

LEGISTAR NO.

110295



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

110295

TO: Mayor and City Commissioners

DATE: September 1, 2011

FROM: City Attorney

CONSENT


SUBJECT: Elvan Moore, II vs. City of Gainesville, Florida; Chief Norman Botsford as Chief of the Gainesville, Florida Police Department; Officer Robert Kennedy, in his Official and Individual capacity; Eighth Judicial Circuit, Court Case No. 01-2011-CA-4417

Recommendation: The City Commission 1) authorize the City Attorney and/or Special Counsel if insurance coverage is available to represent the City of Gainesville and the City employee acting in the course and scope of his employment, with the consent and waiver of potential conflict by the City Commission and by said City employee, and; 2) the City Commission authorize the City Manager to execute a consent and waiver of potential conflict on behalf of the City in the case styled Elvan Moore, II vs. City of Gainesville, Florida; Chief Norman Botsford as Chief of the Gainesville, Florida Police Department; Officer Robert Kennedy, in his Official and Individual capacity; Eighth Judicial Circuit, Court Case No. 01-2011-CA-4417.

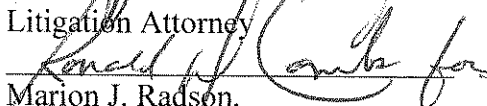
On August 30, 2011, the City and Officer Kennedy were served with a Summons and Complaint filed by Elvan Moore, II in the Circuit Court. The Plaintiff alleges that he is a victim of false arrest, false imprisonment, battery and malicious conduct which occurred during his arrest on August 26, 2007. He claims to have sustained severe and permanent traumatic injuries, including mental, psychological and emotional damages. Plaintiff is seeking compensatory damages, costs, and attorney's fees.

In the same complaint, Mr. Moore also filed suit individually against the City officer who arrested him. In this lawsuit, the interests of the City employee and the City appear, at this time, to not be in conflict. However, the possibility does theoretically exist for a conflict of interest to develop at some time in the future between the City's interests and those of the City employee. Therefore, informed consent confirmed in writing by both the City and the City employee is appropriate.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

IN THE CIRCUIT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA
ALACHUA COUNTY COURTHOUSE, 201 E. UNIVERSITY AVE., P.O. BOX 600, GAINESVILLE, FLORIDA 32602

ELVA ALARIN II
Plaintiff,

-VS-

City of Gainesville, et al
Defendant,

Case No.: 2011-CA-4417

DIVISION: _____

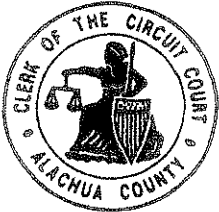
SUMMONS / PERSONAL SERVICE OF AN INDIVIDUAL

THE STATE OF FLORIDA:

TO EACH SHERIFF OF THE STATE: You are hereby commanded to serve this Summons and a copy of the Complaint or Petition in this action on the Defendant:

Officer Robert Kennedy, in his individual capacity
413 New 32nd Ave
Gainesville, FL 32609

WITNESS my hand and the seal of said Court on this 26 day of Aug, 2011.



A True Copy
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 2250 by the AS Day 26
of Aug, 2011
BY JK Irby
AS DEPUTY SHERIFF
IMPORTANT

J. K. "Buddy" Irby
Clerk of the Circuit Court

Deputy Clerk

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770."

Boat Smith
PLAINTIFF/PLAINTIFF'S ATTORNEY

500 W. Bundy Ave Ste 230
Gainesville, FL 32601

ADDRESS

JK Irby
Clerk of the Circuit Court
Alachua County
201 East University Ave
Gainesville, Florida 32601

www.AlachuaClerk.org
Civil

RECEIVED
AUG 30 2011
BY: _____

CITY OF GAINESVILLE
CITY COMMISSION
IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION, ALACHUA COUNTY COURTHOUSE

201 East University Avenue - Post Office Box 600
Gainesville Florida 32602

PHONE (352) 374-3636 • FAX (352) 338-3281

A True Copy

ADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA

Served at 9:40 AM on the 30 Day
of AUG 30, 2011

BY: [Signature] AS DEPUTY SHERIFF

Case No.: 2011-CH-4417
Division: J

Elias Moore II PLAINTIFF

-VS-
City of Gainesville et al DEFENDANT

JK Irby
Clerk of the Circuit Court
Alachua County
201 East University Ave
Gainesville, Florida 32601
www.AlachuaClerk.org
Civil

SUMMONS

THE STATE OF FLORIDA

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant

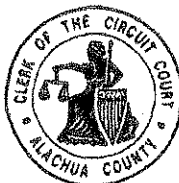
City of Gainesville C/o Daniel Nee
200 E University Suite 425
Gainesville, FL 32601

Each defendant is required to serve written defenses to the complaint or petition on plaintiff's attorney whose name and address is

Law Offices of Hynes & Laurent
560 W Broadway Ave Suite 280
Orlando, FL 32803

OK
16 per
JAY
within 30 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on Aug 26, 2011



J.K. "Buddy" Irby
Clerk of Circuit Court

By: [Signature]
Deputy Clerk

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770."

