr. Hilburn that, as a result, it would be necessary to move forward in Mr. Taylor's civil case, including the filing of an answer on behalf of Defendants.

10. Attached as Exhibit C is a true and correct copy of an e-mail exchange between me and Mr. Hilburn on December 11, 2013.

11. On December 12, 2013, I participated in a telephone conference with Mr. Hilburn wherein he represented that an Answer to Plaintiff's complaint had been drafted, and would be filed with the Court in the near future.

12. Mr. Hilburn also stated his belief that certain Defendants may be entitled to an immunity defense, and that he anticipated filing a motion to dismiss on that basis concurrently with, or in lieu of, an answer.

13. I continued to engage in discussions with Mr. Hilburn during the subsequent months, and on February 24, 2014, having still not received an Answer to Plaintiff's Complaint or other responsive pleading, I again inquired regarding the status of these filings.

14. Attached as Exhibit D is a true and correct copy of the e-mail sent to Mr. Hilburn on February 24th, 2014, inquiring as to the status of Defendants' filings with the Court.

15. On March 5, 2014, Mr. Hilburn indicated that he would no longer be handling Mr. Taylor's case for the Parish Attorney's Office, and that Tedrick Knightshead would be the point of contact from that point forward.

16. Attached as Exhibit E is a true and correct copy of an e-mail sent by Mr. Hilburn on March 5, 2013, indicating that Tedrick Knightshead had taken over Mr. Taylor's file for the Parish Attorney's Office.

17. Between March 5, 2014 and April 15, 2014, I attempted to contact Mr. Knightshead at the Parish Attorney's Office to discuss numerous issues related to Mr. Taylor's suit, including the failure to file any appearances or responsive pleadings into the record. On each occasion, I left a message with Michelle Bailey of the Parish Attorney's Office, who indicated that she would inform Mr. Knightshead of my attempts to reach him.

18. Also during the period between March 5, 2014 and April 15, 2014, I sent paper copies of all papers filed with the Court to the Parish Attorney's Office, addressed to Mr. Knightshead's attention.

19. Despite numerous and repeated attempts to discuss issues related to Mr. Taylor's case with counsel representing Defendants at the Parish Attorney's Office, I never received a return phone call or any other manner of contact from Mr. Knightshead or anyone else at the Parish Attorney's Office from March 5, 2014 until after the Clerk had granted my request to place Defendants in default.

20. On April 28, 2014 the Louisiana Attorney General's Office, acting on behalf of The City of Baton Rouge, dismissed all criminal charges pending against in Baton Rouge City Court arising from the events of October 13, 2012.

21. At no time has any representative of Defendants requested an extension of the time in which to file an Answer to Plaintiff's Complaint, and at no point during my interactions with counsel for Defendants did I ever consent to extend the time period for filing an Answer to Plaintiff's Complaint.

22. As a result of Defendants' failure to plead or otherwise defend themselves in this case, Plaintiffs have been prejudiced by the expiration of substantive deadlines appearing in the Scheduling Order issued by the Court, without being provided the benefit of Defendants' participation or compliance. *See* [Doc. 10].

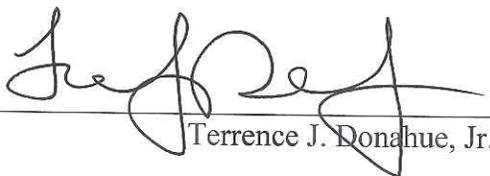
23. For instance, the deadline for the parties to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) expired on April 14, 2014 – two days before Plaintiff moved for the Clerk's Entry of Default. *Id.* While Defendants have moved to set aside the Clerk's default,

Plaintiff has still not received the disclosures required by the Scheduling Order and the Federal Rules of Civil Procedure.

24. In addition, the Scheduling Order set a deadline to amend pleadings for April 28, 2014. However, Plaintiff's ability to identify all of the actors involved in the events underlying this lawsuit has been severely hampered by Defendants' refusal to engage even in preliminary discovery. As a result, Plaintiff has been unable to identify the "Jane Doe" defendant identified in his Complaint, despite counsel for Defendants' representation that this individual's identity would be provided. See Ex. E, pg. 2.

25. All of the statements appearing above are true and correct to the best of my knowledge.

Dated this 2nd day of May, 2014 in Baton Rouge, Louisiana.



Terrence J. Donahue, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME on the 2nd day of May, 2014, to certify which witness my hand and official seal.



