

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15 CV 1759

LEVI FRASIER,

Plaintiff,

v.

Denver Police Officers CHRISTOPHER L. EVANS, # 05151,
CHARLES C. JONES, # 04120, JOHN H. BAUER, # 970321,
RUSSELL BOTHWELL, # 94015, As-yet Unidentified Denver
Police Officers, and CITY AND COUNTY OF DENVER, COLORADO,

Defendants.

COMPLAINT AND JURY DEMAND

Now comes Plaintiff, Levi Frasier, by and through his attorneys, LOEVY & LOEVY, and hereby complains of Defendants Christopher L. Evans, Charles C. Jones, John H. Bauer, Russell Bothwell, As-yet Unidentified Denver Police Officers, and City and County of Denver, Colorado, and states as follows:

Introduction

1. On August 14, 2014, Plaintiff Levi Frasier witnessed Denver police officer Charles Jones punch an unarmed civilian numerous times in the head and trip a heavily pregnant woman, causing her to fall to the ground. At the time of Officer Jones's punches, the civilian was already on the ground and restrained by Officer Christopher Evans, Detective John Bauer, and Sergeant Russell Bothwell.

2. Believing that the officers were committing acts of misconduct against the unarmed civilian and pregnant woman, Mr. Frasier video-recorded the officers with his Samsung tablet.

3. The officers knew that Mr. Frasier was recording or photographing them. After the officers placed the unarmed civilian under arrest, they surrounded Mr. Frasier, threatened him with arrest, and demanded his video.

4. Having done nothing wrong, Mr. Frasier refused to hand over his tablet or video.

5. Without consent or any lawful justification whatsoever, Officer Evans seized Mr. Frasier's tablet from him and searched it illegally.

6. The officers' actions violated Mr. Frasier's First Amendment right under the United States Constitution to record the police performing their official duties in public. The First Amendment protects the right to gather, receive, record, and disseminate information on matters of public importance relating to civil liberties and civil rights, including the official actions of police officers in public.

7. The officers' actions also violated Mr. Frasier's right to be free from illegal searches and seizures under the Fourth Amendment to the United States Constitution.

8. Plaintiff Levi Frasier now brings this action pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution, as well as to pursue certain state law claims.

Jurisdiction

9. This court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1367.

10. Venue is proper under 28 U.S.C. § 1391(b). All parties reside in this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district.

The Parties

11. Plaintiff Levi Frasier is a citizen of the United States and a resident of Colorado.

12. Defendant Christopher L. Evans is a citizen of the United States, a resident of Colorado, and was and is an officer in the Denver Police Department. At all relevant times, Defendant Evans was employed by the Denver Police Department and was acting within the scope of his employment and under the color of law.

13. Defendant Charles C. Jones is a citizen of the United States, a resident of Colorado, and was an officer in the Denver Police Department. Defendant Jones is currently a sergeant in the Denver Police Department. At all relevant times, Defendant Jones was employed by the Denver Police Department and was acting within the scope of his employment and under the color of law.

14. Defendant John H. Bauer is a citizen of the United States, a resident of Colorado, and was and is a detective in the Denver Police Department. At all

relevant times, Defendant Bauer was employed by the Denver Police Department and was acting within the scope of his employment and under the color of law.

15. Defendant Russell Bothwell is a citizen of the United States, a resident of Colorado, and was and is a sergeant in the Denver Police Department. At all relevant times, Defendant Bothwell was employed by the Denver Police Department and was acting within the scope of his employment and under the color of law.

16. As-yet Unidentified Denver Police Officers are believed to be citizens of the United States, residents of Colorado, and were officers employed by the Denver Police Department at all relevant times. These Officers were acting within the scope of their employment and under the color of law.

17. Defendant City and County of Denver (the “City”) is a Colorado municipal corporation. At all relevant times, it employed Defendants Evans, Jones, Bauer, Bothwell, and As-yet unidentified Denver Police Officers (henceforth collectively referred to as “Defendant Officers”). The City is responsible for the supervision, training, policies, customs and practices of the Denver Police Department.

