

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 04-B-722 (MJW)

Plaintiff,

v.

NORTH METRO DRUG TASK FORCE ("NMDTF");
THE CITY OF NORTHGLENN;
THE CITY OF THORNTON;
LIEUTENANT LORI MORIARTY, Commander of the NMDTF, in her individual capacity;
DETECTIVE JORGE VILLEGOS, a law enforcement officer assigned to the NMDTF, in his individual capacity;
SERGEANT JIM GERHARDT, a law enforcement officer assigned to the NMDTF, in his individual capacity;
DETECTIVE CHARLES SCHOEPFTIN, a law enforcement officer assigned to the NMDTF, in his individual capacity;
LEO GUILLIANO, Assistant Fire Chief of the Thornton Fire Department, in his individual capacity;
RICK AMEND, Lieutenant of the Thornton Fire Department, in his individual capacity;
JOHN DOE, a supervisor of the Northglenn/Thornton SWAT Team, in his individual capacity;

Defendants.

FIRST AMENDED COMPLAINT

INTRODUCTION

1. On April 10, 2002, Plaintiff was doing her art class homework in the second-floor bedroom of her condominium when black-clad members of the Northglenn/Thornton SWAT team and agents of the North Metro Drug Task Force ("NMDTF") suddenly battered down her door and burst into her home. They held her at gunpoint, handcuffed her, and then executed a warrant to search her premises for a purported methamphetamine laboratory that was never

found and had never existed. They brought along a camera person from a private film company, who filmed her and the search process. Despite the inevitable failure to find the nonexistent methamphetamine lab, and despite the absence of any volatile chemicals or dangerous fumes, the Defendants then forced Plaintiff to submit to a degrading, humiliating, and pointless “decontamination” ritual that was not justified by any legitimate government interest either in law enforcement or public safety.

2. In the outdoor parking lot of the condominium complex, the Defendants filled a small plastic children’s wading pool with cold water mixed with a decontaminant agent. They surrounded it with a spotty makeshift “enclosure” composed of cloth tarps that contained significant visual gaps, which grew larger as the tarps blew in the wind. The inside of the “enclosure” was visible not only to numerous male officers standing in the parking lot but also from the second-floor windows of the other residences in the housing complex.

3. The Defendants took Plaintiff to this “enclosure;” required her to remove all of her clothes; forced her to stand naked in the pool; directed her to apply the cold water to her body; and then forced her to dunk her head and hair in the water. At least two male firefighters standing inside the small “enclosure” monitored the entire process. A third male law enforcement officer, watching through a gap in the tarps, issued orders to _____ directing each separate step of the “decontamination” ritual. Numerous additional male officers stood in the parking lot nearby where they could observe Plaintiff, naked, shaking and shivering from cold, fear, and humiliation.

4. Plaintiff files this action seeking compensatory and punitive damages for this unjustified violation of her right of privacy, her right to bodily integrity, and her right to be free from cruel, inhuman, and degrading treatment.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1367 and 1343.

6. This action also includes claims for relief that are based on Colorado law. These claims are based on the same nucleus of operative facts and are so related to the federal-law claims that they form part of the same case or controversy. This Court has jurisdiction over the supplemental state-law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in the District of Colorado because all of the events and omissions giving rise to these claims occurred in the District of Colorado. 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff is a female individual residing in Thornton, Colorado.

9. Defendant North Metro Drug Task Force ("NMDTF"), also referred to as the North Metro Task Force, is an unincorporated association formed by an intergovernmental agreement between several Colorado cities and counties. They include Adams County, Brighton, Broomfield, Commerce City, Federal Heights, Northglenn, Thornton, and Westminster. Detectives and other officers working for NMDTF are law enforcement officers employed by the police departments of the participating governmental units. On information and belief, they are assigned to work fulltime for NMDTF.

10. At all times relevant to this complaint, Defendant John Doe was the on-site supervisor of the Northglenn/Thornton SWAT team. He is employed as a law enforcement officer by the City of Thornton or the City of Northglenn or some other governmental agency unknown to Plaintiff. He supervised and directed the actions of all members of the Northglenn/Thornton SWAT team members who participated in the events described in this complaint. He made, ratified, or authorized all decisions and actions of the SWAT team members, including the decision to effect a forcible entry into Plaintiff's residence without first ringing the doorbell or otherwise attempting a peaceable entry. He is sued in his individual capacity.

