

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

TRAVIS RICHARDSON)
)
)
 Plaintiff,)
)
 v.) No. _____
)
 DAREN SMITH,)
 In his official and individual capacity,)
)
 SERVE:)
 Spotsylvania County Sheriff's Office)
 9119 Dean Ridings Lane)
 Spotsylvania, VA 22553)
)
 and)
)
 THOMAS GRASSO,)
 In his official and individual capacity,)
)
 SERVE:)
 Spotsylvania County Sheriff's Office)
 9119 Dean Ridings Lane)
 Spotsylvania, VA 22553)
)
 Defendants.)
)

JURY TRIAL DEMAND

COMPLAINT

Plaintiff Travis Richardson (“Mr. Richardson” or “Plaintiff”), by counsel, for his
Complaint against Deputy Sheriff Daren Smith (“Deputy Smith”) and Deputy Sheriff Thomas
Grasso (“Deputy Grasso” or collectively, “Defendants”), alleges as follows:

NATURE OF ACTION

1. This is an action for damages for assault and battery in violation of Virginia common law as well as for damages under 42 U.S.C. § 1983 (“Section 1983”) stemming from Deputy Smith and Deputy Grasso’s use of excessive force against Mr. Richardson in violation of the Fourth and Fourteenth Amendments to the United States Constitution as well as for retaliation against Mr. Richardson for his engagement in protected speech in violation of the First and Fourteenth Amendments to the United States Constitution.

PARTIES

2. Plaintiff Mr. Richardson is an adult resident of Spotsylvania County within the Commonwealth of Virginia.

3. Defendants Deputy Smith and Deputy Grasso are, and at all times relevant to this Complaint were, working for Spotsylvania County, Virginia as Deputy Sheriffs and thereby are persons subject to suit under Section 1983.

4. At all times relevant to this Complaint, Deputy Smith and Deputy Grasso were in uniform and displaying their badges of authority.

5. At all times relevant to this Complaint, Deputy Smith and Deputy Grasso were acting under the color of state law.

VENUE AND JURISDICTION

6. Deputy Smith and Deputy Grasso are subject to personal jurisdiction in this Court because their work is performed within this judicial district.

7. Venue is proper in this Court under Va. Code § 8.01-262 as the Defendants are employed within this judicial district.

TIMELINESS OF ACTION

8. The Supreme Court of Virginia issued various judicial emergency orders dictating how Court operations would proceed in light of the COVID-19 pandemic.

9. On July 8, 2020, the Supreme Court of Virginia issued its *Seventh Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency* (the “Tolling Order”).

10. The Tolling Order stated, in pertinent part:

[t]he tolling period as a result of the Judicial Emergency for such statutes of limitations and deadlines shall be limited to March 16, 2020 through July 19, 2020. This period of tolling shall not be counted for purposes of determining statutes of limitations or other case-related deadlines.

11. The cause of action set forth in this Complaint accrued on August 1, 2019.

12. The ordinary statute of limitations applicable to both Plaintiff’s personal injury claims under Virginia common law as well as Plaintiff’s claims under Section 1983 is two years, or until August 1, 2021.

13. Pursuant to the Tolling Order, because the entirety of the Tolling Period (March 16, 2020 through July 19, 2020) fell within the two years during which Plaintiff had to bring suit, those 126 days “shall not be counted” when determining Plaintiff’s applicable statute of limitations.

14. Accordingly, the Tolling Order added 126 days to the date on which the statute of limitations for Plaintiff’s claim ordinarily would have expired.

15. Plaintiff had until December 5, 2021 to file his Complaint.

16. Plaintiff’s Complaint is timely filed.

FACTUAL BACKGROUND

17. On August 1, 2019, Mr. Richardson experienced a drug-related medical emergency that resulted in a family member calling for emergency medical assistance.

18. Fire and rescue personnel arrived at Mr. Richardson's home, and Deputies from the Spotsylvania County Sheriff's Office, including Defendants, arrived shortly thereafter.¹

19. Fire and rescue personnel began to administer medical treatment to Mr. Richardson, whom they located in an upstairs bathroom seated on a closed toilet.

20. Deputy Smith moved into the bathroom doorway and interrupted communications between medical personnel and Mr. Richardson to ask Mr. Richardson what drugs he was under the influence of.

