

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BENJAMIN K. HERRINGTON,

Plaintiff,

v.

GRUNDY COUNTY SHERIFF'S DEPUTY
AARON CORY and GRUNDY COUNTY,
ILLINOIS,

Defendants.

Case No. 1:24-cv-02940

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES the Defendants, GRUNDY COUNTY SHERIFF'S DEPUTY AARON CORY and GRUNDY COUNTY, ILLINOIS (herein after referred to as "Grundy County" or "Defendants") by and through its attorneys HAWKINS PARNELL & YOUNG LLP, and hereby answers Plaintiff's Complaint at Law as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343 and 28 U.S.C. § 1367.

ANSWER: Defendants admit the allegations in paragraph 1.

2. Plaintiff Benjamin K. Herrington is a resident of the Northern District of Illinois.

ANSWER: Defendants do not have sufficient knowledge with which to admit or deny the allegations in paragraph 2.

3. Defendant Aaron Cory was at all times relevant acting under color of his authority as law enforcement officer employed by the Sheriff of Grundy County, Illinois.

ANSWER: Defendants admit the allegations in paragraph 3.

4. Defendant Grundy County is joined in this action as the potential indemnitor of defendant Cory. Plaintiff does not assert any federal claim against defendant Grundy County.

ANSWER: Defendants admit the allegations in paragraph 4.

5. On April 25, 2022, law enforcement officers employed by the Illinois State Police and the Sheriff of Grundy County arrested plaintiff in Grundy County, Illinois.

ANSWER: Defendants admit the allegations in paragraph 5.

6. Plaintiff does not challenge the existence of probable cause to arrest.

ANSWER: Defendants admit the allegations in paragraph 6.

7. Three law enforcement officers, including defendant Cory, placed plaintiff under arrest, as depicted in the following image of plaintiff's arrest on April 25, 2022.

ANSWER: Defendants admit Defendant Cory was among the officers that placed Plaintiff under arrest on April 25, 2022. To the extent the images depicted in Paragraph 7 state either legal or factual conclusions, Defendants denies those conclusory allegations.

8. The canine officer in the above image is defendant Cory.

ANSWER: Defendants admit that Cory was one of the canine officers at the plaintiff's arrest, but they cannot admit or deny if he is pictured in the included image.

9. After the officers depicted above had subdued plaintiff and at a time when plaintiff did not present an imminent threat of harm, defendant Cory released his dog, instructed the animal to bite plaintiff, and stood by while the dog bit plaintiff on his right leg, specifically in his right pretibial and lateral mid-calf, causing plaintiff to receive bite wounds and incur serious personal injuries.

ANSWER: Defendants deny the allegations of paragraph 9.

10. The scene at about the time defendant Cory's dog inflicted bite wounds on plaintiff's right leg as depicted below:

ANSWER: Defendants admit that Cory's canine bit the plaintiff during the arrest of the plaintiff but deny the remaining allegations of paragraph 10.

11. The bite wounds caused plaintiff to experience severe pain and suffering requiring medical treatment and physical therapy and caused plaintiff to be permanently disfigured.

ANSWER: The allegations of Paragraph 11 state medical conclusions to which no answer is required. To the extent an answer is required, Defendant denies all allegations contained in Paragraph 11.

12. Defendant Cory did not have a reasonable basis to instruct his dog to bite plaintiff or to stand by while his dog but plaintiff, and he thereby caused plaintiff to be deprived of rights secured by the Fourth Amendment to the Constitution of the United States.

ANSWER: The allegations of Paragraph 12 state legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies all allegations contained in Paragraph 12 of Count..

13. Plaintiff hereby demands trial by jury.

ANSWER: Defendants admit the allegations of paragraph 13.

WHEREFORE, Defendant, GRUNDY COUNTY SHERIFF'S DEPUTY AARON CORY and GRUNDY COUNTY, ILLINOIS, denies that Plaintiff is entitled to a judgment in any sum whatsoever, and further prays for a judgment in its favor and against Plaintiff plus costs of this action. Defendants demand trial by jury.

AFFIRMATIVE DEFENSES

NOW COMES, GRUNDY COUNTY SHERIFF'S DEPUTY AARON CORY and GRUNDY COUNTY, ILLINOIS (herein after referred to as "Grundy County" or "Defendants"), by and through its attorneys Hawkins Parnell & Young, LLP, and states as follows for its Affirmative Defenses to Plaintiff's Complaint at Law:

COUNT ONE QUALIFIED IMMUNITY

1. Defendant Aaron Cory did not violate any clearly established law or right of Plaintiff in his interaction with Plaintiff on April 25, 2022, and therefore is entitled to qualified immunity.

2. To the extent that plaintiff has suffered any damages as a result of the actions taken by Aaron Cory, plaintiff has failed to properly mitigate his damages. Therefore, Plaintiff's recovery, if any, should be limited pursuant to 735 ILCS 5/2-1116.

3. Defendants demand trial by jury.

COUNTS TWO & THREE

1. Defendant Aaron Cory is entitled to immunity pursuant to 745 ILCS 10/2-202 for the reason that all actions taken with respect to the Plaintiff were performed in the execution or enforcement of the law and the actions and/or omissions did not constitute willful and wanton conduct. 745 ILCS 10/2-202. This immunity is extended to the Grundy County by virtue of 745 ILCS 10/2-209.

2. Defendant Aaron Cory is immune from liability because his decision to use force and the extent of force used were discretionary decisions made in the determination of policy and exercise of discretion. 745 ILCS 10/2-201. This immunity is extended to Grundy County by virtue of 745 ILCS 10/2-209.

3. Defendant Aaron Cory's use of force was lawful and justified because he reasonably believed such force was necessary to overcome Plaintiff's resistance to arrest and effect a lawful arrest. 720 ILCS 5/7-5 & 7-7.

4. To the extent that plaintiff has suffered any damages as a result of the actions taken by Aaron Cory, plaintiff has failed to properly mitigate his damages. Therefore, Plaintiff's recovery, if any, should be limited pursuant to 735 ILCS 5/2-1116.

5. Plaintiff was comparatively reckless in the cause of his injuries and therefore his recovery should be reduced by the percentage of his fault and if such fault exceeds 50% of the total cause of Plaintiff's injury, Plaintiff's recovery must be barred.

6. Defendants demand trial by jury.

Respectfully submitted,

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