

LEGISTAR NO.

120045

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF FLORIDA
(Gainesville Division)

STEPHEN LOCKE

CASE NO.: 1:12-CV-00099

Plaintiff

vs.

THE CITY OF GAINESVILLE, FLORIDA
a municipal corporation,
OFFICER JOEY DEVORE
and OFFICER DANIEL SURRENCY,
in their individual capacities,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, STEPHEN LOCKE, ("Plaintiff") by and through his undersigned counsel, sues Defendants, CITY OF GAINESVILLE, and OFFICERS JOEY DEVORE and DANIEL SURRENCY of the Gainesville Police Department, and states:

CAUSE OF ACTION

1. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988, the IV and XIV Amendments to the United States Constitution, Florida Statute § 768.28, Florida common law, the State of Florida Constitution, Article I, §§ 2, 9 and 12.

JURISDICTIONAL VENUE

2. This court has federal question jurisdiction of this action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction of the pendant state claims pursuant to 28 U.S.C. § 1367.

3. This is an action for damages in excess of \$75,000, exclusive of interest, costs and attorney's fees.

4. All actions took place within the Northern District of Florida and venue is proper within the Northern District of Florida.

PARTIES

5. At all times material to this Complaint, STEPHEN LOCKE was a resident of Alachua County, State of Florida, and the United States of America.

6. At all times material to this Complaint, Officer JOEY DEVORE and DANIEL SURRENCY were employed as police officers by the Gainesville Police Department in Gainesville, Alachua County Florida.

7. At all times material to this Complaint, the CITY OF GAINESVILLE was a municipal corporation under the laws of the State of Florida and the United States of America.

8. At the time of the incident that is the subject of the instant cause of action, Norman Botsford was the CHIEF OF POLICE for the City of Gainesville and he is succeeded in interest by Tony Jones as CHIEF OF POLICE. As CHIEF OF POLICE, he was responsible for making policy for the police department and ensuring that the officers under his command, including Officers SURRENCY and DEVORE, conducted themselves properly and received appropriate training and supervision.

9. The Plaintiff sues the CHIEF OF POLICE in his official capacity.

10. The Plaintiff sues OFFICERS JOEY DEVORE and DANIEL SURRENCY in their individual capacities.

11. At all times referenced herein, the Defendants were acting under the color of the law, statute, ordinances, regulations, policies, customs, and usages of the United States of America, State of Florida, and the City of Gainesville, Florida.

GENERAL ALLEGATIONS

11. On January 24, 2009, OFFICER DEVORE arrested the Plaintiff during a traffic stop on the charge of driving while under the influence of alcohol or a controlled substance pursuant to Florida Statute § 316.193 ("D.U.I.").

12. A full, fair and complete investigation shows that the Plaintiff did not commit a crime and that at the time of his arrest, there was no probable cause for D.U.I. and he accordingly should not have been arrested.

13. On January 24, 2009, OFFICER SURRENCY conducted a traffic stop of the Plaintiff, claiming that Plaintiff had driven across the double yellow line and into oncoming traffic, causing another vehicle to take evasive action to avoid a head-on collision.

14. At no time on January 24, 2009, did Plaintiff drive across the double yellow line and into oncoming traffic, causing another vehicle to take evasive action to avoid a head-on collision.

15. This fabrication was the first of many that OFFICERS SURRENCY and DEVORE relied upon to falsely arrest the Plaintiff for D.U.I. in the absence of probable cause.

16. Defendant OFFICER SURRENCY made the determination that Plaintiff was going to jail for D.U.I. from the moment Plaintiff exited the vehicle.

17. Defendant OFFICER SURRENCY falsely asserted that Plaintiff used his driver's door to steady himself upon exiting the vehicle, a "golden factor" for determining intoxication.

18. Plaintiff did not touch his vehicle when he exited pursuant to Officer Surrency's command.

19. Defendant OFFICER SURRENCY also falsely asserted that Plaintiff swayed on his feet, slurred his speech, and had bloodshot watery eyes.

20. In contrast, Plaintiff maintained a steady, upright stance, spoke at a normal speed without impediment, and did not have bloodshot watery eyes.

21. Despite the complete absence of factors supporting a D.U.I. investigation, Defendant OFFICER SURRENCY called Defendant OFFICER DEVORE to the scene for the purpose of making a D.U.I. arrest, because OFFICER SURRENCY believed that if OFFICER DEVORE made the arrest, then the grant that funded his patrol car and equipment would be renewed.