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of the Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

I. CASE STYLE

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

ELVAN MOORE II,

Plaintiff,

CASE NO.: _____

Division: _____

v.

CITY OF GAINESVILLE, FLORIDA;

CHIEF NORMAN BOTSFORD

As Chief of the Gainesville, Florida Police Department;

OFFICER ROBERT KENNEDY,

in his Official and Individual capacity,

Defendants.

II. TYPE OF CASE

(If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an "x" in both the main category and subcategory boxes.

- ☐ Condominium
- ☐ Contracts and indebtedness

- ☐ Eminent domain
- ☐ Auto negligence
- ☐ Negligence – other
 - ☐ Business governance
 - ☐ Business torts
 - ☐ Environmental/Toxic tort
 - ☐ Third party indemnification
 - ☐ Construction defect
 - ☐ Mass tort
 - ☐ Negligent security
 - ☐ Nursing home negligence
 - ☐ Premises liability – commercial
 - ☐ Premises liability – residential
- ☐ Products liability
- ☐ Real Property/Mortgage foreclosure
 - ☐ Commercial foreclosure \$0 - \$50,000
 - ☐ Commercial foreclosure \$50,001 - \$249,999
 - ☐ Commercial foreclosure \$250,000 or more
 - ☐ Homestead residential foreclosure \$0 – \$50,000
 - ☐ Homestead residential foreclosure \$50,001 - \$249,999
 - ☐ Homestead residential foreclosure \$250,000 or more
 - ☐ Non-homestead residential foreclosure \$0 - \$50,000
 - ☐ Non-homestead residential foreclosure \$50,001 - \$249,999
 - ☐ Non-homestead residential foreclosure \$250,00 or more
 - ☐ Other real property actions \$0 - \$50,000
 - ☐ Other real property actions \$50,001 - \$249,999
 - ☐ Other real property actions \$250,000 or more
- ☐ Professional malpractice
 - ☐ Malpractice – business
 - ☐ Malpractice – medical
 - ☐ Malpractice – other professional
- ☒ Other
 - ☐ Antitrust/Trade Regulation
 - ☐ Business Transaction
 - ☐ Constitutional challenge-statute or ordinance
 - ☐ Constitutional challenge-proposed amendment
 - ☐ Corporate Trusts
 - ☐ Discrimination-employment or other
 - ☐ Insurance claims
 - ☐ Intellectual property

- ☐ Libel/Slander
- ☐ Shareholder derivative action
- ☐ Securities litigation
- ☐ Trade secrets
- ☐ Trust litigation

III. REMEDIES SOUGHT (check all that apply):

- ☒ Monetary;
- ☐ Non-monetary declaratory or injunctive relief;
- ☐ Punitive

IV. NUMBER OF CAUSES OF ACTION: (17)
(Specify)

COUNT I – 42 U.S.C. § 1983 MATERIAL MISREPRESENTATIONS IN THE CHARGING AFFIDAVIT (798) IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

COUNT II - 42 U.S.C. § 1983 MALICIOUS PROSECUTION IN VIOLATION OF THE FOURTH, FIFTH, AND FOURTEENTH AMENDMENTS

COUNT III - 42 U.S.C. § 1983 POLICY, PRACTICE OR PROCEDURE

COUNT IV - 42 U.S.C. § 1983 FAILURE TO TRAIN AND/OR SUPERVISE

COUNT V – 42 U.S.C. § 1983 BATTERY

COUNT VI - FALSE ARREST

COUNT VII – FALSE ARREST

COUNT VIII – FALSE IMPRISONMENT

COUNT IX – FALSE IMPRISONMENT

COUNT X – MALICIOUS PROSECUTION

COUNT XI – INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS

COUNT XII – BATTERY

COUNT XIII – BATTERY

V. IS THIS CASE A CLASS ACTION LAWSUIT?

☐ Yes

☒ No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

☒ No

☐ Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

☒ Yes
☐ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature: _____

Carlus L. Haynes, Esquire

Fla Bar # 0935611

Date: _____

8/26/11

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

ELVAN MOORE II,

Plaintiff,

CASE NO.: _____
Division: _____

v.

CITY OF GAINESVILLE, FLORIDA;
CHIEF NORMAN BOTSFORD
As Chief of the Gainesville, Florida Police Department;
OFFICER ROBERT KENNEDY,
in his Official and Individual capacity,

Defendants.

_____/

COMPLAINT

INTRODUCTION

1. 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.
2. The events giving rise to this complaint occurred or originated in Alachua, County Florida; specifically within the city limits of Gainesville, Florida.
3. This is an action for money damages for the injuries suffered by Plaintiff Elvan Moore II as a result of negligent conduct, violations of civil and constitutional rights.
4. Throughout Mr. Moore's investigation and prosecution, Chief Norman Botsford and Officer Robert Kennedy showed deliberate indifference towards Mr. Moore's civil and

constitutional rights by unlawfully seizing, arresting and using excessive force while arresting him.

