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2012 APR 19 10 16 AM
MORRIS COUNTY
CLERK OF SUPERIOR COURT

CARL J. GRANESE,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO.: 12957-13

v.

ANTHONY GARDNER,
Defendant.

Civil Action

COMPLAINT AND DEMAND FOR
TRIAL BY JURY

Plaintiff Carl J. Granese, residing in Flanders, New Jersey, by way of Complaint against defendant, says:

FACTS COMMON TO ALL COUNTS

1. On April 19, 2012 defendant Anthony Gardner ("Gardner") was employed with the Township of Mount Olive, County of Morris, as a police officer.
2. At approximately 3:30 p.m. on April 19, 2012 defendant Gardner was traveling westbound on Rt. 46 in his patrol car when he observed a red Volkswagen Jetta ("vehicle") allegedly change lanes without signaling and failing to maintain its lane.
3. Plaintiff Carl J. Granese ("plaintiff") was operating the aforementioned vehicle.
4. Defendant Gardner initiated a motor vehicle stop and instructed plaintiff to pull into the parking lot of Equity Plaza.
5. Thereafter, plaintiff provided his credentials to defendant Gardner and stepped out of the vehicle at defendant's request. Despite lacking reasonable suspicion that plaintiff was

impaired, or possessed any illegal substance, defendant asked plaintiff if he had smoked marijuana earlier that day and said plaintiff's vehicle smelled like marijuana. Defendant Gardner then instructed plaintiff to close his eye lids so defendant could observe plaintiff's eyelids. Plaintiff complied. Defendant then instructed plaintiff to open his mouth and stick out his tongue. Plaintiff complied. Defendant determined that plaintiff did not exhibit any sign impairment. Despite this, defendant then instructed plaintiff to perform field sobriety tests. After plaintiff satisfactorily performed those tests, defendant Gardner concluded that plaintiff was not impaired. In fact, plaintiff was not impaired and was not under the influence of or in possession of marijuana.

6. Defendant Gardner then requested plaintiff to consent to the search of his vehicle on the alleged basis that defendant Gardner perceived the odor of raw marijuana in plaintiff's vehicle.

7. Plaintiff lawfully refused defendant Gardner's request to search his vehicle.

8. Defendant Gardner became irritated and angry with plaintiff because of plaintiff's lawful refusal to consent to the search of his vehicle. Defendant Gardner stated something to the effect that plaintiff was wasting defendant Gardner's time because plaintiff would not provide such consent.

9. Thereafter, a Morris County K-9 Unit was requested to respond to the location. While waiting for the K-9 Unit defendant Gardner conceded that he was frustrated that plaintiff was wasting his time by refusing to consent to the search.

10. Sgt. Michael Novak of the Mount Olive Township Police Department arrived on the scene during the course of the stop and investigation. While waiting for the K-9 Unit to arrive, plaintiff asked Sgt. Novak if he could use his cell phone which was in his vehicle.

Sgt. Novak responded by retrieving plaintiff's cell phone from plaintiff's vehicle and handed the cell phone to plaintiff. Upon noticing this, defendant Gardner instructed plaintiff not to use his cell phone.

11. While plaintiff was attempting to place his cell phone in his pocket defendant Gardner forcefully grabbed plaintiff with both arms without warning and threw plaintiff to the ground. While on the ground, defendant Gardner wrestled plaintiff to submission (plaintiff was providing no resistance), handcuffed plaintiff behind his back, arrested plaintiff and took plaintiff's cell phone.

12. Defendant then escorted plaintiff to the rear of defendant's patrol car where plaintiff was again searched without probable cause.

13. Eventually, the Morris County K-9 Unit arrived on the scene. Defendant Gardner and the K-9 Unit conducted a search of plaintiff's vehicle. No marijuana or other drugs were found in the vehicle or on plaintiff.

14. Thereafter, defendant parked plaintiff's vehicle at the scene and locked it. Defendant took plaintiff's keys, wallet and cell phone and transported plaintiff to Mount Olive police headquarters for processing.

15. Upon arrival at police headquarters, plaintiff was again searched and handcuffed to the processing room bench.

16. After a significant period of time, plaintiff was fingerprinted and photographed.

17. Throughout his interactions with defendant Gardner and Sgt. Novak during the aforementioned stop and investigation, plaintiff was polite and cooperative. An MVR recorded the entire incident.

18. Defendant Gardner charged plaintiff with resisting arrest under N.J.S.A. 2C:29-2,

obstruction of justice under N.J.S.A. 2C:19-1, unsafe lane change under N.J.S.A. 39:4-88, failing to have a passenger mirror under N.J.S.A. 39:3-71 and driving with an expired license under N.J.S.A. 39:3-10.

