

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

KELLY DOE,

Plaintiff,

vs.

EVAN CRAMER, individually,
and KEN MASCARA, as Sheriff
of St. Lucie County, Florida,

Defendants.

_____ /

COMPLAINT

1. This is a civil action seeking money damages in excess of \$15,000.00, exclusive of costs, interest and attorney's fees by KELLY DOE against Deputy Sheriff EVAN CRAMER (hereinafter DEFENDANT CRAMER) and KEN MASCARA, as Sheriff of St. Lucie County, Florida (hereinafter SHERIFF MASCARA).

2. This action is brought pursuant to 42 USC §1983 and §1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

3. The United States District Court for the Southern District of Florida has jurisdiction of this action under 42 USC §1983, 28 USC §1331 and 28 USC §1343.

4. KELLY DOE further invokes the supplemental jurisdiction of the United States District Court to hear pendent state tort claims arising under state law pursuant to 28 USC §1367 (a).

5. KELLY DOE has fully complied with all conditions precedent to bringing this action, including those imposed by Florida Statute §768.28, by serving notice of the claim via Certified Mail on April 5, 2017 to SHERIFF MASCARA and the Florida Department of Financial Services.

PARTIES

6. Plaintiff, KELLY DOE is and was, at all material times, a resident of St. Lucie County, Florida.

7. At all times referred to herein, DEFENDANT CRAMER, was acting under color of law as a Deputy Sheriff of St. Lucie County, Florida and in such capacity as an agent, servant and employee of SHERIFF MASCARA.

8. KELLY DOE sues DEFENDANT CRAMER in his individual capacity.

9. KEN MASCARA, is the Sheriff of St. Lucie County, Florida, which is an office organized and existing under the Constitution and the laws of the State of Florida.

10. In this cause, SHERIFF MASCARA acted through his agents, employees and servants, including DEFENDANT CRAMER.

FACTS

The Subject Incident

11. At all times material hereto, KELLY DOE was a 31 year-old woman, living in Ft. Pierce, St. Lucie County, Florida.

12. Shortly after midnight, on the early morning of January 24, 2017, MS. DOE was traveling by bicycle to the home of a friend where she planned to spend the night.

13. While MS. DOE was standing at her friend's door, a St. Lucie County Sheriff's deputy, later determined to be DEFENDANT CRAMER, flashed his head lights and directed her to approach his vehicle.

14. Without probable cause and without reason to do so, DEFENDANT CRAMER then frisked MS. DOE and asked if she had any outstanding warrants.

15. MS. DOE, who did not have any identification on her at the time, was afraid that she was going to be arrested.

16. DEFENDANT CRAMER then asked MS. DOE, "How are we going to take care of this?"

17. When MS. DOE did not respond, DEFENDANT CRAMER told her that he would let her go and not arrest her (for which he had no probable cause), if she would perform oral sex on him.

18. DEFENDANT CRAMER then placed MS. DOE in the backseat of his vehicle.

19. DEFENDANT CRAMER then drove MS. DOE to a vacant lot near Virginia Avenue and 29th Street.

20. Under duress and at the insistence of DEFENDANT CRAMER, MS. DOE performed oral sex on him. DEFENDANT CRAMER ejaculated on her face, in her hair and on her clothing.

21. DEFENDANT CRAMER then instructed MS. DOE to get back into the car.

22. While driving MS. DOE home, DEFENDANT CRAMER asked her if she would consider working as a police informant, which she refused.

23. After dropping MS. DOE off in the early morning hours of January 24, 2017, DEFENDANT CRAMER continued to circle the block for several hours.

24. Because of the continued presence of DEFENDANT CRAMER, MS. DOE was scared to call the police and report the incident immediately.

25. Later that day, around 7:00 p.m., MS. DOE, who had not showered or changed her clothes, went to Lawnwood Regional Medical Center where a rape kit was performed.

26. DNA evidence from the semen on MS. DOE's clothing and body obtained through the rape kit was later confirmed to match the DNA of DEFENDANT CRAMER.

27. DEFENDANT CRAMER was subsequently arrested for sexual assault and, upon information and belief, is currently incarcerated and awaiting trial on the charges.

DEFENDANT CRAMER'S Employment

28. DEFENDANT CRAMER was previously employed by the Sanford Police Department.

29. In January of 2016, DEFENDANT CRAMER was investigated by the Sanford Police Department for multiple infractions and a recommendation was made that he be terminated for his inappropriate conduct.

30. DEFENDANT CRAMER'S improper conduct included, among other violations, his use of authority to improperly coerce individuals to do things he was requesting.

31. The Sanford Police Department determined that DEFENDANT CRAMER's further employment would constitute an unjustified risk for the Department and it was recommended that he be terminated.

