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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

KENNETH BRAGG

Plaintiff,

vs.

FRANK SKRAH; KLAMATH COUNTY; and
JOHN DOES 1-10,

Defendants.

Case No.

COMPLAINT

Civil Rights Action (42 U.S.C. § 1983) for
excessive force in violation of the Fourth
Amendment

DEMAND FOR JURY TRIAL

This is a Civil Rights action stemming from Defendants' unconstitutional and unnecessary violence against Mr. Bragg following his arrest and handcuffing. Mr. Bragg's Civil Rights claims against Sheriff Frank Skrah are based on throwing him to the ground in handcuffs, striking him, and strangling Mr. Bragg until he almost passed out. Mr. Bragg's Civil Rights

claim against Klamath County is based on its violation of his right to be free from excessive force through its failure to adequately train its employees, and its policy and practices that resulted in Mr. Bragg's injury.

JURISDICTION

1. This court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. §§ 1983, and 28 U.S.C. §§ 1331, 1343(a)(3), (4).

VENUE

2. Venue is proper within the District of Oregon because all of the events giving rise to this claim occurred in this judicial district, and all defendants reside in this judicial district. 28 U.S.C. § 1391(b). The acts and practices alleged herein occurred in Klamath Falls, Klamath County, Oregon.

PARTIES

3. At the time of filing, Plaintiff Kenneth Bragg is a 25 year-old man currently residing at the Oregon State Correctional Institute in Salem, Oregon. At the time of the incident, Mr. Bragg was living in Klamath County.

4. Defendant Klamath County is a political subdivision of the State of Oregon, with the capacity to sue and be sued. The Klamath County Sheriff's Office is a department or division of the County.

5. Defendant Frank Skrah is the elected Sheriff of Klamath County, and is sued in his individual capacity. At all times relevant, Mr. Skrah was acting under color of law. Defendant Skrah is has ultimate policy making authority for the policies of the Klamath County Sheriff's Department.

6. Mr. Bragg does not know the true names and capacities of Defendants sued herein as John Does 1-10, and therefore sue these Defendants by fictitious names. John Does 1-10 are sued in their individual capacity, and are any Klamath County, or other state actor personnel who exercised responsibility over, conspired with, aided and abetted subordinates, and/or directly or indirectly participated in the tortious violations as hereinafter alleged.

FACTUAL ALLEGATIONS

7. On February 27, 2015, Mr. Bragg was staying at the Klamath Travel Inn, in Klamath Falls, OR.

8. Around 6:00 pm, Defendant Skrah, along with a number of other Sheriff Deputies, arrived at the Klamath Travel Inn to serve a warrant for Mr. Bragg's arrest.

9. The Sheriff Deputies announced their presence to Mr. Bragg over a loudspeaker. When one of the Deputies noticed movement, they fired tear gas and flash grenades into Mr. Bragg's hotel room, disorienting him. Mr. Bragg surrendered to the Deputies, and followed their commands.

10. Mr. Bragg was handcuffed and searched without incident. After deputies had restrained Mr. Bragg in handcuffs, Defendant Skrah threw Mr. Bragg onto the ground, and began kneeling him in the head. Defendant Skrah then pulled up Mr. Bragg, and strangled him until Mr. Bragg nearly passed out. None of the other Sheriff Deputies intervened nor helped Mr. Bragg.

11. Defendant Skrah has since been indicted by a Grand Jury for the strangulation of Mr. Bragg and other unreasonable acts of violence against other citizens of Klamath County.

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CLAIMS FOR RELIEF

12. Plaintiff brings claims under 42 USC § 1983, for violations made by Defendants Skrah, and John Does 1-10 of Mr. Bragg's Fourth Amendment rights to be free from excessive force; and violations made by Defendant Klamath County through its policies and practices, and inadequate training of its employees, resulting in a violation of Mr. Bragg's Fourth Amendment rights; and violations made by all individually named Defendants and Defendant County of Klamath of his Fourteenth Amendment right to be free from cruel or unusual punishments as a pre-trial detainee.

13. The Defendants are all persons within the meaning of 42 U.S.C. 1983.

14. Plaintiff seeks an award of economic damages, non-economic damages, punitive damages where appropriate, attorney fees and litigation expenses/costs against defendants.