Plaintiff Witnesses and Records Police Misconduct

18. On the morning of August 14, 2014, Plaintiff Levi Frasier drove near the area of West Fifth Avenue and Federal Boulevard in Denver, Colorado.

19. Mr. Frasier saw two men forcefully pulling a Latino man out of a car in a parking lot, and he decided to video-record it. These two men were Defendants Bothwell and Bauer.

20. Mr. Frasier parked his truck, got out, and began video-recording the Defendants' actions with his Samsung tablet.

21. Defendants Bothwell and Bauer had the Latino man, named David Flores, on the ground. They were attempting to arrest Mr. Flores.

22. Two other Denver police officers, Defendants Evans and Jones, joined Defendants Bothwell and Bauer in arresting Mr. Flores.

23. At some point, there was a sock purportedly containing narcotics in Mr. Flores's mouth. The Defendant Officers attempted to get the sock out of Mr. Flores's mouth.

24. While Mr. Flores was restrained on the ground by Defendants Evans, Bothwell, and Bauer, Defendant Jones punched Mr. Flores numerous times in the head in an apparent attempt to force the sock out of Mr. Flores's mouth. Defendant Jones punched Mr. Flores in the head with such force that his head struck the pavement numerous times, causing serious injury requiring him to be taken away in an ambulance. Mr. Flores was unarmed and restrained at the time of these actions by Defendant Jones.

25. At one point during this incident, Mr. Flores's visibly pregnant girlfriend, Mayra Lazos-Guerrero, stepped forward toward Mr. Flores in an attempt to help him. She posed no threat to any of the Defendant Officers or anyone else.

26. In response to this, Defendant Jones purposefully tripped Ms. Lazos-Guerrero, causing her to fall to the ground, even though she was heavily pregnant and posed no threat.

27. During these events, Mr. Frasier stood at a comfortable distance from the Defendants and openly recorded their actions using his tablet. Mr. Frasier posed no threat to the officers, did not interfere or attempt to interfere with the officers' actions, and did not speak to them.

28. Mr. Frasier recorded events that were a matter of public concern, given that they involved police officers performing their official duties in public.

29. The Defendant Officers knew that Mr. Frasier was either recording or photographing their use of force on Mr. Flores and Ms. Lazos-Guerrero. At one point, Defendant Evans yelled, "Camera!", while Defendant Jones was punching Mr. Flores in the head.

30. After Defendant Evans yelled, "Camera!", Mr. Frasier stopped recording, walked over to his truck, and put his tablet safely in his truck.

**Defendant Officers Threaten Plaintiff with Arrest,
Illegally Detain Him, and Illegally Seize and Search His Tablet**

31. After Mr. Flores's arrest, Defendant Evans or one of the other Defendant Officers asked Mr. Frasier for the video that he had just recorded and asked to see Mr. Frasier's identification.

32. Mr. Frasier showed this Defendant his identification but not the video. He was afraid that the officer wanted to erase his video, and so he told the officer that he did not have any video. This Defendant told Mr. Frasier something to the effect of, "if you don't have the video, then you can't leave until you give a witness statement." This Defendant opened the back door of his squad car and gestured to

the back seat, telling Mr. Frasier something to the effect of, “we can do this the easy way or the hard way.”

33. Given the excessive force that Mr. Frasier had just witnessed Defendant Officers use on Mr. Flores and Ms. Lazos-Guerrero, he was afraid of the Defendant Officers. He did not feel free to leave and believed he had to give a witness statement or else he would be arrested.

34. Defendant Evans wrote out questions on a witness statement for Mr. Frasier to answer.

35. Mr. Frasier eventually signed a witness statement that indicated he had not seen the Defendant Officers do anything inappropriate, even though this was not true. He was afraid to tell the Defendant Officers that he believed they had used excessive force. In his statement, Mr. Frasier also stated that he had only taken a “Snapchat” (a photo that deletes itself after 10 seconds) of the Defendant Officers’ actions and that he did not still possess any video or photo, because he did not want the Defendant Officers to take his tablet or video.

