

LEGISTAR NO.

160688

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, STATE OF FLORIDA
CIVIL DIVISION

RYAN SHEPPARD,

Plaintiff,

CASE NO.:

v.

OFFICER ROBERT KENNEDY,
in his Individual capacity,

Defendants.

COMPLAINT

COMES NOW, Plaintiff, RYAN SHEPPARD, (hereinafter "Plaintiff" or "SHEPPARD") by and through the undersigned attorney and sues Defendants, CITY OF GAINESVILLE, FLORIDA (hereinafter "CITY") and OFFICER ROBERT KENNEDY (hereinafter "KENNEDY") (hereinafter collectively "Defendants") for damages and alleges the following:

1. This is an action for money damages for the injuries suffered by Plaintiff, as a result of Defendants' conduct in violation of Plaintiff's civil rights under the United States Constitution, and the Florida Constitution, and the laws of the great state of Florida.
2. This is an action for damages in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00), exclusive of interest, attorney's fees and costs and comes within the jurisdiction of this court.
3. Jurisdiction is conferred in the Circuit Court in and for Alachua County, Florida, by Article V, Section 5(b) of the Florida Constitution to hear all state law claims including claims under the Constitution of the State of Florida.
4. Concurrent jurisdiction is conferred in the Circuit Court in and for Alachua County, by 28 U.S.C. §1331, to decide cases presenting a question arising under the Constitution and the

laws of the United States, and by 8 U.S.C. §1343(a)(3) and (4), to redress the deprivation, under color of law, of any right, privilege or immunity secured by the United States Constitution.

5. Venue is appropriate because the events giving rise to this Complaint occurred or originated in Alachua County, Florida.
6. Throughout the investigation and prosecution of SHEPPARD, Defendant, KENNEDY showed deliberate indifference towards the civil and constitutional rights of Plaintiff by detaining Plaintiff in the absence of a reasonable suspicion of criminal activity, and arresting and/or charging Plaintiff with criminal violation(s) without probable cause to believe that he was in the process of committing unlawful offenses, or had completed unlawful offense.
7. This is an action brought pursuant to 42 U.S.C. §1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territorysubjects or causes to be subjected any citizen of the United States or others person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

8. Pursuant to § 768.28(6)(a), *Florida Statutes*, Plaintiff has notified Defendants of all Plaintiff's claims six months or more prior to the filing of this action and said claims were not resolved. Plaintiff has fully complied with § 768.28(6)(a), including providing notice and service TO THE GAINESVILLE POLICE DEPARTMENT and CITY OF GAINESVILLE on March 30, 2015.
9. All conditions precedent to the filing of this action have occurred, accrued, or have been waived as a matter of law.

PARTIES

10. Plaintiff, SHEPPARD, was a resident of Alachua County, Florida at all relevant times mentioned in the Complaint.

11. CITY OF GAINESVILLE, is a government entity in the State of Florida and is the employer of Defendant KENNEDY.

12. Defendant, KENNEDY, is a law enforcement officer employed by the CITY OF GAINESVILLE. Defendant, KENNEDY is being sued in his individual capacity.

FACTS COMMON TO ALL COUNTS

13. On or about December 13, 2012, KENNEDY initiated a traffic stop upon a vehicle in which SHEPPARD was driving.

14. SHEPPARD had just left Starbucks located on 13th Street in Gainesville Florida in which he was studying with a friend.

15. SHEPPARD dropped his friend at home at approximately 9:15pm.

16. After dropping his friend at home he went directly down 34th street to Checkers on University Avenue to get a bit to eat before he went home.

17. When SHEPPARD turned into the Checkers parking lot he was pulled over by Officer Kennedy.

18. When Officer Kennedy got out of his vehicle and approached SHEPPARD he immediately began yelling at SHEPPARD and telling SHEPPARD he smelled weed.