Notary Public in and for the
State of Louisiana
William Tyler Downing
My Commission Expires at death
Notary ID # 87937

Daniel J. McGlynn
Christopher D. Glisson
Benjamin P. Mouton

John R. Morganti
Paul B. Lauve
Terrence J. Donahue, Jr.
Eric E. Helm

Of Counsel

Patrick B. Kennedy
Edward B. Kramer

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick Wennemann
704 Mayflower St
Baton Rouge La 70802

2. Article Number

(Transfer from service label)

7012 1640 0001 6473 3397

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

D. Cooney

Agent

Addressee

B. Received by (Printed Name)

D. Cooney

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Patrick Wennemann
704 Mayflower Street
Baton Rouge, LA 70802

RE: Ernest Taylor v. The City of Baton Rouge, et al.
Suit Number: 3:13-CV-579-BAJ-RLB
United States District Court
Middle District of Louisiana

Dear Corporal Wennemann:

Enclosed please find a copy of the complaint filed in the above-captioned lawsuit, along with a notice of filing and request to waive service of summons. I would ask that you review these items and return the waiver of summons within thirty (30) days of this letter. If you or your attorney have any questions or would like to discuss, please feel free to contact me or Chris Glisson using the information above, or through e-mail at joe@mcglynnnglisson.com or chris@mcglynnnglisson.com.

Thank you in advance for your cooperation.

Sincerely,

Terrence "Joe" Donahue, Jr.

Terrence "Joe" Donahue, Jr.

TJD
Enclosures

Daniel J. McGlynn
Christopher D. Glisson
Benjamin P. Mouton

John R. Morganti
Paul B. Lauve
Terrence J. Donahue, Jr.
Eric E. Helm

Of Counsel

Patrick B. Kennedy
Edward B. Kramer

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1. Article Addressed to:

Carl Dabadie Jr
704 Mayflower St
Baton Rouge LA 70802

2. Article Number
(Transfer from service label)

7012 1640 0001 6473 3380

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PS Form 3800, August 2006

See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Signature

JD Cosley

- Agent
 Addressee

B. Received by (Printed Name)

JD Cosley

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Carl Dabadie, Jr.
704 Mayflower Street
Baton Rouge, LA 70802

RE: Ernest Taylor v. The City of Baton Rouge, et al.
Suit Number: 3:13-CV-579-BAJ-RLB
United States District Court
Middle District of Louisiana

Dear Chief Dabadie:

Enclosed please find a copy of the complaint filed in the above-captioned lawsuit, along with a notice of filing and request to waive service of summons. I would ask that you review these items and return the waiver of summons within thirty (30) days of this letter. If you or your attorney have any questions or would like to discuss, please feel free to contact me or Chris Glisson using the information above, or through e-mail at joe@mcglynnnglisson.com or chris@mcglynnnglisson.com.

Thank you in advance for your cooperation.

Sincerely,



Terrence "Joe" Donahue, Jr.

TJD
Enclosures

Daniel J. McGlynn
Christopher D. Glisson
Benjamin P. Mouton

John R. Morganti
Paul B. Lauve
Terrence J. Donahue, Jr.
Eric E. Helm

Of Counsel

Patrick B. Kennedy
Edward B. Kramer

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1. Article Addressed to:

James Thomas
704 Mayflower
Baton Rouge LA
70802

2. Article Number

(Transfer from service label)

7012 1640 0001 6473 3403

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee

B. Received by (Printed Name)
D. Cosey
C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

James Thomas
704 Mayflower Street
Baton Rouge, LA 70802

RE: Ernest Taylor v. The City of Baton Rouge, et al.
Suit Number: 3:13-CV-579-BAJ-RLB
United States District Court
Middle District of Louisiana

Dear Officer Thomas:

Enclosed please find a copy of the complaint filed in the above-captioned lawsuit, along with a notice of filing and request to waive service of summons. I would ask that you review these items and return the waiver of summons within thirty (30) days of this letter. If you or your attorney have any questions or would like to discuss, please feel free to contact me or Chris Glisson using the information above, or through e-mail at joe@mcglynnnglisson.com or chris@mcglynnnglisson.com.

Thank you in advance for your cooperation.

Sincerely,



Terrence "Joe" Donahue, Jr.