36. At some point, Defendant Bauer or Rothwell told Defendant Evans something to the effect of “if it’s a picture, it’s ok; we only need the video footage.” Defendant Bauer or Rothwell then asked to see the witness statement so that he could determine whether Mr. Frasier was free to leave.

37. The Defendant Officers then conferred with each other. After they conferred, they concluded that Mr. Frasier had taken video, not a photo, of their illegal and excessive use of force on Mr. Flores and Ms. Lazos-Guerrero. The

Defendant Officers agreed with each other to detain Mr. Frasier and threaten him until he produced the video.

38. Defendants Evans, Jones, Bothwell, Bauer, and one or more As-yet Unidentified Denver Police Officers surrounded Mr. Frasier in the parking lot, interrogated him regarding the video, and threatened him with arrest if he did not produce the video. One or more of them told him something to the effect of “we know you have that video and if you don’t have it, then we’ll just take you down to holding.” The Defendant Officers would not allow Mr. Frasier to leave.

39. Mr. Frasier did not want the Defendant Officers to take his tablet or erase the video, so he showed the Defendant Officers his cell phone instead. Defendant Bauer or one of the other Defendant Officers laughed and said something to the effect of, “that’s not it.” This Defendant knew that Mr. Frasier had been recording them with a device that was bigger than a cell phone.

40. Due to the Defendant Officers’ threats, Mr. Frasier felt that he did not have any choice but to retrieve his tablet from his truck.

41. Defendant Evans escorted Mr. Frasier to his truck to retrieve his tablet.

42. After Mr. Frasier retrieved his tablet, Defendant Evans eventually took the tablet from him without permission and searched it without permission. Defendant Evans had no warrant or other lawful justification for seizing or searching Mr. Frasier’s tablet.

43. Mr. Frasier could not find the video on his tablet when Defendant Evans subsequently returned the tablet to him.

44. Fortunately, Mr. Frasier was later able to retrieve the video on his tablet.

45. After the Defendant Officers obtained a witness statement from Mr. Frasier that they deemed satisfactory to them and unlawfully seized and searched the tablet, they let him go.

Plaintiff Shares the Video with the Press

46. Mr. Frasier knew that the misconduct that he witnessed on August 14, 2014 was a matter of public concern and importance. He did not, at the time, even know the names of Mr. Flores and Ms. Lazos-Guerrero. Thus, Mr. Frasier eventually provided a copy of his video recording to Fox31 Denver. Fox31 Denver did an investigative report, aired the video on the news, and posted it on its website.

47. Instead of thanking Mr. Frasier for coming forward to share information about the misconduct of its officers, the Denver Police Department released a statement defending the officers' behavior and unfairly attacking Mr. Frasier's character.

48. Upon information and belief, the Defendant City and County of Denver (the "City") has failed to discipline any of the Defendant Officers in any way for their unreasonable and unlawful actions. In fact, the City promoted Defendant Jones to sergeant shortly after Mr. Frasier's video was made public.

49. The City’s former Independent Monitor, Richard Rosenthal, has testified that “what I saw, again, was this potential systemic problem where officers were permitted to use inappropriate force on the street, were not held accountable, would lie to Internal Affairs about it and, again, were not held accountable.”

50. Mr. Rosenthal has stated that Internal Affairs was “particularly weak on force cases,” “too willing to accept any statement from an officer and not willing to follow up to try to ensure whether it was truthful.” He also stated that the Denver Police Department “has not established itself to be able to adequately discipline or terminate officers who should not be police officers.”

Importance of Citizen Recordings of the Police

51. While most police officers perform their duties in a lawful manner, some police officers abuse their authority.

52. In many cases, the only evidence of what happened during an encounter between police officers and civilians—including whether police officers and/or civilians behaved lawfully—will be the conflicting testimony of police officers and civilians.

