

CAUSE NO. 2010-21221

JOSE JESUS VIEYRA
Plaintiff,

vs.

HARRIS COUNTY, TEXAS,
Defendant.

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IN THE CIVIL DISTRICT COURT
OF HARRIS COUNTY, TEXAS

FILED

Loren Jackson
District Clerk

APR 05 2010

125

JUDICIAL DISTRICT

Time:

Harris County, Texas

By

Deputy

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES JOSE JESUS VIEYRA , Plaintiff herein, complaining of HARRIS COUNTY, TEXAS, Defendants herein, and for causes of action in connection therewith would show unto the Court as follows:

Parties

1. Plaintiff is domiciled of Houston, Harris County, Texas.
2. Defendant Harris County, Texas ("Harris County") is a political subdivision of the state of Texas and upon which citation herein can be effected through County Judge Ed Emmett at 1001 Preston, Suite 911, Houston, Texas 77002.
3. Defendant Harris County Sheriff's Department ("Sheriff Dept") is a department of Harris County, Texas and may be served with summons herein through service of same on Adrian Garcia, the Harris County Sheriff, at 1200 Baker Street, Houston, Texas 77002.
4. Defendant Tommy R. Thomas ("Thomas") is the former Sheriff of Harris County, Texas and may be served with citation herein at his place of business in Harris

CONFIRMED FILE DATE: 4/5/2010

County, Texas.

5. Defendant Charles A. Rosenthal, Jr. ("Rosenthal") is the former District Attorney for Harris County, Texas, who made the decision to wrongfully charge and prosecute Plaintiff herein and may be served with citation herein at his place of business in Harris County, Texas.

6. Defendant Harris County District Attorney ("DA") is a Department of Harris County, Texas and may be served with citation herein through service of same on the Harris County District Attorney, Pat Lykos, at 1201 Franklin Street, Houston, Texas 77002-1923.

7. Plaintiff anticipates the necessity of joining additional parties hereto in order to obtain complete relief in connection with the claims asserted herein.

Jurisdiction and Venue

8. This Court possesses jurisdiction of the causes of action asserted herein, in that the Plaintiff's damages, exclusive of interest and costs, exceed the minimum jurisdictional limits of this Court.

9. Venue is proper as to Harris County, Texas, pursuant to §15.001, et seq., of the Texas Civil Practice and Remedies Code, in that the causes of action asserted herein, either in whole or in part, as well as the predicate facts therefor, accrued in Houston, Harris County, Texas. Also, Defendants Harris County, Harris County Sheriff's Department and Harris County District Attorney's Office are all Departments of Harris County, Texas and maintain their principal offices Houston, Harris County, Texas.

Factual Background

10. Plaintiff was driving his commercial vehicle on the access road of Highway I10

just west of Houston in Harris County, Texas when a Deputy Sheriff, Craig Miller ("Miller"), collided with the rear of Plaintiff's vehicle when Miller was attempting a high speed pass around Plaintiff's vehicle to enter the entry ramp to Highway I10 toward Houston. Miller's vehicle then collided with a portion of the retainer wall at the entrance ramp for Highway I10 and flipped over, killing Miller. Plaintiff was immediately arrested and held in lock-down and shackles at the Harris County Jail for months as a result of false charges against him which were initiated by Thomas, the then Harris County Sheriff, and other Harris officials, including Rosenthal, in a cover up to, inter alia, insulate Harris from liability for the false arrest and imprisonment and malicious prosecution of Plaintiff and to protect Miller and the members of Thomas' special Sheriff's Department squad and to cover up the fact that Miller, allegedly on duty at the time of his death, was highly intoxicated and had a blood alcohol level of 0.27 percent - more than three times the legal limit - when he collided with the commercial vehicle driven by Plaintiff.