21. Mr. Richardson indicated he had taken suboxone.

22. Deputy Smith told Mr. Richardson he did not believe him and asked Mr. Richardson twice if he received his suboxone from a doctor.

23. Mr. Richardson responded that he did and provided the name of his doctor to Deputy Smith.

24. Deputy Smith asked Mr. Richardson if he had a prescription for the suboxone.

25. Mr. Richardson stated that he did, pointed in the direction of his bedroom, and stood up.

¹ Deputy Smith wore a body camera that was activated during the entirety of the events described in this Complaint.

Deputy Grasso wore a body camera but did not activate it upon his arrival on the scene. Upon information and belief, Deputy Grasso's body-worn camera automatically activated upon Deputy Smith's deployment of his taser and remained activated for the remainder of the events described in this Complaint.

26. Deputy Smith ordered Mr. Richardson to sit back down and “stay right there” and Mr. Richardson immediately complied.

27. Deputy Smith asked Mr. Richardson where his prescription was located inside the home, and Mr. Richardson told Deputy Smith he did not have Mr. Richardson’s permission to search his home in order to locate it.

28. Deputy Smith stated to Mr. Richardson, “I don’t need your permission.”

Deputy Grasso and Deputy Smith’s Arrest of Mr. Richardson

29. Approximately one and a half minutes after entering Mr. Richardson’s home, Deputy Grasso, without provocation, aggressively approached at Mr. Richardson.

30. He ordered Mr. Richardson to “come with me,” grabbed him by his right arm, and lifted him to his feet.

31. Deputy Smith, without verbal instruction, attempted to bring Mr. Richardson’s left arm behind his back. Mr. Richardson asked the deputies, “what is going on?”

32. Within two-to-three seconds, Deputy Smith approached Mr. Richardson from behind and said, “I’m going to tase you.”

33. At that time, Mr. Richardson was compliant and non-threatening. Deputy Smith had not given Mr. Richardson any verbal instruction and Mr. Richardson had not demonstrated anything other than a willingness to comply with the instructions given to him by the deputies.

34. Deputy Smith tased Mr. Richardson in the back using the drive-stun feature of his taser.

35. Deputy Smith continued to press the taser into Mr. Richardson’s back as he fell to the ground screaming and tased Mr. Richardson for approximately five (5) seconds.

36. While Mr. Richardson rolled on the floor, writhing in pain, Deputy Smith struck Mr. Richardson on the left side of this face with his hand.

37. Mr. Richardson curled up on the floor in the fetal position and raised his arms up to protect his head as he called to his grandmother for help.

38. Deputy Smith and Deputy Grasso pushed Mr. Richardson onto his stomach, face down on the floor, with his arms behind his back.

39. Despite Mr. Richardson being completely subdued and restrained, Deputy Smith pulled the trigger again on his taser again while pressing it into Mr. Richardson's hip.

40. Deputy Smith instructed Mr. Richardson **for the first time**, "Put your hands behind your back or I'm going to tase you again."

41. Mr. Richardson held his hands behind his back and stayed face down on the floor while Deputy Smith held his taser against the back of Mr. Richardson's leg.

42. Deputy Basil, who had newly arrived on the scene, placed handcuffs on Mr. Richardson.

43. Deputy Grasso shouted at Mr. Richardson, who remained face-down on the floor, "**You're not going to tell us we have no permission to be here.** You decide to shoot up? We're here. Do you understand me?"

44. Deputy Grasso leaned down and shouted into Mr. Richardson's ear a second time "DO YOU UNDERSTAND ME?"

45. Deputy Grasso then announced to Mr. Richardson and to all fire and rescue personnel present in the hallway, "NOW, medical will see you."

46. Mr. Richardson sat handcuffed on the floor in the hallway.

47. Deputy Smith called a supervisor to the scene. Deputy Chambers arrived as medical personnel resumed their treatment of Mr. Richardson.

48. Deputy Smith and Deputy Grasso performed a full custodial search of Mr. Richardson's person, removing and examining items contained within his pockets.

49. Deputy Chambers spoke to Mr. Richardson and informed him of the deputies' intent to escort Mr. Richardson to the ambulance waiting outside.

50. Mr. Richardson asked Deputy Chambers if he was under arrest, to which Deputy Chambers responded, "you are not under arrest, you are being treated."