19. SHEPPARD was scared because he could not understand why KENNEDY was so aggressive towards him.

20. KENNEDY ordered SHEPPARD to open his hand which he did and there was nothing in his hand.

21. KENNEDY asked SHEPPARD what was in his mouth and SHEPPARD stated that he had nothing in his mouth.

22. KENNEDY then opened SHEPPARD'S car door and proceeded to beet SHEPPARD.

23. KENNEDY dug his fingers into SHEPPARD'S jaw breaking the skin and yelling for SHEPPARD to spit it out.
24. SHEPPARD repeatedly asked Kennedy to stop beating him.
25. Kennedy ordered SHEPPARD to put his hands behind his back and SHEPPARD immediately complied.
26. Kennedy then handcuffed SHEPPARD and continued beating SHEPPARD by hitting him multiple times in the back of his head
27. SHEPPARD continued to tell Kennedy that he did not have anything in his mouth as he was relentlessly beaten by Kennedy and Kennedy drug him out of his vehicle by his ankles.
28. SHEPPARD's face hit the doorstep of his truck as he was being dragged out by his ankles by KENNEDY because his hands were handcuffed behind his back so he could not use his hands to break his fall.
29. KENNEDY then began to smash SHEPPARD'S face into the concrete.
30. Kennedy and another officer began searching SHEPPARD's car without his consent.
31. SHEPPARD voiced that he did not consent to the officers searching his car and KENNEDY replied "I do not consent to you speaking."
32. Kennedy then grabbed SHEPPARD by the throat and began choking SHEPPARD.
33. While choking SHEPPARD, Kennedy told SHEPPARD to spit out whatever he had in his mouth or he was going to die.
34. After Kennedy stopped choking SHEPPARD a blonde officer that was also on the scene started laughing at SHEPPARD.
35. SHEPPARD asked the female officer if she was laughing at him and she stated she was and continued laughing at him.
36. They ransacked SHEPPARD's truck and searched him but they did not find any drugs.

37. SHEPPARD was taken to the hospital in a neck brace as a result of the beating.
38. KENNEDY falsely alleged that SHEPPARD was driving his vehicle carelessly.
39. KENNEDY falsely alleged that SHEPPARD did not comply with his order.
40. SHEPPARD was found Not Guilty of reckless driving by the Court on February 21, 2013.
41. On March 4, 2013, the state attorney's office filed a no information because the case lacked prosecutive merit.

STATE LAW CLAIMS

COUNT I

UNLAWFUL SEARCH AND SEIZURE IN VIOLATION OF FLA. CONST. ART. I § 12 (AGAINST KENNEDY)

42. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.

43. The *Florida Constitution, Art. I, § 12* provides that:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the *4th Amendment to the United States Constitution*, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the *4th Amendment to the United States Constitution*

Id.

44. On December 13, 2012, Defendant unlawfully seized and detained Plaintiff without probable cause, reasonable suspicion of criminal activity or a warrant.
45. Plaintiff did not provide consent or permission to Defendant to be seized or searched.

46. Defendant beat up, choked, and dragged the Plaintiff out of his vehicle without probable cause, arguable probable cause or reasonable suspicion.
47. Plaintiff was not free to leave when Defendant ordered him to the ground and handcuffed him.
48. Defendant also shoved his hands into Plaintiffs mouth and searched Plaintiffs mouth.
49. Defendants fellow officers conducted a search of Plaintiffs vehicle while he was being beat up by the Defendant and found nothing.
50. Plaintiff was arrested for resisting an officer without violence.
51. Plaintiff was searched again after he was arrested.
52. Defendant did not have probable cause to conduct a traffic stop, detain or arrest Plaintiff because Plaintiff had not committed any traffic violations or broken any laws.
53. There was no evidence that Plaintiff had committed, was committing or was about to commit a crime and Plaintiff made no threats against law enforcement, made any furtive movements.
54. As a direct and proximate result of Kennedys actions Plaintiff suffered and will continue to suffer in the future damage to his reputation, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, and expenses incurred as a result of unlawful detention.

WHEREFORE, Plaintiff demands judgment for damages against Kennedy, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate. Further, Plaintiff seeks an award of punitive damages to punish Kennedy for his conduct, which would deter him and others from such conduct in the future.

COUNT II
BATTERY
(AGAINST KENNEDY)

55. SHEPPARD re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.

56. On December 12, 2012, KENNEDY unlawfully seized and detained Plaintiff without probable cause, reasonable suspicion of criminal activity or warrant.
57. Plaintiff did not provide consent or permission to KENNEDY to be seized or searched.
58. KENNEDY opened SHEPPARD'S car door and proceeded to beat SHEPPARD.
59. KENNEDY dug his fingers into SHEPPARD'S jaw breaking the skin and yelling for SHEPPARD to spit it out.
60. SHEPPARD repeatedly asked Kennedy to stop beating him.
61. Kennedy handcuffed SHEPPARD and continued beating SHEPPARD by hitting him multiple times in the back of his head
62. Kennedy drug SHEPPARD out of his vehicle by his ankles.
63. SHEPPARD'S face hit the doorstep of his truck as he was being dragged out by his ankles by KENNEDY because his hands were handcuffed behind his back so he could not use his hands to break his fall.
64. KENNEDY smashed SHEPPARD'S face into the concrete.
65. After KENNEDY, smashed SHEPPARD'S face into the concrete he began choking SHEPPARD.
66. KENNEDY punching, dragging, shoving SHEPPARD'S face into concrete, and choking SHEPPARD is a battery, an unpermitted, unprivileged contact with the SHEPPARD'S person, caused by acts intended to result in such contact, directed at SHEPPARD'S person.
67. As a direct and proximate result of the actions by KENNEDY. SHEPPARD suffered and will continue to suffer in the future damage to his reputation, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, and expenses incurred as a result of unlawful detainment.

