

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

DECARI JENKINS,)	
)	
PLAINTIFF,)	CIVIL ACTION NO:
)	
v.)	
)	
ERIC SMITH,)	
)	JURY DEMAND
DEFENDANT.)	

COMPLAINT

Comes now Plaintiff, Decari Jenkins, and brings this complaint and alleges as follows:

1. Plaintiff Decari Jenkins (hereinafter referred to as "Jenkins") is over the age of nineteen (19) years, is a citizen of the State of Alabama and is domiciled, in Jefferson County, Alabama.

2. Defendant Eric Smith, (hereinafter referred to as "Smith") is over the age of nineteen (19) years, and is domiciled in the State of Florida.

3. Jurisdiction is established in this action based on diversity of citizenship and amount under 28 U.S.C. § 1332. Plaintiff, Decari Jenkins, is a citizen of the State of Alabama. Defendant Eric Smith is domiciled in the State of Florida. The incident making the basis for this complaint occurred in Lee County, Alabama which is located in the Middle District of Alabama territory. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332.

BACKGROUND

4. On or about August 21, 2009, Plaintiff, with a friend, attended a function at the Lexington Hotel. While there, Plaintiff was approached by two presently unnamed

Auburn football players in a provocative and belligerent manner. In an attempt to avoid a confrontation, Plaintiff's friend stepped between Plaintiff and the two Auburn football players and said: "We don't want any trouble." Immediately after making the statement, Plaintiff's friend was punched by one of the Auburn football players and rendered unconscious with one blow. Totally unconscious, Plaintiff's friend was removed from harm's way by bystanders. Defendant Eric Smith, also an Auburn football player, then approached Plaintiff in a hostile and aggressive manner and slapped a drink from his hand.

5. Defendant Smith, with the aid of his cohorts began to pummel Plaintiff Jenkins with hands and fists about his face and body. Though Plaintiff attempted to defend himself he was knocked to the floor where Defendant Smith and his cohorts continued to punch and kick him. Plaintiff sustained injuries from the initial assault, however; Plaintiff was able to escape the assault and fled down the outside stairway to the front of the hotel.

6. While standing in front of the hotel, Plaintiff attempted to make a call on his cell phone. Standing twenty to thirty feet from the Plaintiff stood four Auburn City Police Officers.

7. The Plaintiff was facing the driveway, with his back to the hotel. Defendant Smith ran out of the crowd very rapidly, drew his fist back and punched the Plaintiff in the back of the head. Plaintiff Jenkins went limp immediately. Defendant Smith then kicked the Plaintiff, turned away from the officers, and casually walked away as if nothing had happened, leaving Jenkins unconscious in a pool of blood. While blood was covering the asphalt, one of the police officers administered help to the Plaintiff and made sure nothing else happened to him because he was unconscious on the ground. The

officer called the paramedics. When Plaintiff came to, he was dazed and disoriented. He had a knot over his eye the size of a tennis ball. He was bleeding badly from a gash over his eye. He was transported by paramedics to the hospital where he was given medical care and released the next morning.

8. Defendant Smith was apprehended by Auburn Police, handcuffed and escorted to a police car for transportation to the jail. The Auburn Police Officers were approached by Auburn football players wearing Auburn University attire who identified Defendant Smith to the officers as being a football player. They also inquired as to "what could be done."

9. Criminal charges were filed against Defendant Smith by the Plaintiff and the Auburn Police. Ten days after the incident, Defendant Smith was allowed to file a charge against the Plaintiff. The charge against the Plaintiff was later dismissed with prejudice.

10. Plaintiff suffered and continues to suffer grievous and permanent injury as a result of Defendants' actions. During the initial assault, Plaintiff received bruises and contusions. Plaintiff's gash to the head required fourteen stitches. He has permanent scarring to his face. He received a concussion and has been diagnosed as having classic Post Concussion Syndrome manifesting itself in an altered gait, inability to concentrate, headaches, sleeplessness, vertigo and nausea. Plaintiff is a fifth year engineering student with a minor in business. His injuries have significantly impaired his ability to execute his education. Plaintiff has incurred substantial hospital, diagnostic and medical bills.

COUNT I

11. The Plaintiff hereby adopts and re-alleges each and every foregoing paragraph of this Complaint as if set out herein in full.

12. Defendant Smith did intentionally, willfully and wantonly physically assault the Plaintiff by hitting and punching him about his person while in the hotel and Defendant Smith did intentionally, willfully, and wantonly physically assault the Plaintiff by running up behind him and slamming him in the head, knocking him to the ground rendering him unconscious, then kicking him as he walked away.

13. As a result of Defendants actions, Plaintiff suffered physical and emotional damage as well as incurring medical and other expenses.

COUNT II

14. The Plaintiff hereby adopts and re-alleges each and every foregoing paragraph of this Complaint as if set out herein in full.

15. Defendant Smith conspired to physically assault the Plaintiff. The Defendant aided, abetted and assisted others, in the physical assault of the Plaintiff and either encouraged and participated in the assault or did not interfere with the perpetration or commission of the assault.

16. As a result of Defendants actions, Plaintiff suffered physical and emotional damage as well as incurring medical and other expenses.

COUNT III

17. The Plaintiff hereby adopts and re-alleges each and every foregoing paragraph of this Complaint as if set out herein in full.

18. As Defendant Eric Smith is a well known college football figure, the violent, inappropriate conduct of the Defendant Eric Smith necessitates an award of

punitive damages, to punish him for his misdeeds and to provide economic incentive to discourage him from engaging in further violent activity that would result in the injury to persons and to deter others in his position from acting in kind and to compensate Plaintiff for his ongoing physical and psychological injuries.

PRAYER FOR RELIEF

1. In view of the foregoing allegations, Plaintiff prays that this Court assume jurisdiction of this cause;
2. Grant Plaintiff compensatory and punitive damages against each of the individual defendants;
3. Award such other and further relief as this Court may deem appropriate.

WENDY BROOKS CREW

D.W. GRIMSLEY, JR.

CREW & HOWELL, P.C.
2001 Park Place North, Suite 550
Birmingham, AL 35203
(205) 326-3555

Defendant's Address:
4905 84th Street
Tampa, FL 33619