51. Mr. Richardson's phone, located on the bed in Mr. Richardson's bedroom, began to ring before Mr. Richardson was escorted from the home and to the ambulance waiting outside.

52. Deputy Smith took possession of Mr. Richardson's phone and silenced the call.

53. Medical personnel loaded Mr. Richardson onto an ambulance, and Deputy Smith boarded the ambulance to escort Mr. Richardson to the hospital.

54. Before Deputy Smith boarded the ambulance, he gave Mr. Richardson's phone to his supervisor, Deputy Chambers.

55. Upon arrival at the hospital, Deputy Chambers returned Mr. Richardson's phone to Deputy Smith and stated, "I'm not sure what you want to do with it."

56. Deputy Smith took possession of the phone and placed it into an envelope in the trunk of his patrol vehicle.

57. At approximately 6:04pm on August 1, 2019, Deputy Smith logged Mr. Richardson's cell phone as evidence and sent it to the property room maintained by the Spotsylvania County Sheriff's Office.

58. Mr. Richardson requested the return of his phone from the Spotsylvania County Sheriff's Office on multiple occasions following his arrest.

59. As of the date of this Complaint, Mr. Richardson's phone has not been returned.

Post-Arrest Justifications for Use of Force

60. While still present on the scene, Deputy Grasso attempted to justify his illegal actions during separate conversations with Deputy Basil and Deputy Chambers.

61. Deputy Grasso told Deputy Chambers that Mr. Richardson had denied the deputies permission to enter his home and had instructed them to "get out."

62. According to body camera footage, Mr. Richardson made no statement(s) to the deputies to this effect.

63. Deputy Grasso told Deputy Basil that Mr. Richardson had been instructed to put his hands behind his back before Deputy Smith tased Mr. Richardson.

64. According to body camera footage, neither Deputy Grasso nor Deputy Smith gave any such verbal instruction to Mr. Richardson prior to tasing him.

65. Deputy Grasso explained his decision to escalate the encounter to Deputy Smith, who had been present with him at the scene and presumably witnessed the same events. Deputy Grasso told Deputy Smith, "When he said we had no right to be there, that's when I said 'Hey, fuck this, we're going to put him in handcuffs.'"

66. Deputy Grasso's decision to place Mr. Richardson in handcuffs and Deputy Smith's decision to tase Mr. Richardson were based solely on Mr. Richardson having denied them consent to perform a warrantless search of his residence.

Retaliatory Charges Against Mr. Richardson

67. Deputy Smith charged Mr. Richardson with two misdemeanor offenses related to the possession of Schedule III drugs and drug paraphernalia.

68. In addition, Deputy Smith charged Mr. Richardson with two felony offenses absent probable cause to believe Mr. Richardson had committed said offenses.

69. Deputy Smith charged Mr. Richardson with a violation of Section 18.2-57.02 of the Virginia Code for the felony offense of disarming a law enforcement officer of a stun gun.

70. Deputy Smith knew that Mr. Richardson did not disarm him of his taser in the manner proscribed by this statute and that he lacked probable cause to believe Mr. Richardson had committed this offense.

71. Deputy Smith charged Mr. Richardson with a violation of Section 18.2-57 of the Virginia Code for felony assault of a law enforcement officer.

72. Deputy Smith knew that Mr. Richardson did not assault him as proscribed by this statute and that he lacked probable cause to believe Mr. Richardson had committed this offense.

73. Deputy Smith expected that the existence of the felony charges against Mr. Richardson would preclude a magistrate judge from permitting Mr. Richardson bail, which would result in Mr. Richardson remaining in jail as he awaited trial.

74. Deputy Smith communicated this expectation to Mr. Richardson before he escorted Mr. Richardson to the magistrate judge.

75. Mr. Richardson was, in fact, denied bail for a period of weeks and confined in jail as a result.

76. Prior to trial, both of the felony charges against Mr. Richardson were amended to the lesser misdemeanor offense of obstruction of justice or resisting arrest without the use of force under 18.2-460 of the Virginia Code.

77. The commonwealth's attorney ultimately declined to prosecute both misdemeanor obstruction of justice charges against Mr. Richardson, resulting in a disposition of nolle prosequi. The decision by Deputy Smith and Deputy Grasso to use excessive force against Mr. Richardson and to tase him multiple times was motivated by a desire to retaliate against Mr. Richardson for his engagement in protected speech.