32. Immediately prior to his termination, DEFENDANT CRAMER resigned his position as an officer with the Sanford Police Department.

33. DEFENDANT CRAMER then applied to the St. Lucie County Sheriff's Office for a position as a deputy sheriff.

34. In his application DEFENDANT CRAMER acknowledged receiving some prior discipline. However, he also represented that he had left the Sanford Police Department after one year of service, on his own accord, because the Department was not a good fit for his career goals, which was false.

35. On February 24, 2016 DEFENDANT CRAMER was extended a conditional offer of appointment as a probationary law enforcement deputy with the St. Lucie County Sheriff's Office.

37. On March 30, 2016, investigators with the St. Lucie County Sheriff's Office visited the Sanford Police Department and reviewed DEFENDANT CRAMER's personnel file.

38. The investigator for the St. Lucie County Sheriff's Office, Gregory Kirk, noted that DEFENDANT CRAMER had resigned, without notice, from the Sanford Police Department, after learning of the recommendation that he be terminated from his employment.

39. Investigator Kirk discussed these findings with Major David Thompson from the St. Lucie County Sheriff's Office and Major Thompson issued a directive to cease the background investigation and send DEFENDANT CRAMER a letter of rejection for employment.

40. A copy of the Sanford Police Department's discipline file is included in the St. Lucie County Sheriff's Office personnel file for DEFENDANT CRAMER.

41. Inexplicably, despite the results of the investigation and Major Thompson's decision to reject DEFENDANT CRAMER as a deputy, DEFENDANT CRAMER was hired by the St. Lucie County Sheriff's Office as a reserve deputy with a start date of May 2, 2016.

42. The decision to hire DEFENDANT CRAMER was made by the Human Resources Manager, the Professional Standards Division Commander, the employing Director and SHERIFF MASCARA.

43. DEFENDANT CRAMER remained employed by SHERIFF MASCARA from May 2, 2016 until and including the dates of the incident complained of herein.

44. At all times material hereto the conduct of DEFENDANT CRAMER took place while he was acting as a Sheriff's deputy under color of state law.

CAUSES OF ACTION

**COUNT I – FALSE IMPRISONMENT CLAIM COGNIZABLE UNDER 42 USC §1983
AGAINST DEFENDANT CRAMER**

For her cause of action against DEFENDANT CRAMER, individually, in Count I, Plaintiff states:

45. MS. DOE alleges and adopts as if fully sets forth in Count I, the allegations of Paragraphs 1-44.

46. DEFENDANT CRAMER, intentionally and without probable cause or justification, frisked MS. DOE, took her into custody, against her will, and forced her to perform a sexual act on him.

47. At no time during the sexual assault was the Plaintiff free to leave.

48. The actions of DEFENDANT CRAMER, who was acting under the authority of the State of Florida and under color of law as a deputy employed by SHERIFF MASCARA, were objectively unreasonable and subjected MS. DOE to the deprivation of the rights and privileges secured to her by the constitution of the United States, including the right to be free from unlawful and unreasonable searches and detention, and the substantive due process right to bodily integrity under the Fourth and Fourteenth Amendments and 42 USC §1983.

49. With regard to the violations of the constitutional rights of MS. DOE as alleged in this Count, the actions of DEFENDANT CRAMER were done with malicious intent, ill will, spite, intent to injure, evil motive, wickedness, formed designed to injure or oppress MS. DOE and were done with a reckless and callous indifference to her rights.

50. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

51. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

52. MS. DOE has also agreed to pay the undersigned attorneys a reasonable fee for their services herein and will incur the costs of this litigation.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Judgment for exemplary damages;
- c. Costs of litigation;
- d. Reasonable attorney fees pursuant to 42 USC §1988;
- e. Trial by jury as to all issues so triable; and
- f. Such other and further relief as this Honorable Court may deem just and appropriate.

**COUNT II – SEXUAL ASSAULT AND BATTERY CLAIM UNDER 42 USC §1983
AGAINST DEFENDANT CRAMER, INDIVIDUALLY**

For her cause of action against DEFENDANT CRAMER, individually, in Count II, Plaintiff states:

53. MS. DOE re-alleges and adopts, as if fully sets forth herein, in Count II the allegations of Paragraphs 1-44.

54. DEFENDANT CRAMER, through the use of force, coercion and the authority of his office and while acting under color of state law, sexually assaulted and battered MS. DOE without her permission, against her will and was the sole and proximate cause of this event.

55. The conduct of DEFENDANT CRAMER towards MS. DOE was objectively unreasonable and violated her clearly established rights, including the right to be free from unlawful and unreasonable searches and detention, and the substantive due process right to bodily integrity under the Fourth and Fourteenth Amendments and 42 USC §1983.

