

LEGISTAR NO.

120248

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

CHERON HAMPTON-BATES,
personally and as natural guardian of
BRYCE BATES, a minor,

CASE NO.:

Plaintiff,

v.

THE CITY OF GAINESVILLE, FLORIDA,
a municipal corporation, and
CPL. TIMOTHY DURST, in his individual capacity,

Defendants. _____/

COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL

The Plaintiff, BRYCE BATES, (hereinafter "BATES") by and through his undersigned attorneys, sues the Defendants, CITY OF GAINESVILLE, FLORIDA acting through its delegated agent, the Gainesville Chief of Police, (hereinafter "CITY OF GAINESVILLE") and Gainesville Police Corporal TIMOTHY DURST (hereinafter "CORPORAL DURST"), 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, and the State of Florida Constitution, Article I, §§ 2, 9 and 12.

JURISDICTION AND 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 interests, 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. Plaintiff BRYCE BATES is a resident of Alachua County, State of Florida, and the United States of America.

6. At all times referenced herein, Defendant CORPORAL DURST was and continues to be employed by the City of Gainesville Police Department.

7. At all times material, 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 complained herein, TONY JONES was the Chief of Police for the CITY OF GAINESVILLE. As such, he was responsible for making policy for the department and ensuring that the officers under his command, including CORPORAL DURST, conducted themselves properly and received appropriate training, supervision, and discipline.

9. At the time of the incident complained herein, the CITY OF GAINESVILLE had the responsibility and obligation to investigate all incidents relating to officers' conduct and discipline, including that of CORPORAL DURST.

10. At the time of the incident complained herein, the CITY OF GAINESVILLE was responsible for handling complaints relating to the conduct of police officers.

11. The Plaintiff sues the CITY OF GAINESVILLE, acting through the Gainesville Chief of Police, in its official capacity.

12. The Plaintiff sues CORPORAL DURST in his individual capacity.

13. At all times referred to herein, the Defendants were acting under the color of the law, statute, ordinance, regulations, policies, customs, and usages of the United States of America, State of Florida, and the City of Gainesville, Florida.

GENERAL ALLEGATIONS

14. On or about June 16, 2010, at 3:20 p.m., Plaintiff BATES was riding his bicycle through his apartment complex in the City of Gainesville, heading through the parking lot to his mailbox to get the family's mail for his mother.

15. At the time of the incident, BATES was ten years old, attended the fifth grade, stood less than five feet tall and weighed approximately 95 pounds. He is an African American.

16. While BATES was riding his bicycle to the mailbox, several police cars pulled in to the apartment complex at emergency speed. The officers were responding to a 911 call from a mentally ill woman who suffered from delusions. This woman had a history of calling 911 so frequently that she was known to dispatch to be a mentally ill caller whose reports were unreliable. On this day, her reported complaint was that three Hispanic teenagers, two males and one female, were inside her apartment in the process of committing a burglary.

17. Prior to the date of the incident, BATES had been instructed by his mother to come inside if he saw police in the complex. Accordingly, when BATES saw a police car speeding toward him, he dropped his bicycle in fear and ran to the door of his apartment, yelling "Mom!"

18. CORPORAL DURST stopped his patrol vehicle and pursued BATES on foot but gave no verbal commands.

19. Shortly thereafter, CORPORAL DURST released his police canine and commanded it to apprehend Plaintiff. Pursuant to the canine's training, it had been taught to apprehend suspects by biting them and then holding or, if need be, continuously reestablishing the bite until the canine is removed from the suspect by its police handler.

20. As he reached the door to his apartment, BATES was overtaken by the

canine which, in accordance with its training, bit BATES repeatedly as he struggled in fear to get away.

21. BATES's mother had left the exterior door to her home open and saw the attack. She tried repeatedly to open the screen door to rescue her son but could not intervene because the canine had forced himself and BATES against the door, which was designed to swing outward.

22. BATES screamed as the canine bit him, exclaiming "I didn't do anything!"; "I wasn't bad!"; and "I don't want to die!"

23. The police canine continued to bite BATES until CORPORAL DURST arrived and physically pulled the canine off of him.

24. BATES's mother was upset and screamed throughout the attack. When she saw CORPORAL DURST a few seconds later, she confronted him, asking why he put his dog on her son. CORPORAL DURST replied, "He shouldn't have run."

25. A visual identification of BATES confirms that his appearance does not match *any* of the suspect information provided to DURST over police dispatch.

26. Meanwhile, other Gainesville Police Department officers had contacted the 911 caller at her apartment and determined that no crime had occurred; this call was another false report by a known mentally ill person.

