

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.:

LEWIS ASHELY SMITH,

Plaintiff,

vs.

THE CITY OF DAYTONA BEACH;
and SHAWN M. CLARK, individually,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, **LEWIS ASHLEY SMITH** (“Plaintiff” and/or “Smith”), by and through his undersigned counsel, and sues Defendants, **THE CITY OF DAYTONA BEACH** (“City” or “Daytona Beach Police Department”); and, **SHAWN M. CLARK, individually** (“Clark”) (collectively referred to as “Defendants”), and herein seeks damages against Defendants, and for any other and further relief as this Court deems just and proper, and states as follows:

PARTIES

1. Plaintiff **LEWIS ASHLEY SMITH** is a resident of Port St. Lucie, St. Lucie County, Florida.

2. Defendant **THE CITY OF DAYTONA BEACH** is a municipal corporation of the State of Florida, situated in Volusia County, Florida and through its law enforcement agency, the Daytona Beach Police Department, is responsible for the policies and conduct of the officers of the Daytona Beach Police Department and any other law enforcement investigators working in concert with Daytona Beach Police Department.

3. Defendant, **SHAWN M. CLARK**, is a police officer who, at all times relevant to this complaint, was employed by Defendant City and working under the direction and supervision of the Daytona Beach Police Department, and is over the age of eighteen (18) years old. Defendant Clark is being sued in his individual capacity.

VENUE AND JURISDICTION

4. This action is proper in the Circuit Court in and for Volusia County, Florida, as all material facts in this cause of action occurred in Volusia County, Florida and this is where the cause of action accrued.

5. This is an action for damages in excess of \$15,000.00, exclusive of attorneys' fees and costs.

6. Jurisdiction is conferred in the Circuit Court in and for Volusia County, Florida by Article V, Section 5(b) of the Florida Constitution.

7. Pursuant to §768.28(6)(a), Florida Statutes, Plaintiff has notified Defendant City of his claims six (6) months or more prior to the filing of this action and said claims were not resolved. Plaintiff has fully complied with §768.28(6)(a), including providing notice and service, if applicable, to the Florida Department of Financial Services.

8. All conditions precedent to the filing of this action have occurred, accrued, or have been waived as a matter of law.

GENERAL ALLEGATIONS

9. On March 19, 2017, while at or near the 500 Block of Main Street in Daytona Beach, Florida, Plaintiff was illegally detained and arrested by Defendant Clark, an employee with the Defendant City and as an officer with the Daytona Beach Police Department.

10. On or about March 19, 2019, Plaintiff Smith was attending Bike Week in Daytona Beach with his wife and several friends. Plaintiff was walking down Main Street in Daytona Beach heading to his hotel for the evening.

11. While Plaintiff and his wife were talking to their friends, Defendant Clark, for some unknown reason, approached and started yelling commands at Plaintiff.

12. At the time Defendant Clark approached Plaintiff there was no disturbance, arguing or yelling. Plaintiff was simply walking with his friends on a public sidewalk.

13. Defendant Clark proceeded to place Plaintiff under arrest for the alleged crime of disorderly conduct.

14. While Plaintiff was handcuffed and sitting peacefully on the curb, Defendant Clark began yelling profanities at Plaintiff saying in part, "I'm going to fu**ing [redacted] bury you now game over."

15. At no time did Plaintiff resist Defendant Clark or fail or refuse to follow any lawful command with the police.

16. Defendant Clark was either clearly mistaken or purposefully alleged false statements that Plaintiff was yelling and shouting and acting as if he was going to come after the officer to fight.

17. At some point Daytona Beach Police Department discussed the investigation with Defendant Clark who continued to assert facts wholly and completely false regarding the incident.

18. In order to defend against the false charges asserted against him by Defendant Clark, Plaintiff was required to retain a criminal defense attorney.

19. During the discovery in the criminal case the defense counsel requested any video or body camera evidence. Initially, Defendants claimed that no video or body camera evidence

existed, but ultimately, video evidence was obtained which contradicted the false allegations by Defendant Clark. Further all witness statements contradicted Defendant Clark's false allegations.

20. The prosecution of Plaintiff Smith was terminated in favor of Plaintiff Smith and a Nolle Prosequi was filed in the criminal matter.

21. Defendant Clark obviously not happy the case against Plaintiff was dismissed, on behalf of himself and the City, decided to contact Plaintiff Smith's current employer, the Martin County Fire Department, and continued making false statements about Plaintiff Smith.