CLAIM 1: VIOLATION OF FOURTH AMENDMENT (Use of Excessive Force – 42 U.S.C. 1983 – Individual Liability)

15. Mr. Bragg restates and incorporates here the allegations in paragraphs 1 through 14.

16. It is clearly established law that an officer may not use force that, in light of the circumstances and as perceivable by a reasonable, objective officer, is excessive or unreasonable.

17. In taking the actions described above, including but not limited to throwing Mr. Bragg to the ground after he had already surrendered and was in handcuffs, kneeling Mr. Bragg in the head repeatedly, and strangling Mr. Bragg until he almost passed out, Defendant Skrah intentionally violated Mr. Bragg's right to be free from seizure by excessive or unreasonable force, guaranteed by the Fourth Amendment to the United States Constitution.

18. Defendant Skrah violated rights held by Mr. Bragg which were clearly established, and no reasonable official similarly situated to Defendant Skrah could have believed

that their conduct was lawful or within the bounds of reasonable discretion. Defendant Skrah therefore do not have qualified or statutory immunity from suit or liability.

19. The actions of Defendant Skrah, as described in this complaint, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Mr. Bragg. As a result of said intentional conduct, Mr. Bragg is entitled to punitive damages against Defendant Skrah, in his individual capacity, in an amount sufficient to punish him and to deter others from like conduct.

20. The unreasonable seizure of Mr. Bragg was the direct and proximate cause of bodily injury, pain, suffering, loss of liberty, mental and emotional suffering, worry, fear, anguish, shock, anxiety, nervousness, chronic post-traumatic stress, frequent nightmares, depression, loss of ability to enjoy certain recreational and leisure activities. Mr. Bragg is entitled to all of his damages in an amount to be ascertained according to proof at trial.

**CLAIM 2: VIOLATION OF FOURTH AMENDMENT
(Failure to adequately train and supervise – 42 USC § 1983 – Municipal liability)**

21. Mr. Bragg restates and incorporates here the allegations in paragraphs 1 through 14.

22. As the elected Sheriff of Klamath County, Defendant Skrah oversees the Klamath County Sheriff's Office, and develops policies and has the ultimate policymaking authority for policies and practices to be followed by the Klamath County Sheriff's Office. Defendant Klamath County, by and through the Klamath County Sheriff's Office, is liable for adopting the following:

- a. By and through his actions, Sheriff Skrah, and his deputies whom did not intervene, have demonstrated that the Klamath County Sheriff's Office has

developed policies regarding the use of force in stops and detentions contrary to Constitutional norms.

b. Defendant Klamath County knew or should have known that the practices of excessive force described in this Complaint as such are so well settled as to constitute a custom or usage, and failed to take affirmative actions to prevent the actions alleged in this complaint.

c. Defendant Klamath County failed to adequately train, supervise, or discipline the Klamath County Sheriff's Office to avoid the types of civil rights violations described herein.

d. Sheriff Skrah created and followed a policy to personally use excessive force on persons in his custody.

23. Defendant Klamath County is liable for the unconstitutional policy, custom, and/or practice of failing to train, supervise, investigate and/or discipline officers regarding constitutional rights of citizens to be free from unlawful and unreasonable searches and seizures including the right to be free from excessive physical force as guaranteed by the Fourth Amendment to the United States Constitution.

24. The policies of the Klamath County Sheriff's Office were a direct and proximate cause of the excessive and unreasonable use of force on Mr. Bragg and the harm stated above in paragraph 20.

DEMAND FOR JURY TRIAL

25. For all claims alleged in this Complaint, Plaintiff demands a jury trial.

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REASONABLE ATTORNEY’S FEES AND COSTS

26. 42 U.S.C. § 1988(b) allows “the prevailing party... a reasonable attorney’s fee as part of the costs...” in an action brought under 42 U.S.C. § 1983.

27. Plaintiff requests that the Court grant a reasonable attorney’s fee in this action.

CONCLUSION

WHEREFORE, plaintiff prays for relief as follows:

- a. For judgment in favor of Mr. Bragg against Defendants for their damages;
- b. For reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988; and
- c. For such other and further relief as may appear just and appropriate.

DATED: September 27, 2016.

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