TJD
Enclosures

NDER: COMPLETE THIS SECTION

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Article Addressed to:

Mayor President Kip Holden
222 St Louis Street
3rd floor City Hall
Baton Rouge LA 70802

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
X

B. Received By (Printed Name) *Everett G. Parker II* C. Date of Delivery **SEP 10 2013**

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Article Number (Transfer from service label) **7012 1640 0001 6473 3441**

Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COURT

3:13-CV-579-BAJ-RLB

Wennemann; James Thomas, and Jane Doe; all in their individual and official capacities
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of Baton Rouge
Through its agent for service of process
Mayor Kip Holden
222 St. Louis Street
3rd Floor, City Hall
Baton Rouge, LA 70801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Chris Glisson
Terrence J. Donahue, Jr.
McGlynn Glisson & Mouton
340 Florida Street
Baton Rouge, LA 70801

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Nick J. Lorio
CLERK OF COURT

Chelitta A. Plummer
Signature of Clerk or Deputy Clerk

Date: September 05, 2013



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mrs Lisa Freeman
233 St Louis St.
Baton Rouge La 70802

2. Article Number

(Transfer from service label)

7012 1640 0001 6473 3434

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

EVERETT G. PARKER II

C. Date of Delivery

SEP 10 2013

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Domestic Return Receipt

102595-02-M-1540

Daniel J. McGlynn
Christopher D. Glisson
Benjamin P. Mouton

John R. Morganti
Paul B. Lauve
Terrence J. Donahue, Jr.
Eric E. Helm

Of Counsel

Patrick B. Kennedy
Edward B. Kramer

Mary E. Roper
830 Main Street
Baton Rouge, LA 70802

RE: Ernest Taylor v. The City of Baton Rouge, et al.
Suit Number: 3:13-CV-579-BAJ-RLB
United States District Court
Middle District of Louisiana

Dear Ms. Roper:

Enclosed please find a copy of the complaint filed in the above-captioned lawsuit, along with a notice of filing and request to waive service of summons. I would ask that you review these items and return the waiver of summons within thirty (30) days of this letter. If you or your attorney have any questions or would like to discuss, please feel free to contact me or Chris Glisson using the information above, or through e-mail at joe@mcglynnnglisson.com or chris@mcglynnnglisson.com.

Thank you in advance for your cooperation.

Sincerely,



Terrence "Joe" Donahue, Jr.

TJD
Enclosures

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mary E Roper
830 Main Street
Baton Rouge La
70802

2. Article number

(Tracking service label)

7012 1640 0001 6473 3410

PS Form 3800, February 2004

Domestic Return Receipt

102595-02-M-1540

PS Form 3800, August 2006

See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *alany*

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

9/10/13

D. Is delivery address different from item? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

USPS Tracking™



Customer Service ›
Have questions? We're here to help.

Tracking Number: 70121640000164733397

Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
September 10, 2013 , 12:57 pm	Delivered	BATON ROUGE, LA 70802
Your item was delivered at 12:57 pm on September 10, 2013 in BATON ROUGE, LA 70802.		

Tracking Number: 70121640000164733380

Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
September 10, 2013 , 12:57 pm	Delivered	BATON ROUGE, LA 70802
Your item was delivered at 12:57 pm on September 10, 2013 in BATON ROUGE, LA 70802.		

Tracking Number: 70121640000164733403

Product & Tracking Information

Available Actions

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
September 10, 2013 , 12:57 pm	Delivered	BATON ROUGE, LA 70802

Your item was delivered at 12:57 pm on September 10, 2013 in BATON ROUGE, LA 70802.

Tracking Number: 70121640000164733441

Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
September 10, 2013 , 12:18 pm	Delivered	BATON ROUGE, LA 70802

Your item was delivered at 12:18 pm on September 10, 2013 in BATON ROUGE, LA 70802.

Tracking Number: 70121640000164733434

Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
September 10, 2013 , 12:18 pm	Delivered	BATON ROUGE, LA 70802

Your item was delivered at 12:18 pm on September 10, 2013 in BATON ROUGE, LA 70802.

Tracking Number: 70121640000164733410

Product & Tracking Information

Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME

September 10, 2013 , 10:57 am

STATUS OF ITEM

Delivered

LOCATION

BATON ROUGE, LA 70802

Your item was delivered at 10:57 am on September 10, 2013 in BATON ROUGE, LA 70802.

Track Another Package

What's your tracking (or receipt) number?

[Track It](#)

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- [Terms of Use](#) ›
- [FOIA](#) ›
- [No FEAR Act EEO Data](#) ›

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- [Postal Explorer](#) ›
- [National Postal Museum](#) ›



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Joe Donahue

From: James Hilburn <JHILBURN@brgov.com>
Sent: Wednesday, December 11, 2013 3:33 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

I'll call you tomorrow at 2:00.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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From: Joe Donahue [mailto:joe@mcglynnnglisson.com]
Sent: Wednesday, December 11, 2013 3:25 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

That works for me.

From: James Hilburn [mailto:JHILBURN@brgov.com]
Sent: Wednesday, December 11, 2013 3:21 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

Joe,

Are you available tomorrow at 2:00 for a telephone conference?