11. Defendant Lieutenant Lori Moriarty was at all times relevant to this Complaint employed as a commissioned police officer with the Thornton Police Department. She was assigned full time to the NMDTF and served as commander of the NMDTF. In that capacity, she is the official with final policymaking authority for the NMDTF with regard to the issues and events described in this complaint. She made, ratified or authorized every decision about the procedure for carrying out the search and the decision to subject Plaintiff to the "decontamination" ritual. On information and belief, she ratified the decision to ask the Northglenn/Thornton SWAT team to participate in the execution of the search warrant. She also authorized a private videographer to film portions of the search, "decontamination", and physical examination of the Plaintiff. She is sued in her individual capacity.

12. At all times relevant to this Complaint, Defendant Jorge Villegos was a Detective employed by the Thornton Police Department assigned to work fulltime for the NMDTF. He was in charge of the investigation of _____ and the nonexistent

methamphetamine lab that was the object of the search warrant. He acted in concert with the other law enforcement officers and made, ratified or authorized all decisions regarding the search and the "decontamination" ritual. He is sued in his individual capacity.

13. Defendant Sergeant Jim Gerhardt was at all times relevant to this complaint employed as a commissioned police officer by the City of Thornton Police Department and assigned full time to the NMDTF. On information and belief, he participated in and had supervisory responsibilities with the NMDTF and jointly supervised and participated in every decision regarding the search of Plaintiff's condominium. On information and belief, he acted jointly and in concert with all the other NMDTF officers at the scene and ratified, authorized or directed all actions regarding the search of Plaintiff's home and the decision to subject Plaintiff to the "decontamination" ritual. He is sued in his individual capacity.

14. At all times relevant to this complaint, Defendant Charles Schoepftin was a Detective employed by the Commerce City Police Department assigned to work full time for NMDTF. On information and belief, he acted jointly and in concert with all other law enforcement officers at the scene. He directly supervised and directed the "decontamination" ritual to which _____ was subjected. He is sued in his individual capacity.

15. Defendant Leo Guilliano was at all times relevant to this Complaint employed by the City of Thornton as the Assistant Fire Chief of the Thornton Fire Department. On information and belief, Defendant Guilliano was the final policymaking official for the Thornton Fire Department regarding procedures and practices for hazardous materials. Pursuant to decisions he made, implemented, and carried out, it was the custom and policy of the Thornton Fire Department to respond to the scene of purported methamphetamine labs at the request of the

NMDTF and subject suspects to "decontamination" procedures such as the one to which Plaintiff was subjected in this case. Decisions, policies, and orders of Defendant Guilliano were a proximate cause of Plaintiff being subjected to the "decontamination" ritual described in this Complaint. He is sued in his individual capacity.

16. Defendant Rick Amend was at all times relevant to this Complaint employed by the City of Thornton as a Lieutenant of the Thornton Fire Department. He was present during the entire search of Plaintiff's condominium. He participated in the decision to subject Plaintiff to the "decontamination" ritual, and he participated in directing and supervising the process. He is sued in his individual capacity.

17. Defendant City of Thornton is a municipality organized under the laws of the State of Colorado. The customs and policies of the City of Thornton were a proximate cause of, or moving force behind, the violations of Plaintiff's rights. For example, it is the policy of the City of Thornton to participate in the NMDTF and to assign officers from the Thornton Police Department to work fulltime as NMDTF officers. On information and belief, it is the policy of the City of Thornton that law enforcement employees assigned to work for NMDTF must follow the policies, customs, and practices of NMDTF. On information and belief it is also the policy of the City of Thornton that members of the Thornton Fire Department shall respond to the scene when NMDTF conducts searches of purported methamphetamine labs and subjects suspects to "decontamination" procedures such as the one to which Plaintiff was subjected in this case.