22. At the time that Defendant OFFICER SURRENCY called Defendant OFFICER DEVORE to the scene, he had already made the determination that Plaintiff would be arrested.

23. When Defendant OFFICER DEVORE arrived on-scene, he relied upon Defendant OFFICER SURRENCY's assertions of what factors were present to support probable cause for a D.U.I. arrest, despite obvious evidence to the contrary.

24. Despite the Plaintiff being innocent of any criminal activities, OFFICER DEVORE arrested Plaintiff and took him to jail.

25. No probable cause existed for OFFICER DEVORE to arrest Plaintiff.

26. No arguable probable cause existed for OFFICER DEVORE to arrest Plaintiff.

27. OFFICER DEVORE has a financial motive to arrest Plaintiff, as articulated by OFFICER SURRENCY, to wit, that OFFICER DEVORE'S vehicle and equipment were funded by a grant which rewarded D.U.I. arrests.

28. The sole reason OFFICER SURRENCY called OFFICER DEVORE to arrest Plaintiff was because of the financial motive.

29. The Defendant CHIEF OF POLICE for Gainesville knew of the D.U.I. grant and informed its officers of the financial incentive to arrest citizens for D.U.I.

30. The Defendant CHIEF OF POLICE for Gainesville instituted faulty policies and training regarding D.U.I. arrests and arrests without probable cause, and failed to institute an adequate system of oversight that would prevent false arrests for the offense of D.U.I and other offenses which occurred because of faulty training and policies.

31. Plaintiff filed a complaint with internal affairs, notifying him of the illegality of his arrest.

32. The Defendant CHIEF OF POLICE failed to adequately investigate Plaintiff's complaint regarding this arrest, in part because the Internal Affairs division of the department was marginalized in the command structure and had internal problems with officers engaging in illegal and unprofessional conduct.

33. Under the tenure of former CHIEF OF POLICE Norman Botsford there existed a lack of leadership and discipline at the Gainesville Police Department which caused and contributed to a system that facilitated police abuse.

34. Under the tenure of former CHIEF OF POLICE Norman Botsford there existed a lack of leadership and discipline at the Gainesville Police Department that created an atmosphere which facilitated police abuse and unprofessional conduct.

35. The Defendant CHIEF OF POLICE maintained the Gainesville Police Department with a flawed supervisory structure which disassociated supervisors from patrol officers, resulting in the failure to adequately investigate, document, and review allegations of illegal and unprofessional conduct by members of the force.

36. The Defendant CHIEF OF POLICE adopted departmental policies that were willfully indifferent to citizens' rights by limiting investigations for repeat discipline of officers to violations committed only within a two year period and only for the same type of conduct.

37. The Defendant CHIEF OF POLICE administered promotions and discipline unequally and unfairly, creating an environment where officers do not take rules and regulations seriously, and officers such as OFFICER DEVORE are promoted based on improper criteria.

38. The Defendant CHIEF OF POLICE has a D.U.I. policy that compels officers to make arrests and foreseeably leads D.U.I arrests without probable cause, in contravention of citizens' rights under both federal and state law.

39. As a direct and proximate result of Plaintiff's illegal arrest for D.U.I. by Defendant OFFICERS SURRENCY and DEVORE, Plaintiff had to spend a night in jail, pay for the cost of defending his criminal charge, and endure a year-long suspension of his driver's license.

40. As a direct and proximate result of Plaintiff's illegal arrest for D.U.I. by Defendant OFFICERS SURRENCY and DEVORE Plaintiff's "mug shot" and charges were displayed in public records, on various internet websites, and were widely known to his superiors and associates in the field of baseball, including teammates, coaches, and recruiters.

41. As a direct and proximate result of Plaintiff's illegal arrest for D.U.I. by Defendant OFFICERS SURRENCY and DEVORE, Plaintiff was suspended from the University of Florida baseball team for the first 23 games of the season, amounting to nearly half the season of his senior year of ball-playing.

42. Because of his suspension and known status as a player who had been arrested, Plaintiff was drafted for professional baseball in a much lower round than he would have been had he never been falsely arrested.

43. Plaintiff's false arrest stunted and eventually ruined his professional career, because the importance of a draft pick for professional baseball directly corresponds with the amount of money, attention, and resources that a professional team will invest in the player.

44. As a direct and proximate result of Defendant OFFICERS SURRENCY and DEVORE falsely arresting Plaintiff on January 24, 2009, his baseball career was effectively ruined.

COUNT I

VIOLATION OF CIVIL RIGHTS BY OFFICER DEVORE

45. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

46. The actions of OFFICER DEVORE were taken with deliberate indifference to Plaintiff's rights and freedom in violation of the 4th and 14th Amendments to the United States Constitution.

