

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

CASE NO..

VASSILI MIRONOV,

Plaintiff,

v.

THE CITY OF FLAGLER BEACH, Florida,  
a municipality,

Defendant.

---

**COMPLAINT**

Plaintiff, VASSILI MIRONOV, by and through the undersigned attorney, sues  
Defendant, THE CITY OF FLAGLER BEACH, Florida, as follows:

1. This Court has jurisdiction over this matter as the amount in controversy exceeds \$15,000.00, exclusive of attorney's fees and costs.
2. At all times relevant to this cause of action, Plaintiff was a resident of Flagler County, Florida.
3. Defendant is a municipality, organized under Florida law, and located in Flagler County, Florida.
4. The incident upon which this Complaint is based occurred in Flagler County, Florida.
5. On January 23, 2015, Plaintiff sent a letter via certified mail to the Claims Administrator for the City of Flagler Beach, Florida, pursuant to Section 768.28 of the Florida Statutes. A copy of Plaintiff's letter is attached hereto as Exhibit "A". Plaintiff has redacted his social security number from the letter.

**FALSE ARREST AND IMPRISONEMENT**

**Factual Basis**

6. Plaintiff realleges and reincorporates the facts contained in paragraphs 1 through 5 above.

7. On March 19, 2014, Plaintiff arrived at Finn's Bar in Flagler Beach, Florida with Roman Dubinschi and Joshua Auriemma.
8. Shortly after arriving at Finn's Bar, Mr. Dubinschi and Mr. Auriemma were approached by an individual named Ralph Ortiz. Mr. Ortiz attempted to initiate a fight with Mr. Auriemma over a spilled drink.
9. Mr. Ortiz's stepson, James Avdoulos, stepped in front of Mr. Ortiz to prevent a fight. The parties subsequently separated.
10. However, a few minutes later, Mr. Ortiz approached Mr. Auriemma and struck him in the face. A fight began between the parties, which moved outside of the bar area. Security camera footage from inside of Finn's Bar recorded the incident.
11. Plaintiff was not involved in the fight with Mr. Ortiz and did not touch or strike Mr. Ortiz at any time.
12. Deputy Nunziato of the Flagler County Sheriff's Office arrived at Finn's Bar after the fight moved outside into the parking lot.
13. Deputy Nunziato observed the end of the fight and arrested Mr. Auriemma after witnessing Mr. Auriemma strike another individual. Deputy Nunziato then called for assistance from the Flagler Beach Police Department and turned the investigation over to the Flagler Beach Police Department.
14. Prior to doing so, Deputy Nunziato did not identify Plaintiff as a participant in the fight.
15. Officer Pineda and Officer McCraney of the Flagler Beach Police Department subsequently arrived at Finn's Bar in response to Deputy Nunziato's call.
16. In his charging affidavit for the incident, Officer McCraney stated that he was given numerous conflicting reports regarding the instigators of the fight. He further stated that the bouncer at Finn's Bar informed him that the fight started inside and that all parties, including Mr. Ortiz and Mr. Avdoulos, instigated the fight.
17. Officer McCraney did not make any arrests and forwarded his charging affidavit to the Flagler County State Attorney's Office.
18. Officer Pineda made contact with Deputy Nunziato immediately after arriving at the scene. According to Officer Pineda's charging affidavit, Deputy Nunziato could not identify any individuals involved in the fight, other than Mr. Auriemma.

19. Officer Pineda was aware of numerous conflicting statements regarding the participants and instigators of the fight. He was also aware that Finn's Bar had a working security camera system inside.

20. However, Officer Pineda singled out one (1) witness, Jenuk Neku, who allegedly stated that Plaintiff was involved in the fight. According to Officer Pineda's charging affidavit, Mr. Neku stated that the fight began as a verbal altercation inside of Finn's Bar.

21. Officer Pineda failed to review the security camera footage inside of Finn's Bar prior to arresting Plaintiff for one (1) count of disorderly conduct and one (1) count of battery.

22. After placing Plaintiff under arrest, Officer Pineda transported Plaintiff to the Flagler County Inmate Facility. Plaintiff was then booked into the Flagler County Inmate Facility.

### **Legal Argument**

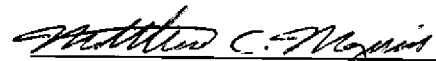
A claim for false arrest and imprisonment is based upon the unlawful restraint of a person against that person's will. Probable cause is required in order to effectuate an arrest of an individual. The existence of probable cause is determined by the totality of the circumstances of a particular situation. An Officer is held to a reasonable person standard when determining whether probable cause exists. The facts and circumstances, based upon reasonably trustworthy information, must be such that "would cause a prudent person to believe" the suspect has committed a crime. *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002) (quoting *Williamson v. Mills*, 65 F.3d 155, 158 (11th Cir. 2002)).

Officer Pineda's arrest of Plaintiff was not reasonable. Officer Pineda failed to review all of the evidence available to him prior to arresting Plaintiff. In addition, Officer Pineda chose to ignore the reasonably trustworthy information available to him at the time of arrest and instead relied upon the untruthful statement of one (1) witness when arresting Plaintiff. Officer Pineda did not act reasonably when arresting Plaintiff and his arrest of Plaintiff was unlawful.

Plaintiff sustained damages as a direct and proximate result of his unlawful arrest and detention.

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment in favor of Plaintiff and against Defendant in the full jurisdictional amount.



