

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CASE NO.: 3:19-cv-00908

JACOB AARON LEVEILLE,

Plaintiff,

v.

RYAN EDWARD UPCHURCH
professionally known as UPCHURCH,

Defendant.

COMPLAINT FOR VIOLATION OF THE VISUAL ARTISTS RIGHTS ACT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff JACOB AARON LEVEILLE, by and through his undersigned counsel, brings this Complaint against Defendant, RYAN EDWARD UPCHURCH professionally known as UPCHURCH, for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff JACOB AARON LEVEILLE (“LeVeille”), brings this action for violations of his rights as a visual artist under the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A, for the intentional violation of LeVeille's right of integrity in his original works of visual art.
2. LeVeille is a young visual artist and painter who resides in Jacksonville, Duval County, Florida.
3. LeVeille’s unique paintings of country musicians have achieved growing acclaim among visual art and country music aficionados. LeVeille’s work is featured in the Loretta Lynn Coal Miner’s Daughter Museum and other galleries.

SRIPLAW

21301 POWERLINE ROAD, SUITE 100, BOCA RATON, FLORIDA 33433

4. Defendant RYAN EDWARD UPCHURCH professionally known as “Upchurch” (“Upchurch”), is an individual residing in Cheatham County, Tennessee.

5. Upchurch is a country music performer. Upchurch initially gained notoriety through YouTube, Facebook and other social media outlets. Beginning in 2016, Upchurch released ten studio albums, and several have reached the top 30 on Billboard’s Top Country album charts. Upchurch has garnered a substantial online following where his videos reach millions of viewers.

6. LeVeille sues Upchurch for intentionally mutilating LeVeille's works using an assault rifle, posting video recordings of Upchurch’s destruction of LeVeille’s works on social media, and for subsequently distributing LeVeille’s mutilated works for purposes of damaging LeVeille’s honor and reputation and the reputation of LeVeille’s art.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Upchurch is subject to personal jurisdiction in Florida under Florida’s Long Arm Statute, Fla. Stat. § 48.193.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because substantial events giving rise to the claims occurred in this district and Defendant is subject to personal jurisdiction in this district.

BACKGROUND

10. On or around December 23, 2016, LeVeille first met Upchurch in Florida at an Upchurch concert. During this first meeting, LeVeille showed his art to Upchurch. On the spot, Upchurch sought to purchase a LeVeille portrait of LeVeille and Upchurch together.

11. On or around May 27, 2017, LeVeille delivered the completed portrait which was paid for by Upchurch. This work is not a subject of this dispute.

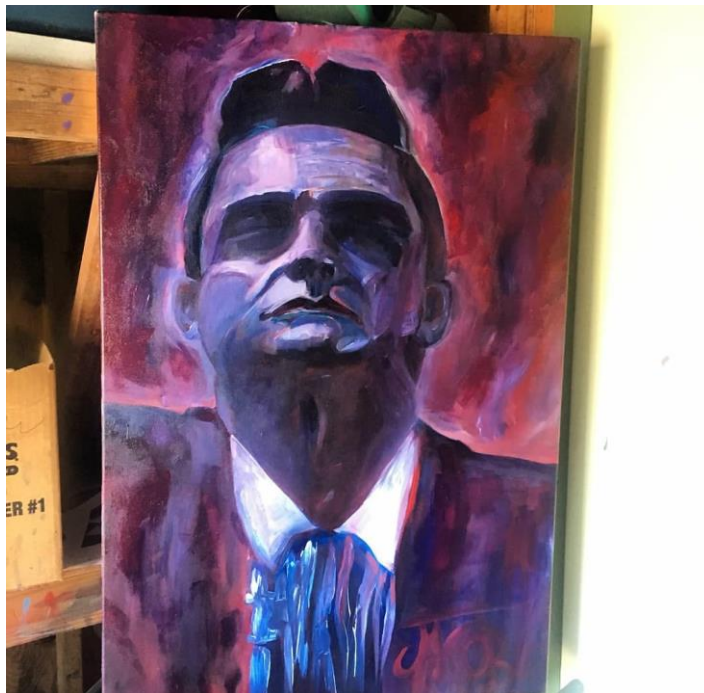
12. Upon receiving LeVeille's first artwork, Upchurch contacted LeVeille in Jacksonville and requested two additional works. The first work was a new commission of a portrait of country performer Kane Brown ("Brown Portrait"). The second work was a portrait of the late, great country musician Hank Williams Sr. that LeVeille had painted previously ("Hank Sr. Portrait").

13. On or around August 5, 2017, LeVeille delivered to Upchurch in Astatula, Florida, in this federal district, LeVeille's Brown Portrait and his Hank Sr. Portrait. These works are not the subject of this dispute.

14. On or around January 23, 2018, Upchurch commissioned LeVeille, for a fee, to paint Upchurch's portrait ("Upchurch Portrait"). LeVeille agreed and painted the Upchurch Portrait, which is shown below.



15. On or around October 27, 2018, Upchurch gave a performance in Fort Myers, Florida. Following the performance, LeVeille delivered to Upchurch's agent, Chad Sheppard, of Live Fast Entertainment, LLC, the Upchurch Portrait and another portrait by LeVeille from his personal collection. This second portrait was of country music legend Johnny Cash ("Cash Portrait"). The Cash Portrait is shown below.



16. The Upchurch Portrait and the Cash Portrait were not paid for upon delivery.

17. After the delivery of the Upchurch Portrait and Cash Portrait, LeVeille made repeated attempts to obtain payment for his works or, in the alternative, to obtain their return.

18. Despite LeVeille's repeated attempts to obtain payment or the return of his paintings, LeVeille never received assurances that his works would be paid for or returned.