47. As a direct and proximate result of the false arrest and imprisonment of the Plaintiff without probable cause, committed by Defendant OFFICER DEVORE under the color of law and under his authority as an Officer for the Gainesville Police Department, the Plaintiff suffered grievous bodily harm, was deprived of his freedom and deprived of his right to be secure in his person against unreasonable seizures of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States.

48. As a direct and proximate result of the outrageous conduct of Defendant OFFICER DEVORE as set forth above, the Plaintiff suffered economic injuries, pain and suffering, embarrassment, humiliation, and loss of earning capacity and the capacity for the enjoyment of life.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, costs of suit including the Plaintiff's attorneys' fees, and for other such relief as the Court deems proper.

COUNT II

VIOLATION OF CIVIL RIGHTS BY OFFICER SURRENCY

49. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

50. The actions of OFFICER SURRENCY were taken with deliberate indifference to Plaintiff's rights and freedom in violation of the 4th and 14th Amendments to the United States Constitution.

51. As a direct and proximate result of the false arrest and imprisonment of the Plaintiff without probable cause, committed by Defendant OFFICER SURRENCY under the color of law and under his authority as an Officer for the Gainesville Police Department, the Plaintiff suffered grievous bodily harm, was deprived of his freedom and deprived of his right to be secure in his person against unreasonable seizures of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States.

52. As a direct and proximate result of the outrageous conduct of Defendant OFFICER SURRENCY as set forth above, the Plaintiff suffered economic injuries, pain and suffering, embarrassment, humiliation, and loss of earning capacity and the capacity for the enjoyment of life.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, costs of suit including the Plaintiff's attorneys' fees, and for other such relief as the Court deems proper.

COUNT III

VIOLATION OF CIVIL RIGHTS AS TO GAINESVILLE CHIEF OF POLICE

53. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

54. As a direct and proximate result of the failure of the Defendant CHIEF OF POLICE, by and through Chief Norman Botsford, to institute policies, training and procedures to ensure against the unlawful arrest of innocent persons and abuse of authority, Defendant CHIEF OF POLICE caused or contributed to the false arrest of the Plaintiff under the color of law and under its authority as a municipality in and for the City of Gainesville, Florida.

55. Defendant CHIEF OF POLICE encouraged D.U.I. arrests in furtherance of its grant, for pecuniary gain.

56. Defendant CHIEF OF POLICE failed to supervise, train, or discipline their officers regarding cases in which their officers make an arrest but the charges are dropped for lack of evidence.

57. After this incident occurred, Defendant CHIEF OF POLICE failed to conduct any competent investigation, failed to order remedial training, failed to discipline, reprimand or take any corrective action and, therefore, condoned and ratified the unlawful and outrageous actions of officers DEVORE and SURRENCY.

58. Defendant CHIEF OF POLICE acted with deliberate indifference in training, supervising, investigating misconduct, and discipline of police officers in the GAINESVILLE POLICE DEPARTMENT, including officers DEVORE and SURRENCY.

59. The Plaintiff has suffered grievous bodily harm and was deprived of his right to be secure in his person and against unreasonable seizure of his person in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

60. As a direct and proximate cause of the illegal actions taken by Defendant CHIEF OF POLICE, Plaintiff suffered economic losses, pain and suffering, humiliation, mental anguish, loss of professional reputation and career opportunities, and other lawful damages, then and continuing into the future

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, and costs of suit including the Plaintiff's attorneys' fees, and for other such relief as the Court deems proper.

COUNT IV

STATE LAW CLAIM FOR FALSE ARREST AND FALSE IMPRISONMENT AGAINST GAINESVILLE POLICE DEPARTMENT

61. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

62. The Plaintiff was falsely arrested without competent investigation and without probable cause.

63. OFFICERS DEVORE and SURRENCY committed this false arrest of the Plaintiff while acting in the course and scope of their employment as Officers for the Gainesville Police Department.

64. Competent supervision, training, and record keeping would have prevented OFFICER DEVORE's arrest of Plaintiff and OFFICER SURRENCY's false recitation of factors supporting the arrest.

65. As a direct and proximate result of the false arrest, the Plaintiff has suffered economic losses, pain and suffering, humiliation, mental anguish, loss of professional reputation and career opportunities, and other lawful damages, then and continuing into the future.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, and costs of suit, including the Plaintiff's attorney's fees in this case, and for other such relief as the Court deems proper.