WHEREFORE, SHEPPARD demands judgment for damages against KENNEDY, exemplary damages, cost of this action and such other and further relief as the Court deems appropriate. Further, SHEPPARD seeks an award of punitive damages to punish KENNEDY for his conduct, which would deter him and others from such conduct in the future.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST KENNEDY)

68. SHEPPARD re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.

69. On December 12, 2012, KENNEDY unlawfully seized and detained SHEPPARD without probable cause, reasonable suspicion of criminal activity or warrant.

70. SHEPPARD did not provide consent or permission to KENNEDY to be seized or searched.

71. KENNEDY beat and choked SHEPPARD during the unlawful encounter.

72. KENNEDY'S conduct of unlawfully seizing, searching, and detaining SHEPPARD and then unlawfully arresting him and sending him to jail, where there was no probable cause or warrant in place which would allow the same, was outrageous, going beyond all bounds of decency.

73. KENNEDY'S actions caused severe emotional distress to SHEPPARD.

74. KENNEDY knew or should have known that his actions would cause emotional trauma and damage to SHEPPARD.

75. As a direct and proximate result of KENNEDY'S intentional or reckless conduct, SHEPPARD will continue to suffer severe mental anguish and pain.

WHEREFORE, SHEPPARD demands judgment for damages against KENNEDY, exemplary damages, cost of this action and such other and further relief as the Court deems appropriate. Further, SHEPPARD seeks an award of punitive damages to punish KENNEDY, for his conduct, which would deter him and others from such conduct in the future.

FEDERAL CONSTITUTIONAL CLAIMS

COUNT IV

42 U.S.C. §§ 1981, 1983 & 1988

**UNLAWFUL SEARCH IN VIOLATION OF THE
FOURTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION
(AGAINST KENNEDY)**

76. SHEPPARD re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.
77. KENNEDY is a police officer employed by the City of Gainesville Police Department.
78. On or about December 12, 2012, KENNEDY, acting in his individual capacity while employed by City of Gainesville Police Department, deprived SHEPPARD of his rights under the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1981, in that KENNEDY seized and searched SHEPPARD in the absence of a warrant, probable cause, or reasonable suspicion of criminal activity.
79. KENNEDY unlawfully pulled SHEPPARD'S vehicle over and unlawfully detained SHEPPARD.
80. At the time, KENNEDY pulled SHEPPARD over he had not violated any traffic laws.
81. KENNEDY falsely alleged that SHEPPARD'S vehicle smelled like marijuana and unlawfully searched SHEPPARD and his vehicle.
82. KENNEDY choked SHEPPARD during this detention accusing SHEPPARD of hiding something in his mouth.
83. SHEPPARD has retained the undersigned counsel to bring this actions under 42 U.S.C. §1981 and §1983 and is entitled to recover a reasonable fee for said counsel, from KENNEDY pursuant to 42 U.S.C. §1988.

84. SHEPPARD has the right under the United States Constitution to the full and equal benefit of all laws and proceedings for the security of persons, including the right to be free from unreasonable seizures.

85. SHEPPARD suffered serious personal injuries and special damages as alleged in this Complaint and is entitled to relief under 42 U.S.C. §§ 1981 and 1983. These damages include but are not limited to: the violation of SHEPPARD'S Federal Constitutional rights, a deprivation of liberty, humiliation, physical inconvenience, pain and suffering, emotional damage, mental suffering and anguish, and all other damages associated with this intrusion.

WHEREFORE, SHEPPARD demands judgment for damages against KENNEDY, exemplary damages, cost of this action and such other and further relief as the Court deems appropriate. Further, SHEPPARD seeks an award of punitive damages to punish KENNEDY for his conduct, which would deter them and others from such conduct in the future.