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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Sent: Wednesday, December 11, 2013 3:10 PM
To: James Hilburn
Cc: MICHELLE BAILEY
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James,

I have exchanged e-mails with Mr. Wall who has indicated that the AG's office currently does not intend to prosecute the charges against Mr. Taylor. Mr. Wall indicated that despite the recusal order, they have received nothing from the City Prosecutor or Parish Attorney's offices that would enable them to prosecute any charges, or comply with any discovery requests. Mr. Wall said he could offer no information, and therefore felt that meeting with us would be a futile exercise.

As a result, I think it necessary to move forward with Mr. Taylor's claims in federal court even though you may be unable to coordinate your efforts with the prosecution of the criminal charges (which appear to have been abandoned). If you have time this week or next, I would like to speak with you about beginning to perform some preliminary discovery, getting an answer or some form of appearance on the record, and also discuss submitting a status report to the magistrate. The form issued by the court is attached.

Let me know if there is a time that works for you, and we could do it by phone or in person – whatever your preference. Thanks,

-Joe



Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: James Hilburn [<mailto:JHILBURN@brgov.com>]
Sent: Wednesday, December 11, 2013 10:51 AM
To: Joe Donahue

Cc: MICHELLE BAILEY

Subject: RE: Ernest Taylor v. City of Baton Rouge

That sounds like a good idea. Let me know.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney

Office of the Parish Attorney

10500 Coursey Boulevard, Suite 205

Baton Rouge, Louisiana 70816

Telephone: 225/389-8730

Facsimile: 225/389-8736

Email: jhilburn@brgov.com

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]

Sent: Wednesday, December 11, 2013 10:16 AM

To: James Hilburn

Subject: RE: Ernest Taylor v. City of Baton Rouge

James,

I went down to the city prosecutor's office yesterday and had them pull the motion and order recusing them from the case. I had never been served with it, and I'm assuming that the AG's office never received the order either. I've been speaking with someone from Kurt Wall's division that has been very helpful, and plan to forward the order to him today to see if we can get the ball moving.

Once we have someone from the AG's office assigned to the case, do you think it might be beneficial for the three of us to meet? I would like to get a handle on where we stand, and make some filings with the court before the holidays. Thanks,

-Joe



Terrence "Joe" Donahue, Jr.
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340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: James Hilburn [<mailto:JHILBURN@brgov.com>]
Sent: Wednesday, December 11, 2013 9:13 AM
To: Joe Donahue
Subject: RE: Ernest Taylor v. City of Baton Rouge

Joe,

Looks fine to me. Thanks.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
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Email: jhilburn@brgov.com

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Wednesday, December 04, 2013 2:23 PM
To: James Hilburn
Subject: Ernest Taylor v. City of Baton Rouge

James,

Attached is the motion for continuance I plan to file with the Court. Let me know once you've had a chance to review, and I'll get it filed. Thanks,

-Joe



Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

Joe Donahue

From: Joe Donahue
Sent: Monday, February 24, 2014 11:04 AM
To: 'James Hilburn'
Subject: RE: Ernest Taylor v. City of Baton Rouge

Hey James,

Just following up on our last conversation, and seeing if there was any progress on getting things on file with the court. Also, you told me during our last conversation that you had been able to obtain the identity of the female officer that appears in the video. If you could get that to me, I'd appreciate it. Thanks,

-Joe



Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: James Hilburn [mailto:JHILBURN@brgov.com]
Sent: Monday, December 16, 2013 9:01 AM
To: Joe Donahue
Subject: RE: Ernest Taylor v. City of Baton Rouge

Joe,

You have a great holiday, too.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
Facsimile: 225/389-8736
Email: jhilburn@brgov.com

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Friday, December 13, 2013 11:02 AM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

James,

The court granted the motion to continue last evening. Status report now due January 23 – don't hurt yourself trying to get something down before Santa arrives. Happy Holidays!

-Joe



Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: James Hilburn [<mailto:JHILBURN@brgov.com>]
Sent: Wednesday, December 11, 2013 3:59 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

OK.

JAMES L. HILBURN

Senior Special Assistant Parish Attorney
Office of the Parish Attorney
10500 Coursey Boulevard, Suite 205
Baton Rouge, Louisiana 70816
Telephone: 225/389-8730
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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Wednesday, December 11, 2013 3:55 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. City of Baton Rouge

Sounds good – you can reach me at the office at 225-344-3555. Talk to you then,

-Joe



Terrence “Joe” Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

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I'll call you tomorrow at 2:00.

JAMES L. HILBURN

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Joe,

Are you available tomorrow at 2:00 for a telephone conference?