COUNT V

CONSPIRACY TO VIOLATE CIVIL RIGHTS BY DEFENDANTS SURRENCY AND DEVORE

66. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

67. The Defendants, jointly and severally, combined, confederated and conspired, taking actions which resulted in the violation of Plaintiff's civil rights, including:

- a) conferring and agreeing that Defendant SURRENCY would pull over drivers and then call Defendant DEVORE

to the scene for the purpose of effecting a DUI arrest so that the federal grant that funded DEVORE's patrol cruiser and equipment would continue to receive funding;

b) participating in at least two conversations regarding the actions of the Plaintiff in in which both officers fabricated the existence of factors to support probable cause for an arrest of Plaintiff, such as driving into oncoming traffic, slurred speech, leaning on the door when exiting the vehicle, and swaying on his feet, none of which are supported by any physical evidence;

c) intentionally failing to review their own video recordings from their patrol car video cameras, which clearly contradict the falsified factors that Plaintiff was driving into oncoming traffic, slurred his speech, leaned on his car door when exiting the vehicle, and swayed on his feet.

68. Notwithstanding the obvious evidence that Plaintiff did not exhibit signs of impairment, Defendants SURRENCY and DEVORE prepared false incident reports in which these false factors were cited as probable cause for the arrest of Plaintiff for the offense of DUI.

69. As a direct and proximate result of the unlawful and malicious actions of the defendant, the Plaintiff suffered injury, was deprived of his right to be secure in his

person and property against unreasonable seizures of his person and property in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

70. As a direct and proximate result, the Plaintiff was falsely arrested and imprisoned, suffered pain and suffering, lost wages and earnings, mental anguish, humiliation, loss of professional reputation and career opportunity, and other lawful damages, then and continuing into the future.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, and costs of suit, including the Plaintiff's attorney's fees in this case, and for other such relief as the Court deems proper.

COUNT VI

MALICIOUS PROSECUTION AGAINST DEFENDANT SURRENCY

71. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

72. Defendant SURRENCY initiated the arrest of Plaintiff by continuously advising Defendant DEVORE that Plaintiff was "beyond intoxicated" and needed to be arrested for the offense of DUI.

73. The charge of DUI against Plaintiff was without probable cause.

74. The arrest mittimus for this charge contained false facts that had been fabricated by Defendant SURRENCY in order to effect the false arrest of Plaintiff.

75. Defendant SURRENCY willfully, wantonly, oppressively and maliciously caused Plaintiff to be arrested because he believed that the Gainesville Police Department would benefit from officers making a high number of arrests for the charge of DUI.

76. On or about March 6, 2009, the Office of the State Attorney filed a nolle prosequi, dismissing the charge against Plaintiff because the State had determined that there was insufficient evidence to sustain a conviction.

77. As a direct and proximate result of Defendant SURRENCY's malicious prosecution, Plaintiff was falsely arrested and suffered economic losses, pain and suffering, humiliation, mental anguish, loss of professional reputation and career opportunities, and other lawful damages, then and continuing into the future.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, and costs of suit, including the Plaintiff's attorney's fees in this case, and for other such relief as the Court deems proper.

COUNT VII

MALICIOUS PROSECUTION AGAINST DEFENDANT DEVORE

78. The Plaintiff incorporates paragraph 1 through 44 above as if fully set forth herein.

79. Defendant DEVORE arrested Plaintiff for the false charge of DUI.

80. The charge of DUI against Plaintiff was without probable cause.

81. The arrest mittimus for this charge that Defendant DEVORE prepared contained false facts that Defendant DEVORE knew to be false but decided to rely upon in order to effect the false arrest of Plaintiff.

82. Defendant DEVORE willfully, wantonly, oppressively and maliciously caused Plaintiff to be arrested because he believed that he would benefit from making a high number of arrests for the charge of DUI.

83. On or about March 6, 2009, the Office of the State Attorney filed a nolle prosequi, dismissing the charge against Plaintiff because the State had determined that there was insufficient evidence to sustain a conviction.

84. As a direct and proximate result of Defendant DEVORE's malicious prosecution, Plaintiff was falsely arrested and suffered economic losses, pain and suffering, humiliation, mental anguish, loss of professional reputation and career opportunities, and other lawful damages, then and continuing into the future.

WHEREFORE, Plaintiff, STEPHEN LOCKE, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, and costs of suit, including the Plaintiff's attorney's fees in this case, and for other such relief as the Court deems proper.

Dated this 10th day of May, 2012.

Respectfully Submitted,

RUSH & GLASSMAN

/s/ Robert Rush

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