

University of Colorado Law School

Colorado Law Scholarly Commons

Colorado Supreme Court Records and Briefs Collection

11-1-1979

City and County of Denver v. District Court for Second Judicial Dist.

Follow this and additional works at: <https://scholar.law.colorado.edu/colorado-supreme-court-briefs>

Recommended Citation

"City and County of Denver v. District Court for Second Judicial Dist." (1979). *Colorado Supreme Court Records and Briefs Collection*. 3114.

<https://scholar.law.colorado.edu/colorado-supreme-court-briefs/3114>

This Brief is brought to you for free and open access by Colorado Law Scholarly Commons. It has been accepted for inclusion in Colorado Supreme Court Records and Briefs Collection by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

IN THE SUPREME COURT OF THE

STATE OF COLORADO

No. **79SA500**

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

David H. Boyer

CITY AND COUNTY OF DENVER,)
STANLEY BAKER AND STEPHEN)
BARNHILL,)

Petitioners,)

ORIGINAL PROCEEDING

vs.)

PETITION FOR WRIT IN THE
NATURE OF PROHIBITION

THE DISTRICT COURT FOR THE)
SECOND JUDICIAL DISTRICT OF)
COLORADO, AND THE HONORABLE)
JAMES C. FLANIGAN, ONE OF)
THE JUDGES THEREOF;)
J. B. MCGHEE AND JULLY MAE)
SIMMONS,)

Respondents.)

Civil Action No. C-76726

The Petitioners, CITY AND COUNTY OF DENVER (hereinafter "City"), STANLEY BAKER and STEPHEN BARNHILL, by their attorneys, HALABY AND BAHR, respectfully petition this Honorable Court pursuant to the provisions of Rule 21 of the Colorado Appellate Rules and Section 3 of Article 6 of the Colorado Constitution, for a writ in the nature of prohibition on the basis Respondent District Court for the Second Judicial District of Colorado and the Honorable James C. Flanigan, one of the judges thereof, exceeded its jurisdiction and grossly abused its discretion. As grounds therefor, petitioners state as follows:

1. Respondents and Plaintiffs below, J. B. MCGHEE and JULLY MAE SIMMONS, (hereinafter "Plaintiffs") allege in their Complaint in Civil Action C-76726 (Exhibit A attached) pending in the Respondent District Court that the Petitioners, STANLEY BAKER and STEPHEN BARNHILL while acting within the course and

scope of their employment with the Denver Police Department, did commit an unlawful and illegal detention, stop, arrest, frisk and search of the Plaintiffs for which they claim damages. Plaintiffs further allege that Petitioner, CITY AND COUNTY OF DENVER is liable on the basis of: (a) Respondent Superior; and (b) negligent hiring of Police Officers STANLEY BAKER and STEPHEN BARNHILL; and (c) negligent retention of STANLEY BAKER and STEPHEN BARNHILL as employees.

2. In connection with their Complaint, Plaintiffs served Petitioners with a Request for Production of Documents (Exhibit B attached) requesting, inter alia, the following:

"5. A copy of the SIB Complaints and results thereof filed against either of the herein-described officers on or before September 20, 1977.

6. Any letter of reprimand, censure, or other disciplinary action taken against said officers by the Denver Police Department on or before September 20, 1977."

3. Petitioners objected to said request on the grounds that the documents of the Staff Inspection Bureau (SIB) were priveleged and not subject to discovery (Exhibit C attached).

4. Plaintiffs then filed a Motion to Compel on the basis the requested material was "relevant to ascertain the bias, motives, or prejudice of the Defendant STANLEY BAKER, and the knowledge that the CITY AND COUNTY OF DENVER had" thereof (Exhibit D attached).

5. Judge Flanigan thereupon reviewed in camera, the SIB documents that were the subject of the Plaintiff's request. The trial court subsequently entered an Order requiring Petitioners to produce certain of these SIB documents on the

grounds that the court felt they were discoverable and relevant to Plaintiffs' claims against Petitioners. The court further ordered the aforescribed documents be sealed in an envelope and granted a stay until November 2, 1979 to allow Petitioners the opportunity to file the instant proceeding.

