

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO

EDWARD GONZALES,

Plaintiff,

v.

No. D-202-CV-2017-08648

BERNALILLO COUNTY,
BERNALILLO COUNTY SHERIFF'S OFFICE,
MITCHELL SKROCH, CHARLES COGGINS,
GREGORY GRUNDHOFFER, JEFFREY BARTAM,
ALTON SMITH, JUSTIN BISHOP, and
JOHN DOES 1 through 4,

Defendants.

**COMPLAINT FOR ASSAULT, BATTERY, NEGLIGENT HIRING AND
SUPERVISION, AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ARISING FROM THE UNLAWFUL USE OF EXCESSIVE FORCE**

1. Plaintiff Edward Gonzales brings this complaint against Defendants Bernalillo County, the Bernalillo County Sheriff's Office (hereinafter collectively "Bernalillo County Sheriff's Office"), Bernalillo County Sheriff's Office Deputies Mitchell Skroch, Charles Coggins, Gregory Grundhoffer, Jeffrey Bartam, Alton Smith, Justin Bishop, and John Does 1 through 4 to remedy violations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq., including assault, battery, negligent hiring and supervision, and intentional infliction of emotional distress, arising from the unlawful use of excessive force. In support thereof, Mr. Gonzales states as follows:

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to NMSA 1978, § 41-4-18(A).

3. Mr. Gonzales properly and timely gave notice of impending litigation to the Defendants, according to NMSA 1978, § 41-4-16, on August 1, 2017.

4. Venue is proper pursuant to NMSA 1978, §§ 38-3-1 and 41-4-18(B).

5. The violations of Mr. Gonzales' rights and New Mexico law alleged in this Complaint occurred in Bernalillo County.

PARTIES

6. Mr. Gonzales is now and was at all times material to this Complaint a citizen of the State of New Mexico and a resident of Bernalillo County.

7. Defendant Bernalillo County is a political subdivision of the State of New Mexico.

8. The Bernalillo County Sheriff's Office is an agency of Bernalillo County.

9. Bernalillo County Sheriff's Office Deputies Mitchell Skroch, Charles Coggins, Gregory Grundhoffer, Jeffrey Bartam, Alton Smith, and Justin Bishop (hereinafter collectively "BCSO Deputies"), are all individuals employed by the Bernalillo County Sheriff's Office as Deputy Sheriffs.

10. John Does 1 through 4 are all individuals employed by the Bernalillo County Sheriff's Office and were responsible for supervising and/or training the BCSO Deputies.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

11. On June 13, 2017, Mr. Gonzales – at the time a sixty-three (63) year old man – was at home with his wife, his children, and his young grandchildren when more than a dozen Bernalillo County Sheriff's Deputies secured a perimeter around Mr. Gonzales' residence.

12. The BCSO Deputies began to close in on the residence and started yelling loudly at Mr. Gonzales' son, who was in Mr. Gonzales' gated front yard checking on the family's dogs.

13. Hearing the ensuing commotion, Mr. Gonzales exited his residence.
14. Mr. Gonzales initiated verbal contact with the BCSO Deputies.
15. Mr. Gonzales asked the BCSO Deputies why they were at his residence.
16. Mr. Gonzales asked the BCSO Deputies whether they had a warrant.
17. Mr. Gonzales was not a suspect in any crime. Nor was he the target of the police raid at his home.
18. Mr. Gonzales observed the BCSO Deputies detaining his son.
19. Mr. Gonzales asked the BCSO Deputies why his son was being detained.
20. The BCSO Deputies did not respond to any of Mr. Gonzales' inquiries.
21. Instead, the BCSO Deputies yelled instructions at Mr. Gonzales to come outside of his gated front yard.
22. Mr. Gonzales responded that he was willing to come out of the secured front yard if the BCSO Deputies had a warrant or otherwise explained why they were on his property.
23. The BCSO Deputies again ignored Mr. Gonzales' prompts.
24. Contemporaneously with Mr. Gonzales' inquiries, BCSO Deputy Coggins threw Mr. Gonzales' son to the ground, breaking Mr. Gonzales' son's arm in the process.
25. Mr. Gonzales observed the rough handling of his son, heard his son scream in pain, and also heard the persistent yelling by the BCSO Deputies.
26. Mr. Gonzales also heard gunshots.
27. The gunshots were fired by BCSO Deputy Bartrum, who killed one of the Gonzales family dogs while Mr. Gonzales was attempting to deescalate the situation and find out why the BCSO Deputies were behaving so aggressively towards Mr. Gonzales and his son.