5. That there were numerous complaints levied against the Gainesville Police Department in general, and Officer Kennedy in specific, on the abuse of authority and excessive use of force.
6. These complaints should have placed the City of Gainesville and the Gainesville Police Department on notice that their officers, specifically Officer Kennedy, were acting negligently and unlawfully.
7. That Mr. Moore was arrested on August 26, 2007 and charged with the offenses of Resisting Officer Without Violence, Refusal to sign a Uniform Traffic Citation and Possession of open Container, in Alachua County, Florida.
8. That Mr. Moore, retained legal representation in the amount of \$4,000.00 and costs.
9. Mr. Moore, by and through his legal counsel (Mr. Haynes), filed a Motion to Dismiss (challenging the sufficiency of the evidence and the reason for the seizure and arrest).
10. Before a hearing could be conducted on the Motion, the State filed a notice of no information/nolle prosequi to all but one count, however, the Court subsequently dismissed the remaining count at trial based on the details within the Motion to Dismiss.
11. Upon reviewing the record the Court granted the Motion to Dismiss ruling that Officer Kennedy and the State did not have probable cause arrest Mr. Moore for Resisting or

Obstruction and Officer. Mr. Moore never challenged the fact that he offered resistance, but that his resistance was lawfully excused and justified where Officer Kennedy was neither engaged in the lawful execution of a legal duty, to wit: was making an arrest that was not based upon probable cause. *See exhibit A.*

12. The City of Gainesville was placed on notice, pursuant to *Fla. Stat. § 786.28(6)(a)* of Mr. Moore's intent to sue for damages related to his unlawful arrest.

13. On August 28, 2009, the City of Gainesville denied liability. *See exhibit B.* Also at the time of the filing of this complaint, the six month statutory period precluding the filing of a complaint has expired.

PARTIES

14. Plaintiff, ELVAN MOORE II, was at all relevant times a resident of Seminole County, Florida.

15. Defendant CITY OF GAINESVILLE, FLORIDA was at all relevant times a municipal corporation in the State of Florida and was the employer of Chief Norman Botsford, and Officer Kennedy.

16. Defendant CHIEF NORMAN BOTSFORD, was at all relevant times the Chief of Police of Gainesville, Florida. The current Chief of Police of Gainesville, Florida is Tony Jones.

17. Defendant OFFICER KENNEDY, at all relevant and material times was a police officer with the City of Gainesville Police Department. The facts giving rise to Mr. Moore's

unlawful arrest and to this complaint occurred in the City of Gainesville, county of Alachua, and State of Florida.

18. Defendant Kennedy is also being sued in his individual capacity as a law enforcement officer for the City of Gainesville, Florida.

19. Unless otherwise stated, all acts of the Defendants alleged herein were within the course and scope of their authority and the course of their employment.

FACTS REGARDING ARREST

20. Officer Kennedy of the Gainesville Police Department says that he observed the Plaintiff, Mr. Moore, walking down the sidewalk of a public street with clear plastic cup in his hand whose contents appeared brownish in color.

21. Mr. Moore then poured out the contents of the cup into the nearby grass and dropped the cup on the ground.

22. Officer Kennedy then grabbed the cup and alleges that he knew its contents were alcoholic (specifically Crown Royal and Coke) just from "sight, smell, and personal experience".

23. Officer Kennedy claims to have issued Mr. Moore a Notice to Appear for possessing an open container and a Uniform Traffic Citation for Littering. Mr. Moore subsequently requested that he be allowed to speak with his attorney before signing any document(s) in that he had not done anything wrong. This request was denied by Officer Kennedy.

24. The “open container” charge is a violation of a municipal ordinance and not a state statute.
25. Furthermore, Officer Kennedy took Mr. Moore’s request as a refusal to sign. Officer Kennedy then attempted to place Mr. Moore under arrest.
26. Officer Kennedy claimed that Mr. Moore resisted by pulling his body away and curling his hands underneath his body.
27. Officer Kennedy’s caused Mr. Moore to be thrown to the ground after requesting to speak with his attorney and allegedly resisting. He was subsequently punched and kicked several times by Officer Kennedy and possibly other officers which resulted in numerous injuries.
28. Mr. Moore suffered a dislocated jaw, chipped teeth, a cut on his left wrist, cuts on his face, numbness and immobility of his left thumb, cut on his left foot and swelling of his head and face. *See Exhibit C.*
29. While Officer Kennedy initially claimed that a Notice to Appear must be signed, after further questioning Officer Kennedy testified that it is the policy of GPD and not the state law that requires a signature from the Defendant.
30. Mr. Moore had no legal obligation to sign the notice to appear. Furthermore, Mr. Moore never actually refused to sign anything; he just requested to call his attorney before signing and was attacked by Officer Kennedy and several other officers.