6. The SIB documents ordered to be produced include the following:

(a) Prior citizens complaints against the Defendant officers and internal investigation thereof;

(b) Internal investigation of Plaintiffs' Complaint to SIB relative to the conduct of Officers BAKER and BARNHILL which conduct also constitutes the subject matter of Plaintiffs' claim in Civil Action C-76726 pending in the Respondent District Court. Such documents involved: (i) Subjective impressions and conclusions of the reviewing officers; (i) Statements of Defendant Officers BAKER and BARNHILL relating to their conduct in connection with Plaintiffs' Complaint, which were obtained pursuant to an order of their superior officer and under threat of immediate suspension as well as other disciplinary action for refusal to obey; and with the assurances that such statements would be used solely and exclusively for internal purposes and would not be used in any other proceeding.

7. The Order of the District Court constituted a gross abuse of discretion and an act in excess of its jurisdiction, because:

(a) It directly contravened the provisions of C.R.S. 1973 §24-72-204 and §24-72-305 (5);

(b) It goes beyond the scope of discovery allowed under the Colorado Rules of Civil Procedure;

(c) It violates the constitutional rights to privacy of Officers BAKER and BARNHILL;

(d) It violates executive privilege by requiring production of non-factual information such as conclusions, opinions and evaluative summaries;

(e) It violates the public policy of Colorado that encourages and requires that law enforcement agencies conduct a thorough and accurate internal investigation unhindered by the fear and intimidation that public disclosure would have on the subjects and witnesses involved.

8. The petitioners have no other adequate and speedy remedy at law. Unless the aforesaid Order compelling discovery is prohibited from being enforced, the Petitioners will suffer immediate and irreparable harm and injury because the confidentiality of the files will be destroyed.

9. The importance of the issues raised herein transcend the particular interests of the Petitioners. Presently, the trial courts are without guidelines in litigation relating to law enforcement in determining rights of parties arising from the interrelationship among the various privilege and public policy considerations cited herein, the statutory law relating to disclosure of records, and the scope of discovery allowed under the Colorado Rules of Civil Procedure. It is respectfully submitted that immediate resolution of these issues will serve the public interest.

PRAYER FOR RELIEF

Petitioners respectfully request this Honorable Court to issue an Order to Respondents requiring them to show cause why a writ in the nature of prohibition should not enter against them and preclude enforcement of the order compelling discovery.

Respectfully submitted,

HALABY AND BAHR

By:


THEODORE S. HALABY No. 2232


MICHAEL P. BAHR No. 8655

5945 West Mississippi Avenue
Denver, Colorado 80226
Telephone: (303) 922-8191

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 1979, I mailed a true and correct copy of the foregoing Petition for Writ in the Nature of Prohibition, by placing same in the United States mail, postage prepaid, addressed to:

Honorable James C. Flanigan
Judge, Denver District Court
City and County Building, Courtroom 9
Denver, Colorado 80202

David B. Savitz (#4690)
1420 Western Federal Savings Building
Denver, Colorado 80202

Clerk of the District Court
City and County Building
Denver, Colorado 80202

Marshall A. Fogel, ESq.
Fogel, Keating and Wagner
336 West 13th Avenue
Denver CO

SUMMONS IN CIVIL ACTION

Court Filing Stamp

Docket
Shansato, M. Donnell
& Sellner

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER AND
STATE OF COLORADO

CIVIL ACTION NO. Courtroom

SERVED BY Jim Spence

SHERIFF _____ MARSHALL _____ OTHER

DATE 1-17-78 TIME 12:05pm

RECEIVED BY MJ Cummings
Mayor's Office

J. B. MC GHEE and JULLY
MAE SIMMONS,

PLAINTIFFS...,
vs.

CITY AND COUNTY OF DENVER,
STANLEY BAKER and STEPHEN
BARNHILL,

DEFENDANT...S.

