

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

JOE GARCIA,

Plaintiff,

v.

No. D-202-CV-2017-01910

BERNALILLO COUNTY
METROPOLITAN DETENTION CENTER
CORRECTIONAL OFFICER CHRISTOPHER
FACEY,

Defendant.

COMPLAINT TO RECOVER DAMAGES FOR DEPRIVATION OF CIVIL RIGHTS

Plaintiff, Joe Garcia, through counsel, Kennedy Kennedy & Ives, hereby brings this complaint seeking damages pursuant to 42 U.S.C. § 1983.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Joe Garcia is a resident of Albuquerque, New Mexico, a municipality located in Bernalillo County.

2. Defendant Christopher Facey is an individual and was a correctional officer employed by the Bernalillo County Metropolitan Detention Center (hereinafter, "MDC"). At all times material, Defendant Facey acted under color of state law and within the scope of his duties. Plaintiff brings this suit against Defendant Facey in his individual capacity only.

3. Defendant Facey resides in Bernalillo County.

4. The occurrence giving rise to this complaint occurred in Bernalillo County.

5. Jurisdiction and venue are proper in the Second Judicial District Court of the State of New Mexico pursuant to NMSA 1978, Section 41-4-18 and NMSA 1978, Section 38-3-1.

FACTS

6. On November 30, 2016, Joe Garcia was an inmate being transported to MDC.
7. Mr. Garcia was bound by four point restraints; being both handcuffed and strapped to leg shackles.
8. Defendant Facey was in a position of authority as a transport officer.
9. Around 2:30 PM, Defendant Facey openly identified Mr. Garcia as “PC,” or Protective Custody, in the presence of other inmates, while Mr. Garcia was being moved from the transport van into the west sally port at MDC.
10. Protective Custody is a status assigned to certain inmates who are to be kept separate from the general population, as protection from other inmates.
11. Protective Custody designations are usually kept confidential, since the status can lead to PC inmates being targeted, harassed, and subjected to crimes, such as battery at the hands of other inmates within the facility.
12. Defendant Facey then referred to Mr. Garcia as a “Cho-mo,” which is short for “child molester,” in the presence of other inmates.
13. Defendant Facey also referred to Mr. Garcia as a “bitch.”
14. Mr. Garcia asked Defendant Facey why he targeted him in front of other inmates.
15. Defendant Facey responded that he was simply using the inmate’s proper classification.
16. Defendant Facey and Mr. Garcia got into an argument.
17. Mr. Garcia entered the west sally port and sat down next to two female inmates.
18. Defendant Facey ordered Mr. Garcia to move to the other side of the sally port, next to a male inmate.

19. Mr. Garcia followed Defendant Facey's instructions to move.

20. Reacting to Mr. Garcia's statements, Defendant Facey ran towards and tackled Mr. Garcia, who was sitting down and still bound by four point shackles, while the other transport officer, Correctional Officer Oscar Alvarez, had his back turned away from the sally port in order to secure the door.

21. Correctional Officers Brandon Johnson and Victor Carrete observed Defendant Facey severely beating Mr. Garcia via the transport control room monitor.

22. Officer Johnson commented, "Oh shit! What is Facey doing?"

23. Defendant Facey punched Mr. Garcia numerous times in the head.

24. Defendant Facey climbed on top of Mr. Garcia, straddled him, and continued to punch him.

25. Mr. Garcia advised Defendant Facey that he had 11 staples recently taken out of his head.

26. Defendant Facey stood up, hovered over Mr. Garcia, and kicked him in the torso.

27. Defendant Facey then backed away from Mr. Garcia and grabbed his personal belongings.

28. Moments later, inner side of the sally port door opened and Mr. Garcia made another remark to Defendant Facey.

29. Defendant Facey ran back towards Mr. Garcia, grabbed him by the collar, and dragged him out of the sally port, on his back, and into the Transfer Office.

30. Correctional Officers Johnson and Carrete observed Defendant Facey drag Mr. Garcia via the Transport Control Monitor.