18. Defendant City of Northglenn is a municipality organized under the laws of the State of Colorado. The customs and policies of the City of Thornton were a proximate cause of, or moving force behind, the violations of Plaintiff's rights. For example, it is the policy of the

City of Northglenn to participate in the NMDTF and to assign officers from the Northglenn Police Department to work fulltime as NMDTF officers. On information and belief, it is the policy of the City of Northglenn that law enforcement employees assigned to work for NMDTF must follow the policies, customs, and practices of NMDTF. On information and belief it is also the policy of the City of Northglenn that members of the Northglenn Fire Department shall respond to the scene when the NMDTF executes searches of purported methamphetamine labs and subject suspects to "decontamination" procedures such as the one to which Plaintiff was subjected in this case.

FACTUAL ALLEGATIONS

19. On April 10, 2002, Plaintiff was sitting in the second-floor bedroom of her home in Thornton, Colorado. She was doing her homework for her art class.

20. The door to Plaintiff's condominium was locked. There is a doorbell clearly visible to persons who may wish to seek entry. Nevertheless, without knocking or ringing the doorbell to announce their presence and seek a peaceable entry, Defendants forcibly and without prior warning burst into Plaintiff's home. They broke the frame and glass of a large side window, causing the glass of the storm window and the inner window to splinter onto Plaintiff's desk and computer inside. They also broke down Plaintiff's metal front door by using, based upon information and belief, a battering ram or similar device.

21. After this forcible entry, Defendants immediately rushed up the stairs and into Plaintiff's bedroom, where they held her at gunpoint and handcuffed her.

22. Plaintiff was then escorted outside to her garage, where she was kept handcuffed while the videographer continued filming and Defendants carried out the search of her home and car.

23. While Plaintiff was handcuffed in the garage, Defendant Schoepftin told her that “we’re going to get you and your methamphetamine lab.”

24. After a thorough search of Plaintiff’s home and car, the Defendants acknowledged that there was no methamphetamine lab in Plaintiff’s home. In addition, Defendants did not find any evidence of the presence of the kind of hazardous chemicals or volatile or toxic vapors that are known for making methamphetamine labs a threat to public health or safety.

25. Defendants did find a small personal-use quantity of methamphetamine, and Defendants placed Plaintiff under arrest. Although Plaintiff acknowledges that she has had a problem with substance abuse, for which she has subsequently been receiving treatment and therapy, she did not manufacture illegal drugs.

26. Based upon information and belief, when the NMDTF conducts searches of the premises of suspected methamphetamine labs, it requires all persons who are arrested to undergo a “decontamination” process before they are removed from the site. The avowed purpose of the “decontamination” process is to protect others from the potentially hazardous and volatile chemicals that can be present in an operating methamphetamine lab. At the time of the incident at issue, there were no written guidelines detailing the exact justification and procedure for such “decontamination”, but in general, suspects are required to remove all of their clothing and rinse their body with a decontaminant liquid.

27. At some point after the search was completed, Defendant Schoepftin spoke with Plaintiff and confirmed that the Defendants had not found any methamphetamine lab. He also stated that they had found the personal-use quantity of illegal drugs and that she would be

arrested and taken into custody. At that time, Defendant Schoepftin stated that he did not know whether the Defendants would “wash her down” or not.

28. After Defendant Schoepftin then left the garage and returned, he took Plaintiff out of the garage and out to the parking lot of the condominium complex, where Defendants had filled a child’s wading pool with water. The pool was surrounded by an “enclosure” composed of cloth tarps suspended from metal rods about seven or eight feet high. The “enclosure” contained significant visual gaps, which grew larger as the tarps blew in the wind. Portions of the inside of the “enclosure” were visible not only from ground level in the parking lot but also from the second-floor windows of the other residences in the housing complex.

29. Defendant Schoepftin removed the handcuffs and ordered Plaintiff to enter the “enclosure,” where two female police officers and two male firefighters were waiting. Defendant Schoepftin ordered Plaintiff to empty her pockets. He ordered her to remove all her jewelry and hand it to one of the female officers. She complied.

