

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NELDON LEWIS	*	CIVIL ACTION
VERSUS	*	NO: 09-7468
GRETNA POLICE DEPARTMENT, ET AL	*	SECTION: "D"(1)

ORDER AND REASONS

Before the court is the "**Motion for Partial Dismissal Pursuant to FRCP 12(b)(6)**" (Doc. No. 7) filed by Defendants, Arthur S. Lawson and the Gretna Police Department. **No memorandum in opposition was filed.** The motion, set for hearing on Wednesday, April 21, 2010, is before the court on Defendants' brief, without oral argument. Now, having considered the memorandum of Defendants' counsel, the record, and the applicable law, the court finds that the motion should be granted.

In his Complaint, Plaintiff alleges that on various occasions, Defendants violated his federal civil and constitutional rights, and they also committed negligent and intentional acts under Louisiana law. The alleged incidents described in Paragraphs 4-8 of his Complaint (allegedly involving false detention, arrest or

imprisonment, assault or harassment, and issuance of traffic citations) all occurred over one year before he filed his Complaint on November 25, 2009. Louisiana's prescriptive period on delictual actions is one year and a state statute of limitations for personal-injury suits applies in a §1983 claim. Thus, all of Plaintiff's state law claims and §1983 claims based on the incidents described in Paragraphs 4-8 are prescribed.

The court also finds that Plaintiff fails to allege viable Fourth Amendment claims for false arrest arising from his receipt of traffic citations for not wearing his seatbelt (referenced in Paragraphs 7-8 of the Complaint), since there is no allegation that Plaintiff was also arrested, detained, restricted in his travel, or otherwise subject to deprivation of his liberty.

Accordingly;

IT IS ORDERED that the "**Motion for Partial Dismissal Pursuant to FRCP 12(b)(6)**" (Doc. No. 7) filed by Defendants, Arthur S. Lawson and the Gretna Police Department, be and is hereby **GRANTED**, dismissing Plaintiff's claims arising from incidents described in Paragraphs 4-8 of his Complaint.

Finally, the court recognizes that Plaintiff named "Gretna Police Department, an agency of the city of Gretna, State of Louisiana" as a Defendant. (Complaint at ¶2(a)). In the instant motion, Defendants note that "[t]he Gretna Police Department is not

an entity capable of being sued and, hence, is an improper party to this litigation." (Doc. No. 7, at p. 1, n. 1). However, Defendants do not specifically seek dismissal of the Gretna Police Department. Thus, the court instructs Defendants to file the appropriate motion (with cited legal authority) if Defendants seek dismissal of the "Gretna Police Department."

New Orleans, Louisiana, this **21st** day of **April**, 2010.


A.J. McMAMARA
UNITED STATES DISTRICT JUDGE