19. Thereafter, plaintiff retained counsel to represent him in connection with the charges brought against him by defendant.

20. Plaintiff was required to attend various Court hearings and was required to incur significant legal expenses and costs in defending the wrongful criminal charges initiated by defendant.

21. Plaintiff pled not guilty to the resisting arrest and obstruction of justice charges.

22. A trial was held in Mount Olive Municipal Court before The Honorable Brian Levine on three dates in November and December 2012.

23. Judge Levine dismissed the resisting arrest charge after the State rested its case. At the conclusion of the trial, plaintiff was found guilty of all remaining charges.

24. Thereafter, plaintiff appealed his obstruction of justice conviction to the Superior Court of New Jersey, County of Morris.

25. On August 15, 2013 The Honorable Mary Gibbons Whipple reversed plaintiff's conviction for obstruction of justice. During the course of her oral opinion, Judge Gibbons Whipple stated on the record that she was "appalled by the conduct of the police in this tape" and that she found "it rather disturbing . . ."

FIRST COUNT

1. Plaintiff repeats the allegations set forth above as if set forth at length herein
2. Defendant deprived plaintiff of various rights and privileges set forth in the New Jersey State Constitution ("N.J. Constitution"), which deprivations are actionable pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA").
3. Plaintiff was arrested without probable cause and subjected to false arrest and false imprisonment. The facts and circumstances within defendant's knowledge were not sufficient to warrant a reasonable person to believe that plaintiff had committed the offense of obstruction of justice or resisting arrest.
4. Plaintiff was deprived of procedural and substantive due process, deprivation of liberty, and was subjected to false arrest and false imprisonment by defendant in violation of Article 1, Paragraph 1 of the New Jersey Constitution, which violations are actionable pursuant to the N.J.C.R.A.
5. Plaintiff did not obstruct, impair or pervert the administration of the law prior to his arrest. Further, plaintiff did not attempt to flee, prevent his arrest, or take any action consistent with an attempt to resist arrest.
6. Plaintiff was wrongfully seized by defendant and suffered a lengthy loss of liberty and freedom of movement as a result of defendant's wrongful conduct.
7. As a result of defendant's wrongful conduct, plaintiff has been injured.

SECOND COUNT

1. Plaintiff repeats the allegations set forth above as if set forth at length herein.
2. Defendant utilized excessive and unreasonable force upon plaintiff.
3. Under the circumstances defendant's conduct in grabbing plaintiff and subduing him

to the ground with force was clearly unreasonable in light of all of the circumstances including, but not limited to: the fact that two other police officers were present; plaintiff had been previously subjected a pat-down search establishing the lack of any weapon; the minimal severity of the offense at issue; plaintiff's passivity and cooperativeness during the stop; the lack of any criminal history establishing plaintiff to be a threat and the fact that plaintiff was not resisting arrest or attempting to evade the police officers.

4. Defendant's aforementioned conduct is in violation of plaintiff's rights to liberty, freedom from unreasonable searches and seizures, procedural and substantive due process and other rights guaranteed by Article 1, Paragraph 1 and Article 1, Paragraph 7 of the New Jersey Constitution which violations are made actionable by the N.J.C.R.A.

5. As a result of defendant's wrongful conduct, plaintiff sustained physical injury and has been otherwise injured.

THIRD COUNT

1. Plaintiff repeats the allegations above as if set forth at length herein.

2. Defendant initiated criminal proceedings against plaintiff without probable cause, as set forth above, and subjected plaintiff to malicious prosecution. The criminal proceedings initiated by defendant ended in plaintiff's favor. Defendant acted maliciously and for a purpose other than bringing plaintiff to justice. Further, during the course of the proceedings, as set forth above, plaintiff was deprived of liberty and other constitutional rights as set forth above.

3. Defendant falsely charged plaintiff with the offenses of obstruction of justice and resisting arrest in a pretextual and retaliatory attempt to justify his excessive and unreasonable force upon plaintiff.

4. As a result of the wrongful criminal charges initiated by defendant, plaintiff was forced to retain counsel and incur significant expense to defend himself in the Municipal and Superior Court proceedings.
5. Further, as set forth above, plaintiff was seized and subjected to a loss of liberty and freedom of movement.
6. Defendant deprived plaintiff of procedural and substantive due process, rights to liberty, freedom from unreasonable searches and seizures and other rights guaranteed by Article 1, Paragraphs 1 and 7 of the New Jersey Constitution, made actionable by the N.J.C.R.A.
7. As a result of defendant's wrongful conduct, plaintiff has been injured.