30. Defendant Schoepftin then ordered Plaintiff to remove all of her clothes.

31. Plaintiff was crying and shaking, dizzy with fear, anxiety and humiliation. She was humiliated at the thought that her neighbors could see her naked. She felt like she wanted to die. As she began to comply with the order to remove her clothes, she screamed that someone should “call the cops.”

32. Defendant Schoepftin replied, “we are the cops.” Several of the Defendants standing near Defendant Schoepftin began laughing, increasing Plaintiff’s pain, humiliation, and helplessness. She felt as if she was being raped. She started to go numb inside and felt she was going into darkness. She wanted to be dead.

33. Defendant Schoepftin then held out a trashcan and ordered Plaintiff to put her clothes in it. They were new clothes that she had received as a gift from her mother. Defendant Schoepftin told Plaintiff that her clothes would be thrown away.

34. When Plaintiff was completely naked, Defendant Schoepftin ordered her to step into the plastic pool that was filled with cold water. Plaintiff was shivering from the cold and quaking with fear and humiliation as she followed Defendant Schoepftin's additional instructions. She was ordered to dip a cloth into the pool and dab her body with the cold water.

35. Plaintiff tried to comply while also trying to cover her naked body from the eyes of the numerous people - particularly male officers and firefighters - who could see her. She dipped the cloth into the pool and dabbed the cold water on her legs, stomach, and chest as she tried to crouch into a fetal position.

36. One of the male firefighters standing inside the "enclosure" held a hose and the other held a brush. But neither of them used these tools. The two male firefighters just stood there and observed Plaintiff as she followed each successive instruction issued by Defendant Schoepftin, who watched her through a gap in the "enclosure."

37. Additional Defendants were standing outside the "enclosure" near Defendant Schoepftin. Plaintiff was visible to them through gaps in the "enclosure." The inside of the "enclosure" and Plaintiff's naked body were also visible from the second-story windows of the neighboring condominiums in the housing complex.

38. Defendant Schoepftin then ordered Plaintiff to get her hair wet. He ordered her to bend forward and put her head in the cold water. Plaintiff did so while trying to remain crouched in a ball to hide her nakedness.

39. Unsatisfied, Defendant Schoepftin ordered Plaintiff to get her head even more wet. Plaintiff again bent over and dipped her head into the cold water in the pool.

40. Finally, Defendant Schoepftin ordered the shivering Plaintiff to get up and get a towel from one of the female officers. The female officers provided Plaintiff with a one-piece paper coverall to wear. While she was stepping into the coverall, her nakedness was once again exposed to the view of male officers and neighbors.

41. The Plaintiff, upset and shivering in a wet paper suit, was then taken to a waiting ambulance, where she was examined for possible hypothermia and subjected to a medical examination.

42. The private videographer filmed some or all of the events described herein and did so with the knowledge, consent, and authorization of all Defendants but without the consent of the Plaintiff. Defendants allowed the private videographer to be present in locations from which the public was excluded during the law enforcement operation, including, on information and belief, portions of Plaintiff's home and/or curtilage as well as portions of the private parking lot.

43. Plaintiff ultimately pled guilty and was convicted of possession of a controlled substance. She was sentenced to community corrections. After some time in a halfway house, she was released. She continues to receive treatment, medications, and counseling for substance abuse.

44. The policies and customs of the NMDTF were a proximate cause, or the moving force behind, the violations of Plaintiff's rights. For example, the strip search and "decontamination" of Plaintiff was carried out pursuant to a policy or custom of the NMDTF. In

adopting, pursuing, ratifying, and carrying out that policy or custom, the NMDTF was deliberately indifferent to the risk that the custom or policy would result in violations of the rights of persons such as Plaintiff.

45. The customs and policies of each of the municipal defendants, Northglenn and Thornton, were a proximate cause of, and the moving force behind, the violation of Plaintiff's rights. For example, it is the policy of each of the municipal defendants to participate in the NMDTF. That participation consists, in part, in contributing the services of law enforcement officers employed by the municipal defendants who are assigned to work full-time as part of the NMDTF. On information and belief, it is also the policy or custom of each of the municipal defendants to authorize the employees they contribute to the NMDTF to follow all policies and customs of the NMDTF, including the policies and customs at issue in this case.

