



# MEMORANDUM

Office of the City Attorney

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**TO:** Mayor and City Commissioners **DATE:** July 12, 1999

**FROM:** Marion J. Radson, City Attorney **CONSENT ITEM**

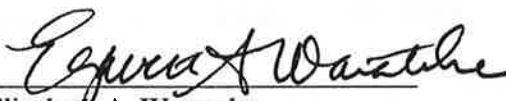
**SUBJECT:** **Stonny C. Barnett v. The City of Gainesville  
Florida, et. al. / Circuit Court, Eighth Judicial Circuit  
Case Number 99-1036-CA**

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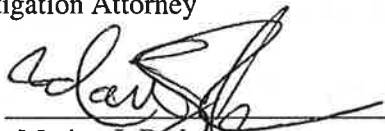
Recommendation: The City Commission authorize the City Attorney and/or Special Counsel, if insurance coverage is available, to represent the City of Gainesville, Police Chief Donald Shinnamon and Police Officer M. Birkhold, in the case styled Stonny C. Barnett, Plaintiff, v. The City of Gainesville, Florida, a Municipal Corporation; Donald Shinnamon, in his official capacity; and M. Birkhold, in her individual capacity; Circuit Court, Eighth Judicial Circuit, Case No.: 99-1036-CA.

The City of Gainesville was served with a complaint on June 24, 1999. Plaintiff, Stonny C. Barnett, alleges that on or about March 25, 1995, he was knocking on his girlfriend's apartment window at 1723 NE 8<sup>th</sup> Avenue Apt. E12, Gainesville, Florida. He states he then saw two police officers approaching the apartment. Mr. Barnett states that he jumped over the balcony and had walked approximately 100 feet when he was knocked down by a police K-9, and bitten on the lower right leg. He alleges that he was severely mauled by the police dog. Mr. Barnett states he was taken to the hospital for his injuries and that upon release was taken to the Alachua County Detention Center where the officers charged him with Burglary of a Residence. Mr. Barnett alleges the officers had no probable cause for the charge of Burglary of a Residence. Mr. Barnett alleges that he has suffered physical injury, medical expenses, lost wages, and severe mental anguish. Mr. Barnett requests compensatory damages, attorney's fees and costs and punitive damages against Officer Birkhold.

Prepared by:

  
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Litigation Attorney

Approved  
and Submitted by:

  
Marion J. Radson  
City Attorney

EAW/mec

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

STONNY C. BARNETT,

Plaintiff,  
vs.

CASE NO.:

The CITY OF GAINESVILLE, FLORIDA,  
a Municipal corporation; DONALD  
SHINNAMON, in his official capacity;  
and M. BIRK HOLD, her individual  
capacity.

Defendants.



COMPLAINT AND  
DEMAND FOR JURY TRIAL

Plaintiff STONNY C. BARNETT, by and through his undersigned  
counsel, sues Defendants CITY OF GAINESVILLE; DONALD SHINNAMON;  
and M. BIRK HOLD, and says:

This is an action for damages in excess of \$15,000,  
exclusive of costs and attorneys' fees.

1. Plaintiff STONNY C. BARNETT (hereinafter BARNETT) is a  
resident of the County of Alachua, State of Florida.

2. At all times referred to herein, Defendant M. BIRK HOLD  
(BIRK HOLD) was a police officer employed by the CITY OF  
GAINESVILLE, Florida.

3. Defendant POLICE CHIEF SHINNAMON is Police Chief of the  
City of Gainesville at this time, and is substituted for Police  
Chief Clifton as successor in interest as at the time of this  
incident he was the commanding officer of Defendant BIRK HOLD, and  
was responsible for the training, supervision, and conduct of

this Defendant, as more fully set forth below. The Police Chief, in his official capacity, (hereinafter referred to as Police Chief) was further responsible by law for enforcing the regulations of the City of Gainesville and for ensuring that the City of Gainesville's police officers obeyed the laws of the State of Florida.

4. Defendant CITY OF GAINESVILLE is a municipal corporation, organized and existing under the laws of the State of Florida.

5. Plaintiff sues Defendant BIRKHOLD in her individual capacity.

6. This action is brought pursuant to Section 768.28, Florida Statutes. The Plaintiff has complied with all conditions precedent to this action under Section 768.28, including the provision of notice letters to Defendant CITY. Said letters are attached as Exhibit 1 to this Complaint, and incorporated herein by reference.

7. On or about March 25, 1995, Plaintiff went to his girlfriend's apartment located at 1723 NE 8<sup>th</sup> Avenue, Apt. E12, Gainesville, Florida.

8. Plaintiff and his girlfriend proceeded to have an argument and Plaintiff, highly intoxicated, passed out on the floor.