31. Officer Kennedy had no probable cause to arrest Mr. Moore for Resisting or Opposing Officer without violence in that there was no indication that Mr. Moore had committed or was about to commit a criminal act or municipal ordinance violation. Therefore Kennedy was not engaged in the lawful execution of a legal duty when he demanded Mr. Moore sign a document he claimed to be a summons and the Uniform Traffic Citation for a non-traffic violation.
32. It is clear, based upon the State Attorney's decision to dismiss the charges for "possession of open container of alcohol and refusal to sign citation for civil summons," that Officer Kennedy was not justified in detaining and arresting Mr. Moore's. The Plaintiff asserts that the cup he was holding contained a clear liquid which was water.
33. Therefore, Mr. Moore could not be lawfully charged with resisting or obstruction where there was no legal requirement for him to comply with Officer Kennedy's request to sign the Notice to Appear.
34. It is irrefutable that the Gainesville Police Department has a policy to issue citations and make arrest upon probable cause. Also the Gainesville Police Department has an implied policy to harass and arrest African American Males in the downtown area. In erroneously implementing the policy, the deputy violated Mr. Moore's constitutional rights who is a graduate of the University of Florida and was not a "local thug" as perceived by officer Kennedy.
35. The Plaintiff asserts that the cup he was holding contained a clear liquid which was water.

CAUSES OF ACTION

FEDERAL CONSTITUTIONAL CLAIMS

COUNT I: 42 U.S.C. § 1983

**MATERIAL MISREPRESENTATIONS IN THE CHARGING AFFIDAVIT (798)
IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS**

Defendant Kennedy

36. Plaintiff re-alleges and reaffirms paragraphs 1 through 35.
37. Plaintiff has a clearly established constitutional right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendment to the United States Constitution.
38. Defendant acted under color of state law when he arrested Mr. Moore without probable cause.
39. Defendant also acted under color of law when he deprived Mr. Moore his right to consult with his attorney who had access to on his cell phone, while Mr. Moore was being commanded to perform an act with legal consequences. This violated his constitutional right to counsel.
40. Defendants made material misrepresentations and omissions in the Charging Affidavit (798) about the defendant's refusal to sign the UTC and the NTA and omitted the fact that Mr. Moore was brutally beaten by Officer Kennedy and several other officers.
41. The material misrepresentations and omission were deliberately made with an utter disregard for the truth and without such misrepresentations or omissions, the State of Florida would have never filed an information and pursued criminal charges

42. A reasonable official would understand that making deliberate or reckless misrepresentations in a charging affidavit in order to justify an arrest of a criminal defendant violates the Fourth and Fourteenth Amendments to the United States Constitution. The Defendant's conduct lies so obviously at the very core of what the Constitution prohibits that the unlawfulness of the conduct was readily apparent to the Defendant.

43. These material and deliberate misrepresentations and omissions deprived the Plaintiff of his right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments.

44. Defendant Kennedy was the affiant of the charging affidavit.

45. Plaintiff suffered damages as a result of Defendant's conduct.

46. Plaintiff has performed all conditions precedent to be performed or the conditions have occurred.

WHEREFORE, the Plaintiff demands judgment for damages against Defendant Kennedy, exemplary damages, costs of this action, and such other and further relief as the Court deems appropriate.

COUNT II: 42 U.S.C. § 1983
MALICIOUS PROSECUTION IN VIOLATION
OF THE FOURTH, FIFTH, AND FOURTEENTH AMENDMENTS

Defendants Chief Norman Botsford as Chief of the Gainesville Police Department and City of
Gainesville by and through Officer Kennedy

47. That each of the foregoing paragraphs 1 through 35 are re-alleged and reaffirmed and incorporated herein.
48. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, and by virtue of his office, did, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ELVAN MOORE II, to be wrongfully and forcibly arrested, imprisoned and restrained of his liberty in the Alachua County Jail.
49. That the criminal proceeding against the Plaintiff, ELVAN MOORE II, was nolle prossed as to two counts on November 26, 2007 and dismissed as to the count of resisting without violence on or about December 19, 2007. This dismissal was a bona fide termination in favor of the Plaintiff.
50. That the Defendants were the legal cause of the criminal proceeding against the Plaintiff.
51. That there was an absence of probable cause for the initiation of criminal charges against the Plaintiff in that there was no contraband to support the open container charge, no

vehicle or cup to support the UTC for littering, and the law does not require a individual to sign a notice to appear.

52. That the Defendants acted with malice when they caused the indictment to be returned.

53. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ELVAN MOORE II, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, losses of business and employment, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT III: 42 U.S.C. § 1983
POLICY, PRACTICE OR PROCEDURE

Defendants Botsford as Chief of Gainesville Police Department and City of Gainesville, Florida

54. Plaintiff re-alleges and reaffirm paragraphs 1 – 35.

55. The City of Gainesville, Gainesville Police Department, and Chief Norman Botsford has a policy, practice and/or custom which:

- a. Permits, encourages, and praises the development and use of evidence illegally obtained by unlawful searches and seizures in criminal prosecutions of persons charged with criminal conduct;

- b. Permits, encourages, and praises employees to intentionally or with reckless disregard for the truth to misrepresent material facts in arrest affidavits (798s) in order to support/justify the reason for seizures and arrests;
- c. Permits, encourages, and praises employees who use excessive force in seizing and arresting an individual by continuing their employment;
- d. Permits Gainesville Police Department employees to conduct seizures and arrests that are not based upon probable cause or reasonable suspicion;
- e. Has a standing policy to make arrest;
- f. Encourages harassment and arrest of young African Americans; and
- g. Fails to adequately train and/or supervise Gainesville Police Department employees to prevent a through f.