COUNT I – FALSE ARREST/FALSE IMPRISONMENT AND DETENTION
(City of Daytona Beach)

COMES NOW, Plaintiff, **LEWIS ASHLEY SMITH** ("Plaintiff" and/or "Smith"), by and through his undersigned counsel, and sues Defendant, **THE CITY OF DAYTONA BEACH** ("Defendant City"), a municipal corporation of the State of Florida, and herein seeks damages against Defendant City, and for any other and further relief as this Court deems just and proper, and states as follows:

22. This is a cause of action for false arrest/false imprisonment and detention against Defendant City, and for damages in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00).

23. Plaintiff re-alleges the allegations contained in paragraphs one (1) through twenty-one (21) above as if fully set forth herein.

24. On or about March 19, 2017, Defendant City, through its employees and agents acting in the course and scope of their duties as police Defendants caused Plaintiff to be deprived of his freedom and liberty and restrained him and his movements at the scene of his arrest and detention and continuing until he was released from the Volusia County Jail.

25. Plaintiff did not consent to the aforementioned actions of Defendant City, its employees and agents, and said actions were against the will of Plaintiff.

26. The restraint and arrest of Plaintiff by Defendant City, through its employees and agents acting in the course and scope of their duties as police was unlawful, and was not based upon any lawfully issued process of court which was based upon facts and evidence to support probable cause nor were any exigent circumstances present to allow for the arrest absent a warrant.

27. The restraint of Plaintiff was caused by Defendant City, through its employees and agents acting in the course and scope of their duties as police Defendants and was unlawful.

28. As a direct and proximate result of Defendants' actions Plaintiff has suffered damages, which include injury to reputation, hurt feelings, mental anguish, physical inconvenience, physical discomfort, loss of earnings, loss of time, loss of income, lost working time and loss of ability to earn money sustained in the past and future embarrassment, humiliation and disgrace, which are continuing to this day and are likely to continue in the future.

WHEREFORE, for the foregoing reasons, Plaintiff, **LEWIS ASHLEY SMITH**, respectfully requests this Court to enter Judgment against Defendant, **THE CITY OF DAYTONA BEACH**, a municipal corporation for damages and costs in the prosecution of this matter and such other and further relief as this Court deems just and proper under the circumstances.

COUNT II- FALSE ARREST
(Clark)

COMES NOW, Plaintiff, **LEWIS ASHLEY SMITH** ("Plaintiff" and/or "Smith"), by and through his undersigned counsel, and sues Defendant, **SHAWN M. CLARK, in his**

individual capacity (“Defendant Clark”), and for any other and further relief as this Court deems just and proper, and states as follows:

29. This is a cause of action for false arrest/false imprisonment and detention against Defendant Clark for damages in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00). This Count is an alternative to Count I,

30. Plaintiff re-alleges the allegations contained in paragraphs one (1) through twenty-one (21) as if fully set forth herein.

31. On or about March 19, 2017, the actions of Defendant Clark caused Plaintiff to be deprived of his freedom and liberty and caused his to be restrained in his movements at the scene of his arrest and detention and continuing until he was released from the Volusia County Jail.

32. The restraint of Plaintiff was caused by the actions of Defendant Clark, individually and was unlawful.

33. As a direct and proximate result of Defendants’ actions Plaintiff has suffered damages, which include injury to reputation, hurt feelings, mental anguish, physical inconvenience, physical discomfort, loss of income, lost working time and loss of ability to earn money sustained in the past and future embarrassment, humiliation and disgrace, which are continuing to this day and are likely to continue in the future.

34. The actions of Defendant Clark were done in bad faith, with malice and in reckless disregard for the rights of Plaintiff.

WHEREFORE, for the foregoing reasons, Plaintiff, **LEWIS ASHLEY SMITH**, respectfully requests this Court to enter Judgment against Defendant, **SHAWN M. CLARK**, for damages and costs in the prosecution of this matter and such other further relief as this Court deems just and proper under the circumstances. Further, Plaintiff, **LEWIS ASHLEY SMITH**,

reserves the right to seek an award of punitive damages to punish Defendant, **SHAWN M. CLARK**, for his conduct, which would deter him and others from such conduct in the future.

COUNT III- MALICIOUS PROSECUTION
(Clark)

COMES NOW, Plaintiff, **LEWIS ASHLEY SMITH** (“Plaintiff” and/or “Smith”), by and through his undersigned counsel, and sues Defendant, **SHAWN M. CLARK**, in his **individual capacity** (“Defendant Clark”), and in support therefore states as follows:

35. This is a cause of action for malicious prosecution against Defendant Clark for damages in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00).

36. Plaintiff re-alleges the allegations contained in paragraphs one (1) through twenty eight (28) as if fully set forth herein.