SUMMONS

THE PEOPLE OF THE STATE OF COLORADO

To the above named defendant...S., GREETING:

You are hereby summoned and required to file with the clerk an answer to the complaint within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the complaint.

If service upon you is made outside the State of Colorado, or by publication, or if a copy of the complaint be not served upon you with this summons, you are required to file your answer to the complaint within 30 days after service of this summons upon you.

WARNING: If this summons does not contain the docket number of the civil action, then the complaint may not now be on file with the clerk of the court. The complaint must be filed within ten days after the summons is served, or the action may be dismissed without notice upon your proper request to the court. Information from the court concerning this civil action may not be available until ten days after the summons is served.

This is an action* as more particularly described in the Complaint attached hereto wherein punitive damages are prayed for.

Dated January 15,, 19 78

Clerk of the District Court

By.....
Deputy Clerk

(SEAL OF THE COURT)

David B. Savitz
Attorney for Plaintiff

DAVID B. SAVITZ (#4690)
1420 Western Federal Savings Buildi
Denver, Colorado 80202
Address of Attorney

Telephone: (303) 993-6836

Note — This summons is issued pursuant to Rule 4, Colorado Rules Civil Procedure.

*If the summons is published or served without a copy of the complaint, after the word "action" state the relief demanded.

If body execution is sought the summons must state, "This is an action founded upon tort."

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER
STATE OF COLORADO

Civil Action No. _____

J. B. MC GHEE and JULLY)	
MAE SIMMONS,)	
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT IN DAMAGES
)	(Jury Trial Demanded)
CITY AND COUNTY OF)	
DENVER, STANLEY BAKER,)	
and STEPHEN BARNHILL,)	
)	
Defendants.)	

The Plaintiffs, as a complaint against the Defendants, state and allege as follows:

FIRST CLAIM FOR RELIEF

1. That prior to and on or about September 20, 1977, the City and County of Denver, one of the Defendants above named, was and is a municipal corporation.

2. That on or about September 20, 1977, the Defendants Stanley Baker and Stephen Barnhill were agents, servants and employees of the Defendant City and County of Denver and were acting within the course and scope of their agency and employment.

3. That Plaintiffs have given written notice of their intent to sue to the Honorable William H. McNichols, Mayor, City and County of Denver, pursuant to C.R.S. 1973, 24-10-109 (as amended).

4. That on or about September 20, 1977, at or near 16th and California Streets, Denver, Colorado, the Defendant Stanley Baker and Stephen Barnhill, acting under the scope of their agency and employment with the City and County of Denver, did commit an unlawful and illegal detention, stop,

and/or arrest, and frisk, and/or search, of the person and/or effects of the Plaintiffs, J. B. McGhee and July Mae Simmons.

5. That the Defendants Stanley Baker and Stephen Barnhill, acting under the scope of their authority and within the scope of their employment with the Defendant City and County of Denver, did commit the above described acts without reasonable suspicion, probable cause, or exigent circumstances.

6. That the Defendants, Stanley Baker and Stephen Barnhill, were acting under color of law, in their capacity as police officers of the Defendant City and County of Denver and in the scope of their employment with the City and County of Denver. That said acts of the Defendants deprived Plaintiffs of their rights, privileges, and liberties secured to them by the Constitution and laws of the United States and the Constitution and laws of the State of Colorado, to-wit:

- (a) The right to liberty;
- (b) The right to be secure in his person and effects from unreasonable seizure and search;
- (c) The right to due process of law;
- (d) The right to travel freely;
- (e) The right to privacy;
- (f) The right to equal protection of the law;
- (g) The freedom from physical abuse, coercion and intimidation, and harassment; the freedom from unlawful interference, detention, stop, frisk, and arrest.

7. The Defendants, engaged in the unlawful and illegal conduct herein mentioned to the injury of the Plaintiffs and deprived them of their rights, privileges, and immunities secured to them by the First, Fourth, Fifth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution, by the correspondending amendments to the Constitution of the

State of Colorado, and by 42 U.S.C. Section 1983.

