

LEGISTAR NO.

130641

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
Gainesville DIVISION

FIRST AMENDED
CIVIL RIGHTS COMPLAINT FORM
TO BE USED BY PRO SE (NON-PRISONER) LITIGANTS IN ACTIONS
UNDER 28 U.S.C. § 1331 or § 1346 OR 42 U.S.C. § 1983

Brandon Ricardo Smith

(Enter full name of Plaintiff(s))

vs.

CASE NO: 1:13-cv-166-MW-GRJ
(To be assigned by Clerk)

Gainesville Police Department

Jeremiah Kelly (Officer)

(Enter name and title of each Defendant.

If additional space is required, use the
blank area below and directly to the right.)

ANSWER ALL QUESTIONS ON THE FOLLOWING PAGES:



Filed 11/14/13 1:13 PM 0428

I. PLAINTIFF:

State your full name and full mailing address in the lines below.

Name of Plaintiff: Brandon Ricardo Smith
Mailing address: 2228 Southeast 30th Street
Gainesville, Florida 32641

II. DEFENDANT(S):

State the name of the Defendant in the first line, official position in the second line, place of employment in the third line, and mailing address. Do the same for every Defendant:

(1) Defendant's name: Gainesville Police Department
Official position: Arresting Agency
Employed at: _____
Mailing address: 413 Northwest 8th Avenue
Gainesville, Florida 32601

(2) Defendant's name: Jeremiah Kelly
Official position: Arresting Officer
Employed at: Gainesville Police Department
Mailing address: 413 Northwest 8th Avenue
Gainesville, Florida 32601

(3) Defendant's name: _____
Official position: _____
Employed at: _____
Mailing address: _____

(4) Defendant's name: _____
Official position: _____
Employed at: _____
Mailing address: _____

ATTACH ADDITIONAL PAGES HERE TO NAME ADDITIONAL DEFENDANTS

III. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

Brandon Smith was illegally detained and arrested without probable cause by Officer Jeremiah Kelly. Smith was initially stopped for allegedly running the stop sign; but once Officer Kelly had issued Mr. Smith his traffic citation. Smith should have immediately been released from the custody of the GPD Officer without any further incidents. Once Officer Kelly issued Smith his traffic citation for allegedly running the stop sign, that was when Mr. Smith proceeded to converse with his family members on his aunt Luciana Thomas private party in her front yard during a birthday party gathering for Smith's other aunt Gloria Hill. Once Officer Kelly had issued Smith the traffic ticket, the Officer had no legal rights by law to walk onto Luciana Thomas private property at her house and accuse Mr. Smith of disturbing the peace for merely exercising his legal rights of "Free Speech" & "Free Expression" just for being on his aunt's property conversing with his family in regards to the traffic stop. Officer Kelly deprived Smith of his First Amendment Right merely for holding conversations with his family on private property moments after the traffic citation was issued. Officer Kelly assumed that Smith didn't know the people at the birthday gathering, and that Smith was possibly disturbing the peace of the individuals as he proceeded to exercise his free speech & free expression while talking with his family members. Officer Kelly's "hunch" led to the deprivation of Smith's constitutional rights of free speech & free expression. Officer Jeremiah Kelly's illegal detainment and false arrest without probable cause deprived Mr. Smith of his constitutional rights under the Fourth Amendment. Once Officer Kelly of the Gainesville Police Department issued Smith his traffic citation and fine, and after depriving Smith of his First Amendment rights to free speech & free expression; Officer Kelly proceeded to place Smith under arrest, attach handcuffs to his wrist, and place the Plaintiff in the back seat of his patrol car. During the entire detaining, arrest, and verbal questioning of Mr. Smith; Officer Jeremiah Kelly made the arrest without ever mentioning to the Plaintiff his legal Miranda Rights warning to protect Smith against self-incrimination. Which the act of not giving Mr. Smith his proper Miranda warnings deprived the Plaintiff of his Fifth Amendment right. During the arrest and while being detained, Smith immediately requested that his attorney be present before any further questioning since the Plaintiff was already detained and placed under arrest inside of the patrol car. That was when Officer Kelly along with other uniformed Officers immediately revoked and denied Smith his legal right to counsel during questioning. Aggressively depriving Smith of his Sixth Amendment right of the constitution. Which the second part of the Miranda Rights warning protects Smith Sixth Amendment right to counsel, which was deprived and taken away by the power of Jeremiah Kelly himself after the Officer failed to read Smith his Miranda Rights.

III. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

While Smith was illegally detained and placed under arrest in the patrol car, Officer Kelly approached his patrol car and asked Smith if he could have his permission to search his car; Smith replied "no" to Officer Kelly. Officer Kelly along with other Officers continued with their own power and authority, and performed an illegal search of Smith's car without probable cause that Smith had in fact committed a crime. Depriving Smith of his Fourth Amendment right. Officer Kelly never called in for a K-9 unit to perform an outside search of the car, in which the K-9 dogs are trained to alert any type of foul play. Without the proper probable cause to conduct such illegal search, the Officers took it upon themselves with self-power to deprive Smith of his Fourth Amendment right while Smith's girlfriend at the time Britney Brown was in the passengers seat, and his family members were forced to witness the overpowering abuse of illegal authority that Officer Kelly was conducting. Once Smith had told the officers they could not search his car, then the Officers should had never continued the search. Brandon Smith was racially profiled as a "Black male" during the entire traffic stop, detainment, and arrest. Officer Jeremiah Kelly had frisked Smith, but did not find contraband or a weapon on him. But after Smith complained to Officer Kelly about his treatment during the street encounter in front of his girlfriend and family, Officer Kelly Placed Brandon Smith under arrest without probable cause. Officer Jeremiah Kelly filed a written police report with the Alachua County Criminal Court, and also with the Gainesville Police Department that falsely claimed Mr. Smith was was yelling loudly cursing, and throwing & waving his arms around, allowing Officer Kelly to add another charge of resisting arrest without violence, illegally depriving Smith of his First Amendment right to free speech & free expression, and making a false arrest based on the Plaintiffs race as a Black man. As a consequence for the trumped-up charges, Smith was wrongfully imprisoned in the Alachua County Jail for approximately 5 1/2 to 6 hours before posting bail. "The power to arrest to deprive a citizen of liberty- Must be used fairly, responsibly and without bias. Motivated by racial animus, The Defendant Officer Jeremiah Kelly abused this power and responsibility." Officer Kelly's racially-profiled actions which initiated the traffic stop, detaining, and arrest blatant deprived Smith of his Fourteenth Amendment right of the constitution. If the Gainesville Police Department allows or encourages for their Officers employed with that agency to practice racial profiling, then the Gainesville Police Department themselves are practicing vicarious discrimination as well. That is unacceptable, and it's a clear deprivation of the Fourteenth Amendment being acted upon by Officer Jeremiah Kelly himself.

III. STATEMENT OF FACTS:

State briefly the **FACTS** of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

Smith was maliciously prosecuted by the Gainesville Police Department, and State Prosecution. On July 8, 2013 the State of Florida dropped their entire case against Smith dismissing all charges. There was lack of victims, lack of witnesses, and prosecution also continued to prosecute the criminal case against Smith even after the (90) day speedy trial deadline had expired and lapsed over. The Gainesville Police Department and Prosecutors had until April 19, 2013 to find Smith guilty. Prosecution continued the criminal case for nearly four months after the 90 day speedy trial deadline had expired. Without any actual victims or witnesses to validate Officer Kelly's arresting statements: that leaves Prosecution and the Gainesville Police Department without probable cause to constitute the charges against Smith. Illegally depriving Smith of his Fourth Amendment, Sixth Amendment, and Fourteenth Amendment Rights of the constitution. By abusing the process of the criminal court system, and by intentionally & maliciously prosecuting Smith; the Gainesville Police Department has intentionally misused their government authority and powers, and have deprived Smith of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights. These tort acts deprived Smith of his Due Process rights of law, which is guaranteed to the Plaintiff under the Fifth & fourteenth Amendments.

