

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT
COUNTY OF LOS ALAMOS
STATE OF NEW MEXICO

NO: D-132-CV-2015-00116

ANDREW ABEYTA
Plaintiff,

v.

DAVID BRADSHAW, as an individual and in his official capacity; and
“JOHN DOE” ORTEGA, as an individual and in his official capacity; and
DINO SGAMBELLONE, as an individual and in his official capacity
as Chief of the Los Alamos Police Department; and
THE COUNCIL OF THE INCORPORATED COUNTY OF
LOS ALAMOS
Defendants.

CIVIL COMPLAINT FOR ASSAULT, BATTERY,
AND FALSE IMPRISONMENT

1. The Plaintiff is an adult and is a permanent resident of Rio Arriba County.
2. The Plaintiff was incarcerated at the Los Alamos Police Department Detention Center when all acts relevant to this complaint occurred. This facility is located in the County of Los Alamos, New Mexico.
3. The Defendant Bradshaw was at all times relevant a detention officer at the Los Alamos Police Department Detention Center. At the time of the acts relevant to this complaint David Bradshaw acted within the scope of his duties as a Los Alamos Police Department Detention Center detention officer.
4. The Defendant John Doe Ortega was at all times relevant a detention officer at the Los Alamos Police Department Detention Center. Defendant John Doe Ortega's first name is unknown at this time, but is discoverable. At the time of the acts

- relevant to this complaint Defendant Ortega acted within the scope of his duties as a Los Alamos Police Department Detention Center detention officer.
5. The Defendant Dino Sgambellone is the Chief of Police of the Los Alamos Police Department. The Los Alamos Police Department manages the Los Alamos Police Department Detention Center and is in control of the day to day operations of the Los Alamos Police Department Detention Center.
 6. Defendant Sgambellone was acting within the scope of his duties as Chief of Police. At all times relevant the Defendant Sgambellone was responsible for hiring, training, monitoring, supervising, and disciplining the detention officers at the Los Alamos Police Department Detention Center.
 7. At all times relevant to the acts complained of in this Complaint the Defendants Bradshaw, Ortega, and Sgambellone were “law enforcement officers” as that title is used in NMSA §41-4-12.
 8. Upon information and belief all of the Defendants are residents of Los Alamos County.
 9. The incorporated County of Los Alamos is a joint municipal-county government and political subdivision of the State of New Mexico, organized and operating under a charter pursuant to the Constitution of the State of New Mexico.
 10. Venue is proper in Los Alamos County, and the First Judicial District.

COUNT 1

COMPLAINT FOR DAMAGES FOR ASSAULT, BATTERY
AND FALSE IMPRISONMENT
UNDER THE NEW MEXICO TORT CLAIMS ACT

11. On December 25, 2013 the Plaintiff was an inmate at the Los Alamos Police Department Detention Center (hereafter “jail”).
12. Defendant Bradshaw and Defendant Ortega were on duty in their jobs as detention officers.
13. Defendant Bradshaw and Defendant Ortega had removed the Plaintiff from his regular cell in order to search the cell for drugs or other contraband.
14. The Plaintiff was placed in a single cell located in the booking area, at the end of the hallway that runs past the booking counter, while the search of his regular cell took place.
15. A short time later Defendant Bradshaw and Defendant Ortega returned to the single cell where Plaintiff was waiting and informed him that nothing was found in the cell pursuant to their search.
16. Defendant Bradshaw then told the Plaintiff that he was going to be strip searched.
17. The Plaintiff was in the single cell in the booking area undressing for the strip search and Defendant Bradshaw and Defendant Ortega were waiting outside of the cell door.
18. Another guard was near the booking counter but was not talking to the Plaintiff or directly interacting with him.
19. The Plaintiff exited the single cell, fully unclothed, and presented himself to Defendant Bradshaw and Defendant Ortega for the strip search.
20. He was viewed by Defendant Bradshaw and Defendant Ortega from the front, from the back and when he was in a squatting position.

21. No drugs or other contraband were found by Defendant Bradshaw and Defendant Ortega during this search.
22. Immediately after completing the search, while the Plaintiff remained standing just outside the single cell, naked, Defendant Bradshaw said to him “you think you’re fucking bad” or similar words.
23. Defendant Bradshaw then punched the Plaintiff in his face.
24. Almost immediately after being punched Defendant Bradshaw sprayed mace, or some similar chemical agent, in the Plaintiff’s face.
25. The Plaintiff immediately felt his eyes, nose and mouth burn from the mace.
26. The Plaintiff was then hit with a baton by either Defendant Bradshaw or Defendant Ortega.
27. Defendant Bradshaw and/or Defendant Ortega forced the Plaintiff’s hands behind his back and handcuffed him.
28. The Plaintiff was standing, naked, in the corner of the hallway outside of the single cell, with his face covered in mace, and Defendant Bradshaw continued to spray his body with mace.
29. Defendant Bradshaw sprayed mace at the Plaintiff, then waited a number of seconds, sprayed mace lower on the Plaintiff’s body, waited a number of seconds, then sprayed mace lower on the Plaintiff’s body, and repeated this until the Plaintiff’s entire body had been covered in mace.
30. The Plaintiff could hear a loud click when the mace was dispensed.