31. Correctional Officers Johnson and Carrete ran to the Transfer Office to further investigate what was happening between Defendant Facey and Mr. Garcia.

32. Defendant Facey continued to punch Mr. Garcia in the throat.

33. Defendant Facey kned Mr. Garcia in the back of the head numerous times.

34. As Correctional Officers Johnson and Carrete arrived to the Transfer Office, they saw Defendant Facey kick Mr. Garcia in the chest, "soccer ball style."

35. Correctional Officers Johnson and Carrete pulled Defendant Facey off of Mr. Garcia.

36. Correctional Officers Johnson yelled at Defendant Facey to stop and asked, "what the fuck are you doing?"

37. Correctional Officers Johnson and Carrete held back Defendant Facey.

38. At no point, did Mr. Garcia, who was handcuffed and shackled, present any type of threat to Defendant Facey nor did he attempt to batter Defendant Facey.

39. Mr. Garcia was transported to medical to evaluate his injuries.

40. Defendant Facey is currently facing criminal charges in case # T-4-FR-2016-06595 for violations of NMSA 1978, Section 30-4-1(A) and NMSA 1978, Section 30-3-5(B).

41. Defendant Facey's acts against Mr. Garcia were intentional, willful, oppressive, and done with malice.

COUNT ONE – EXCESSIVE FORCE (FOURTH AMENDMENT)

42. Mr. Garcia incorporates his previous allegations as if stated herein.

43. The Fourth Amendment to the United States Constitution protects an inmate's right to be free from the use of excessive force during the course of confinement that is objectively unreasonable under the totality of the circumstances.

44. Defendant Facey used an objectively unreasonable amount of force on Mr. Garcia when he violently tackled him to the ground, punched him in the head and throat, kicked him in the chest, and dragged him by the collar across several rooms, all while Mr. Garcia was bound by four point restraints.

45. As a result of Defendant Facey's actions, Mr. Garcia sustained actual injury.

COUNT TWO – EXCESSIVE FORCE (FOURTEENTH AMENDMENT IN THE ALTERNATIVE)

46. Mr. Garcia incorporates his previous allegations as if stated herein.

47. The Fourteenth Amendment to the United States Constitution protects an inmate's right to be free from excessive force. The force Defendant Facey used was objectively unreasonable and malicious.

48. Defendant Facey tackled Mr. Garcia while Mr. Garcia was bound by four point restraints.

49. Defendant Facey punched Mr. Garcia numerous times, including in the head and neck while Mr. Garcia was bound by four point restraints.

50. Defendant Facey kicked Mr. Garcia in the chest twice while Mr. Garcia was bound by four point restraints.

51. Defendant Facey dragged Mr. Garcia by his collar across several rooms, to continue beating Mr. Garcia out of the view of a camera.

52. Defendant Facey only ceased his attacks on Mr. Garcia when two other correctional officers intervened by pulling Defendant Facey off of Mr. Garcia.

53. Defendant Facey's actions were arbitrary and inspired by malice.

54. As a result of Defendant Facey's actions, Mr. Garcia sustained actual injury.

COUNT THREE – BATTERY

55. Mr. Garcia incorporates his previous allegations as if stated herein.

56. Defendant Facey intentionally tackled Mr. Garcia to the ground, punched him in the head and throat, kicked him in the chest, and dragged him by the collar across several rooms, all while Mr. Garcia was in four point restraints.

57. The contact was offensive and unlawful.

58. Defendant Facey caused the offensive and unlawful contact with Mr. Garcia’s person.

59. Defendant Facey’s conduct constituted battery on Mr. Garcia.

60. As a result of the battery, Mr. Garcia suffered damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

- I. Actual and compensatory damages sufficient to make Mr. Garcia whole;
- II. Punitive damages against Defendant Facey for his malicious conduct and indifference to Mr. Garcia’s rights;
- III. Attorneys’ fees, litigation expenses, costs, pre-and post-judgment interest as provided by law; and
- IV. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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/s/ Joseph P. Kennedy

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