37. Defendant Clark owed a duty of care to the citizenry in general, and specifically, in this case, he owed a duty of care to Plaintiff.

38. On or about March 19, 2017, Defendant Clark, individually, with malicious purpose caused a prosecution to be instituted against Plaintiff.

39. Said prosecution was instituted without probable cause by Defendant Clark, and the facts known by him would not have warranted a reasonable person to believe that any criminal offense had been committed by Plaintiff.

40. There was absence of probable cause to arrest and prosecute Plaintiff and for the continued prosecution against Plaintiff.

41. The prosecution against Plaintiff was terminated in favor of Plaintiff. The termination of the prosecution constituted a bona fide termination of those proceedings in favor of Plaintiff.

42. Defendant Clark acted maliciously and in bad faith against the Plaintiff at all times mentioned herein. No prosecution of Plaintiff would have occurred but for the actions of Defendant Clark.

43. As a direct and proximate result of Defendants' actions Plaintiff has suffered damages, which include injury to reputation, hurt feelings, mental anguish, physical inconvenience, physical discomfort, attorneys' fees incurred to defend the false arrest and malicious prosecution, loss of earnings, loss of time, loss of income, lost working time and loss of ability to earn money sustained in the past and future embarrassment, humiliation, disgrace, which are continuing to this day and are likely to continue in the future.

44. Plaintiff also suffered damages as the result of being forced to retain counsel and incur attorney's fees and costs to defend the prosecution.

WHEREFORE, for the foregoing reasons, Plaintiff, **LEWIS ASHLEY SMITH**, respectfully requests this Court to enter judgment against Defendant, **SHAWN M. CLARK, in his individual capacity**, for damages and costs in the prosecution of this matter, expenses incurred in defending the prosecution and for such other and further relief as this Court deems just and proper under the circumstances. Further, Plaintiff, **LEWIS ASHLEY SMITH**, reserves the right to seek an award of punitive damages to punish Defendant, **SHAWN M. CLARK**, for his conduct, which would deter him and others from such conduct in the future.

COUNT IV – TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

COMES NOW, Plaintiff, **LEWIS ASHLEY SMITH** (“Plaintiff” and/or “Smith”), by and through his undersigned counsel, and sues Defendant, **SHAWN M. CLARK, in his individual capacity** (“Defendant Clark”), and in support thereof states as follows:

45. This is an tortious interference with a business relationship against Defendant Clark and for damages in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00).

46. Plaintiff re-alleges the allegations contained in Paragraphs one (1) through twenty-one (21) above as if fully set forth herein.

47. Defendant Clark, fully aware that Plaintiff was employed and had a business relationship with Martin County Fire Department, decided to take matters into his own hands and mete out his own form of vigilante *justice* as he deemed fit against Plaintiff Smith.

48. Defendant Clark was so upset that he was found to have made up false statements and that the charges against Plaintiff was dismissed. Defendant Clark, in an act of malice against Plaintiff, intentionally and without justification sent correspondence and made calls to Plaintiff's employer reasserting the false statements to interfere with Plaintiff's employment.

49. Defendant Clark knew that Plaintiff worked for Martin County Fire Department as a Fire Fighter and was aware of Plaintiff's business relationship with Martin County Fire Department.

50. Defendant Clark's wrongful interference with Plaintiff's employment/business relationship resulted in Plaintiff being terminated from his position with the Martin County Fire Department.

51. Defendant, Clark, acted maliciously and in bad faith against the Plaintiff at all times mentioned herein.

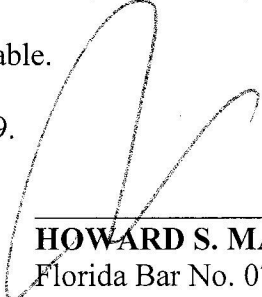
52. As a direct and proximate result of Defendants' actions Plaintiff has suffered damages, which include injury to reputation, hurt feelings, mental anguish, physical inconvenience, physical discomfort, attorneys' fees incurred to defend the false arrest and malicious prosecution, loss of earnings, loss of time, loss of income, lost working time and loss of ability to earn money sustained in the past and future embarrassment, humiliation, disgrace, which are continuing to this day and are likely to continue in the future.

WHEREFORE, for the foregoing reasons, Plaintiff, **LEWIS ASHLEY SMITH**, respectfully requests this Court to enter judgment against Defendant, **SHAWN M. CLARK**, an individual, for all compensatory damages, all costs of this action, and for such other and further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs, **LEWIS ASHLEY SMITH** by and through his undersigned counsel, hereby demands a trial by jury on all issues so triable.

DATED this 1st day of April, 2019.



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