53. Indeed, on many occasions in the past several years, audio/video recordings made by civilians of police-civilian encounters have helped to resolve testimonial disputes about alleged police misconduct. Sometimes these audio/video recordings have tended to disprove allegations of police misconduct, and sometimes they have tended to prove allegations of police misconduct.

54. Federal, state, and local law enforcement agencies have deployed tens of thousands of audio/video recording devices for purposes of documenting certain interactions between police officers and civilians. For example, many police squad cars are equipped with audio/video recording devices that document traffic stops. Likewise, many officers are equipped with body cams. One law enforcement purpose of these audio/video recording devices is to deter and detect police misconduct, and to disprove false accusations of police misconduct.

55. As a result of the events alleged in this Complaint and other instances of local law enforcement, including Denver police, intimidating witnesses who record or attempt to record them, the Colorado legislature recently passed a law that strengthens the rights of citizens to obtain compensation under state law for trying to stop or retaliate against lawful recording of their activities. This law is now codified at C.R.S. § 13-21-128.

Legal Claims

Count I: 42 U.S.C. § 1983 – First Amendment

56. Plaintiff incorporates each paragraph of this Complaint as if restated fully herein.

57. In the manner described more fully above, Defendant Officers, under color of law and within the scope of their employment, violated Plaintiff's rights as secured by the First Amendment of the U.S. Constitution. Plaintiff's act of recording

the Defendant Officers constituted protected speech and expression under the First Amendment.

58. The right to gather, receive, record, and disseminate information is grounded in the Free Speech Clause of the First Amendment. This right is further grounded in:

a. The Petition Clause of the First Amendment, if the purpose of gathering, receiving, or recording the information is to use it to petition government for redress of grievances; and

b. The Free Press Clause of the First Amendment, if the purpose of the gathering, receiving, or recording the information is to publish and disseminate it to other people.

59. This First Amendment right to gather, receive, record, and disseminate information includes the right to audio and video record police officers performing their duties in public.

60. Police officers performing their public duties in public places have no reasonable expectation that their conduct is private and will not be recorded, published, and disseminated.

61. In the manner described more fully above, Defendants' actions in harassing, intimidating, unlawfully detaining, and threatening Plaintiff caused him injury that would chill a person of ordinary firmness from continuing to engage in protected activity.

62. In the manner described more fully above, Defendants' actions were substantially motivated as a response to Plaintiff's constitutionally protected activity. Defendants would not have taken the above-alleged actions against Plaintiff in the absence of his protected activity.

63. The misconduct described herein was undertaken pursuant to the policy and practice of the Defendant City in that Denver police officers regularly intimidate, harass, and threaten witnesses who they believe are recording or attempting to record them performing their official duties in public. This is a widespread pattern, practice, and custom of Denver police officers.

64. For instance, in the immediate aftermath of the Denver police shooting of Jessica Hernandez, a witness tried to video-record the officers' actions in public while she was standing on her own property. The officers threatened the witness and ordered her not to record them.

65. The above-described widespread practice is so well-settled as to constitute *de facto* policy in the Denver Police Department, and it is allowed to exist because municipal policymakers with authority over the same exhibited deliberate indifference to the problem, thereby effectively ratifying it.

66. The above-described widespread practice is allowed to flourish because the City has declined to implement sufficient training and/or any legitimate mechanism for oversight or punishment, thereby leading officers to believe that they could violate citizens' constitutional rights with impunity.

67. The policy and practice of the City are the moving force behind the violation of Plaintiff's constitutional rights.

68. As a direct and proximate result of Defendants' actions, Plaintiff's constitutional rights were violated and he suffered damages, entitling him to compensatory damages against the Defendants. Plaintiff is also entitled to punitive damages against the Defendant Officers to redress their willful, malicious, wanton, and reckless conduct in violation of Plaintiff's civil rights.