8. That each and every act of the Defendants herein complained of were perpetrated intentionally, willfully, maliciously, and with wanton and reckless disregard of the Plaintiffs' rights and feelings. Accordingly, Plaintiffs are entitled to punitive damages against the Defendants, jointly and severally.

9. That as a direct and proximate result of the Defendants' acts herein described, Plaintiffs have suffered emotional trauma, humiliation, embarrassment, and psychological overlay. That prior to the time described herein, Plaintiffs had respected police officers in general as trustworthy and as protectors. That since the above described incident, Plaintiffs have a deep seated fear and distrust for police in general and that said persons believe that this condition will exist in the future. That Plaintiffs to this day have suffered mental pain and anguish and will continue to suffer such indefinitely in the future.

10. That because of the above described conduct of the Defendants, the Plaintiffs, J. B. McGhee and July Mae Simmons, have been damaged in the amount of Twenty-Five Thousand Dollars (\$25,000.00) individually. That as a result of the willful and wanton disregard of the Plaintiffs' conduct, the Plaintiffs, individually, are entitled to punitive damages against the Defendants, jointly and severally, in the amount of Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, the Plaintiffs, J. B. McGhee and July Mae Simmons, individually, pray for judgment against the Defendants, The City and County of Denver, Stanley Baker, and Stephen Barnhill, individually, jointly and severally, in the amount of \$25,000.00 for actual damages, \$50,000.00 exemplary damages, special damages, interest from the date of filing this Complaint costs, expert witness fees, attorney's fees, and any other relief

the Court may deem proper in the premises.

SECOND CLAIM FOR RELIEF

1. The Plaintiffs, J. B. McGhee and Jully Mae Simmons, incorporate herein by reference the allegations contained in Paragraphs 1, 2, 3, 4, 5, and 8 as if fully set forth herein of their FIRST CLAIM FOR RELIEF.

2. That the injuries suffered by the Plaintiffs were directly and proximately caused by the negligence of the Defendants, jointly and severally, by one or more of the following acts:

(a) Negligently failed to ascertain the reliability of a supposed confidential informant;

(b) Negligently failed to ascertain whether or not the supposed confidential informant's information was credible; a

(c) Negligently failed to ascertain that the Plaintiffs, jointly and severally, were not committing a crime; negligently stopping, detaining and/or arresting, frisking, and searching the person and/or effects of the Plaintiffs.

3. That as a direct and proximate result of Defendants' negligence as herein described, Plaintiffs have suffered emotional trauma, humiliation, embarrassment, and psychological overlay. That prior to the time described herein, Plaintiffs had respected police officers in general as trustworthy and as protectors. That since the above described incident, Plaintiffs have a deep seated fear and distrust for police in general and that said persons believe that this condition will exist in the future. That Plaintiffs to this day have suffered mental pain and anguish and will continue to suffer such indefinitely in the future.

4. That because of the above described conduct of the Defendants, the Plaintiffs, J. B. McGhee and Jully Mae Simmons, have been damaged in the amount of Twenty-Five Thousand Dollars (\$25,000.00) individually. That as a result of the willful and wanton disregard of the Plaintiff's conduct, the Plaintiffs, individually, are entitled to punitive damages

against the Defendants, jointly and severally, in the amount of Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, the Plaintiffs, J. B. McGhee and July Mae Simmons, individually, pray for judgment against the Defendants, The City and County of Denver, Stanley Baker, and Stephen Barnhill, individually, jointly and severally, in the amount of \$25,000.00 for actual damages, \$50,000.00 exemplary damages, special damages, interest from the date of filing this Complaint, costs, expert witness fees, attorney's fees, and any other relief the Court may deem proper in the premises.

THIRD CLAIM FOR RELIEF

1. Plaintiffs incorporate all of the allegations contained in their FIRST AND SECOND CLAIMS FOR RELIEF.

2. That Defendant, The City and County of Denver and its agents were negligent in causing the above acts and damages to the Plaintiffs as a result of one or more of the following acts of negligence:

(a) Negligently hired police officers Stanley Baker and Stephen Barnhill in not perceiving their propensity to act without reliable or credible information;

(b) That since hiring police officers Stanley Baker and Stephen Barnhill, negligently allowed Defendants to remain on the police force in spite of clear indications that Defendants did not possess the requisites of police officers to perform their duties in a calm and reasoned manner toward the citizens in their jurisdiction; and

(c) Negligently failed to suspend or dismiss Defendants Stanley Baker and Stephen Barnhill after clear indications existed that Defendants did not possess the requisites of police officers to perform their duties in a calm and reasoned manner.