31. When the Plaintiff was suffering the effects of the mace, and still naked and handcuffed behind his back, Defendant Bradshaw or Defendant Ortega tackled him from the side and brought him to the ground.
32. Defendant Bradshaw told Defendant Ortega to dress the Plaintiff.
33. Defendant Ortega had a difficult time getting close enough to the Plaintiff to dress him because he was coughing from the cloud of mace surrounding the Plaintiff.
34. Defendant Ortega did slip pants on the Plaintiff.
35. Defendant Bradshaw and Defendant Ortega walked the Plaintiff to the Sally Port area.
36. The Plaintiff was begging the Defendants Bradshaw and Defendant Ortega to help him to wipe his eyes.
37. Either Defendant Bradshaw or Defendant Ortega told him he could wait to wipe his eyes.
38. The Plaintiff dropped onto one knee and attempted to wipe his eyes on his bent knee.
39. The Defendants then stopped the Plaintiff from wiping his eyes.
40. The actions of Defendant Bradshaw and Defendant Ortega were malicious, willful, reckless, wanton, and in bad faith.
41. Members of the fire department arrived and began performing first aid.
42. The Plaintiff was eventually transported to the Los Alamos Medical Center by the Los Alamos Police Department.

43. The touching of and application of mace to the Plaintiff by Defendants Bradshaw and Ortega was an unlawful, intentional touching and application of force that was done in a rude, insolent and angry manner.
44. During the time immediately preceding and during the time that the Plaintiff was touched and maced by the Defendants Bradshaw and Ortega, the Plaintiff reasonably believed that he was in danger of receiving an immediate battery because of the unlawful acts, threats, and menacing conduct the Defendants Bradshaw and Ortega were engaging in.
45. The Plaintiff suffered physical pain, fear, anxiety, and other emotional injuries as a result of the acts Defendant Bradshaw and Defendant Ortega.
46. Prior to the Plaintiff being strip searched, his bond had been set at \$1,000.
47. The Plaintiff had paid the \$1,000 bond and was eligible to be released from the jail.
48. Defendant Bradshaw knew that the bond had been paid but refused to allow the Plaintiff to be released.
49. Defendant Bradshaw claimed that the Plaintiff was being held on additional charges and paying the \$1,000 bond was insufficient to secure his release.
50. The Plaintiff was not being held on any other charges prior to the strip search and should have been released.
51. Defendant Bradshaw intentionally confined and restrained the Plaintiff, without his consent, knowing that he had no lawful authority to do so.

52. After the strip search and the accompanying assault and battery by Defendants Bradshaw and Ortega, the Defendants Bradshaw and Ortega placed criminal charges against the Plaintiff claiming that the Plaintiff had attacked them.
53. These criminal charges did exist at the time the Plaintiff's bond had been fully paid.
54. The entire incident of the search that took place outside of the single cell, and the accompanying assault and battery, was recorded by two security cameras.
55. One security camera had a view that was partially obstructed by a privacy curtain placed by the Defendants Bradshaw and Ortega between the camera and the Plaintiff prior to the search.
56. By information and belief there was a second camera in place behind the privacy curtain and had an unobstructed view of the search and accompanying assault and battery.
57. The Defendants Bradshaw and Ortega had a duty to protect the Plaintiff from personal injury, bodily injury, and false imprisonment.
58. The Defendants Bradshaw and Ortega breached that duty.
59. The Plaintiff suffered personal injury, bodily injury, and false imprisonment because of the breach of duty by the Defendants Bradshaw and Ortega.
60. Defendant Sgambellone had a duty to properly hire, train, supervise, and discipline Defendants Bradshaw and Ortega.
61. Defendant Sgambellone breached that duty.
62. As a result of that breach the Plaintiff suffered personal injury, bodily injury, and false imprisonment.

63. The County of Los Alamos is liable for Plaintiff's injuries by virtue of the doctrine of respondeat superior.

WHEREFORE, the Plaintiff prays for judgment for damages and punitive damages against all defendants, jointly and severally, in such amount as shall be proved at trial; and for costs, interest, and all other relief deemed just and proper.

Respectfully submitted,

/s/ Sheri A. Raphaelson

Sheri A. Raphaelson
Attorney for Plaintiff
512 S. Riverside Dr., Suite B
Española, NM 87532
505-927-3185 f: 505-692-6042
bingolawyer@gmail.com