COUNT I
Civil Rights Violation of 42 U.S.C. § 1983: Fourth Amendment
Excessive Force

Against Both Defendants

78. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

79. At all material times, Deputy Smith and Deputy Grasso were acting under color of state or local law.

80. By their actions, Deputy Smith and Deputy Grasso deprived Plaintiff of the established right to be free from unreasonable search and seizure through use of excessive force, in violation of Plaintiff's rights under Section 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

81. As the direct and proximate cause of Deputy Smith and Deputy Grasso's actions, Plaintiff suffered physical and mental injuries, including emotional pain and suffering.

82. Deputy Smith and Deputy Grasso's decision to tase Mr. Richardson and use excessive physical force to restrain him was retaliatory, reckless, wanton, and punitive, engendering a claim for punitive damages.

83. Deputy Smith and Deputy Grasso's actions resulted in physical injuries to Mr. Richardson's wrists, head, and back as well as significant emotional and psychological distress.

84. Plaintiff is entitled to declaratory and monetary relief, including compensatory damages, punitive damages, attorneys' fees, and costs.

COUNT II
Civil Rights Violation of 42 U.S.C. § 1983: Fourth Amendment
Unreasonable Search and Seizure

Against Deputy Smith

85. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

86. Defendants' authority to enter Mr. Richardson's home without a warrant was premised on the need to provide emergency aid to Mr. Richardson and to assist emergency medical personnel in carrying out this task.

87. Deputy Smith's seizure and subsequent search of Mr. Richardson's cell phone exceeded the limited scope of his authority to search attendant to these circumstances.

88. Deputy Smith's seizure of Mr. Richardson's cell phone bore no relation to the medical emergency for which he was present in Mr. Richardson's home.

89. Deputy Smith retrieved Mr. Richardson's cell phone from Mr. Richardson's bedroom, a room that Mr. Richardson was not located in at any time during Defendants' presence in Mr. Richardson's home.

90. Mr. Richardson's cell phone was not within Deputy Smith's plain view at any time during his presence in Mr. Richardson's home.

91. Deputy Smith continues to maintain possession of Mr. Richardson's cell phone despite Mr. Richardson having requested its return.

92. Mr. Richardson's cell phone contains information and data to which Mr. Richardson has a reasonable expectation of privacy.

93. Deputy Smith's search of Mr. Richardson's cell phone without a warrant was unreasonable as it bore no connection to the medical emergency for which they were present in Mr. Richardson's home.

COUNT III
Civil Rights Violation of 42 U.S.C. § 1983: First Amendment
Retaliation for Engagement in Free Speech

Against Both Defendants

94. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

95. Mr. Richardson engaged in protected speech when he expressed his belief that the officers present in his home were not permitted to conduct a thorough search of his home without his consent.

96. Deputy Smith and Deputy Grasso, acting under color of state law, retaliated against Mr. Richardson for his engagement in protected speech when they used unreasonable and excessive force against Mr. Richardson not warranted by the circumstances.

97. The decision by Deputy Smith and Deputy Grasso to use excessive force against Mr. Richardson and to tase him multiple times was motivated by a desire to retaliate against Mr. Richardson for his engagement in protected speech.

98. Deputy Smith and Deputy Grasso retaliated against Mr. Richardson for his statement to them that they did not have permission to conduct a search of his home.

99. The retaliatory actions of Deputy Smith and Deputy Grasso bear an adverse effect on protected speech.

100. Defendants' actions are likely to deter individuals from exercising their First Amendment rights where doing so requires stating one's lack of consent to the warrantless search of their home by law enforcement.

101. Plaintiff is entitled to declaratory and monetary relief, including compensatory damages, punitive damages, attorneys' fees, and costs.

COUNT IV
Civil Rights Violation of 42 U.S.C. § 1983: First Amendment
Retaliatory Prosecution for Engagement in Free Speech

Against Deputy Smith

102. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

103. Mr. Richardson engaged in protected speech when he expressed his belief that the officers present in his home were not permitted to conduct a thorough search of his home without his consent.

104. Deputy Smith, acting under color of state law, retaliated against Mr. Richardson for his engagement in protected speech when he charged Mr. Richardson with a number of criminal offenses without probable cause to believe Mr. Richardson had committed said offenses.