WHEREFORE, the Plaintiffs pray for judgment against the Defendant City and County of Denver in the amount of \$25,000.00 for actual damages, special damages, interest from the time of filing this Complaint, costs, expert witness fees, attorney's fee

and any other relief that this Court shall deem proper.

Respectfully submitted,

David B. Savitz

DAVID B. SAVITZ, (#4690)
Attorney for Plaintiffs
1420 Western Federal Savings Building
Denver, Colorado 80202
Telephone: (303) 893-6836

Plaintiffs' Addresses:

J. B. McGhee
1267 Lafayette Street
Denver, Colorado

Jully Mae Simmons
1794 South Oswego
Aurora, Colorado

PLAINTIFFS HEREBY DEMAND A JURY TRIAL OF SIX (6) PERSONS
ON ALL ISSUES.

EXHIBIT B

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER

STATE OF COLORADO

CLERK OF DISTRICT COURT
AUG 24 1977
City and County of Denver, Colo

Civil Action No. C-76726, Courtroom 9

J. B. MC GHEE and JULLY
MAE SIMMONS,

Plaintiffs,

vs.

CITY AND COUNTY OF DENVER,
STANLEY BAKER and STEPHEN
BARNHILL,

Defendants.

MOTION FOR PRODUCTION OF
DOCUMENTS
TO THE DEFENDANT, CITY AND
COUNTY OF DENVER

The Plaintiffs, by and through their attorney, request that the Defendant, City and County of Denver, provide counsel for the Plaintiffs with a copy of the following documents within thirty (30) days hereof in accordance with the Colorado Rules of Civil Procedure:

1. The intelligence files of the Plaintiffs, J. B. McGhee and July Mae Simmons, as they existed on or before September 20, 1977 in the offices of the Narcotics Department of the Denver Police Department, City and County of Denver, State of Colorado.
2. The card files of the Plaintiffs, J. B. McGhee and July Mae Simmons, as they existed on or before September 20, 1977 in the offices of the Narcotics Department of the Denver Police Department, City and County of Denver, State of Colorado.
3. The general files of the Plaintiffs, J. B. McGhee and July Mae Simmons, as they existed on or before September 20, 1977 in the offices of the Narcotics Department of the Denver Police Department, City and County of Denver, State of Colorado.
4. Any correspondence or memorandum or reports written by either or both of the Defendants Baker and/or Barnhill to any superior office within the Narcotics Department of the Denver Police Department with regard to this incident and any similar documents written by said officers to the S.I.B.

5. A copy of the S.I.B. complaints and results thereof filed against either of the herein-described officers on or before September 20, 1977.

6. Any letter of reprimand, censure, or other disciplinary action taken against said officers by the Denver Police Department on or before September 20, 1977.

Respectfully submitted,

David B. Savitz
DAVID B. SAVITZ (#4690)
Attorney for Plaintiffs
1420 Western Federal Savings Building
Denver, Colorado 80202
Telephone: (303) 534-1983

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing "Motion for Production of Documents to the Defendant, City and County of Denver" to: John E. McDermott, Esquire, 1445 Cleveland Place, Room 301-C, Denver, Colorado, 80202, by placing the same in the United States Mail, postage prepaid, this 30th day of August, 1978.

David B. Savitz

IN THE DISTRICT COURT IN AND FOR THE

CITY AND COUNTY OF DENVER

STATE OF COLORADO

Civil Action No. C-76726

Courtroom 9

J.B. MCGHEE and)
JULY MAE SIMMONS,)
)
Plaintiffs,)

vs.)