FOURTH COUNT

1. Plaintiff repeats the allegations above as if set forth at length herein.
2. As set forth above, after stopping plaintiff on Rt. 46, defendant said he smelled raw marijuana and demanded that plaintiff consent to a search of his vehicle. Defendant's request to search plaintiff's vehicle was pretextual and based on fabricated assertions of the smell of raw marijuana. In fact, defendant's fabrication was confirmed when the K-9 Unit arrived, plaintiff's vehicle was completely searched and no evidence of any marijuana or other CDS was found.
3. Plaintiff, exercising rights guaranteed by Article 1, Paragraphs 1, 6 and 7 of the N.J. Constitution including, but not limited to, rights to procedural and substantive due process, freedom of speech and freedom from unreasonable searches and seizures, refused to consent to the search.
4. As set forth above, as a result of plaintiff's refusal to consent to the search, defendant

became irritated and angry at plaintiff and asserted that plaintiff was wasting his time by requiring defendant to request a K-9 Unit to the scene to conduct a search.

5. Defendant subjected plaintiff to retaliation for plaintiff's aforementioned constitutionally protected conduct in refusing to consent to a search, by subjecting plaintiff to the aforementioned deprivations of his constitutional rights as set forth above.

5. As a result of defendant's wrongful conduct, plaintiff has been injured.

FIFTH COUNT

1. Plaintiff repeats the allegations of the Facts Common to all Counts and the First, Second, Third and Fourth Counts as if set forth at length herein.

2. Defendant subjected plaintiff to an unreasonable and illegal search of his person and vehicle in violation of plaintiff's rights to procedural and substantive due process, liberty and freedom from unreasonable searches and seizures, in violation of Article 1, Paragraphs 1 and 7 of the New Jersey Constitution, which violations are made actionable by the N.J.C.R.A.

3. As a result of defendant's wrongful conduct, plaintiff has been injured.

WHEREFORE, plaintiff demands judgment against defendant for compensatory damages, emotional distress damages, punitive damages, attorney's fees and costs, interest and any other relief the Court deems just.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury as to all Counts and Issues.

RULE 4:5-1(c) DESIGNATION OF TRIAL COUNSEL

John F. McDonnell is hereby designated as trial counsel for plaintiff.

RULE 4:5-1(b)(2) CERTIFICATION

I, the undersigned, certify that the matter in controversy is not the subject of any other action or arbitration proceeding and no such action or arbitration proceeding is contemplated. Further, I am not aware, at this time, of any other parties that should be joined in this action.

McDONNELL ARTIGLIERE
Attorneys for Plaintiff

By: _____
JOHN F. McDONNELL, ESQ.

DATED: 10/31/13

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 Attorneys for Defendant

CARL J. GRANESE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MORRIS COUNTY
Plaintiff,	:	
vs.	:	DOCKET NO.: MRS- L-2957-13
	:	
ANTHONY GARDNER,	:	Civil Action
	:	
Defendant.	:	SETTLEMENT AGREEMENT
	:	AND RELEASE
	:	

THIS SETTLEMENT AGREEMENT AND RELEASE (Settlement Agreement”) is made and entered into this 30 day of ^{November}~~December~~, 2015 by and between plaintiff, Carl J. Granese (hereinafter referred to as “Plaintiff” or “Releasor”), and defendant, Anthony Gardner (hereinafter referred to as “Defendant”) together with their affiliated, parent or subsidiary corporation, or agencies, and their owners, officers, counsel, servants, agents, employees, underwriters, principals, insurers, successors and assigns (collectively with Defendants referred to as “Releasees”).

RECITAL

A. Plaintiff is in an action pending against the Defendant in the Superior Court of New Jersey, Morris County, bearing Docket No. L-2957-13.

B. The parties hereto desire to enter into this Settlement Agreement in order to provide for certain payment, in full settlement and discharge of all claims against Defendant, Anthony Gardner, that is the subject of Plaintiff’s complaint in the above-captioned action,

upon the terms and conditions set forth herein. This settlement is made in full settlement of all claims arising out of and all claims for damages, including for reimbursement or repayment of medical expenses, or medical liens, for personal injuries sustained by Plaintiff, Carl J. Granese, as a result of an incident that took place on or about April 19, 2012, in Mount Olive, New Jersey, which claims formed the basis of a lawsuit filed in the Superior Court of New Jersey, Law Division, Morris County, captioned Carl J. Granese vs. Anthony Gardner, Docket No. L-2957-13, in which the Plaintiff alleges that he sustained injuries as a result of Defendant's actions (hereinafter "subject incident").

