

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

**KEVIN JONES**

**PLAINTIFF**

**v.**

**CASE NO. 4:11-CV-889-JMM**

**MARK FROST, GARY DUNN, and  
JAMES BACON and CITY OF  
RUSSELLVILLE, ARKANSAS**

**DEFENDANTS**

**SEPARATE DEFENDANTS' ANSWER TO AMENDED COMPLAINT**

COME Separate Defendants, Mark Frost and James Bacon, each in their individual and official capacities (City of Russellville, Arkansas), and the City of Russellville, by and through their attorney, John L. Wilkerson, and Mark Frost, in his individual capacity, by and through his attorney, Russell A. Wood, and for their Answer to Plaintiff's Amended Complaint, state:

1. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 1, and therefore deny same.
2. Regarding Paragraph 2, Defendants admit that Frost is a resident of Russellville, Arkansas and was a police officer at all pertinent times. The remainder of Paragraph 2 contains no allegations which require a response, but to the extent it is construed to do so, it is denied.
3. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 3, and therefore deny same.
4. Separate Defendants admit that Bacon was a resident of Russellville, Arkansas, was the Chief of Police for the City of Russellville, that his present location is Nixa, Missouri, and that he is currently a police officer. The remainder of Paragraph 4 contains no allegations which require a response, but to the extent it is construed to do so, it is denied.

5. With regard to Paragraph 5 of Plaintiff's complaint, Separate Defendants admit the first sentence. The remaining allegations are jurisdictional in nature and no response is required.

6. Paragraph 6 of Plaintiff's Complaint is jurisdictional nature, and requires no response; however, to the extent it is construed to do so, Separate Defendants deny any and all allegations of wrongdoing.

7. Paragraph 7 of Plaintiff's Complaint is jurisdictional nature, and requires no response; however, to the extent it is construed to do so, Separate Defendants deny any and all allegations of wrongdoing.

8. Regarding Paragraph 8, Separate Defendants admit that Nona Dirksmeyer was murdered in her Russellville apartment on December 15, 2005, and that she was approximately 19 years of age. Separate Defendants are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 8, and therefore deny same.

9. Separate Defendants admit the allegations contained in Paragraph 9.

10. Separate Defendants admit the allegations contained in Paragraph 10.

11. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 11, and therefore deny same.

12. Separate Defendants deny the allegations contained in Paragraph 12.

13. Regarding Paragraph 13, Separate Defendants admit that Kevin Jones was charged with 1<sup>st</sup> Degree Murder, and was acquitted by jury verdict, and that Gary Dunn was later charged with Ms. Dirksmeyer's homicide, which resulted in two trials. Upon information and belief, both of Dunn's trials were declared mistrials because the juries were unable to reach a verdict.

14. Regarding Paragraph 14, Separate Defendants deny the first paragraph which begins with, “Dunn.”

- (A) Separate Defendants are without sufficient knowledge to admit or deny the allegations in subparagraph (A).
- (B) Separate Defendants admit Frost investigated the alibi, but deny the remaining allegations of subparagraph (B).
- (C) Separate Defendants deny subparagraph (C).
- (D) Separate Defendants deny the allegations contained within the first sentence and deny the characterization of the remaining allegations contained in subparagraph (D).
- (E) Separate Defendants are without sufficient knowledge to admit or deny the allegations in subparagraph (E).
- (F) Separate Defendants admit that Glover polygraphed Kevin on or about December 21, 2005. Separate Defendants deny the allegations contained within the second sentence. Upon information and belief, Separate Defendants deny the allegations contained in the third, fourth, fifth, and sixth sentences.
- (G) Separate Defendants deny the allegations contained in the first two sentences of subparagraph (G). Separate Defendants are without sufficient information or belief to admit or deny the allegations contained in the third sentence of subparagraph (G).