9. The next Plaintiff knew, he was awoken by two Gainesville police officers, Defendant M. Birkhold and another officer

shining flashlights in his face and trying to talk to him.

10. The two police officers asked Plaintiff to leave the premises, which Plaintiff did. Plaintiff returned to the apartment a short time later to retrieve some clean clothes for his use the next day.

11. Upon Plaintiff's return to the apartment, he knocked on the window and received no answer. Plaintiff knocked harder and the window broke.

12. Plaintiff then saw two police officers approaching the apartment and he jumped off the balcony onto the parking lot.

13. Plaintiff walked for about 100 feet before he was knocked down by K-9 Urk.

14. Defendant Birkhold released K-9 Urk with no warning to Plaintiff.

12. K-9 Urk knocked Plaintiff to the ground and bit Plaintiff on the lower right leg around the calf and shin. Plaintiff was screaming for Defendant Birkhold to get the dog off him.

13. Defendant Birkhold told Plaintiff to get on the ground and relax and the dog would stop biting.

14. Plaintiff complied with the officers and was on the ground while the K-9 continued to attack the Plaintiff, severely mauling him and causing him serious injuries, particularly to his right calf, shin and inside thigh.

15. Defendant Birkhold did not release the dog until the Plaintiff had been handcuffed and severely bitten by the dog.

16. An officer then took the Plaintiff to Alachua General Hospital where he received emergency treatment.

17. After treatment, Plaintiff was transported to the Alachua County Detention Center, where he was charged with Burglary of a Residence.

18. There existed no probable cause for the charge of Burglary of a Residence.

19. The charge of Burglary of a Residence was fabricated by the officers in an attempt to justify the unlawful use of force against the Plaintiff.

COUNT I - VIOLATION OF CIVIL RIGHTS AS TO BIRK HOLD

For his cause of action against Defendant BIRK HOLD, Plaintiff states:

20. By this reference, Plaintiff incorporates each and every allegation and averment set forth in Paragraphs 1 through 19 of this complaint as though fully set forth herein.

21. As a direct and proximate result of the above-referenced unlawful and malicious physical abuse of Plaintiff by Defendant BIRK HOLD committed under her authority as a City of Gainesville police officer, Plaintiff suffered grievous bodily harm and was deprived of his right to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the

United States.

22. As a direct and proximate result of the malicious and outrageous conduct of this Defendant, as set forth above, Plaintiff suffered severe and permanent injuries including permanent scarring of the right leg, and Plaintiff's body was rendered weak, stiff, sore, painful and causing Plaintiff great anguish, fear and consternation. Additionally, Plaintiff has suffered special damages in the form of medical expenses and lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

23. The acts of Defendant BIRKHOLD as set forth above, was intentional, wanton, malicious, and oppressive.

WHEREFORE, Plaintiff STONNY C. BARNETT respectfully requests judgment as follows for compensatory damages against the Defendant BIRKHOLD in an amount proved at trial; punitive damages, for costs of suit herein, including Plaintiff's reasonable attorney's fees; and, for such other and further relief as the Court deems proper.

COUNT II - VIOLATION OF CIVIL RIGHTS AS TO SHINNAMON

For his cause of action against Defendant SHINNAMON Plaintiff states:

24. By this reference, Plaintiff incorporates each and every allegation and averment set forth in Paragraphs 1 through 19 of this complaint as though fully set forth herein.

25. Prior to the incident involving Plaintiff, the Police Chief had learned of previous incidents involving Defendant BIRKHOLD wherein she had used unreasonable force on others that they had arrested. The Police Chief failed to conduct a competent investigation regarding complaints regarding the use of the police dogs. No action was taken to discipline these Defendants, or to order them not to repeat such incidents, thus tacitly authorizing such conduct. Had remedial action, been taken, then this attack on the Plaintiff by K-9 Urk would not have occurred.

26. At all times relevant to this complaint, Defendant BIRKHOLD, as a police officer of the City of Gainesville, was acting under the direction and control of the Police Chief and was acting pursuant to the official policy, practice or custom of the City of Gainesville.

27. Acting under color of law and pursuant to official policy, practice, or custom, the Police Chief intentionally, knowingly, or recklessly failed to instruct, supervise, control and discipline, on a continuing basis, Defendant BIRKHOLD in her duty to refrain from ordering police K-9s to attack citizens and otherwise using unreasonable and excessive force before, during or after the making of an arrest.

28. Acting under color of law and pursuant to official policy, practice or custom, the Police Chief intentionally, knowingly and recklessly failed to instruct, train and supervise

Defendant BIRKHOLD on a continuing basis in the correct procedure for making arrests using a police K-9.

