

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

MAR 20 1998 GS

Michael H. Milby, Clerk of Court

CLAUDIA NAVARRO PINEDA, §  
INDIVIDUALLY AND AS §  
REPRESENTATIVE OF THE ESTATE §  
OF PEDRO OREGON NAVARRO; , §  
ANA ISABEL LORES, AS NEXT FRIEND OF §  
ASHLEY MINOR DAUGHTER OF §  
PEDRO OREGON NAVARRO, §  
BLANCA LIDIA VIERA, AS NEXT FRIEND §  
OF BELINDA, MINOR DAUGHTER OF §  
PEDRO OREGON NAVARRO, §  
ROGELLIO OREGON NAVARRO, §  
SALVADOR LOPEZ, and §  
NELLY MEJA, §

Plaintiffs

v.

CITY OF HOUSTON, §  
D.H. STROUSE, §  
D.R. BARRERA, §  
P.A. HERREDA, §  
D.R. PERKINS, §  
L.E. TILLERY, and §  
JAMES R. WILLIS, §

Defendants

CIVIL ACTION NO. H-98-3877  
JURY DEMANDED

DEFENDANT, OFFICER DAVID R. PERKIN'S  
SECOND AMENDED ANSWER TO PLAINTIFFS' ORIGINAL COMPLAINT

D.R. Perkins, Defendant, brings this Original Answer to Plaintiffs' Amended Complaint:

**ANSWER**

1. Defendant, David R. Perkins, admits that on July 12, 1998, acting in his capacity as an officer employed with and under the supervision and direction of the Houston Police Department and its agents, he entered the home of Pedro Oregon Navarro. Upon information and belief, Pedro Oregon Navarro was hit nine times in the back, once in the top of the head, once in the top of the shoulder, and once in the back of the hand. None of the rounds which hit Pedro Oregon Navarro were fired from the weapon of Officer Perkins. Defendant denies all other allegations of paragraph 1 of plaintiffs' amended complaint.

2. Defendant admits that he was on duty and acting under the direction and control of The City Houston, The Houston Police Department and its agents and/or employees. Defendant was acting within the course and scope of his employment as a member of the Gang Task Force Unit of the Houston Police Department at all times. Defendant denies that he violated any civil rights of Pedro Oregon Navarro and further denies all other allegations of paragraph 2 of plaintiff's amended complaint.

3. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 3 of plaintiffs' amended complaint.

4. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 4 of plaintiffs' amended complaint.

5. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 5 of plaintiffs' amended complaint.

6. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 6 of plaintiffs' amended complaint.

7. Defendant admits that Rogelio Oregon Navarro was present at the time the events giving rise to this lawsuit occurred. Otherwise, defendant does not have sufficient information to admit or deny the allegations contained in paragraph 7 of plaintiffs' amended complaint.

8. Defendant admits that Salvador Lopez was present at the time the events giving rise to this lawsuit occurred. Otherwise, defendant does not have sufficient information to admit or deny the allegations contained in paragraph 8 of plaintiffs' amended complaint.

9. Defendant admits that Nelly Mejia was present at the time the events giving rise to this lawsuit occurred. Otherwise, defendant does not have sufficient information to admit or deny the allegations contained in paragraph 9 of plaintiffs' amended complaint.

10. Defendant admits the allegations contained in paragraph 10 of plaintiff's amended complaint.

11. Defendant admits the allegations contained in paragraph 11 of plaintiff's amended complaint as to Defendant Perkins.

12. Defendant admits jurisdiction is proper in this Court pursuant to, *inter alia*, 28 U.S.C. sec's 1331 and 1343 and all other applicable law.

13. Defendant admits that venue is proper in this Court pursuant to 28 U.S.C. sec. 1391 and all other applicable law.

14. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 14 of plaintiffs' amended complaint.

15. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 15 of plaintiffs' amended complaint.

16. Defendant admits the allegations contained in paragraph 16 of plaintiffs' amended complaint.

17. Upon information and belief, defendant admits the allegations contained in paragraph 17 of plaintiffs' amended complaint.

18. Upon information and belief, defendant admits the allegations contained in paragraph 18 of plaintiffs' amended complaint.

19. Upon information and belief, defendant admits the allegations contained in paragraph 19 of plaintiffs' amended complaint.

20. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 20 of plaintiffs' amended complaint.

21. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 21 of plaintiffs' amended complaint.

22. Defendant denies any knowledge about any "buy" as alleged by plaintiff in the allegations contained in paragraph 22 of plaintiff's amended complaint.

23. Defendant, Officer David R. Perkins denies that he made this arrest and further denies the allegations contained in paragraph 23 of plaintiff's amended complaint until plaintiffs specify which defendant decided to book Mr. Baxter.

24. Defendant, Officer David R. Perkins admits that he traveled with Mr. Baxter in the same vehicle to 6711 Atwell but denies he traveled with Mr. Baxter to the Jack-N-the Box restaurant. Defendant is without sufficient information to admit or deny the remaining allegations contained in paragraph 24 of plaintiff's amended complaint.

25. Defendant admits that after the door was opened, the six officers entered the apartment but denies the exact sequence of events and facts as alleged in paragraph 25 of plaintiffs' amended complaint.

26. None of the rounds which hit Pedro Oregon Navarro were fired from the weapon of Officer Perkins. Nor did Officer Perkins stop to unload his gun. Upon information and belief defendant admits all other allegations of paragraph 26 of plaintiffs' amended complaint.

27. Defendant admits that Pedro Oregon Navarro never fired the gun he had in his hand. Defendant denies the remaining allegations contained in paragraph 27 of plaintiffs' amended complaint.

28. Upon information and belief, defendant admits the allegations contained in paragraph 28 of plaintiffs' amended complaint.

