

IN THE UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

Colleen Lord and Robert Francis	:	Docket Number:
Talbot, Jr., Co-Administrators of the	:	3:22-cv-00322 VLB
Estate of Carl Talbot	:	
Plaintiffs	:	
	:	
	:	
vs.	:	
	:	
Carlos Padro, Arden Coggins, Nicholas	:	
Belanger, Jeffrey Gibbons, Eddie Daniels,	:	
Nekengie Brookshire, Corron Petaway,	:	
Charles Washington, Malcolm Gatison,	:	
Patrick Davidson, Bii-Ron Wilkes,	:	
Jon Antoine and Margo Zukowska	:	August 9, 2023
Defendants	:	

**STIPULATION TO WITHDRAW CLAIMS AGAINST DEFENDANT  
NEKENGIE BROOKSHIRE**

Pursuant to F.R.C.P Rule 21, “Misjoinder and Nonjoinder of Parties”, or, in the alternative, Rule 41(a) of the F.R.C.P. “Dismissal of Action”, the plaintiffs in the above-entitled action respectfully seek leave of this Court to withdraw their claim as to the defendant, Nekengie Brookshire, only.

**Legal Standard**

Rule 21 of the Federal Rules of Civil Procedure states:

**Rule 21. Misjoinder and Nonjoinder of Parties**

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Rule 41 of the Federal Rules of Civil Procedure states:

**Rule 41 – Dismissal of Actions**

**(a) Voluntary Dismissal.**

**(1) By the Plaintiff.**

**(A) Without a Court Order.** Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

**(B) Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

**(2) By Court Order; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.<sup>1</sup>

**Factual Background**

In support of this motion, the plaintiffs represent as follows:

**1. Plaintiffs asserted in Paragraph 10 of their Amended Complaint**

**(Document #60) that "Defendant Nekengie Brookshire was a Correctional Officer employed at NHCC in March, 2019. At all times relevant to this Complaint, Defendant Nekengie Brookshire was acting as an employee of**

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<sup>1</sup> Plaintiff moves in the alternative because there appears to be an uneven circuit split as to whether Rule 41 of the Federal Rules of Civil Procedure permits dismissal of a single party in a multiparty case. Rule 41(a) provides in pertinent part that the plaintiff "may dismiss an action" without a court order by making a required filing. See Fed. R. Civ. P. 41(a)(1) (emphasis added). The Sixth Circuit interprets the scope of an "action" narrowly to mean only dismissal of the "entire controversy," not a single party. *Mullins v. C.R. Bard, Inc.*, No. 0:19-CV-85-JMH-EBA, 2020 WL 4288400, at \*1 (E.D. Ky. July 27, 2020) (citing *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961)). The Second Circuit has also followed this approach, though it has been called into question. See *Baksh v. Captain*, No. 99-CV-1806 (ILG), 2000 WL 33177209, at \*2 (E.D.N.Y. Dec. 11, 2000) (discussing *Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105 (2d Cir.), cert. denied, 345 U.S. 1964 (1953)). As Plaintiff seeks to have Defendant Brookshire (only) dropped from this litigation as a result of this motion, the Court is requested to allow such a withdrawal by either Rule 21 or Rule 41(a) as the Court deems appropriate.

**the Connecticut Department of Corrections and was acting within the course and scope of her employment. She is sued in her individual capacity”;**

- 2. Plaintiffs also asserted in Paragraph 49 that “According to a use of force report filed by Defendant Brookshire, at approximately 6:45 a.m., defendant Brookshire “. . . deployed chemical agent towards his [Mr. Talbot’s] facial area in an attempt to gain his compliance”;**
- 3. Plaintiffs also asserted in Paragraph 60 that “At no time is the reported use of OC Spray by Defendant Brookshire, as described in her Use of Force Report, and as reviewed by Defendant Coggins, preserved on any video tape as required by the DOC Policies identified above”;**
- 4. Plaintiffs also asserted in Paragraph 61 that “At no time does any report indicate that Defendant Brookshire, Defendant Coggins or any other defendant issued verbal warnings to Mr. Talbot that he was going to be exposed to OC spray prior to the reported discharge of OC spray by Defendant Brookshire”;**
- 5. Plaintiffs also asserted in Paragraph 146 that “Defendant correction officers Padro, Coggins, Belanger, Gibbons, Daniels, Brookshire, Petaway, Washington, Gatison and Davidson maliciously engaged in excessive force against Mr. Talbot that was in gross excess of any security need. The use of OC spray by Defendant Padro and the alleged use of OC Spray by Defendant Brookshire were in violation of DOC regulations; was objectively unreasonable; as was the lack of efforts by the defendants to comply with DOC regulations and manufacturer’s**

**instructions regarding decontamination, which resulted in the continued unreasonable use of force as the continuing effect of the OC spray on Mr. Talbot remained unabated;**

**In fact, discovery in this case has established to a certainty the following facts:**

- 1. That the ‘Use of Force’ report produced by the Department of Correction purportedly authored and signed by Correctional Officer Brookshire in which she states “I deployed chemical agent towards his [Talbot] facial area in an attempt to gain compliance” was fabricated and the information contained therein was false (See, Exhibit A, purported “Use of Force” report attributed to Officer Brookshire);**
- 2. That Correctional Officer Brookshire never applied chemical agent in the face of plaintiff’s decedent Talbot and does not know who within the Department of Corrections filed a Use of Force report containing false information and which contained a forgery of Officer Brookshire’s signature;**
- 3. That the Use of Force report produced by the Department of Corrections containing statements that Officer Brookshire observed that Mr. Talbot was “...combative and non-compliant with staff during a RHU placement” and that “Mr. Talbot was “secured in Restrictive Housing on In-cell restraints without incident” were falsified, as Officer Brookshire was never present during the placement of Mr. Talbot in the RHU;**

4. That Officer Brookshire testified under oath that (1) she never applied chemical agent towards Mr. Talbot's facial area (See, Exhibit B, Pages 62- 63, lines 23-8); (2) She did not participate in placing Mr. Talbot in in-cell restraints and had no personal knowledge of that taking place (See, Exhibit B, Pages 61-62 lines 6-17, Page 64, lines 10-19); (3) The signature purporting to be hers on Exhibit A is not her signature, and she has no idea who filled out the Use of Force form attributed to her regarding this incident, and if she had filled out a Use of Force report it would have included significantly different information (See, Exhibit B, Pages 66-71).

Plaintiff respectfully requests that Officer Brookshire be dropped from this lawsuit. While the Plaintiff's allegations against her were based on a good-faith reliance upon official Department of Corrections reports generated on the day of Mr. Talbot's death, it has been conclusively proved that the Use of Force report attributed to Officer Brookshire was fabricated completely by some employee of the Department of Corrections, and Officer Brookshire's signature on that Use of Force form was forged. Plaintiffs had no knowledge at the time the summons and complaint were filed that the document disclosed by the Department of Corrections was fabricated entirely and in fact Officer Brookshire neither utilized chemical spray the face of Mr. Talbot nor observed or participated in any activities in the RHU.

Plaintiff's counsel has conferred with Attorney David Yale of the Office of the Attorney General and Attorney Jeffrey Ment and they consent to the granting of this motion.

Wherefore, Plaintiff respectfully requests that Defendant, Nekengie Brookshire, be removed as a defendant in this action.

**THE PLAINTIFFS**

BY: /s/ Arthur C. Laske, III  
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**CERTIFICATION**

I hereby certify that on August 9, 2023, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Arthur C. Laske, III  
Arthur C. Laske, III, Esq.