56. With regard to the violations of the constitutional rights of KELLY DOE as alleged in this Count, the actions of DEFENDANT CRAMER were done with malicious intent, ill will, spite, intent to injure, evil motive, wickedness, formed designed to injure or oppress MS. DOE and were done with a reckless or callous indifference to her rights.

57. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

58. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

59. MS. DOE has also agreed to pay the undersigned attorneys a reasonable fee for their services herein and will incur the costs of this litigation.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;

- b. Judgment for exemplary damages;
- c. Cost of litigation;
- d. Reasonable attorney's fees pursuant to 42 USC §1988;
- e. Trial by jury as to all issues so triable; and
- f. Such other relief as this Honorable Court may deem just and appropriate.

COUNT III – FALSE IMPRISONMENT CLAIM
AGAINST DEFENDANT CRAMER, INDIVIDUALLY

For her cause of action against DEFENDANT CRAMER, individually, in Count III,
Plaintiff states:

60. MS. DOE re-alleges and adopts, as if fully sets forth herein, in Count III the allegations of Paragraphs 1-44.

61. DEFENDANT CRAMER proximately caused MS. DOE'S imprisonment by holding her against her will in the absence of any probable cause that MS. DOE had committed any criminal offense.

62. The actions of DEFENDANT CRAMER in detaining MS. DOE, in the absence of probable cause, were taken in the absence of lawful authority.

63. The actions of DEFENDANT CRAMER constitute false imprisonment under Florida Law.

64. The actions of DEFENDANT CRAMER herein were committed outside the course and scope of DEFENDANT CRAMER's employment, were taken in bad faith or were with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property, therefore the conduct of DEFENDANT CRAMER occurred in his individual capacity.

65. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

66. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Cost of suit;
- c. Trial by jury as to all issues so triable; and
- d. Such other relief as this Honorable Court may deem just and appropriate.

**COUNT IV – CLAIM FOR SEXUAL ASSAULT AND BATTERY
AGAINST DEFENDANT CRAMER, INDIVIDUALLY**

For her cause of action against DEFENDANT CRAMER, individually, in Count IV, Plaintiff states:

67. Plaintiff re-alleges and adopts, as it fully sets forth herein, in Count IV the allegations of Paragraphs 1-44.

68. DEFENDANT CRAMER's actions, in holding the Plaintiff against her will and forcibly through the use of threats, forcing her to be sexually assaulted by him, were done without any legal purpose or probable cause and served no reasonable purpose for a sworn law enforcement officer.

69. The actions of DEFENDANT CRAMER in sexually assaulting and battering MS. DOE constitutes sexual assault and battery under Florida Law.

70. The actions of DEFENDANT CRAMER in sexually assaulting and battering MS. DOE occurred outside the course and scope of DEFENDANT CRAMER's employment and the actions were taken in bad faith and with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property, therefore the conduct of DEFENDANT CRAMER occurred in his individual capacity.

71. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

72. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Cost of suit;
- c. Trial by jury as to all issues so triable; and
- d. Such other relief as this Honorable Court may deem just and appropriate.

**COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT CRAMER**

For her cause of action against DEFENDANT CRAMER, individually in Count V, Plaintiff states:

73. MS. DOE re-alleges and adopts, as it fully sets forth herein, in Count V the allegations of Paragraphs 1-44.

74. DEFENDANT CRAMER, while in uniform and working as a Sheriff's deputy, took MS. DOE, against her will, to an undisclosed location where he sexually assaulted her, including ejaculating on her face, hair and clothing.

75. DEFENDANT CRAMER's conduct was intentional or reckless in that when he committed the aforementioned acts, he intended his behavior when he knew or should have known that it would cause severe emotional distress to MS. DOE.

76. That the aforementioned conduct by DEFENDANT CRAMER was so outrageous, as to go beyond all bounds of decency and to be regarded as odious and utterly intolerable in a civilized community.

77. The conduct caused physical injuries and emotional distress to the Plaintiff.

78. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

79. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Costs of litigation;
- c. Trial by jury as to all issues so triable; and
- d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT VI – NEGLIGENCE
AGAINST SHERIFF MASCARA

For her cause of action against DEFENDANT SHERIFF MASCARA in Count VI,

Plaintiff states:

80. MS. DOE re-alleges and adopts as if fully sets forth in Count VI, the allegations of Paragraphs 1-44.

81. SHERIFF MASCARA, by and through his agents, employees and investigators, had actual knowledge of the fact that DEFENDANT CRAMER was not fit to be a law enforcement officer, had been fired from his previous position for among other things, using his authority to coerce people.

82. SHERIFF MASCARA was on notice that DEFENDANT CRAMER had acted or, in all probability, would act in a manner dangerous to other persons.

83. MS. DOE was, in fact, injured by an act of DEFENDANT CRAMER, that could have reasonably been anticipated by SHERIFF MASCARA which, through the use of due diligence and authority, SHERIFF MASARA might reasonably have prevented.