29. Defendant, Officer David R. Perkins denies that he assaulted or threatened anybody. Defendant admits the named individuals were unarmed but denies the remaining allegations contained in paragraph 29 of plaintiffs' amended complaint.

30. Defendant denies the allegations contained in paragraph 30 of plaintiffs' amended complaint.

31. Paragraph 31 of plaintiffs' amended complaint requires no response.

32. Defendant admits the allegations contained in paragraph 32 of plaintiffs' amended complaint.

33. Defendant admits that this suit is brought pursuant to 42 U.S.C. sec. 1983 and sec. 1988 and sec's 71.001 *et seq.* of the Texas Civil Practice and Remedies Code and pursuant to all other applicable law.

34. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 33 of plaintiffs' amended complaint.

35. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 35 of plaintiffs' amended complaint.

36. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 36 of plaintiffs' amended complaint.

37. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 37 of plaintiffs' amended complaint.

38. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 38 of plaintiffs' amended complaint.

39. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 39 of plaintiffs' amended complaint.

40. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 40 of plaintiffs' amended complaint.

41. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 41 of plaintiffs' amended complaint.

42. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 42 of plaintiffs' amended complaint.

43. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 43 of plaintiffs' amended complaint.

44. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 44 of plaintiffs' amended complaint.
45. Paragraph 45 of plaintiffs' amended complaint requires no response.
46. Defendant admits the allegations contained in paragraph 46 of plaintiffs' amended complaint.
47. Defendant admits the allegations contained in paragraph 47 of plaintiffs' amended complaint.
48. Defendant admits the actions taken were without a warrant and that some or all individuals were handcuffed at some point in time. Defendant denies the remaining allegations contained in paragraph 48 of plaintiffs' amended complaint.
49. Defendant denies the allegations contained in paragraph 49 of plaintiffs' amended complaint.
50. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 50 of plaintiffs' amended complaint.
51. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 51 of plaintiffs' amended complaint.
52. Defendant, Officer David R. Perkins denies that anyone is entitled to recover damages against this defendant because he simply did not do anything wrong and acted as instructed and according to Houston Police Department policies and procedures. Defendant does not have sufficient information to admit or deny the remaining allegations in paragraph 52 of plaintiffs' amended complaint.

#### **AFFIRMATIVE PLEADINGS AND DEFENSES**

53. Defendant pleads that at all times material to this lawsuit that Officer David R. Perkins was acting in the course and scope of his employment with Defendant City of Houston and at no time

did he break any policy provided to him or disobey any superior officer. In fact, Officer Perkins acted as a reasonably prudent officer would act under the same or similar circumstances at all material times.

54. Defendant Officer David R. Perkins pleads that he did not violate clearly established statutory or constitutional rights of which a reasonable person would have known *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Pedro Oregon Navarro was armed with a firearm when Officer Perkins saw Pedro Oregon Navarro. The actions of Officer Perkins during the confrontation were reasonable. Defendant, Officer David R. Perkins is entitled to immunity from this lawsuit.

55. Defendant, Officer David R. Perkins affirmatively pleads that he did not act with deliberate indifference to the rights of plaintiffs.

56. Defendant, Officer David R. Perkins is immune from liability under the doctrine of public official immunity, also termed “qualified immunity.

57. Defendant, Officer David R. Perkins is immune because Texas Peace Officers have an affirmative duty to “interfere without warrant to prevent or suppress crime” TEX. CODE CRIM. PRO. art. 2.13. Peace officers, like all people are entitled to use deadly force to protect themselves when necessary. TEX. PEN. CODE sec. 9.32.

58. Pedro Oregon Navarro had no right to challenge the arrest of his brother, Rogelio Oregon Navarro, by pointing a loaded weapon at the defendants, who were uniformed Houston Police Officers.

59. When Pedro Oregon Navarro confronted the uniformed police officers who were attempting to arrest his brother, Rogelio Oregon Navarro, by pointing a loaded weapon at the defendants, he

assumed the risk of being shot while illegally resisting the arrest and/or search that he knew was being made by Houston Police Officers.

60. “ A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, . . . if the use of force would have been justified under subsection (a) and; the actor (officer) reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.” TEX. PENAL CODE, sec. 9.51(c)(2). “When the suspect refused to stop and ‘drop the gun’ as ordered and continued to advance upon the officer, under the authority of sec. 9.51 . . . the [force used] by the officer was in good faith in his discretionary capacity within the scope of his authority.” *Vasquez v. Hernandez*, 844 S.W.2d 802, 805 (Tex. App. - San Antonio 1992, writ dismissed)

#### **CROSS CLAIM**

61. Defendant, Officer David R. Perkins tenders a cross claim for relief against the co-defendant, the CITY OF HOUSTON. Defendant Perkins is seeking his cost and expenses for defending this lawsuit. Pursuant to the authority in sec. 180.002, of the TEXAS LOCAL GOVERNMENT CODE, the City Houston has a mandatory duty to provide legal counsel without cost to defend Defendant Perkins against a suit for damages which involves an official act of the defendant within the scope of the defendant’s authority. The defendant, City of Houston, has refused to provide representation to Defendant Perkins in this cause of action.

**PRAYER**

62. For these reasons, defendant, Officer David R. Perkins, requests this Court to enter judgment that plaintiffs take nothing, dismiss plaintiffs' suit with prejudice, and award defendant all other relief to which it is entitled. Alternatively, defendant Officer David R. Perkins asks this Court to grant the motion for more definite statement of defendant, City of Houston, and require plaintiffs to amend their complaint with a more definite statement, and for all other relief to which it is entitled.

Respectfully submitted,

Law Offices of Duncan Neblett III



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