105. Deputy Smith charged Mr. Richardson with felony offenses, without probable cause to believe Mr. Richardson had committed said offense, in retaliation for his statement to himself and Deputy Grasso that they did not have permission to conduct a search of his home.

106. The retaliatory actions of Deputy Smith bear an adverse effect on protected speech.

107. Deputy Smith's actions are likely to deter individuals from exercising their First Amendment rights where doing so requires stating one's lack of consent to the warrantless search of their home by law enforcement.

108. Plaintiff is entitled to declaratory and monetary relief, including compensatory damages, punitive damages, attorneys' fees, and costs.

COUNT IV
Assault in Violation of Virginia Common Law

Against Both Defendants

109. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

110. In doing the acts alleged above, Deputy Smith and Deputy Grasso acted with the intent to place Mr. Richardson in apprehension of imminent harmful and offensive bodily contact without legal justification to do so.

111. Deputy Smith and Deputy Grasso's actions against Mr. Richardson were beyond those necessary to effect a lawful arrest and his use of force was unreasonable under the circumstances.

112. At no time did Mr. Richardson consent to Deputy Smith or Deputy Grasso's unlawful or unreasonable physical contact.

113. Deputy Smith and Deputy Grasso's actions have caused Plaintiff physical harm, pain, suffering, emotional distress, fear, and humiliation.

114. Deputy Smith and Deputy Grasso's actions resulted in physical injuries to Mr. Richardson's wrists, head, and back.

115. Deputy Smith and Deputy Grasso's decision to tase Mr. Richardson and use excessive physical force to restrain him was retaliatory, reckless, wanton, and punitive, engendering a claim for punitive damages.

116. Plaintiff is entitled to declaratory and monetary relief, including compensatory damages, punitive damages, attorneys' fees, and costs.

COUNT V
Battery in Violation of Virginia Common Law

Against Both Defendants

117. The allegations in the foregoing paragraphs are incorporated as if realleged herein.

118. Deputy Smith and Deputy Grasso made harmful and offensive physical contact with Mr. Richardson without Mr. Richardson's privilege or consent.

119. Deputy Smith and Deputy Grasso's actions against Mr. Richardson were beyond those necessary to effect a lawful arrest and his use of force was unreasonable under the circumstances.

120. At no time did Mr. Richardson consent to Deputy Smith or Deputy Grasso's unlawful or unreasonable physical contact.

121. Deputy Smith and Deputy Grasso's actions have caused Plaintiff physical harm, pain, suffering, emotional distress, fear, and humiliation.

122. Deputy Smith and Deputy Grasso's actions resulted in physical injuries to Mr. Richardson's wrists, head, and back.

123. Deputy Smith and Deputy Grasso's decision to tase Mr. Richardson and use excessive physical force to restrain him was retaliatory, reckless, wanton, and punitive, engendering a claim for punitive damages.

124. Plaintiff is entitled to declaratory and monetary relief, including compensatory damages, punitive damages, attorneys' fees, and costs.

AD DAMNUM

WHEREFORE, Plaintiff Travis Richardson requests that this Court enter judgment in his favor against Defendants Daren Smith and Thomas Grasso on all claims, and further:

1. Award Plaintiff compensatory damages in an amount of approximately \$600,000.00; and in addition

2. Award Plaintiff punitive damages as to each of his respective Counts against Defendant in an amount to be determined at trial, but no greater than \$350,000.00 per count; and in addition

3. Award Plaintiff attorneys' fees, interest, and costs of this action as may be permitted by law; and in addition

4. Award Plaintiff injunctive relief requiring that law enforcement officers employed by the Spotsylvania County Sheriff's Office undergo training on the proper use of force and methods for interacting with individuals suffering from mental health or drug-related problems; and in addition

5. Award Plaintiff such other and further relief as may be appropriate.

JURY DEMAND

**PLAINTIFF TRAVIS RICHARDSON DEMANDS A TRIAL BY JURY ON ALL ISSUES
SO TRIABLE.**

Dated: October 15, 2021

Respectfully,

TRAVIS RICHARDSON

A handwritten signature in blue ink, appearing to read 'J. Erlich', written over a horizontal line.

Joshua Erlich, VA Bar No. 81298

Davia Craumer, VA Bar No. 87426

Katherine L. Herrmann, VA Bar No. 83203

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