84. MS. DOE was within a zone of risk that was reasonably foreseeable by SHERIFF MASCARA, a situation that was created by SHERIFF MASCARA's negligent hiring of, retention of and failure to supervise DEFENDANT CRAMER.

85. By such acts or omissions, SHERIFF MASCARA breached his duty to MS. DOE to exercise reasonable care in hiring, retaining, training and supervising employees who were in a position to abuse their power and cause grievous injurie to those they were hired to protect.

86. SHERIFF MASCARA was on notice of DEFENDANT CRAMER's dangerous tendencies and character, and it was unreasonable for SHERIFF MASCARA to hire DEFENDANT CRAMER, allow him to continue in his employ, fail or refuse to train him or supervise him appropriately.

87. Likewise, the actions committed by DEFENDANT CRAMER, permitted by SHERIFF MASCARA'S, resulted in the infliction of both physical and emotional distress to MS. DOE.

88. As a direct and proximate result of SHERIFF MASCARA's negligence, MS. DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

89. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Costs of litigation;
- c. Trial by jury as to all issues so triable; and
- d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT VII – RESPONDEAT SUPERIOR (FALSE IMPRISONMENT)
AGAINST SHERIFF MASCARA

For her cause of action against DEFENDANT SHERIFF MASCARA in Count VII, Plaintiff states:

90. MS. DOE re-alleges and adopts as if fully sets forth in Count VII, the allegations of Paragraphs 1-44.

91. DEFENDANT CRAMER unlawfully detained MS. DOE and deprived Plaintiff of her liberty and freedom, and unlawfully battered and assaulted MS. DOE in violation of her rights.

92. DEFENDANT CRAMER'S actions were taken against MS. DOE'S will.

93. DEFENDANT CRAMER used his legal authority and position as a Sheriff's Deputy to coerce and threaten the Plaintiff to accede to his wishes. Said actions were committed by DEFENDANT CRAMER during the course and scope of his employment as a Deputy Sheriff, employed by DEFENDANT SHERIFF, thus DEFENDANT SHERIFF is vicariously liable for his conduct.

94. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

95. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgment for compensatory damages in excess of \$15,000.00;
- b. Costs of litigation;
- c. Trial by jury as to all issues so triable; and
- d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT VIII – RESPONDEAT SUPERIOR (SEXUAL ASSAULT/ BATTERY)
AGAINST SHERIFF MASCARA

For this cause of action against DEFENDANT SHERIFF in Count VIII, Plaintiff states:

96. MS. DOE re-alleges and adopts as if fully sets forth in Count VIII, the allegations of Paragraphs 1-44.

97. DEFENDANT CRAMER intentionally inflicted harmful or offensive conduct upon MS. DOE by sexually assaulting her.

98. The offensive contact occurred without MS. DOE's consent and against her will.

99. The intentional harmful and offensive contact upon MS. DOE, by DEFENDANT CRAMER, was committed during the course and scope of his employment as a Deputy Sheriff, employed by SHERIFF MASCARA, who is vicariously liability for his conduct.

100. As a Deputy Sheriff and an employee of SHERIFF MASCARA, DEFENDANT CRAMER was subject to SHERIFF MASCARA's supervision and control.

101. As a direct and proximate result of the acts described above, KELLY DOE has suffered a loss of liberty and freedom, physical injuries, pain and suffering, humiliation, mental anguish and suffering, emotional and psychological injury, damage to her reputation and the loss of capacity for the enjoyment of life.

102. MS. DOE'S losses are permanent and continuing and she will continue to suffer those losses in the future.

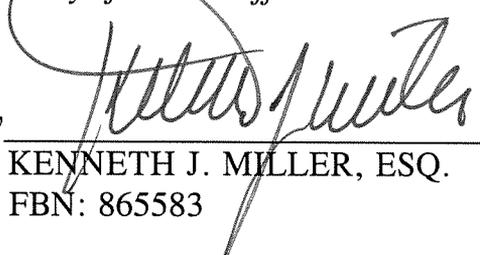
WHEREFORE, Plaintiff, KELLY DOE, respectfully seeks:

- a. Judgement for compensatory damages in excess of \$15,000.00;
- b. Costs of litigation;
- c. Trial by jury as to all issues so triable;
- d. Such other relief as this Honorable Court may deem just and appropriate.

Dated this 1st day of November, 2017.

HALICZER, PETTIS & SCHWAMM, P.A.
One Financial Plaza, Seventh Floor
100 SE 3rd Avenue
Fort Lauderdale, FL 33394
954-523-9922 / 954-522-2512 FAX
E-MAIL: service@hpslegal.com
Attorneys for Plaintiff

By



KENNETH J. MILLER, ESQ.
FBN: 865583