Causes of Action

12. Plaintiff hereby asserts his cause of action pursuant to 42 U.S.C.A § 1983 in connection with the denial of constitutional due process through the denial of meaningful access to due process and equal protection under the law in the courts of Harris County, Texas. Plaintiff seeks actual damages of \$ 20,000,000.00, plus attorneys fees and punitive damages.

13. Plaintiff hereby asserts his causes of action pursuant to 42 U.S.C.A. §§1985 and 1986, as a consequence of the conspiracy of the Defendants, and others to be joined hereto, to interfere with the civil rights of Plaintiff in connection with his personal right of freedom, as well as the conspiratorial action of Defendants and others to deprive Plaintiff of equal protection and due process under the law as described herein above; Defendants

conspiratorial actions to interfere with the judicial process and related matters; Defendants' conspiratorial actions to hinder authorities concerning the release of Plaintiff from wrongful incarceration in Harris County Property; and the neglect of Judges, and other public officials in Harris County, Texas, to prevent the knowing violations complained of herein under § 1985. Plaintiff is the subject of the wrongful conduct and has suffered damage to his person violently and unlawfully taken from him.

14. Plaintiff hereby asserts his claims for violations of his Texas Constitutional right of due process and equal protection under the law, which are virtually the same as under the United States Constitution. *Southwestern Bell Telephone Co. v. Combs*, 270 S.W.3d 249 (Tex. App. - Amarillo, 2008).

15. Plaintiff hereby asserts his cause of action against Defendants herein, jointly and/or severally, for **intentional infliction of mental anguish, pain and suffering, and conspiracy in connection therewith.**

16. Plaintiff hereby asserts his cause of action for **defamation, both libel and slander.**

17. Further, Plaintiff states that Defendants acted with malice and/or a conscious indifference and disregard for the health, safety and welfare of Plaintiff for which Defendants are liable to Plaintiff for **exemplary and/or punitive damages**, in whatever amount the jury shall find, but in the minimum amount of \$10,000,000.00.

18. Plaintiff also requests that the Court and jury award **punitive damages** in the amount of at least \$10,000,000.00, as a consequence of Defendants acting with malice and/or conscious indifference and disregard for the health, safety and welfare of Plaintiff.

19. Plaintiff further requests that he recover of, from and against Defendants, jointly and/or severally, his attorneys' fees and reasonable costs incurred in connection

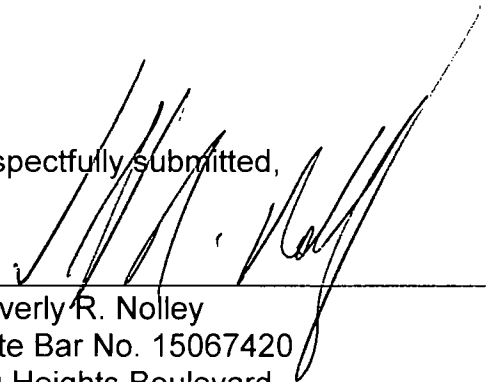
herewith.

20. Plaintiff respectfully requests that the Court award him reasonable and necessary attorney's fees as a consequence of the Defendants' actionable conduct alleged herein, or, alternatively, \$750,000.00 through the trial of the instant action; together with \$600,000.00 in the event this action is appealed to the Court of Appeals; together with \$250,000.00 in the event an appeal is sought to the Texas State and United States Supreme Court; for which Plaintiff hereby seeks judgment of, from and against Defendants, jointly and/or severally.

21. Plaintiff requests that the Court further award prejudgment interest, post-judgment interest, costs of court and such other damages to which Plaintiff may be entitled pursuant to the jury's verdict to be rendered herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Defendants be cited to appear and required to file an answer herein according to law, and that, upon final trial hereof, Plaintiff recover judgment of, from, and against Defendants, jointly and/or severally, for the actual damages sustained by Plaintiff as requested herein above, together with such other and further relief, whether at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff Jose Jesus Vieyra hereby demands a jury trial.



Waverly R. Nolley