JAMES L. HILBURN

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JAMES L. HILBURN

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-Joe



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Joe,

Looks fine to me. Thanks.

JAMES L. HILBURN
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James,

Attached is the motion for continuance I plan to file with the Court. Let me know once you've had a chance to review, and I'll get it filed. Thanks,

-Joe



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340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

Joe Donahue

From: James Hilburn <jamesh@SCWLLP.COM>
Sent: Wednesday, March 05, 2014 3:53 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: FW: Ernest Taylor v. BRPD
Attachments: Joint Status Report - 3-5-14.docx

Joe,

I corrected 2 typos on pages 2 and 4. Those changes are in red.

Since Tedrick Knightshead will be taking over the file I would suggest pushing the deadlines back 30 days. That should allow him enough time to take over the file and conduct discovery. And, the deadlines will expire well before any trial date can be set. Will you agree to that change? Let us know. Thanks.

JAMES L. HILBURN

Associate Attorney
Shows, Cali & Walsh, LLP
628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

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From: Joe Donahue [mailto:joe@mcglynnnglisson.com]
Sent: Wednesday, March 05, 2014 3:44 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

James,

Attached is another draft of the Status Report that I plan to file today. Other than some adjustments to the proposed schedule (which were necessary because some of the previously proposed deadlines had already expired), I did not change or add anything other than to incorporate your inserts. Let me know if you have any comments or concerns. I'll file it this evening if there aren't any concerns. Thanks,

-Joe



Terrence "Joe" Donahue, Jr.
Associate Attorney
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: Joe@mcglynnglisson.com

From: James Hilburn [<mailto:jamesh@SCWLLP.COM>]
Sent: Friday, February 28, 2014 2:39 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

You're welcome. Sorry it took that long. The computers would only work sporadically for over a month. Supposedly, the computer system has been fixed. But, my legal assistant Michelle Bailey told me earlier today that they are acting up again.

Michelle (who is cc'd) has been in touch with BRPD about the "mystery" woman who was present that night. We don't think that person is a police officer but a civilian ride-along. Michelle is going to find out exactly who that person is and let us know.

If you need anything else let us know. Feel free to directly email Michelle at any time. Thanks.

JAMES L. HILBURN
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628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

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From: Joe Donahue [<mailto:joe@mcglynnglisson.com>]
Sent: Friday, February 28, 2014 2:33 PM
To: James Hilburn
Cc: MICHELLE BAILEY
Subject: RE: Ernest Taylor v. BRPD

James,

I got the file opened. Thanks for getting back to me today.

-Joe

From: James Hilburn [<mailto:jamesh@SCWLLP.COM>]
Sent: Friday, February 28, 2014 2:25 PM
To: Joe Donahue
Cc: MICHELLE BAILEY
Subject: Ernest Taylor v. BRPD

Joe,

See attached.

JAMES L. HILBURN
Associate Attorney
Shows, Cali & Walsh, LLP
628 St. Louis Street
Baton Rouge, LA 70802
Telephone: 225.346.1461
Facsimile: 225.346.1467

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**BATON ROUGE CITY COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

**CITY OF BATON ROUGE
VERSUS
ERNEST TAYLOR**

**CASE: 12-CR-106939S

JUDGE ALEXANDER**

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes defendant, Ernest Taylor (“Taylor”), who moves to quash the indictments filed in connection with this case as follows:

1.

Count 1 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor’s violation of Baton Rouge City Ordinance §13:95.3 (POSS OF WEAPONS WHERE ALC BEV SOLD/CONSUMED) on October 13, 2012.

2.

Baton Rouge Code of Ordinances §13:95.3 is unconstitutional on its face and/or as applied in this case, as it seeks to prohibit conduct protected by the Louisiana Constitution and laws passed pursuant to the Louisiana Constitution, namely Article I, Section 11 of the Louisiana Constitution of 1974 and La. R.S. 32:292.1.

3.

Count 2 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor’s violation of Baton Rouge City Ordinance §13:108 (RESISTING AN OFFICER) on October 13, 2012.

4.

Count 2 of the Misdemeanor Affidavit does not give a plain, concise and definite written statement of the essential facts constituting the offense charged. The Affidavit does not allege facts that, if proven, would establish a violation of §13:108. Rather, the facts memorialized in the arresting officer’s narrative establish that Taylor did not violate §13:108.

5.

FILED
BATON ROUGE CITY COURT
CRIMINAL/TRAFFIC DIVISION
OCT 20 11 38
DEPUTY CLERK OF COURT

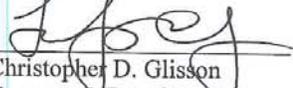
Count 3 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor's violation of Baton Rouge City Ordinance §11:283 (FAIL. TO DIM HEADLIGHT) on October 13, 2012.