CITY AND COUNTY OF DENVER,)
STANLEY BAKER, and)
STEPHEN BARNHILL,)
)
Defendants.)

OBJECTIONS TO REQUEST FOR
PRODUCTION OF DOCUMENTS and
MOTION TO COMPEL

COME NOW the defendants, by and through their attorneys and herewith object to the plaintiffs' Motion to Produce and Motion to Comply, and as grounds therefor show unto the Court as follows:


1. That said documents are privileged and confidential.
2. That the disclosure of said documents would be contrary to the public interest;
3. That the disclosure of said documents would be in violation of C.R.S. 1973, 24-72-301, et seq.;
4. That the plaintiffs' request is a fishing expedition ²⁰¹ on which will not lead to any relevant evidence.

WHEREFORE, Defendants respectfully pray that this Honorable Court enter its Order prohibiting the production of the documents requested by the plaintiffs, or in the alternative, that the requested documents be produced for an in-camera inspection by the Court, and for such other and further relief as to the Court may deem proper in the premises.

Respectfully submitted,

MAX P. ZALL, City Attorney
LLOYD K. SHINSATO, Ass't. City Attorney
DON K. DEFORD, Ass't. City Attorney

By


DON K. DEFORD #6672
1445 Cleveland Pl., #301-C
Denver, Colorado 80202
575-2951

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing "Objections to Request for Production of Documents and Motion to Compel", by placing same in the U.S. Mail, postage prepaid to: David B. Savitz, Esq., 1420 Western Federal Savings Building, Denver, CO. 80202.

EXHIBIT D
RECEIVED
DISTRICT COURT
CITY AND COUNTY OF DENVER
OCT 25 11 1978

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER
STATE OF COLORADO
Civil Action No. C-76726

J.B. MC GHEE and JULLY)
MAE SIMMONS,)
)
Plaintiffs,)
)
vs.)
)
CITY AND COUNTY OF DENVER,)
STANLEY BAKER and STEPHEN)
BARNHILL,)
)
Defendants.)

MOTION TO COMPEL

The Plaintiffs, by and through their attorney, move this Honorable Court to compel the production of documents and for reasons, state and allege as follows:

1. That on or about August 22, 1978, a "Motion for Production of Documents to the Defendant, City and County of Denver" was filed with this Honorable Court and a copy of the same was sent to counsel for the Defendants.

2. That a response to the same was purportedly made on October 23, 1978 but the documents included in the response were not all that was requested.

3. That the documents requested were in part reviewed by the Defendant, Stanley Baker, before he effectuated the arrest of the Plaintiffs and was information that purportedly was used by him to establish a basis for the arrest of the said Plaintiffs.

4. That said documentation requested concerning the SIB complaints and disciplinary measures is relevant to ascertain the bias, motives, or prejudice of the Defendant, Stanley Baker, and the knowledge that the City and County of Denver had with regard to the said Stanley Baker's bias, motives or prejudice.

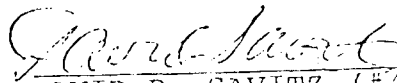
5. That all of the requested documentation was testified to by the Defendant, Stanley Baker, in a deposition as being in existence and the same is relevant to the presentation and

preparation of this case on behalf of the Plaintiffs.

6. That Defendants have interposed no objections to the requested material and their delay in responding hereto is prejudicial to the ability of the Plaintiffs to properly prepare their case.

WHEREFORE, Plaintiffs pray for an appropriate Motion to Compel, for attorney's fees, and for whatever further relief the court may deem proper in the premises.

Respectfully submitted,



DAVID B. SAVITZ (#4690)
Attorney for Plaintiffs
1420 Western Federal Savings Building
Denver, Colorado 80202
Telephone: (303) 893-6836

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing "Motion to Compel" to: John E. McDermott, Esquire, 1445 Cleveland Place, Room 301-C, Denver, Colorado, 80202 and to: Marshall A. Fogel, Esquire, 336 West 13th Avenue, Denver, Colorado, 80204, by placing the same in the United States mail, postage prepaid, this 31ST day of October, 1978.