27. BATES was treated on-scene by E.M.S. then went to the hospital for further treatment for the dog bites. He had approximately fourteen (14) puncture wounds from canine teeth and additional linear scratch marks covering his legs.

28. At the time of this incident, the CITY OF GAINESVILLE did not have an adequate use of force policy, canine handling policy, or proper training and procedures in place to ensure that juveniles were not violently apprehended by a canine, nor to ensure proper identification of a suspect before apprehending that person with the use of a police canine.

29. At the time of this incident and to date, the CITY OF GAINESVILLE does not have an adequate system of review of its records of use of force, and more particularly, the use of canine force by its officers.

30. At the time of this incident and to date, the CITY OF GAINESVILLE has failed to install an adequate internal affairs review process within the Gainesville Police Department.

31. At the time of this incident and to date, the CITY OF GAINESVILLE has failed to acknowledge and adequately protect against the potential for serious and permanent injuries caused by use of force from its canine unit.

32. When Plaintiff BATES was attacked by CORPORAL DURST's police canine, he was not committing any criminal offense, had not committed any criminal offense, and there was no probable cause to believe that he had any involvement in criminal activity.

33. The use of force against Plaintiff BATES was wholly unnecessary; it did not accomplish any legitimate law enforcement purpose under the circumstances presented to CORPORAL DURST.

34. Under the circumstances, it was patently unreasonable for CORPORAL DURST to mistaken Plaintiff BATES as one of the suspects for the “burglary-in-progress” that was alleged at the time to be occurring.

35. The illegal use of canine force against Plaintiff BATES was foreseeable given the gap in the canine training and policy established by the CITY OF GAINESVILLE, which was or should have been known to him based on prior instances of canine bite apprehensions of other persons who had been misidentified as criminal suspects.

36. To date, the CITY OF GAINESVILLE has failed to promulgate and maintain adequate policies regarding the use of force and, more specifically, the use of force by police canines.

COUNT I
VIOLATION OF CIVIL RIGHTS AS TO CPL. DURST
BASED ON FALSE ARREST AND EXCESSIVE USE OF FORCE

37. The Plaintiff incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. At the time of the seizure of Plaintiff’s person as effected by the police canine at the direction of CORPORAL DURST, there was no probable cause or even arguable probable cause that Plaintiff had committed, was committing, or was about to commit any criminal activity.

39. The degree of force utilized by CORPORAL DURST in order to accomplish the apprehension and seizure of Plaintiff’s person was unreasonable under the

Fourth Amendment of the United States Constitution.

40. The false arrest and unlawful physical attack on the Plaintiff committed by CORPORAL DURST was effected under the color of law and his authority as a police officer for the City of Gainesville.

41. The acts of Corporal DURST as set forth herein were unlawful, willful and wanton.

42. As a direct and proximate result of the illegal actions of CORPORAL DURST, the Plaintiff suffered grievous bodily harm and was deprived of his right to be secure in his person against unreasonable seizures and the use of excessive force, in violation of his rights protected by the Fourth Amendment to the United States Constitution.

43. As a direct and proximate result of the illegal seizure of Plaintiff by CORPORAL DURST, Plaintiff BATES suffered grievous bodily harm, including permanent injuries to his body as well as psychological damages, pain and suffering, and medical expenses, then and into the future.

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

COUNT II
VIOLATION OF CIVIL RIGHTS AS TO THE CITY OF GAINESVILLE

44. By reference, the Plaintiff incorporates each and every paragraph 1 to 36

as if fully set forth herein.

45. The CITY OF GAINESVILLE is vested by state law with the authority to make policy for the City, including policies for the police force regarding how to properly effect an arrest and circumscribing the lawful use of force in doing so. The CITY OF GAINESVILLE has delegated that authorization to the Chief of Police, Tony Jones.

46. The CITY OF GAINESVILLE Police Department has a history of widespread abuse, unreasonable seizures and excessive use of force and the CITY OF GAINESVILLE has been deliberately indifferent to this conduct.

47. The CITY OF GAINESVILLE and the Chief of Police were aware of this pattern of unreasonable seizures, abuse, and excessive force by its police officers, having received numerous reports of officer misconduct, and knew or should have known that the City's policies regarding the training and discipline of officers accused of false arrests and excessive force, including misuse of police canines, were so inadequate that it was obvious that a failure to correct them would result in further incidents of illegal conduct by police officers.

48. Despite this knowledge, the CITY OF GAINESVILLE and the Chief of Police failed to take any corrective action.

49. The CITY OF GAINESVILLE and Chief of Police failed to properly train and supervise Corporal DURST such that he would not use his police canine to bite innocent children.