6.

Count 3 of the Misdemeanor Affidavit does not give a plain, concise and definite written statement of the essential facts constituting the offense charged. The Affidavit does not allege facts that, if proven, would establish a violation of §11:283.

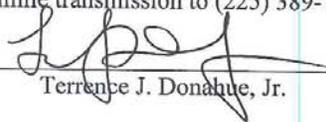
WHEREFORE DEFENDANT PRAYS that the indictments in this case be quashed.

Respectfully Submitted,


Christopher D. Glisson
Terrence J. Donahue Jr.
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Phone: (225) 344-3555
Fax: (225) 344-3666
chris@mcglynnnglisson.com
joe@mcglynnnglisson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Motion to Quash has been filed with the Clerk for Baton Rouge City Court on October 29, 2013, and that a copies were sent to the City Prosecutor's Office by facsimile transmission to (225) 389-7656.


Terrence J. Donahue, Jr.

BATON ROUGE CITY COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE

CASE: 12-CR-106939S

VERSUS

ERNEST TAYLOR

JUDGE ALEXANDER

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes defendant, Ernest Taylor (“Taylor”), who respectfully submits this Memorandum in Support of his Motion to Quash, submitted concurrently herewith.

I. Introduction

On October 13, 2012, defendant Ernest Taylor (“Taylor”) was arrested by officers of the Baton Rouge City Police Department and charged with violating three city ordinances. *See* Misdemeanor Affidavit and Police Report, attached as Exhibit A. Taylor was cited with a violation of Baton Rouge Code of Ordinances §13:95.3, and had three lawfully possessed firearms confiscated, based solely on the alleged presence of his vehicle in the parking lot of an establishment that sells alcohol. Taylor was also charged with violating Baton Rouge Code of Ordinances §13:108, despite the fact that the arresting officer’s report makes clear that Taylor had not been placed under arrest at the time of his alleged “resistance.” Finally, Taylor was charged with violating Baton Rouge Code of Ordinances §11:283, which requires the operator of a motor vehicle to use the lowermost distribution of light when approaching or following other vehicles. For the reasons that follow, each of these indictments should be quashed.

II. Facts

Accompanying the misdemeanor affidavit charging Taylor with violations of the Baton Rouge Code of Ordinances is a non-notarized Affidavit of Probable Cause signed by Corporal Patrick Wenneman, and a police report providing a narrative of the events of October 13, 2012. *See* Ex. A, pp. 3,12.¹ According to these documents, Baton Rouge City Police Officers allegedly observed Taylor’s vehicle leaving an establishment that served alcohol in the early morning hours of October 13, 2012. *Id.* While Officer Wennemann approached and inspected Taylor’s

¹ Defendant disputes the facts appearing in the affidavit of probable cause and the police report, but will assume their accuracy solely for the purpose of the present Motion.

vehicle, Officer James Thomas escorted Taylor to the rear of his police cruiser. *Id.* at 12. When Thomas “grabbed” Taylor’s arm for the purpose of “escorting” him, Taylor backed away, but did not flee. *Id.* Thomas and Wennemann then placed Taylor under arrest, applied handcuffs, put Taylor in the back of Thomas’ cruiser, and read him his Miranda rights. *Id.* The officers confiscated three of Taylor’s rifles – two that had been in plain sight upon approaching the vehicle, and one that was located in the trunk. *Id.*

III. Law and Argument

An individual’s criminal prosecution is instituted by the filing of an information or affidavit (referred to as an “indictment”), which is designed to serve as the basis of a trial. La. C.Cr.P. 934(6),(7). An indictment is a plain, concise, and definite written statement of the essential facts constituting the offense charged. La. C.Cr.P. Art. 464. When an indictment fails to charge an offense that is punishable under a valid statute or ordinance, the defendant is entitled to have the indictment quashed. La. C.Cr.P. Art. 532(1)

A. §13.95.3 Is Unconstitutional

Baton Rouge is a municipality that has a home rule charter that pre-dates the enactment of the Louisiana Constitution of 1974. *See City of Baton Rouge v. Williams*, 661 So.2d 445, 447 (La. 1995). A preexisting home rule charter’s powers to initiate legislation is limited by the constraint that the local government may not exercise its power inconsistently with the Louisiana Constitution. *New Orleans Campaign for a Living Wage v. City of New Orleans*, 825 So.2d 1098, 1103 (La. 2002); citing *City of New Orleans v. Board of Comm’rs of Orleans Levee Dist.*, 640 So.2d 237, 242 (La. 1994). Thus, “home rule” municipalities do not enjoy complete autonomy from the State government, but are rather limited “by the constitution, laws permitted by the constitution, or its own home rule charter. *Id.*; citing *Morial v. Smith & Wesson Corp.*, 785 So.2d 1, 14 (La. 2001). Where a local ordinance conflicts with a provision of the State constitution, or with a statute that was passed pursuant to a reasonable exercise of the State’s police power, it is rendered invalid. *Id.* at 1105. In the present case, there can be no doubt that §13.95.3 conflicts with both provisions of the Louisiana Constitution, and with at least one statute passed pursuant to a reasonable exercise of the State’s police power.