56. These policies, practices, or customs of Defendants City of Gainesville, Gainesville Police Department, and Chief Norman Botsford caused a violation of the Plaintiff's constitutional rights under the Fourth Amendment to be free from unreasonable searches and seizures caused by criminal charges based on false or deliberately fabricated evidence and under the Fifth Amendment not to be subjected to criminal charges on false or deliberately fabricated evidence.

57. These policies, practices and customs were implemented and controlled by Defendants City of Gainesville, Gainesville Police Department, and Chief Norman Botsford.

58. Defendants City of Gainesville, Gainesville Police Department, and Chief Norman Botsford were deliberately indifferent to the fact that this policy would deprive the Plaintiff of his Fourth Amendment to be free from unreasonable searches and seizures and his Fifth Amendment right not to be subject to criminal charges that is supported/justified by false, fabricated, misrepresented and omitted evidence.

59. Defendants City of Gainesville, Gainesville Police Department, and Chief Norman Botsford not only failed to adequately punish the Gainesville Police Department employees responsible for developing and using false, fabricated, misrepresented, and omitted evidence to support an investigation; but Defendants also encouraged it.

60. These policies, practices or customs were the moving force behind the violation of Plaintiff's Fourth Amendment right to be free from unreasonable searches and seizures and Plaintiffs' Fifth Amendment right not to be subject to criminal charges that is supported/justified by false, fabricated, misrepresented and omitted evidence.

61. Defendants knew or should have known that their policies/customs would be applied/misapplied and cause Plaintiff to suffer damages.

62. Plaintiff suffered damages as a result of the Defendants' conduct.

63. Plaintiff has performed all conditions precedents to be performed or the conditions have occurred.

WHEREFORE, Plaintiff demands judgment for damages against Defendants, exemplary damages, costs of this action, and such other and further relief as the Court deems appropriate.

COUNT IV: 42 U.S.C. § 1983
FAILURE TO TRAIN AND/OR SUPERVISE

Defendants City of Gainesville, Chief Norman Botsford as chief of
Gainesville Police Department

64. Plaintiff re-alleges and reaffirms paragraphs 1- 35.

65. Defendant Chief Norman Botsford, and the City of Gainesville failed to adequately train and/or supervise the Defendants' employees in the proper manner to make arrests only upon probable cause a crime or ordinance violation was committed. .
66. The need for such supervision and training was plainly obvious or should have been plainly obvious to the City of Gainesville and Gainesville Police Department policymakers, as evidenced by the fact that Officer Kennedy has had numerous complaints filed against him for use of excessive force and police brutality
67. This failure to supervise and train was an official policy, practice, and procedure of the City of Gainesville and Gainesville Police Department.
68. The failure to supervise and train caused the Defendants to repeatedly violate the Plaintiff's rights under the Fourth Amendment to be free from unreasonable searches and seizures and Plaintiffs' Fifth Amendment (through the 14th Amendment) right not to be subject to criminal charges that are supported/justified by false, fabricated, misrepresented and omitted evidence.
69. The Defendants were deliberately indifferent to the need for supervision and training.
70. The Defendants knew, or should have known, that their failure to supervise and train reflected deliberate indifference.
71. The Plaintiff suffered damages as a result of the Defendants' conduct.

72. Plaintiff has performed all conditions precedents to be performed or the conditions have occurred.

WHEREFORE, Plaintiff demands judgment for damages against Defendants, exemplary damages, costs of this action, and such other and further relief as the Court deems appropriate.

COUNT V: 42 U.S.C. § 1983

BATTERY

Defendant Kennedy

73. Plaintiff re-alleges and reaffirms paragraphs 1- 35.

74. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, committed a battery upon ELVAN MOORE II by slamming him on the ground, punching and kicking him in the face multiple times and directing other City of Gainesville Officers to do the same, while arresting Mr. Moore without probable cause.

75. This battery was in violation of section 784.03 of the Florida Statutes, which recognizes as a crime the battery committed by ROBERT KENNEDY upon ELVAN MOORE II.

76. As a result of the aforementioned occurrence, Plaintiff suffered physical and emotional trauma.

77. As a direct and proximate result of the Defendant's actions, Plaintiff has experienced and will continue to experience physical and emotional pain and suffering.

78. ROBERT KENNEDY intentionally and recklessly battered ELVAN MOORE II, which was the direct cause of the injury to ELVAN MOORE II.

79. The actions by ROBERT KENNEDY of attacking the Plaintiff at the time and place set forth above were done intentionally, and with the express and exclusive purpose of causing grievous and physical injury to the Plaintiff. Therefore, causing the Plaintiff to be in fear of further physical injury at the hands of ROBERT KENNEDY.

80. As a direct and proximate result of ROBERT KENNEDY's battery on ELVAN MOORE II, he has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff ELVAN MOORE II demands judgment against Defendant ROBERT KENNEDY for actual and compensatory damages, costs, attorney's fees, and such other and further relief as this Court deems just and proper.