50. At all times relevant to this Complaint, the Gainesville Chief of Police was acting pursuant to his delegated authority of the CITY OF GAINESVILLE and pursuant to the official policy, practice, and custom of the CITY OF GAINESVILLE and the Gainesville Police Department.

51. At all times relevant to this Complaint, the CITY OF GAINESVILLE intentionally, knowingly or recklessly failed to instruct, supervise, control, and discipline its police officers in order to prevent them from effecting false arrests, which caused or contributed to the violation of Plaintiff's rights as protected by the Fourth Amendment to the United States Constitution.

52. At all times relevant to this Complaint, the CITY OF GAINESVILLE intentionally, knowingly or recklessly failed to instruct, supervise, control, and discipline his police officers in order to prevent them from using unreasonable and excessive force during an arrest, which caused or contributed to the violation of Plaintiff's rights as protected by the Fourth Amendment to the United States Constitution.

53. Defendant CITY OF GAINESVILLE and the Chief of Police had knowledge of, or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge of the deficiencies within the department that caused and contributed to the acts complained of herein.

54. Defendant CITY OF GAINESVILLE and the Chief of Police had the power to prevent the commission of wrongs committed herein, including excessive use of force and false arrest and could have done so by reasonable diligence, but they

intentionally, knowingly, and recklessly failed to do so.

55. Defendant CITY OF GAINESVILLE and the Chief of Police, acting under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of CORPORAL DURST.

56. As a direct and proximate cause of the acts and omissions stated herein, Plaintiff BATES suffered grievous bodily harm, including permanent injuries to his body as well as psychological damages, pain and suffering, and medical expenses, then and into the future.

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

COUNT III
BATTERY AS TO CITY OF GAINESVILLE

58. The Plaintiff incorporates paragraphs 1 through 36 above as if fully set forth herein.

59. This claim is brought pursuant to Florida Statute § 768.28.

60. All conditions precedent to this action, including pre-suit notification to the Defendants, have occurred or have been performed.

61. At the time of the event giving rise to this action, CORPORAL DURST was an employee of the Defendant, CITY OF GAINESVILLE, and was acting in the course and scope of his employment by effecting a police seizure of a citizen.

62. During the apprehension of the Plaintiff BATES, CORPORAL DURST

committed a battery upon Plaintiff by releasing and commanding his trained police canine to attack Plaintiff, resulting in an excessive use of force that was not reasonable under the circumstances presented.

63. CORPORAL DURST had no probable cause to believe that the Plaintiff had committed, was committing, or about to commit any criminal offense.

64. CORPORAL DURST was not in any real or immediate danger of being subjected to any physical force by the Plaintiff BATES, a wholly innocent child who was running to his home after CORPORAL DURST frightened him.

65. As a direct and proximate result of the conduct of CORPORAL DURST, the Plaintiff BATES suffered grievous bodily harm, including permanent injuries to his body as well as psychological damages, pain and suffering, and medical expenses, then and into the future.

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

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
OR IN THE ALTERNATIVE, NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS AS TO CORPORAL DURST

66. In this Count, the Plaintiff sues CORPORAL DURST in his individual capacity, and incorporates paragraphs 1 through 36 above as if fully set forth herein.

67. CORPORAL DURST intentionally commanded his police canine, a 75-pound German Shepherd, to attack and bite Plaintiff BRYCE BATES. The police canine

accordingly performed the intended act of attacking and biting Plaintiff BATES.

68. CHERON HAMPTON-BATES, natural mother of Plaintiff BRYCE BATES, was present and struggled with the screen door as she tried to intervene in the attack on her son which occurred on the threshold of her home. For the duration of the attack, she was trapped indoors and unable to come to his aid.

69. CHERON HAMPTON-BATES received minor physical injuries in her struggle to open the screen door. She experienced a close sensory perception of the injuries to her son which left her completely distraught.

70. As a result of witnessing the attack on BRYCE BATES, CHERON HAMPTON-BATES experienced severe emotional distress such that the distress manifested physically as loss of appetite, night terrors and fatigue from inability to sleep.

71. As a direct and proximate result of the conduct of CORPORAL DURST and Defendant City of Gainesville, the Plaintiff CHERON HAMPTON-BATES suffered bodily injury, psychological damages, pain and suffering, medical expenses, lost wages, and loss of ability to earn, then and continuing into the future.

WHEREFORE, the Plaintiff, CHERON HAMPTON-BATES, respectfully requests a jury trial and judgment for compensatory damages, punitive damages, costs of

suit, including the Plaintiff's reasonable attorneys' fees, and such other relief as the Court deems proper.

Respectfully submitted,

RUSH & GLASSMAN

s/ ROBERT A. RUSH

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