

ORIGINAL

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA


FILED  
U.S. DIST COURT  
MIDDLE DIST. OF LA

SHANNON KOHLER

CIVIL ACTION NO. ~~03-857~~ -1 A II: 53

VERSUS

SECTION: D

SIGN  
BY DEPUTY CLERK 

PAT ENGLADE, ELMER LITCHFIED  
DETECTIVE CHRISTOPHER JOHNSON,  
CITY OF BATON ROUGE, and PARISH  
OF EAST BATON ROUGE

MAGISTRATE: 2

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR  
NEW TRIAL OR AMENDMENT OF JUDGMENT RULE 59(a) and  
RULE 59 (e) FEDERAL RULES OF CIVIL PROCEDURE**

**NOW INTO COURT**, through undersigned counsel, come defendants, Pat Englade, Christopher Johnson and City of Baton Rouge, who respond to plaintiff's motion for new trial or amendment of judgment pursuant to Rule 59(a) and Rule 59 (e) Federal Rules of Civil Procedure as follows:

Plaintiff has listed six (6) points upon which he bases his motion. Those points will be addressed in that order as more fully set forth below.

In plaintiff's first point he complains that he was threatened with public exposure for not "voluntarily" submitting to a swabbing for DNA testing. Plaintiff complains that he was identified because the affidavit and warrant were returned to the East Baton Rouge Parish Clerk of Court's Office for filing into the public records.

It is respectfully submitted that plaintiff's submission to the test was not "voluntary." The testing was court ordered. Further, plaintiff had no constitution right to keep the search warrant from being placed into the public records.

JJB

Regarding points 2 and 3, the shoe size, this court has already dealt with that issue. In support of those points he submits a press release from the Multi Agency Homicide Task Force that shows that the task force had a "sample of a shoe that MAY have been worn by the(perpetrator)." Emphasis added. As Detective Johnson explained in his affidavit, the perpetrator MAY have been the one that wore the shoe and there was a possibility that someone else could have been the person who left the bloody imprint. As stated earlier, this court has already dealt with the issue(s) addressed in points 2 and 3.

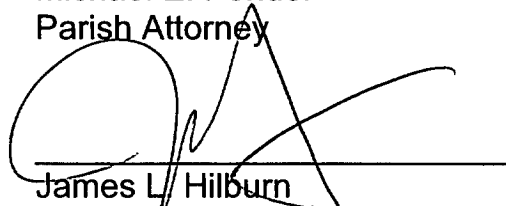
Regarding point 4, "incompetence", Kohler complains that Detective Johnson's failure to arrest him and search for other evidence negates the existence of probable cause and the qualified immunity of Detective Johnson. It is respectfully submitted that Mr. Kohler had no constitutional right to be arrested or to have an invasive premises search.

Regarding point 5, the liability of Chief Englade, that point has already been addressed by the court.

Regarding point 6, plaintiff has apparently asserted claims relative to his DNA being in a database. Baton Rouge Police Department does not have possession of plaintiff's DNA. If Baton Rouge Police Department had any items in its possession belonging to Mr. Kohler it would return said items to him. It is respectfully submitted that this claim should more properly be made against the custodian of his DNA, Louisiana State Police Crime Lab.

Therefore, the issues raised in plaintiff's motion for a new trial or amendment of judgment are totally without merit and the motion should be denied.

By Attorneys:  
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**CERTIFICATE**

I hereby certify that a copy of the foregoing has this day been mailed, postage prepaid to:

Dennis R. Whalen  
Attorney at Law  
854 Main Street  
Baton Rouge, Louisiana 70802

BATON ROUGE, LOUISIANA, this 20<sup>th</sup> day of February, 2005.



JAMES L. HILBURN