29. The Police Chief had knowledge, or, had he diligently exercised his duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge, that the wrongs which were done, as heretofore alleged, were about to be committed. The Police Chief had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly or recklessly failed or refused to do so.

30. The Police Chief, directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless and wanton conduct of Defendant BIRKHOLD, and possibly others as heretofore described.

31. As a direct and proximate result of the acts of the Police Chief as set forth herein, Plaintiff suffered physical injury, medical expenses, lost wages, and severe mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, Plaintiff respectfully requests judgment as follows. For compensatory damages against Defendant SHINNAMON in an amount proved at trial; for costs of suit herein, including Plaintiff's reasonable attorney's fees; and, for such other and further relief as the Court deems proper.



discipline, on a continuing basis, Defendant BIRKHOLD in her duty to refrain from ordering police K-9s to attack citizens and otherwise using unreasonable and excessive force before, during or after the making of an arrest.

36. Acting under color of law and pursuant to official policy, practice or custom, Defendant CITY OF GAINESVILLE intentionally, knowingly and recklessly failed to instruct, train and supervise Defendant BIRKHOLD on a continuing basis in the correct procedure for making arrests using a police K-9.

37. Defendant CITY OF GAINESVILLE had knowledge, or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge, that the wrongs which were done, as heretofore alleged, were about to be committed. Defendant CITY OF GAINESVILLE had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly or recklessly failed to refused to do so.

38. Defendant CITY OF GAINESVILLE, directly or indirectly under color of law, approved or ratified the unlawful, deliberate, malicious, reckless and wanton conduct of Defendant BIRKHOLD, and possibly others as heretofore described.

39. Defendant, CITY OF GAINESVILLE, adopted and implemented a policy and custom of training and using K-9 police dogs in an unreasonable manner including, but not limited to: training their

COUNT III - VIOLATION OF CIVIL RIGHTS AS TO CITY OF GAINESVILLE

For his cause of action against Defendant CITY OF GAINESVILLE, Plaintiff states:

32. By this reference, Plaintiff incorporates each and every allegation and averment set forth in Paragraphs 1 through 19 of this complaint as though fully set forth herein.

33. The City of Commission of Gainesville is vested by state law with the authority to make policy for the City of the use of force in making arrests. The City commission members were aware of a pattern of excessive force by police officers employed by the City of Gainesville; they were aware that the City's policies regarding the discipline of officers accused of excessive force were so inadequate that it was obvious that a failure to correct them would result in further incidents of excessive force; and, the failure to correct said policies caused the excessive force to be used upon Plaintiff as set forth above.

34. At all times relevant to this complaint, Defendant BIRKHOLD, as a police officer of the City of Gainesville, was acting under the direction of the City of Gainesville through its Police chief, and was acting pursuant to the official policy, practice or custom of the City of Gainesville and Gainesville Police Department.

35. Acting under color of law and pursuant to custom and practice, Defendant CITY OF GAINESVILLE intentionally, knowingly, or recklessly failed to instruct, supervise, control and

police dogs to bite and hold suspects upon release of said dog; their failure to utilize alternate means of apprehension of suspects through the use of dogs that does not create an unreasonable risk of danger and failing to utilize alternate means of training the K-9 units so they do not constitute an unreasonable danger.

40. As a direct and proximate result of the acts of Defendant CITY OF GAINESVILLE, as set forth herein, Plaintiff suffered physical injury, medical expenses, lost wages, and severe mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, Plaintiff respectfully prays judgment as follows. For compensatory damages against the Defendant in an amount proved at trial and for costs of suit herein, including Plaintiff's reasonable attorney's fees; and, for such other and further relief as the Court deems proper.

COUNT IV - BATTERY AS TO DEFENDANT CITY OF GAINESVILLE

For his cause of action against Defendant City of Gainesville, Plaintiff states:

41. By this reference, Plaintiff incorporates each and every allegation and averment set forth in Paragraphs 1 through 19 of this complaint as though fully set forth herein.

42. This claim is brought pursuant to Section 768.28, Florida Statutes.

43. All conditions precedent to this action, including pre-suit notification of the Defendant, have been met. A copy of the pre-suit notice is attached and incorporated by reference.

44. At the time of the events giving rise to this action, Defendant BIRKHOLD was an employe of Defendant CITY OF GAINESVILLE, and was acting within the course and scope of her employment, inasmuch as she was acting to apprehend and arrest an alleged criminal suspect.

45. This Defendant, as a sworn law enforcement officer, was authorized and required, as one of her job duties, to apprehend and arrest crime suspects.