STATE LAW CLAIMS

COUNT VI: - FALSE ARREST

Defendants Chief Botsford, and City of Gainesville, Florida by and through Officer Kennedy

81. Plaintiff re-alleges and reaffirms paragraphs 1- 35, and are incorporated herein.

82. That on or about August 26, 2007, the Defendants, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, and by virtue of his office, did cause the Plaintiff, ELVAN MOORE II, to be wrongfully

arrested on the sidewalk of the 100 block of West University Avenue in Gainesville, Florida.

83. That on said date, the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ELVAN MOORE II, to be wrongfully and forcibly arrested.

84. That the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, abused the power of his office, and his conduct with respect to the Plaintiff, ELVAN MOORE II, was committed in bad faith, and with willful disregard of the human rights, safety and property of the Plaintiff; in that Officer Kennedy arrested Mr. Moore without probable cause.

85. That the criminal proceeding against the Plaintiff, ELVAN MOORE II, was nolle prossed by the State or dismissed by the court, resulting in a bona fide termination in his favor.

86. That the Defendants were the legal cause of the arrest.

87. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ELVAN MOORE II, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to

his good name, loss of time, losses of business and employment opportunity, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT VII: - FALSE ARREST
Defendant Kennedy

88. Plaintiff re-alleges and reaffirms paragraphs 1- 35, and are incorporated herein.

89. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his individual capacity, did cause the Plaintiff, ELVAN MOORE II, to be wrongfully arrested on the sidewalk of the 100 block of West University Avenue in Gainesville, Florida.

90. That on said date, the Defendant, ROBERT KENNEDY, acting in his individual capacity, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ELVAN MOORE II, to be wrongfully and forcibly arrested without probable cause.

91. That the criminal proceeding against the Plaintiff, ELVAN MOORE II, was nolle prossed by the State or dismissed by the court, resulting in a bona fide termination in his favor.

92. That the Defendant was the legal cause of the arrest

93. That the Defendant, ROBERT KENNEDY, acting in his individual capacity, abused the power of his office, and his conduct with respect to the Plaintiff, ELVAN MOORE II, was committed in bad faith, and with willful disregard of the human rights, safety and property of the Plaintiff.

94. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ELVAN MOORE II, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, losses of business and employment, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT VIII:
FALSE IMPRISONMENT

Defendants Chief Botsford, and City of Gainesville, Florida by and through Officer Kennedy

95. Plaintiff re-alleges and reaffirms paragraphs 1- 35, and are incorporated herein.

96. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida,

and by virtue of his office, did, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ELVAN MOORE II, to be wrongfully and forcibly arrested without probable cause, which lead to Mr. Moore being imprisoned and restrained of his liberty in the Alachua County Jail.

97. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ELVAN MOORE II, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, losses of business and employment opportunity, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT IX: - FALSE IMPRISONMENT
Defendant Kennedy

98. Plaintiff re-alleges and reaffirms paragraphs 1- 35, and are incorporated herein.

99. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his individual capacity, and by virtue of his office, did, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ROBERT KENNEDY, to be wrongfully and forcibly arrested without

probable cause, which lead to Mr. Moore being imprisoned and restrained of his liberty in the Alachua County Jail.

100. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ROBERT KENNEDY, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, losses of business and employment opportunity, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT X: - MALICIOUS PROSECUTION
Defendant Kennedy

101. Plaintiff re-alleges and reaffirms paragraphs 1- 35, and are incorporated herein.

102. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his individual capacity, and by virtue of his office, did, wrongfully and unlawfully did, wrongfully and unlawfully, and without any order, warrant or process of any Court authorizing him to do so, did cause the plaintiff, ELVAN MOORE II, to be wrongfully and forcibly arrested, imprisoned and restrained of his liberty in the Alachua County Jail.

103. That the criminal proceeding against the Plaintiff, ELVAN MOORE II, was nolle prossed as to two counts on November 26, 2007 and dismissed as to the count of resisting without violence on or about December 19, 2007. These dismissals were a bona fide termination in favor of the Plaintiff.
104. That the Defendant was the legal cause of the criminal proceeding against the Plaintiff.
105. That there was an absence of probable cause or reasonable suspicion for seizing and arresting the Plaintiff.
106. That the Defendant acted with malice when he caused the indictment to be returned by falsely, recklessly, and maliciously misrepresenting the facts concerning the arrest.
107. That as a direct and proximate result of the aforesaid acts and conduct, the Plaintiff, ELVAN MOORE II, suffered and will continue to suffer in the future, physical inconvenience and discomfort, physical suffering, mental pain and suffering, embarrassment, humiliation, deprivation of liberty and property, disgrace, and injury to his good name, loss of time, losses of business and employment opportunity, expenses incurred as a result of unlawful detainment, and losses to business reputation.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT XI:
INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS
All Defendants

108. Plaintiff re-alleges and reaffirms paragraphs 1-35 and are incorporated herein.
109. Defendants' conduct was intentional or reckless in that they intended their actions when they knew or should have known that their actions would likely cause the Plaintiff severe emotional distress.
110. The Defendants' conduct of fabricating evidence, making misleading statements and omissions, conducting unlawful seizures, encouraging such actions, and failing to train and supervise the manner in which to conduct arrest based upon probable cause; was outrageous, beyond all bounds of decency, atrocious and utterly intolerable in a civilized community.
111. The Defendants' conduct caused emotional and physical distress to the Plaintiff.
112. The Plaintiff's emotional and physical distress was severe.
113. Plaintiff has performed all conditions precedents to be performed or the conditions have occurred.