19. Beginning on or around November 8, 2018, LeVeille and Upchurch began a dispute on social media over the payment for or return of the Cash Portrait and Upchurch Portrait.

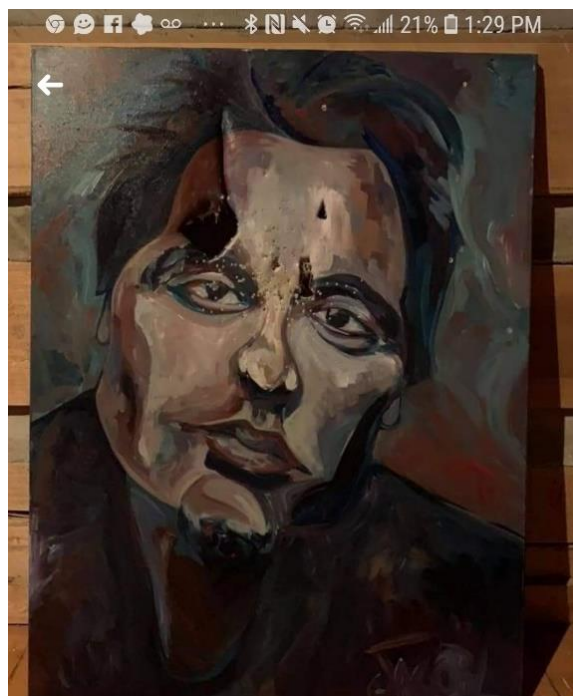
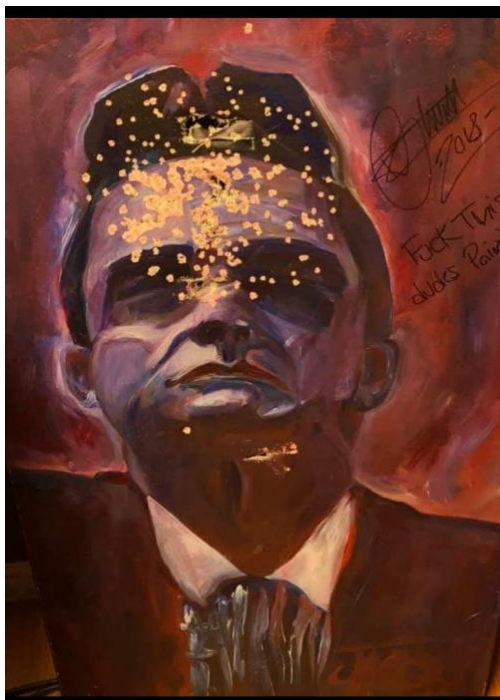
20. On or around November 9, 2018, Upchurch created a video and posted the video to the public on social media including on Instagram where Upchurch had 1.4 Million followers at the time of video.

21. In the video, Upchurch repeatedly defamed LeVeille.

22. In the video, Upchurch fired tens if not hundreds of rounds from a shotgun and an automatic assault rifle at the Cash Portrait and Upchurch Portrait, mutilating them.

23. A true and correct copy of the “shooting” segment of Upchurch’s video is currently posted at the following URL on the internet: <https://www.instagram.com/p/Bp9O-H9FJuu/?igshid=tftkhvncvnu0>. A true and correct copy of the full video will also be conventionally filed with the court.

24. After mutilating the Upchurch Portrait and Cash Portrait, Upchurch signed his name on both mutilated portraits and wrote “Fuck This dudes Paintings” on the Cash Portrait. True and correct copies of the mutilated portraits are shown below.



25. In or around March of 2018, at the direction of Upchurch, the mutilated portraits were auctioned off to the general public by a Tennessee organization called Cheatham County After Dark. True and correct screenshots of the mutilated paintings, as publicly auctioned and promoted on social media are shown below.



COUNT I
**INTENTIONAL VIOLATION OF A VISUAL ARTIST'S RIGHT OF INTEGRITY
UNDER VARA**

26. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 25 as if fully set forth herein.

27. Plaintiff is the author of the Cash Portrait and the Upchurch Portrait.

28. The Cash Portrait and the Upchurch Portrait are works of visual art.

29. At all relevant times, Plaintiff had the right to prevent any intentional distortion, mutilation, or other modification of the Cash Portrait and the Upchurch Portrait that would be prejudicial to his honor or reputation.

30. Without permission, authorization, or right, Upchurch intentionally distorted, mutilated and/or modified the Cash Portrait and the Upchurch Portrait by a) firing automatic firearms at the portraits, b) by signing his own name to both, and c) by writing defamatory profanity directed at LeVeille on the Cash Portrait.

31. Upchurch intentionally harmed LeVeille's honor, reputation, and growing status as a visual artist by publicly disseminating the defamatory video in which he mutilated the Cash Portrait and the Upchurch Portrait and by subsequently displaying the mutilated portraits and distributing images of them publicly on social media, on the internet, and to Upchurch's over 1 million social media followers on the internet.

32. Upchurch further intentionally prejudiced LeVeille's honor, reputation, and growing status as a visual artist by distributing the mutilated Cash and Upchurch Portraits for sale at a public auction.

33. Upchurch's acts were willful and malicious with the intent to cause reputational harm to LeVeille.

34. LeVeille has been damaged.

35. The harm caused to LeVeille has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant Ryan Upchurch that:

a. Defendant and his officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the further acts of mutilation to the works of LeVeille;

b. Defendant return the Cash Portrait and Upchurch Portrait to LeVeille;

c. Defendant be required to pay Plaintiff his actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

d. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

e. Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of his unlawful conduct;

f. Plaintiff be awarded prejudgment interest; and

g. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: August 5, 2019

Respectfully submitted,

/s/ Joel B. Rothman

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