COUNT V
42 U.S.C. §§ 1981, 1983 & 1988
UNLAWFUL ARREST (ABSENT PROBABLE CAUSE) IN VIOLATION OF THE
FOURTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION
(AGAINST KENNEDY)

86. SHEPPARD re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.

87. SHEPPARD has the right under the United States Constitution to be free from unreasonable seizures, which include arrests without probable cause.

88. On December 12, 2012, KENNEDY acted in his individual capacity while employed by the CITY OF GAINESVILLE POLICE DEPARTMENT.

89. KENNEDY deprived SHEPPARD of his rights under the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1981, by effectuating a warrantless arrest, absent probable cause.

90. Prior to the arrest, KENNEDY conducted a warrantless detention and search of SHEPPARD.
91. KENNEDY, alleged that SHEPPARD resisted a law enforcement officer without violence in violation of *Fla. Stat. 843.02* and tampered with evidence in violation of *Fla. Stat. 918.13*.
92. KENNEDY did not have probable cause to believe that SHEPPARD resisted a law enforcement officer without violence. SHEPPARD offered no resistance and obeyed all of KENNEDYS commands.
93. KENNEDY did not have probable cause to believe that SHEPPARD tampered with evidence. KENNEDY did not see SHEPPARD put anything in his mouth for KENNEDY to draw the conclusion that he was destroying evidence.
94. KENNEDY knew or should have known that there was no probable cause to arrest SHEPPARD for the alleged unlawful acts.
95. KENNEDY violated SHEPPARD'S rights under the Fourth and Fourteenth Amendments to the Constitution of the United States.
96. KENNEDY completed the actions complained of in this Complaint with knowledge that actions were in direct violation of the United States Constitution and the rights of the SHEPPARD.
97. As a direct and proximate result of the violation of his constitutional right to be free from unlawful seizure by KENNEDY. SHEPPARD suffered serious personal injuries and special damages as alleged in this Complaint and is entitled to relief under 42 U.S.C. §1983. These damages include but are not limited to: the violation of Plaintiff's Federal Constitutional rights, a deprivation of liberty, physical inconvenience, pain and suffering, loss of income, emotional damage, mental suffering and anguish, and all other damages associated with SHEPPARD'S arrest.

98. SHEPPARD has retained the undersigned counsel to bring this actions under 42 U.S.C. §1983 and is entitled to recover from KENNEDY a reasonable fee for said counsel pursuant to 42 U.S.C. §1988.

WHEREFORE, SHEPPARD demands judgment for damages against KENNEDY, exemplary damages, cost of this action and such other and further relief as the Court deems appropriate. Further, SHEPPARD seeks an award of punitive damages to punish KENNEDY for his conduct, which would deter them and others from such conduct in the future.

COUNT VI – 42 U.S.C. §1983
EXCESSIVE FORCE
(AGAINST KENNEDY)

99. COMES NOW, Plaintiff, by and through his undersigned counsel, and sues Defendant KENNEDY, in his individual capacities and in support thereof, states as follows:

100. Plaintiff realleges the allegations contained in paragraphs 1 through 41, as if fully set forth herein.

101. PLAINTIFF has the right under the United States Constitution to be free from the use of excessive force when officers effectuate an arrest.

102. The actions of Defendant KENNEDY amount to deliberate indifference to the rights of the SHEPPARD to be free of excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

103. Defendant KENNEDY attacked SHEPPARD during the course of an unlawful seizure in which KENNEDY dragged, punched and choked SHEPPARD without provocation.

104. Defendant KENNEDY, acted with deliberate indifference to SHEPPARD's rights and as a direct and proximate result of the violation of his constitutional right to be free from the use

of excessive force during an arrest, the Plaintiff suffered serious personal injuries and is entitled to relief under 42 U.S.C. §1983. These include but are not limited to: physical inconvenience, physical scarring, pain and suffering, medical expenses, emotional damage, damage to his reputation, mental suffering and anguish, and all other damages associated with excessive force used against SHEPPARD when unlawfully arresting him.

105. SHEPPARD has retained the undersigned counsel to bring this actions under 42 U.S.C. §1983 and is entitled to recover from Defendant KENNEDY a reasonable fee for said counsel pursuant to 42 U.S.C. §1988

WHEREFORE, PLAINTIFF, SHEPPARD, prays for damages against Defendant KENNEDY in his individual capacity, and an award of SHEPPARD'S attorney's fees. In addition, Plaintiff requests punitive damages against Defendant KENNEDY, in his individual capacity, for his conduct, which would deter him from such tortious conduct in the future.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 12th day of December, 2016.

/s/ Bradley N. Laurent
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