§13.95.3, entitled “Possession of weapons where alcoholic beverages are sold and/or consumed” provides as follows:

- (a) It shall be unlawful for any person to have in his possession a firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon,

in any premises where alcoholic beverages are sold and/or consumed on the premises except the owner or lessee of the premises, or their employees, sheriffs, deputy sheriffs, state police, city police, constables, town marshals, or persons vested with police power when in the actual discharge of their duties.

- (b) Any sheriff, deputy sheriff, state police, city police, constables, town marshals, or persons vested with police power, may search any person found in any place where alcoholic beverages are sold and/or consumed on the premises, and shall confiscate any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon which such peace officer may find; this search shall be limited to only weapons, unless there is probable cause for a wider search. Any person who enters a place where alcoholic beverages are sold and/or consumed on the premises does, by the mere fact of entering, consent to a search of his person for any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon while on said premises, by any sheriff, deputy sheriff, state police, constable, town marshal or persons vested with police power, without a warrant.
- (c) The phrase, "... premises where alcoholic beverages are sold and/or consumed on the premises" shall include all of the licensed premises, including the parking lot.
- (d) Any gun or other instrumentality customarily used or intended for probable use as a dangerous weapon found on any person while on the premises of a place where alcoholic beverages are sold and consumed may be used as evidence in court.
- (e) Whoever commits the crime of possession of a weapon where alcoholic beverages are sold and/or consumed shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Additionally, the court may order the forfeiture of the weapon in accordance with law.

By its clear and unambiguous language, §13.95.3 forbids possession of any weapon (not just a firearm), on the premises of any establishment that either sells or permits consumption of alcoholic beverages – even where the weapon is located in a vehicle in the establishment's parking lot.

From January 1, 1975 to December 5, 2012, Article I, Section 11 of the Louisiana Constitution of 1974 stated that "[t]he right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person." The Louisiana Supreme Court subsequently made clear that this provision guaranteed each citizen the right to possess firearms that were not concealed on his person. *See State v. Nelson*, 367 So.2d 317, 318 (La. 1979) ("The carrying of an unconcealed weapon is not a special privilege or advantage enjoyed by a police officer. Each citizen is guaranteed the right to keep and bear arms not concealed on his person."). In addition, on July 2, 2008, La. R.S. §32:292.1 became effective. This statute, entitled "Transportation and Storage of Firearms in Privately Owned Motor Vehicles" provides that "a person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area. Finally, on December 10, 2012, Art. I, §11 of the Louisiana Constitution was amended to provide that "[t]he right of each citizen

to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny.”

Clearly, the provisions of §13.95.3 serve to restrict rights guaranteed to Louisiana citizens by virtue of the Louisiana Constitution and La. R.S. 32:292.1. While the laws of the State guarantee that individuals will be able to transport their lawfully-possessed firearms inside their vehicles, §13.95.3 purports to give officers of the Baton Rouge City Police the discretion to arrest individuals who choose to exercise this right, and to also confiscate their firearms. There is an undeniable conflict between §13.95.3 and the laws of the State of Louisiana, and in the face of such conflict the ordinance must give way. It is of no moment that §13.95.3 applies only where a firearm is being possessed on the “premises” of an establishment that either serves or sells alcohol. The ordinance explicitly includes the parking lot in the definition of “premises,” and as evidenced by this case, §13.95.3 is actually *enforced* in situations where the weapons never left the owner’s vehicle. As the vast majority of gas stations within East Baton Rouge Parish sell alcoholic beverages, any citizen that exercises the right to transport and store firearms in a personal vehicle would be subject to arrest, and their firearms subject to seizure pursuant to §13.95.3, anytime they stopped to get gas. As §13.95.3 conflicts with Art. I, §11 of the Louisiana Constitution, and with La. R.S. 32:292.1, Count 1 of the Misdemeanor Affidavit should be quashed.