WHEREFORE, Plaintiff demands judgment for damages against Defendants, exemplary damages, cost of this action, and such other and further relief as the Court deems appropriate.

COUNT XII: BATTERY

Defendant Kennedy in his Official Capacity

114. Plaintiff realleges and reaffirms paragraphs 1- 35.

115. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his official capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, committed a battery upon ELVAN MOORE II by slamming him on the ground, punching and kicking him in the face multiple times while attempting to arrest Mr. Moore without probable cause.

116. This battery was in violation of section 784.03 of the Florida Statutes, which recognizes as a crime the battery committed by ROBERT KENNEDY upon ELVAN MOORE II where KENNEDY intentionally struck and directed and cause others to strike Plaintiff against his will.

117. As a result of the aforementioned occurrence, Plaintiff suffered physical and emotional trauma.

118. As a direct and proximate result of the Defendant's actions, Plaintiff has experienced and will continue to experience physical and emotional pain and suffering.

119. ROBERT KENNEDY intentionally and recklessly battered ELVAN MOORE II, which was the direct cause of the injury to ELVAN MOORE II.

120. The actions by ROBERT KENNEDY of attacking the Plaintiff at the time and place set forth above were done intentionally, and with the express and exclusive purpose of causing grievous and physical injury to the Plaintiff. Therefore, causing the Plaintiff to be in fear of further physical injury at the hands of ROBERT KENNEDY.

121. As a direct and proximate result of ROBERT KENNEDY's battery on ELVAN MOORE II, he has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff ELVAN MOORE II demands judgment against Defendant ROBERT KENNEDY for actual and compensatory damages, costs, attorney's fees, and such other and further relief as this Court deems just and proper.

COUNT XIII: BATTERY
Defendant Kennedy in his Individual Capacity

122. Plaintiff re-alleges and reaffirms paragraphs 1- 35.

123. That on or about August 26, 2007, the Defendant, ROBERT KENNEDY, acting in his individual capacity as officer, employee and servant of the Defendant, NORMAN BOTSFORD, Chief of the City of Gainesville Police Department in Gainesville, Florida, committed a battery upon ELVAN MOORE II by slamming him on the ground, punching and kicking him in the face multiple times while attempting to arrest Mr. Moore without probable cause.

124. This battery was in violation of section 784.03 of the Florida Statutes, which recognizes as a crime the battery committed by ROBERT KENNEDY upon ELVAN MOORE II where KENNEDY intentionally struck and directed and cause others to strike Plaintiff against his will

125. As a result of the aforementioned occurrence, Plaintiff suffered physical and emotional trauma.

126. That the Defendant, ROBERT KENNEDY, acting in his individual capacity, abused the power of his office, and his conduct with respect to the Plaintiff, ELVAN MOORE II, was committed in bad faith, and with willful disregard of the human rights, safety and property of the Plaintiff.

127. As a direct and proximate result of the Defendant's actions, Plaintiff has experienced and will continue to experience physical and emotional pain and suffering.

128. ROBERT KENNEDY intentionally and recklessly battered ELVAN MOORE II, which was the direct cause of the injury to ELVAN MOORE II.

129. The actions by ROBERT KENNEDY of attacking the Plaintiff at the time and place set forth above were done intentionally, and with the express and exclusive purpose of causing grievous and physical injury to the Plaintiff. Therefore, causing the Plaintiff to be in fear of further physical injury at the hands of ROBERT KENNEDY.

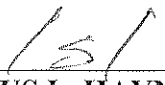
130. As a direct and proximate result of ROBERT KENNEDY's battery on ELVAN MOORE II, he has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff ELVAN MOORE II demands judgment against Defendant ROBERT KENNEDY for actual and compensatory damages, costs, attorney's fees, and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated this 26th day of August 2011.



CARLUS L. HAYNES, ESQ.
Florida Bar Number: 0935611
550 Bumby Ave., Suite 280
Orlando, Florida 32803
Telephone: (407) 246-0077
Facsimile: (407) 246-0078
Email: Champ@fighting4ulaw.com
Attorney for PLAINTIFF

Exhibit A:

Court Order Dismissing Charge

Of Resisting Without Violence and State's Nolle Pros

26f

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

STATE OF FLORIDA,
Plaintiff,

Case No.: 2007-CT-003728-A
Citation No.: 4855-EUL

v.

ELVAN MOORE,
Defendant.