Count II: 42 U.S.C. § 1983 – Fourth Amendment

69. Plaintiff incorporates each paragraph of this Complaint as if restated fully herein.

70. In the manner described more fully above, Defendant Officers, under color of law and within the scope of their employment, violated Plaintiff's rights against unreasonable searches and seizures to his person and property as secured by the Fourth Amendment of the U.S. Constitution.

71. Specifically, Defendant Evans seized and searched Plaintiff's tablet without his consent, without a warrant, without probable cause, and without any legal justification whatsoever.

72. No Defendant at any time had a warrant authorizing any such seizure or search of Plaintiff's tablet.

73. No Defendant at any time had probable cause or reasonable suspicion, or any other legally valid basis, for seizing or searching Plaintiff's tablet.

74. No Defendant at any time had Plaintiff's consent to seize or search Plaintiff's tablet.

75. In the manner described more fully above, the Defendant Officers detained Plaintiff without his consent, without a warrant, without reasonable suspicion or probable cause to believe that he had committed any crime, and without any legal justification whatsoever.

76. No Defendant at any time had probable cause or reasonable suspicion, or any other legally valid basis, to believe that Plaintiff had committed or was committing any violation of the law prior seizing and continuing to restrain his person.

77. No Defendant at any time had a reasonable basis for believing that Plaintiff was a danger to himself or others.

78. No Defendant at any time had a warrant authorizing any such seizure of Plaintiff's person.

79. As a direct and proximate result of Defendants' actions, Plaintiff's constitutional rights were violated and he suffered damages, entitling him to compensatory damages against the Defendants. Plaintiff is also entitled to punitive damages against the Defendant Officers to redress their willful, malicious, wanton, and reckless conduct in violation of Plaintiff's civil rights.

Count III: 42 U.S.C. § 1983 – Failure to Intervene

80. Plaintiff incorporates each Paragraph of the Complaint as if restated fully herein.

81. In the manner described more fully above, during the constitutional violations described herein, one or more of the Defendant Officers stood by without intervening to prevent the violation of Plaintiff's constitutional rights, even though they had the opportunity to do so.

82. The Defendant Officers were acting under color of law and within the scope of their employment when they took these actions.

83. As a direct and proximate result of Defendants' actions, Plaintiff's constitutional rights were violated and he suffered damages, entitling him to compensatory damages against the Defendants. Plaintiff is also entitled to punitive damages against the Defendant Officers to redress their willful, malicious, wanton, and reckless conduct in violation of Plaintiff's civil rights.

Count IV: 42 U.S.C. § 1983 – Civil Conspiracy

84. Plaintiff incorporates each Paragraph of the Complaint as if restated fully herein.

85. In the manner described more fully above, the Defendant Officers, acting in concert with each other and other co-conspirators, known and unknown, reached an agreement among themselves to unlawfully search and seize Plaintiff's tablet, unlawfully seize Plaintiff's person, and retaliate against him for his protected expressive activity under the First Amendment, thereby depriving him of his constitutional rights.

86. In so doing, these co-conspirators conspired to accomplish an unlawful purpose by an unlawful means. In addition, these co-conspirators agreed among

themselves and took concerted action to protect one another from liability by depriving Plaintiff of these rights.

87. In furtherance of their conspiracy, each of these co-conspirators committed overt acts and were otherwise willful participants in joint activity.

88. The Defendant Officers were acting under color of law and within the scope of their employment when they took these actions.

89. As a direct and proximate result of Defendants' actions, Plaintiff's constitutional rights were violated and he suffered damages, entitling him to compensatory damages against the Defendants. Plaintiff is also entitled to punitive damages against the Defendant Officers to redress their willful, malicious, wanton, and reckless conduct in violation of Plaintiff's civil rights.

Count V: Colorado State Law – Trespass to Chattels

90. Plaintiff incorporates each Paragraph of the Complaint as if restated fully herein.

91. In the manner described more fully above, Defendant Evans violated Plaintiff's rights under state law by committing trespass to chattels. Defendant Evans intentionally interfered with the possession, or physical condition, of a chattel in the possession of Plaintiff, without justification.