IV. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section III. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

1.) FIRST AMENDMENT- Guarantees Smith to have "Freedom of speech" & Freedom of Expression". Officer Kelly deprived Smith of his First Amendment, and falsely arrested & wrongfully imprisoned Smith for exercising his free speech & free expression rights.

2.) FOURTH AMENDMENT- Guarantees Smith protection from illegal & unlawful "searches and Seizures" without probable cause or proper consent from the individual. Officer Kelly Falsely arrested and wrongfully imprisoned Smith for exercising his First Amendment right. Officer Kelly also performed an illegal search of Smith's car without the Plaintiff's proper consent to do so.

3.) FIFTH AMENDMENT- Guarantees Smith his rights to be mentioned his Miranda Rights warning. This also entitles Smith to his rights to remain silent during questioning. Officer Kelly never read Smith his Miranda Rights warning, and was still falsely arrested and wrongfully imprisoned without the reading of his Miranda Rights. Smith was never informed of his rights to remain silent, so Officer Kelly continued to aggressively talk to Smith in the patrol car while driving to the jail writing extra statements.

V. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes. Smith is asking this Honorable Court to award damages from the Defendants in the total sum of \$360,000.00. Plaintiff is asking that there be \$60,000.00 awarded separately for each claim and/or Constitutional Amendments that were deprived and violated by the Defendants, which are a total of 6 different claims and/or Amendments. The damage compensation will cover freedom lost from false imprisonment & wrongful arrest, lost wages from job, mental suffering, damage to reputation, fright, shame, humiliation, malicious prosecution, intentional malicious conduct, and false arrest & wrongful imprisonment caused by the Defendants actions.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

11/14/2013
(Date)


(Signature of Plaintiff)

IV. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section III. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

4.) SIXTH AMENDMENT- Guarantees Smith his lawful right to have an attorney present during questioning while detained and placed under arrest. Officer Kelly deprived Smith of his Sixth Amendment right to have counsel present while being questioned. While placed in handcuffs, and sitting in the patrol car. Officer Kelly and other Officers revoked Smith's right to have counsel present, and continued to question Smith about the entire incident even after counsel was demanded. This amendment also protects Smith with the 90 day speedy trial. The 90 day speedy trial clock immediately starts once the Defendant is arrested, and booked into jail. Smith was arrested January 19, 2013 giving the Gainesville Police Department & prosecutors until April 19, 2013 to meet that speedy trial deadline. Prosecution lapsed that deadline once it expired, and continued to prosecute aggressively until July 8, 2013. There was never a speedy trial deadline extension request entered with the criminal court.

V. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

11-14-2013
(Date)


(Signature of Plaintiff)

IV. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section III. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

5.) FOURTEENTH AMENDMENT- This Guarantees Smith the Due Process of law. Guarantees Smith the protection from his deprivation of liberty, and promises equal protection of the constitutional laws. Smith was racially profiled as a Black man and deprived his constitutional rights to be treated equally by law. Smith was also Maliciously prosecuted by the Defendant and State prosecutors after prosecution continued to prosecute without witnesses, victims, and knowing that the right to speedy trial deadline had expired. Officer Kelly's initiated actions relied merely on the Plaintiff's race as a Black man, depriving Smith of his Fourteenth Amendment right.

6.) DEFAMATION OF CHARACTER- Officer Kelly filed false claims with the Alachua County Criminal Court & GPD Claiming that the Plaintiff allegedly was yelling loudly, cursing, and throwing & waving his arms around. Causing the Plaintiff to get another false charge added for resisting arrest without violence. This has caused Smith to be shunned by friends & family, harassed by direct statements, caused Smith to lose his full-time job with the Collier Companies, and has completely damaged his reputation.

V. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

11-14-2013
(Date)


(Signature of Plaintiff)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

BRANDON RICARDO SMITH,

Plaintiff,

v.

CASE NO. 1:13-cv-166-MW-GRJ

OFFICER JEREMIAH KELLY,¹

Defendant.