28. BCSO Deputy Smith also shot one of the Gonzales family dogs with a bean bag round.

29. None of the Gonzales family dogs were a threat to any BCSO Deputies or behaving aggressively when they were shot.

30. Concerned for the safety of his son, the Gonzales family pets, and in response to the BCSO Deputies' verbal commands, Mr. Gonzales then began to approach the vicinity of where the BCSO Deputies were taking his son into custody.

31. BCSO Deputy Skroch became combative with Mr. Gonzales.

32. Without warning, BCSO Deputy Skroch performed an armbar technique on Mr. Gonzales.

33. Multiple BCSO Deputies, including BCSO Deputies Skroch and Grundhoffer, employed a combination of moves, including the body slam, to take Mr. Gonzales to the ground.

34. Before, during, and after the takedown, BCSO Deputy Skroch repeatedly struck Mr. Gonzales with his fist. He also performed a pain compliance hold on Mr. Gonzales.

35. The BCSO Deputies who took Mr. Gonzales to the ground placed their knees on Mr. Gonzales' back and struck Mr. Gonzales multiple times on his face, head, and center mass.

36. For instance, while Mr. Gonzales was being held face down to the ground, and after shooting the Gonzales family dog, BCSO Deputy Bartam placed his body weight on Mr. Gonzales' head, neck, and back, forcing Mr. Gonzales' face roughly into the ground.

37. BCSO Deputy Bartam also struck Mr. Gonzales repeatedly.

38. The BCSO Deputies used a taser stun on Mr. Gonzales' body multiple times.

39. For example, after the BCSO Deputies had Mr. Gonzales restrained on the ground, one of the deputies screamed “You’re going to get it again” and continued to use the taser on Mr. Gonzales until he became unconscious.

40. During the beating administered by the BCSO Deputies, Mr. Gonzales was placed into handcuffs.

41. BCSO Deputy Bishop assisted in beating Mr. Gonzales, and noted in his report that he had Mr. Gonzales’ blood on his clothing after the incident.

42. After he was handcuffed, the BCSO Deputies demanded that Mr. Gonzales stand and walk.

43. Mr. Gonzales was so weak from the beating that he endured that he was unable to stand on his own. So, the BCSO Deputies dragged Mr. Gonzales to the edge of his driveway and placed him into a marked vehicle.

44. While Mr. Gonzales was being dragged to a marked vehicle by the BCSO Deputies, you can hear Mr. Gonzales saying “help me” with a weak voice on one of the BCSO Deputies’ belt tapes.

45. Mr. Gonzales stumbled several times while being dragged, and at one point fell to the ground.

46. Mr. Gonzales was arrested for battery on a peace officer, assault on peace officer, and resisting arrest.

47. This excessive force applied by the BCSO Deputies resulted in Mr. Gonzales suffering from serious physical injuries.

48. Those injuries included severe bruising and abrasions to Mr. Gonzales' face:



49. The injuries also resulted in Mr. Gonzales bleeding from his ear:



50. The injuries also included Mr. Gonzales bleeding from the back of his head:



51. The BCSO Deputies' actions also resulted in Mr. Gonzales suffering from severe abrasions to his right leg, which later became infected. That infection required Mr. Gonzales to be hospitalized for an extended period of time, to undergo surgery to stop the spreading of the infection, and for him to be placed in a long-term care facility for an around-the-clock monitoring to ensure that the infection would cease spreading. To accomplish this goal, Mr. Gonzales was bedridden while his leg was attached to a pump designed to stop the spread of the infection.

52. Following the altercation, the BCSO Deputies then removed Mr. Gonzales' children and young grandchildren from Mr. Gonzales' residence and placed them into a marked vehicle.

53. Without having secured a warrant, the BCSO Deputies entered Mr. Gonzales' residence.

54. Still lacking a warrant, the BCSO Deputies searched the residence.

55. The BCSO Deputies encountered locked doors, including doors that were locked from the outside with padlocks.

56. The BCSO Deputies broke the locks on the locked doors to gain entry.

57. The force that the BCSO Deputies used upon Mr. Gonzales, Mr. Gonzales' son, and the Gonzales family dog was unnecessary, objectively unreasonable, and excessive under the circumstances.

58. Throughout his entire interaction with the BCSO Deputies, Mr. Gonzales was compliant, non-threatening, and did not make any statements or take any actions that would demonstrate that he presented any risk of danger to any BCSO Deputies.

59. Indeed, Mr. Gonzales did not pose a danger to anyone, and no legitimate law enforcement objective was achieved by the degree of force used to take Mr. Gonzales into custody.