MATTHEW C. MAGUIRE

Florida Bar No.: 0884561

109 S. 6<sup>th</sup> St., Suite 200

Flagler Beach, FL 32136

Telephone: (386) 439-2332

Facsimile: (386) 439-6522

Email: [flaglerlawyers@aol.com](mailto:flaglerlawyers@aol.com)

ATTORNEY FOR PLAINTIFF

**Exhibit "A"**

# *Nowell, Bayer & Maguire*

## *Flagler Law Attorneys*

Website: [www.flaglerlaw.com](http://www.flaglerlaw.com)

Sidney M. Nowell, P.A.  
Dennis K. Bayer, Esq.  
Matthew C. Maguire, Esq.

Reply to:  
Flagler Beach  
109 South 6<sup>th</sup> Street, Suite 200  
Flagler Beach, FL 32136  
Tel: 386-439-2332  
Fax: 386-439-6522

---

October 8, 2015

Claims Administrator  
City of Flagler Beach  
P.O. Box 70  
105 S. 2nd St.  
Flagler Beach, FL 32136  
*sent via certified mail delivery*

Re: Vassili Mironov

Dear Claims Administrator:

This firm represents Vassili Mironov in reference to his arrest by Officer Pineda of the Flagler Beach Police Department on March 19, 2014, on charges of battery and disorderly conduct.

On March 19, 2014, my client arrived at Finn's Bar in Flagler Beach with two (2) friends. Shortly after arriving, one of my client's friends was confronted by Ralph Ortiz, after a drink was accidentally spilled on Mr. Ortiz. My client's friend apologized to Mr. Ortiz and Mr. Ortiz's stepson, James Avdoulos, separated the parties. A few minutes after being separated, Mr. Ortiz confronted the same individual again and attacked him. A physical altercation ensued as my client's friend defended himself from the unprovoked attack. The above-described altercation can clearly be seen on the bar security camera footage. The parties then proceeded outside into the bar parking lot. My client was not a party to the altercation and did not strike Mr. Ortiz at any time.

Officer Pineda and Officer McCraney, of the Flagler Beach Police Department, arrived at the bar in response to a call from Deputy Nunziato of the Flagler County Sheriff's Office regarding a physical altercation. When they arrived, Officer Pineda and Officer McCraney began to investigate the altercation further.

Officer McCraney produced a charging affidavit regarding the incident, in which he states that he spoke to numerous bystanders to determine what happened. Officer McCraney states that some bystanders informed him that all parties instigated the altercation, while other bystanders blamed each side. Officer McCraney also spoke to a

bouncer at Finn's Bar named Brian, who informed the Officer that the altercation began inside the bar. Brian could not identify a primary aggressor, but stated that Mr. Ortiz and Mr. Avdoulos were active participants in the altercation. Neither Mr. Ortiz nor Mr. Avdoulos were arrested or charged with a crime despite their involvement.

Officer Pineda also produced a charging affidavit regarding the incident, in which he states that only one bystander, Jenuk Neku, was willing to give a verbal statement about the altercation. Officer Pineda states that Mr. Neku informed the Officer that the altercation took place inside of the bar as a verbal argument only, between Mr. Ortiz, my client, and my client's two (2) friends. According to Mr. Neku, once Mr. Ortiz walked outside, the other individuals followed him and instigated the altercation in the parking lot. Officer Pineda subsequently arrested my client for battery and disorderly conduct based solely upon Mr. Neku's verbal statement. Mr. Neku did not provide a written statement.

Despite the fact that he was aware of the existence of security camera footage of the altercation, Officer Pineda neglected to review the footage prior to arresting my client. The security camera footage was retained by Officer Yelvington the day after the incident and forwarded to the Flagler County State Attorney's Office. The Flagler County State Attorney's Office eventually dismissed both charges filed against my client.

False arrest is the unlawful restraint of a person against that person's will. *Willingham v. City of Orlando*, 929 So.2d 43, 48 (Fla. 5th DCA 2006). While probable cause is an affirmative defense to false arrest, probable cause only exists when the circumstances are sufficient to cause a reasonably cautious person to believe that the person accused is guilty of the offense charged. *Maily v. Jenne*, 867 So.2d 1250, 1251 (Fla. 4th DCA 2004).

The information available to Officer Pineda, prior to arresting my client, was not sufficient to establish probable cause. Officer Pineda was aware of multiple conflicting statements from bystanders regarding how and where the altercation was initiated. Officer Pineda was aware that the alleged victim of the altercation did not sustain any cuts or abrasions and was treated only for pain in his leg. In addition, the bouncer at the bar stated that the physical altercation occurred inside of the bar and Officer Pineda was aware that there was security camera footage of that area. However, Officer Pineda chose to disregard the bouncer's statement, failed to review the security camera footage and relied solely upon a conflicting statement from an unreliable and intoxicated bystander as a basis for the arrest of my client. The information available to Officer Pineda at the time of arrest would lead a reasonably cautious person to believe that my client was not guilty of the offenses charged.

Consider this letter to be a formal notice of my client's intent to seek damages pursuant to the provisions of Section 768.29 of the Florida Statutes. As a direct and proximate result of the wrongful actions of the Flagler Beach Police Department, my client has sustained significant damages.

My client has no judgments against him or other disabilities as set forth in the provisions of Section 768, including unpaid child support. My client was born in Moscow, Russia, on January 25, 1986, and his social security number is [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Maguire". The signature is fluid and cursive, with a large loop at the end of the last name.

Matthew C. Maguire

MCM