B. Taylor Did Not Violate §13:108

Count 2 appearing in the Misdemeanor Affidavit charges Taylor with violating §13:108 of the Baton Rouge Code of Ordinances, entitled “Resisting an officer.” Specifically, the affidavit charges that Taylor “did intentionally resist, oppose or obstruct OFC. J. THOMAS acting in his official capacity and authorized to make a lawful arrest when ERNEST TAYLOR knew or had reason to know he was acting in his official capacity. §13:108 provides as follows:

- (a) Resisting an officer is the intentional opposition or resistance to, or obstruction of, an individual acting in his official capacity and authorized by law to make a lawful arrest, lawful detention or seizure of property, or to serve any lawful process or court order, when the offender knows or has reason to know that the person arresting, detaining, seizing property, or serving process is acting in his official capacity.
- (b) The phrase “obstruction of” as used herein shall, in addition to its common meaning, signification and connotation mean the following:
 - 1) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest;
 - 2) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail;

- 3) Refusal by the arrested or detained party to give his name and make his identity known to the arresting or detaining officer or providing false information regarding the identity of such party to the officer;
 - 4) Congregates with others on a public street and refuses to move on when ordered by the officer.
- (c) The word "officer" as used herein means any peace officer, as defined in R.S. 40:2402, and includes deputy sheriffs, municipal police officers, probation and parole officers, firefighters, and wildlife enforcement agents.
- (d) Whoever commits the crime of resisting an officer shall be fined not more than five hundred dollars (\$500.00) or be imprisoned for not more than six (6) months, or both.

As the text of §13:108 makes evident, in order for an individual to violate its provisions, the officer who is resisted must be "authorized by law to make a lawful arrest, lawful detention or seizure of property." As set forth in the previous section, however, the officers were not authorized by law to arrest Taylor or confiscate his firearms on the basis of §13.95.3, as his right to possess and transport lawfully-owned firearms is guaranteed by the laws of the State of Louisiana.

In addition, the facts as stated in the Police Report narrative provide further justification for quashing Count 2. The facts delineated in the Police Report narrative clearly establish that Taylor allegedly resisted Officer Thomas' "escort" prior to being placed under arrest, and does not indicate that Taylor made any attempt to flee. As Taylor was not attempting to flee from the officers after being notified that he was being placed under arrest, he would not be in violation of §13:108(b)(1). Similarly, as Taylor had not been placed under arrest prior to allegedly "resisting" Officer Thomas' escort, he would not be in violation of §13:108(b)(2). As with Count 1, Count 2 of the Misdemeanor Affidavit should be quashed.

C. Taylor Did Not Violate §11:283

Count 3 appearing in the Misdemeanor Affidavit charges Taylor with violating §11:283 of the Baton Rouge Code of Ordinances, entitled "Headlamps; when low beam required." §11:283 states as follows:

Whenever a motor vehicle is being operated on a street of this city between sunset and sunrise, or at such times as atmospheric conditions require the use of headlamps on the vehicle, the operator of such vehicle must dim the lights to the lowermost distribution of light when approaching an oncoming vehicle within five hundred (500) feet, or when following another vehicle within two hundred (200) feet to the rear.

By its plain language, §11:283 serves to require the operator of a vehicle to "dim the lights to the lowermost distribution of light" when approaching or following vehicles within certain distances. Neither the Misdemeanor Affidavit, nor any other source of information identifies any vehicle

that Taylor was either approaching or following, and §11:283 is therefore inapposite. For that reason, Count 3 of the Misdemeanor Affidavit must also be quashed.

IV. Conclusion

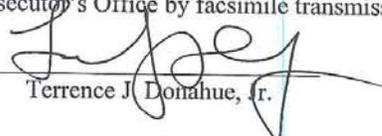
For those reasons appearing above, Defendant Ernest Taylor respectfully requests that Counts 1 - 3 appearing in the Misdemeanor Affidavit issued in connection with this case be quashed.

Respectfully Submitted,


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chris@mcglynnglisson.com
joe@mcglynnglisson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Memorandum in Support of Motion to Quash has been filed with the Clerk for Baton Rouge City Court on October 29, 2013, and that a copies were sent to the City Prosecutor's Office by facsimile transmission to (225) 389-7656.


Terrence J. Donahue, Jr.

BATON ROUGE CITY COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE

CASE: 12-CR-106939S

VERSUS

ERNEST TAYLOR

JUDGE ALEXANDER

ORDER

Considering the foregoing Motion to Quash:

IT IS ORDERED that the Motion to Quash is set for the ____ day of _____,
2013 in Room No. ____ of Baton Rouge City Court.

Signed on this ____ day of _____, 2013 at Baton Rouge, Louisiana.

JUDGE