60. Prior to engaging in their unlawful actions, including the use of unnecessary force against Mr. Gonzales, who posed no threat to any BCSO Deputies, himself, or the public, the BCSO Deputies had a duty to critically evaluate the facts upon which each would rely to support his actions and to determine if such actions were objectively reasonable and in good faith under the totality of the circumstances.

61. The BCSO Deputies failed to exercise this duty.

62. At all times relevant to the allegations made in this Complaint, the BCSO Deputies were agents and employees of the Bernalillo County Sheriff's Office and were acting in the scope of their employment.

63. The Bernalillo County Sheriff's Office is therefore liable to Mr. Gonzales under the doctrine of respondeat superior.

64. Mr. Gonzales suffered substantial damages as a direct and proximate result of the BCSO Deputies' conduct, including but not limited to: severe physical injuries, pain and suffering, surgical procedures, emotional distress and mental anguish, loss of property, medical expenses, and aggravating circumstances attending the BCSO Deputies' wrongful acts.

65. Pursuant to Section 41-4-12, the Bernalillo County Sheriff's Office has waived immunity for the acts complained of herein.

Count I
Assault and Battery

66. Mr. Gonzales incorporates by reference the preceding paragraphs of this complaint as though fully set forth herein.

67. The BCSO Deputies struck Mr. Gonzales in such a manner as to cause him imminent fear of being struck and to cause him great bodily harm.

68. The BCSO Deputies struck Mr. Gonzales while he was restrained and held to the ground.

69. The BCSO Deputies' use of force was excessive, if not completely unnecessary, to restrain Mr. Gonzales in such a manner as to prevent harm to other officers or witnesses.

70. The BCSO Deputies' had no reasonable belief that Mr. Gonzales had committed a crime or was armed or was dangerous.

71. The BCSO Deputies' conduct constitutes assault and battery for which immunity has been waived by Section 41-4-12.

72. Mr. Gonzales suffered damages in the form of physical injury, pain, suffering, medical costs, and property damage as a result of the actions of the BCSO Deputies.

Count II
Negligent Training and Supervision

73. Mr. Gonzales incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

74. The BCSO Deputies were supervised and/or trained by John Does 1 through 4.

75. The Bernalillo County Sheriff's Office, including but not limited to John Does 1 through 4, owed a duty to Mr. Gonzales to adequately train and supervise the BCSO Deputies to properly interact with the public and appropriately handle private property, perform lawful searches and seizures, and to ensure BCSO Deputies' ability to conduct custodial arrests without resorting to unreasonable and excessive force.

76. By failing to provide such training and supervision, the Bernalillo County Sheriff's Office, including but not limited to John Does 1 through 4, breached their duty to Mr. Gonzales.

77. The Bernalillo County Sheriff's Office and John Does 1 through 4's failure to adequately train and supervise the BCSO Deputies directly and proximately caused extensive physically injuries to Mr. Gonzales and resulted in damage to and/or loss of private property.

Count III
Intentional Infliction of Emotional Distress

78. Mr. Gonzales incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

79. The BCSO Deputies' acts, as complained of herein, constitute extreme and outrageous conduct as contemplated by New Mexico law.

80. In performing the acts complained of herein, the BCSO Deputies acted intentionally and/or in reckless disregard of Mr. Gonzales' well-being.

81. Mr. Gonzales suffered severe and extreme mental distress resulting in physical damages as a direct and proximate result of the BCSO Deputies' conduct.

82. Because the BCSO Deputies were acting within the scope and course of their employment as Bernalillo County Sheriff's Deputies when they engaged in the extreme and outrageous conducting that caused Mr. Gonzales to suffer extreme and severe mental distress, the Bernalillo County Sheriff's Office is liable for intentional infliction of emotional distress under the doctrine of respondeat superior.

CONCLUSION

WHEREFORE, Mr. Gonzales prays that the Court enter judgment on his behalf and against Defendants Bernalillo County, the Bernalillo County Sheriff's Office, Bernalillo County Sheriff's Office Deputies Mitchell Skroch, Charles Coggins, Gregory Grundhoffer, Jeffrey Bartam, Alton Smith, Justin Bishop, and John Does 1 through 4 for:

- A. Compensatory damages for his physical injuries;
- B. Compensatory damages for property damage;
- C. Past and future medical expenses;
- D. Past and future pain, suffering, and mental anguish;
- E. Past and future loss of the value of the enjoyment of life, and past and future emotional distress; and
- F. Reasonable costs and attorneys' fees and such other and further relief as this Court deems just and proper.

Respectfully submitted,

**FREEDMAN BOYD HOLLANDER
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By: /s/ Nicholas T. Hart

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