46. During her apprehension and arrest of the Plaintiff, the Defendants committed a battery upon him by causing police K-9 "Urk" to bite him.

47. This constituted an excessive and unnecessary use of force against the Plaintiff, in that the Plaintiff was not armed, was lying prone on the ground; he was not threatening or attempting to batter the Defendant, and it was apparent to her that she was in no real or immediate danger of being subjected by the Plaintiff to physical force or violence.

48. Therefore, it was not reasonable for the Defendant to believe that such force was necessary for self-defense, that such force was necessary to defend others from bodily harm, or that such force was necessary in order to apprehend the Plaintiff.

49. Because the Plaintiff was not armed, was not fleeing or resisting, was lying prone on the ground, the force used by the officer was in excess of that which was reasonably necessary under the circumstances to apprehend and arrest the Plaintiff.

50. Inasmuch as Defendant BIRKHOLD was an employee of Defendant CITY, and was acting within the course and scope of her employment and not in willful or wanton disregard for human rights, safety or property, Defendant CITY is properly named as the party responsible for their actions, pursuant to Section 768.28(9)(a), Florida Statutes.

51. As a direct and proximate result of the actions of Defendant CITY, through its employees, as described above, the Plaintiff has suffered damages including, but not limited to physical injuries and disfigurement, pain and suffering, mental anguish, embarrassment, and inconvenience, loss of income and earning capacity, and loss of capacity for enjoyment of life, and such injuries are permanent and continuing.

WHEREFORE, Plaintiff respectfully prays judgment as follows: For compensatory damages against the Defendant in an amount proved at trial and for costs of suit herein; and for such other and further relief as the Court deems proper.

COUNT V - BATTERY AS TO BIRKHOLD

For his cause of action against Defendant BIRKHOLD, Plaintiff states:

52. By this reference, Plaintiff incorporates each and every allegation and averment set forth in Paragraphs 1 through 19 of this complaint as though fully set forth herein.

53. This claim is brought pursuant to Section 768.28, Florida Statutes.

54. All conditions precedent to this action, including pre-suit notification of the Defendant, have been met. A copy of the pre-suit notice is attached and incorporated by reference.

55. At the time of the events giving rise to this action, Defendant BIRK HOLD was an employee of Defendant CITY OF GAINESVILLE, but was acting outside the course and scope of her employment, in that she was acting with malice and willful and wanton disregard for the human rights of the Plaintiff.

56. This Defendant, as a sworn law enforcement officer, was authorized to apprehend and arrest crime suspects.

57. During her apprehension and arrest of the Plaintiff, the Defendant committed a battery upon him by causing police K-9 "Urk" to bite him.

58. This constituted an excessive and unnecessary use of force against the Plaintiff, in that the Plaintiff was not armed, was lying prone on the ground; he was not threatening or attempting to batter the Defendant, and it was apparent to her that she was in no real or immediate danger of being subjected by the Plaintiff to physical force or violence.

59. Therefore, it was not reasonable for the Defendant to believe that such force was necessary for self-defense, that such force was necessary to defend others from bodily harm, or that such force was necessary in order to apprehend the Plaintiff.

60. Because the Plaintiff was not armed, was not fleeing or resisting, was lying prone on the ground, the force used by the Defendant was in excess of that which was reasonably necessary under the circumstances to apprehend and arrest the Plaintiff. In fact, the Defendant knew that such force was in excess of that which was reasonably necessary, but acted with the intention of deliberately causing harm to the Plaintiff, to punish him for his actions in defying her authority by fleeing from her.

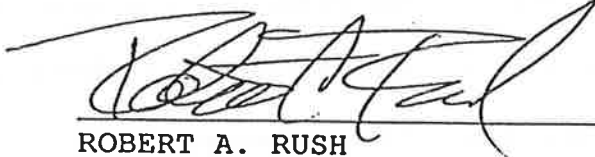
61. Inasmuch as the Defendant was acting with malice, and with willful and wanton disregard for the Plaintiff's human rights, she is properly named as a party responsible for her actions, pursuant to Section 768.28(9)(a), Florida Statutes.

62. As a direct and proximate result of the actions of the Defendant, as described above, the Plaintiff has suffered damages including, but not limited to physical injuries and disfigurement, pain and suffering, mental anguish, embarrassment, and inconvenience, loss of income and earning capacity, and loss of capacity for enjoyment of life, and such injuries are permanent and continuing.

WHEREFORE, Plaintiff respectfully prays judgment as follows;

for compensatory damages against the Defendant BIRKHOLD in an amount proved at trial; punitive damages, for costs of suit herein; and for such other and further relief as the Court deems just and proper.

LAW OFFICES ROBERT A. RUSH, P.A.



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