AGREEMENT

The parties to this lawsuit hereto agree as follows:

1. Release and Discharge

For and in consideration of \$60,000.00, to be paid as follows: \$60,000.00 by or on behalf of Defendant, Anthony Gardner, made payable through counsel to Plaintiff, Carl J. Granese, by and on behalf of Defendant, Plaintiff does, for himself and his agents, heirs, administrators, executors, successors, assigns and insurers, hereby release, acquit and forever discharge Releasees, from any and all past, present, and future claims, suits, demands, losses, costs, charges, complaints, actions, expenses or causes of action, and any other claim whatsoever that has arisen or may arise from or by reason of damages that have resulted or may hereafter result from the subject allegation and for Releasees' conduct relating thereto, and for which Releasor claims Releasees are legally liable in part or in whole. The consideration for this Release is a full and complete compromise and settlement of any and all of the aforesaid pending, future and possible, known or unknown, claims and matters being released herein.

Releasor agrees, through his attorneys or representatives, to dismiss all legal actions with prejudice as being fully compromised and settled with respect to Releasees including, but not limited to, the litigation described in the Recital above.

Releasor warrants that:

- (a) Releasor has the sole right and exclusive authority to execute this Release and receive the sum specified herein; and
- (b) Releasor has not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Release.

1. Warrant of Capacity to Execute Agreement:

Releasor warrants that he has not been induced to execute this Release by any representation, promise, warranty, covenant or agreement made by or on behalf of Releasees or any other party or person, other than those matters specifically set forth herein.

Releasor warrants that he is of legal age, and under no legal disability of any kind, and is fully and completely competent to execute and deliver this Release, and is fully authorized to execute this Release on his behalf in the litigation described more fully in the Recital above.

2. General Release:

Releasor hereby acknowledges and agrees that the Release set forth in Paragraph 1 hereof is a General Release as to Releasees, and further expressly waives and assumes the risk of any and all claims for damages of which he is aware, and those which Releasor does not know of or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect his decision to enter into this Settlement Agreement. Releasor further agrees that payment of the sums specified herein

have been accepted as a complete compromise and satisfaction of matters involving disputed issues of the law and fact. Releasor fully assumes the risk that the facts and the law may be otherwise than Releasor believes them to be.

3. Dismissal with Prejudice:

Counsel for Releasees have delivered to counsel for Releasor herewith a proposed Stipulation of Dismissal, dismissing all of Releasor's claims against Releasees with prejudice, which Stipulation of Dismissal shall be executed by Releasor's counsel, returned to Releasees' counsel, and filed with the Court and a copy thereof provided to Releasor's counsel.

4. Agreement to Hold Harmless and Indemnify:

Releasor agrees to hold harmless and to indemnify Releasees from any claims that may be asserted by Releasor against any third party arising out of or which may arise out of the facts and circumstances set forth in the Complaint. Releasor further agrees to satisfy any liens, claims or encumbrances asserted by any third party relating to or arising out of or which may arise out of the subject incident and/or the alleged conduct of Releasees with regard to the subject incident and, as such, will hold Releasees harmless and indemnify Releasees from any claims or rights asserted against Releasees by any third party asserting such liens, claim or encumbrance. This provision specifically encompasses, but is not limited to, any and all outstanding attorney, medical, hospital and chiropractic bills relating to the subject incident.

5. Entire Agreement and Successors in Interest:

This Settlement Agreement contains the entire agreement between Plaintiff and Defendant with regard to the matters set forth herein, and supersedes any prior written or oral agreements, understandings or arrangements. This Settlement Agreement shall be binding

upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

6. **Confidentiality:**

As a condition of this Settlement Agreement, Plaintiff and his attorneys hereby agree not to reveal either the terms and conditions of this Settlement Agreement or the amount or range of amount of said compromise payment and settlement made on behalf of Defendant to anyone at any time, except insofar as any such disclosure may be required by law.

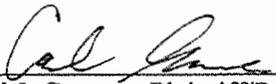
~~It is understood and agreed that all document, including any drawings, photographs, labels, videos and all written material of every description, and all copies thereof of notes pertaining to this matter, which have been produced by Defendant in discovery in the within matter shall be returned forthwith to counsel for the Defendant contemporaneously with the delivery of the executed Settlement Agreement and Release.~~

JFM
CG

7. **Representation of Comprehension of Documente:**

In entering into this Settlement Agreement, Releasor represents that he is and has been represented by counsel of his choice at the time of execution of this Settlement Agreement and Release, and that the Releasor has relied upon the legal advice of such counsel, that the terms of this Settlement Agreement have been completely read and explained to the Releasor by said counsel and that those terms are fully understood and voluntarily accepted by the Releasor.

Executed this 30 day of ~~December~~ November, 2015.


Carl J. Granese, Plaintiff/Releasor