- (H) Separate Defendants are without sufficient information or belief to admit or deny with specificity the allegations contained within the subparagraph (H), and deny the remaining allegations contained in that paragraph.
- (I) Separate Defendants deny the allegations contained in subparagraph (I).
- (J) Separate Defendants deny the allegations of subparagraph (I).
- (J) Separate Defendants deny the characterization of the allegations contained in subparagraph (J) and further deny any allegation of wrongdoing.
- (K) Separate Defendants deny the characterization of the allegations contained in subparagraph (K) and further deny any allegation of wrongdoing.
- (L) Separate Defendants deny the allegations contained in subparagraph (L).
- (M) Separate Defendants deny the allegations contained in subparagraph (M).

15. Separate Defendants deny the characterization of the allegations contained in the first sentence of Paragraph 15. Separate Defendants deny the allegations contained in the second sentence. Separate Defendants deny the characterization of the allegations contained in the third sentence of Paragraph 15. Separate Defendants deny the allegations contained in Paragraph 15.

16. Separate Defendants deny the allegations contained in Paragraph 16.

17. Separate Defendants deny the allegations contained in Paragraph 17.

18. Regarding Paragraph 18, Separate Defendants admit that Frost and Bacon made an evening visit to the Dirksmeyer family on December 21<sup>st</sup>. Separate Defendants are without sufficient knowledge to admit or deny whether or not Carol Dipert was “persuaded” of anything, and therefore deny same. Separate Defendants deny the characterization of the remaining allegations contained in Paragraph 14.

19. Upon information and belief, Separate Defendants admit the first sentence of Paragraph 19. Separate Defendants are without sufficient knowledge to admit or deny the second sentence of Paragraph 19, and therefore deny same. Separate Defendants deny the third sentence of Paragraph 19.

20. Separate Defendants deny the allegations contained in Paragraph 20.

21. Separate Defendants assert that Paragraph 21 requires a legal conclusion, and as such, does not require a response. To the extent Paragraph 21 is construed to contain factual allegations against the Separate Defendants herein, it is denied.

22. Separate Defendants assert that the first sentence of Paragraph 22 requires a legal conclusion, and as such, does not require a response. To the extent the first sentence is construed to contain factual allegations against the Separate Defendants herein, it is denied. Separate Defendants, upon information and belief, deny the remaining allegations contained in Paragraph 22.

23. Separate Defendants deny the first sentence of Paragraph 23. Separate Defendants deny the characterization of the allegations regarding what Frost told Gibbons regarding Dunn's alibi. Separate Defendants are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 23, and therefore deny same.

24. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 24, and therefore deny same; however, Separate Defendants assert that the disposition of the related criminal charges against Dunn regarding this incident speaks for itself.

25. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 25, and therefore deny same.

26. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 26, and therefore deny same.

27. Upon information and belief, Separate Defendants admit the allegations contained within the first sentence of Paragraph 27 and admit Dunn was sentenced to six year term. Separate Defendants are without sufficient information or belief to admit or deny the remaining allegations.

28. Regarding Paragraph 28, Separate Defendants admit that Frost participated in the Bona Dea investigation and prosecution, but Separate Defendants deny the characterization of the remaining allegations contained within the first two sentences. Separate Defendants deny the last sentence of Paragraph 24.

29. Separate Defendants are without knowledge to admit or deny the allegations contained in Paragraph 29, and therefore deny same.

30. Separate Defendants deny the characterization of the first sentence of Paragraph 30, and deny the second sentence.

31. Separate Defendants admit the allegations contained in the first sentence of Paragraph 31. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in the remainder of Paragraph 31, and therefore deny same.

32. Separate Defendants deny the characterization of the allegations contained within Paragraph 32, and therefore deny same.

33. Separate Defendants deny the allegations contained in the first sentence of Paragraph 33. Separate Defendants deny the characterization of the allegations contained in the second sentence. Separate Defendants deny the allegations contained in the third sentence. Separate Defendants deny the allegations contained in the fourth sentence. Finally, Separate

Defendants are without sufficient knowledge to admit or deny what influenced Dunn's attorneys with respect to their decision not to put Dunn on the stand, and therefore deny same.

34. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 34, and therefore deny same.

35. Separate Defendants admit the first two (2) sentences of Paragraph 31. Separate Defendants are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 35, and therefore deny same.

36. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 36, and therefore deny same.

37. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 37, and therefore deny same.

38. Separate Defendants are without information or belief to admit or deny the allegations contained in Paragraph 38.

39. Upon information and belief, Separate Defendants admit that Dunn was tried twice, both resulting in deadlocks. Separate Defendants deny the characterization of the remaining allegations contained in Paragraph 39.

40. Regarding Paragraph 40, Separate Defendants admit that Gary Dunn has been released. Separate Defendants are without sufficient knowledge to admit or deny Dunn's whereabouts, or whether Dunn will be retried. Separate Defendants deny being involved in any conspiracy with Gary Dunn.

41. Separate Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 41.

42. Separate Defendants admit Ms. Dirksmeyer was murdered; however, upon information and belief Separate Defendants deny that she was sexually assaulted.

43. Separate Defendants deny the allegations contained in Paragraph 43.

44. Separate Defendants deny the characterization of the allegations contained in Paragraph 44. Separate Defendants deny the allegations contained in the final sentence.

45. Separate Defendants deny the allegations contained in Paragraph 45.

46. Separate Defendants deny the allegations contained in Paragraph 46.

47. Separate Defendants deny the allegations contained in Paragraph 47.

48. Separate Defendants deny the allegations contained in Paragraph 48, and further deny that Plaintiff is entitled to the relief sought.

49. Separate Defendants deny the allegations contained in Paragraph 49, and further deny that Plaintiff is entitled to the relief sought.

50. Separate Defendants assert that Paragraph 50 contains no allegations which require a response, but to the extent it is construed to do so, Separate Defendants deny any allegations of wrongdoing, and further deny that Plaintiff is entitled to the relief sought.

51. Regarding the Paragraph titled, “**Prayer**,” Separate Defendants deny that Plaintiff is entitled to the relief sought.

52. Separate Defendants deny any and all allegations not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

1. The allegations of Plaintiff’s Complaint fail to state facts or a claim upon which relief may be granted.

2. Separate Defendants assert that Plaintiff’s rights were not violated and deny that any constitutional violation occurred.



3. Separate Defendants assert that the Plaintiff's alleged injuries did not occur as a result of any policy or custom of the City of Russellville, Arkansas.

4. Separate Defendants assert that punitive damages are not recoverable against a municipality as a matter of law.

5. Separate Defendants, in their individual capacities, avail themselves of any and all applicable doctrines of immunity, including, but not limited to, absolute, qualified, good faith, quasi-judicial, and tort immunities.

6. Separate Defendants deny any and all wrongdoing.

7. Plaintiff's claims, all, or in part, are barred by the statute of limitations.

8. Separate Defendants deny that Plaintiff has pled a factually insufficient case to warrant the imposition of punitive damages.

9. Separate Defendants reserve the right to amend or supplement this pleading as defenses become apparent or available during the course of litigation.

10. Plaintiff has failed to exhaust his state court remedies, and thus his claim is untimely.

11. Separate Defendants assert the affirmative defense of laches, waiver, & res judicata.

Respectfully submitted,

MARK FROST, JAMES BACON, each in their individual and official capacities (CITY OF RUSSELLVILLE, ARKANSAS), and THE CITY OF RUSSELLVILLE, ARKANSAS, Separate Defendants

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And

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**CERTIFICATE OF SERVICE**

I, John L. Wilkerson, hereby certify that on this 13<sup>th</sup> day of August, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all counsel of record listed below; and I further certify that I have mailed the document via U.S. Mail, postage prepaid, to all non-CM/ECF participants listed below:

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