ORDER

THIS CAUSE HAVING COME on to be heard upon the Defendant's ore tenus motion for Richardson hearing, and as a Sanction for the Discovery Violation, Motion to Dismiss, and this Court having conduct a Evidentiary Richardson Hearing, and being otherwise duly advised in the premises, it is:

THE COURT'S FINDINGS are as follows:

1. That Officer Kennedy failed to submit the purported and alleged "Notice to Appear" to the State.
2. That the Defendant made timely requests and demands for the document.
3. That the State failed to deliver the document to the Defense prior to trial.
4. That Officer Kennedy testified that he destroyed the document.
5. And such constituted a discovery violation pursuant to Fla. R. Crim. P. 3.220(b).
6. And that the Defenses was severely prejudiced by such violation in that it handicapped their ability to challenge the "lawful" execution of a legal duty; as indicated in the special jury instruction.
7. In addition, it is expressly incorporated by reference, that citation 4855-EUL (Littering) has been consolidated by Defendant's Motion to Consolidate.

J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL.

2007 DEC 19 PM 4:04

FILED
OK 47

IT IS HEREBY ORDERED AND ADJUGED that:

The Defendant's motion is hereby GRANTED, and charges in the above styled cause shall be dismissed with prejudice As a sanction of said discovery violation, pursuant to Fla. R.

(2)

Crim. P. 3.220(n), as well as other considerations addressed before the Court.

DONE AND ORDERED in Chambers/Open Court in Gainesville, Alachua County,
Florida, this 19 day of Dec, 2007.


COUNTY COURT JUDGE

Copies to:

Carlus L. Haynes, 550 Bumby Ave., Suite 280, Orlando, Florida 32803

Office of the State Attorney, 120 West University Ave. Gainesville, Florida 32602

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

STATE OF FLORIDA
Plaintiff,

vs.

ELVAN MOORE
Defendant.

Case Number: 01-2007-CY-003728-A
C.R.#: GPD07-17062
TRAFFIC DIVISION

CASE ACTION REPORT
NOLLE/NO INFORMATION/FINAL DISPOSITION

On 08/26/2007 the GAINESVILLE POLICE DEPARTMENT arrested the above named defendant with:
(original charge){s}

- 1) RESISTING OFFICER WITHOUT VIOLENCE
- 2) POSSESSION OF OPEN CONTAINER OF ALCOHOL - CITY OF GAINESVILLE
- 3) REFUSAL OF CITATION FOR CIVIL SUMMONS

The facts of the case have been reviewed by this office:

The State of Florida, by the undersigned authority, enters a **NOLLE PROSEQUI/NO INFORMATION (DISMISSAL)** in the above entitled action as to:

Count	Reason	
2) POSSESSION OF OPEN CONTAINER OF ALCOHOL	27	TO BE FILED AT LATER DATE
3) REFUSAL TO SIGN CITATION FOR CIVIL SUMMONS	27	TO BE FILED AT LATER DATE

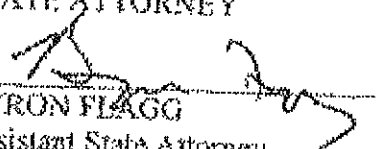
EVIDENCE:

The Evidence Custodian is hereby authorized to:

- ☒ Retain custody of the evidence until instructed otherwise.
- ☐ Dispose of the evidence in accordance with Florida Statutes.

I HEREBY CERTIFY that a copy hereof has been furnished to CARLOS L HAYNES, 550 BUMBAY AVENUE, SUITE 280, ORLANDO, FL 32803 by Inter Office Mail, this 26 day of November, 2007.

WILLIAM P. CERVONE
STATE ATTORNEY


BYRON FLAGG
Assistant State Attorney
Florida Bar Number: 0014311

Clerk: State Attorney's Office Defense Counsel Jail
INVESTIGATIVE AGENCY - GPD (ROBERT J KENNEDY - 549) Evidence Custodian --

FOR FURTHER INFORMATION CALL INVESTIGATOR SPENCER MANN - (352) 374-3699
REMARKS -

RECEIVED

Exhibit B:

Letter from City of Gainesville

Denying Liability

Exhibit C:
Report Showing Injuries Suffered



ALACHUA COUNTY SHERIFF'S OFFICE
Department of the Jail
Inmate Sick Call Request

8/26/07 36

PART A: (To be completed by inmate)

ELVAN NUNEZ

(Inmate Name)

PDJ62MNI 82827

(Adm Number)

8/26/07 @ 15:19

(Date)

36

(Pod)

(Received from inmate by Staff Initial/ID#)

(Date Received)

Request/Complaints (do not write on the back of this sheet)

1) NEED TREATMENT FOR THE FOLLOWING: 1) DISLOCATED JAW 2) CHIPPED TOOTH
3) SCARS TO CHEEK 4) CUT TO LEFT WRIST 5) NUMBNESS AND IMMOBILITY OF
LEFT THUMB 6) CIRCULAR CUT TO RIGHT FOOT 7) EX SWELLING 8) SWELLEN NOSE AND FACE

How long have you had this problem?

Hours:

14 1/2 HOURS

Days:

3 DAYS

PART B: (To be completed by medical personnel - DO NOT WRITE BELOW THIS LINE)

Staff Response/Action Taken:

see doc

White: Inmate Medical File

Yellow: To inmate after response

Pink: Inmate Receipt

DOI 20-66