ORDER DIRECTING SERVICE

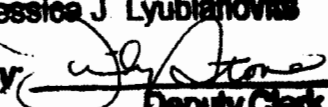
Plaintiff, proceeding *pro se* and *in forma pauperis*, is proceeding on an amended civil rights Complaint, which the Court has deemed sufficient to alert Defendant Jeremiah Kelly to the nature and basis of Plaintiff's claim. (Doc. 1.) Service of the Complaint shall now be ordered, and the Defendant shall be required to respond.

Accordingly, it is hereby **ORDERED** that:

1. The clerk shall print a copy of the Complaint and shall complete the USM-285 form and AO-398 and AO-399 forms for the Defendant.

2. The clerk shall issue a summons for Defendant, indicating that Defendant has sixty (60) days in which to file a response to the Complaint, and refer the summons, a copy of this order, a service copy of the Complaint, the completed USM-285 form and the completed AO-398 and AO-399 forms, to the United States Marshals Service (USMS). Pursuant to Fed. R. Civ. P. 4(c)(2), all costs of service shall be advanced by the United States.

¹The Clerk is directed to change the docket to reflect that Officer Jeremiah Kelly is the only Defendant in this case.

CERTIFIED A TRUE COPY
Jessica J Lyubianovits
By: 
Deputy Clerk

3. Pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, the USMS shall send a copy of the Complaint, a copy of this order, a completed AO-398 form and a copy thereof, a AO-399 form, and a prepaid means of compliance to Defendant through first class mail. The USMS shall mail the forms to each Defendant as soon as possible so that service or waiver of service can be completed within 120 days from the date of entry of this order on the docket.

4. If after thirty (30) days from the mailing of the waiver of service forms and the complaint Defendant has not returned the waiver of service form (AO-399 form), the USMS shall personally serve Defendant pursuant to Rule 4(e) of the Federal Rules of Civil Procedure. Upon completion of service, the USMS shall file with the clerk the return and a written statement of all costs incurred of making such personal service.

5. The clerk shall refer this file to the undersigned if the waiver form is returned for insufficient address or for similar reason, if service on Defendant is returned unexecuted, or if the USMS has filed a statement of costs incurred for making personal service.

6. Defendant shall have sixty (60) days in which to file a response to the Complaint.

7. No motion for summary judgment shall be filed by any party prior to entry of an initial scheduling order without permission of the court.

8. Counsel for Defendant shall file a notice of appearance within twenty (20) days of the date of service of the Complaint.

9. Once a response to the Complaint is filed, no amendments to the Complaint shall be permitted by the court unless, as required by Rule 15 of the Federal

Rules, Plaintiff files a separate motion for leave to so amend and provides a copy of the proposed amended complaint.

10. After a response to the Complaint has been filed by Defendant, Plaintiff shall be required to mail to the attorney for Defendant a copy of every pleading or other paper, including letters, submitted for consideration by the court. Plaintiff shall include with the original paper to be filed with the clerk of court a certificate of service stating the date a correct copy of the paper was mailed to Defendant or to the attorney representing Defendant. **Any paper submitted for filing after a response to the complaint has been filed by Defendant which does not contain a certificate of service shall be returned by the clerk and disregarded by the court.**

11. In accordance with 28 U.S.C. § 636(c)(2), the clerk shall forward to Plaintiff a form for consenting to trial by the magistrate judge, with the case number written on it. If Plaintiff wishes to consent he should sign the form and forward it to counsel for Defendant, who, if Defendant consents, shall return it to the clerk.

12. Plaintiff is reminded to keep the clerk of court advised of any change in his mailing address should he relocate. Failure to do so may result in the dismissal of Plaintiff's action for failure to prosecute if court orders are not able to reach Plaintiff.

13. **In any event, the Clerk shall refer this file to the undersigned forty-five (45) days from the date of this order.**

DONE AND ORDERED this 25th day of November 2013.

s/ Gary R. Jones

GARY R. JONES
United States Magistrate Judge