92. As a direct and proximate result of Defendant Evans' willful and wanton conduct, Plaintiff's rights under state law were violated and he suffered damages, entitling him to compensatory damages.

93. Defendant Evans was acting within the scope of his employment when he intentionally committed such willful and wanton acts and omissions that created an unreasonable risk of proximately causing Plaintiff damage.

94. There is no cap under the Colorado Governmental Immunity Act (C.G.I.A.) on Plaintiff's state common law trespass to chattels claim, as Defendant Evans' acts and omissions in this case were willful and wanton within the meaning of C.R.S. § 24-10-118.

95. Timely notice of claims under the C.G.I.A. has been given by Plaintiff with respect to the willful and wanton conduct alleged in this Complaint, which also violates state law under C.R.S. § 24-10-118 and Colorado common law.

Count VI: Colorado State Law – Intentional Infliction of Emotional Distress

96. Plaintiff incorporates each paragraph of this Complaint as if restated fully herein.

97. In the manner described more fully above, Defendant Officers violated Plaintiff's rights under state law by committing intentional infliction of emotional distress. The Defendant Officers engaged in extreme and outrageous conduct; engaged in such conduct recklessly or with the intent of causing Plaintiff severe emotional distress; and the Defendant Officers' conduct caused the Plaintiff to suffer severe emotional distress.

98. As a direct and proximate result of Defendant Officers' willful and wanton conduct, Plaintiff's rights under state law were violated and he suffered damages, entitling him to compensatory damages.

99. Defendant Officers were acting within the scope of their employment when they intentionally committed such willful and wanton acts and omissions that created an unreasonable risk of proximately causing Plaintiff damage.

100. There is no cap under the Colorado Governmental Immunity Act (C.G.I.A.) on Plaintiff's state common law intentional infliction of emotional distress claim, as Defendant Officers' acts and omissions in this case were willful and wanton within the meaning of C.R.S. § 24-10-118.

101. Timely notice of claims under the C.G.I.A. has been given by Plaintiff with respect to the willful and wanton conduct alleged in this Complaint, which also violates state law under C.R.S. § 24-10-118 and Colorado common law.

Count VII: Colorado State Law – *Respondeat Superior*

102. Plaintiff incorporates each paragraph of this Complaint as if restated fully herein.

103. While committing the acts alleged in the preceding paragraphs, Defendant Officers were employees and agents of the Defendant City and County of Denver, acting at all relevant times within the scope of their employment.

104. While committing the acts alleged in the preceding paragraphs, the behavior of the Defendant Officers was calculated to facilitate and/or promote the business for which they were employed by their employer, Defendant City and County of Denver.

105. Defendant City and County of Denver is liable as principal for all state law torts committed by its agents.

Count VIII: Colorado State Law – Indemnification

106. Plaintiff incorporates each paragraph of this Complaint as if restated fully herein.

107. Colorado law provides that the Defendant City and County of Denver is directed to pay any judgment for compensatory damages for which its employees are liable within the scope of their employment activities.

108. The Defendant Officers were employees of the Defendant City and County of Denver and acted within the scope of their employment at all times relevant in committing the actions and omissions described herein.

WHEREFORE, Plaintiff, Levi Frasier, respectfully requests that this court enter judgment in his favor and against Defendants Christopher L. Evans, Charles C. Jones, John H. Bauer, Russell Bothwell, As-yet Unidentified Denver Police Officers, and City and County of Denver, awarding: compensatory damages against all Defendants; punitive damages on his federal claims against Defendant Officers; attorneys' fees and costs on all federal and state law claims as allowed by law; pre- and post-judgment interest at the lawful rate; and any further relief as this court deems just and appropriate.

JURY DEMAND

Plaintiff, Levi Frasier, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(c) on all issues so triable.

Respectfully submitted,

LEVI FRASIER

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