46. On information and belief it is also the custom and policy of the municipal defendants that their fire departments shall respond to the scene when the NMDTF executes searches of purported methamphetamine and subject suspects to "decontamination" procedures such as the one to which Plaintiff was subjected to in this case. This custom or policy applies without regard to whether the searching officers encounter the presence of volatile or dangerous chemicals that are invoked as the justification for such "decontamination" procedures. In adopting, ratifying, pursuing, and carrying out all of these customs and policies, each of the municipal defendants was deliberately indifferent to the risk that these customs and policies would result in the violation of the constitutional rights of persons such as Plaintiff.

FIRST CLAIM FOR RELIEF

(No-knock entry)

(Claim against City of Thornton, City of Northglenn, NMDTF, Defendants Moriarty, Villegos, Gerhardt, Schoepftin, and John Doe)

47. The allegations of paragraphs 1 – 46 are incorporated by reference as though fully set forth herein.

48. The Fourth Amendment protects the right of persons to be free of unreasonable searches and seizures. It requires that search warrants of persons' homes be executed in a reasonable manner.

49. Pursuant to the Fourth Amendment, law enforcement officers executing a search warrant are required to knock and announce their presence before forcibly entering a person's home.

50. The warrant in this case did not authorize a no-knock entry. It did not comply with the requirements of section 16-3-303 of the Colorado Revised Statutes.

51. The forcible entry in this case failed to comply with any valid exception to the Fourth Amendment's knock-and-announce requirement.

52. Any reasonable officer in the Defendants' position would have known that the forcible entry of Plaintiff's home violated clearly established law.

53. The Defendants acted in concert to carry out this violation of the Fourth Amendment. On information and belief, none of the individual law enforcement officers intervened or otherwise attempted to stop this violation of the Fourth Amendment's knock-and-announce requirement.

54. On information and belief, the failure to comply with the knock-and-announce requirement was carried out pursuant to a policy or custom of the City of Thornton and the City

of Northglenn, pursuant to a standard practice of the Northglenn/Thornton SWAT Team. Pursuant to that custom, on information and belief, the SWAT team regularly executes search warrants for purported methamphetamine labs by immediately initiating a forcible entry and without complying with the Fourth Amendment's knock-and-announce requirement.

55. Defendant Villegos made the decision to ask the SWAT team to carry out the initial entry INTO Plaintiff's home. On information and belief, as the officer in charge of this particular investigation, Villegos was the final policymaking official for NMDTF for making decisions of this kind. Alternatively, on information and belief, Villegos consulted with Defendant Moriarty, who ratified and authorized the decision to request the participation of the SWAT team. On information and belief, Villegos and Moriarty were aware of the custom and practice described in the previous paragraph.

56. Accordingly, Plaintiff is entitled to an award of compensatory and punitive damages from the individual Defendants responsible for the violation of her rights; an award of compensatory damages from the NMDTF and the municipal defendants; an award of attorney's fees and costs, and all other relief to which Plaintiff is entitled by law.

SECOND CLAIM FOR RELIEF

(Fourth Amendment)

(NMDTF and Defendants Moriarty, Villegos, Gerhardt, Schoepftin, and John Doe)

57. The allegations of paragraphs 1 - 56 are incorporated by reference as though fully set forth herein.

58. Law enforcement officers who are executing a search warrant violate the Fourth Amendment when they invite or bring along members of the media or other private parties who have no legitimate role in the actual execution of the warrant.

59. The private videographer had no legitimate law enforcement role in the execution of the warrant in this case. The search warrant did not mention the videographer, nor did it authorize law enforcement officers to invite him or any other private person to enter Plaintiff's home, the curtilage of Plaintiff's home, or any other portions of the private parking lot of the condominium complex.

60. In executing the warrant and carrying out the actions described in this complaint, Defendants secured the entire area, including the private parking lot of the condominium complex as well as Plaintiff's home and curtilage. They exercised full control over who entered the secured area.

61. During the activities described herein, Defendants prohibited members of the public as well as neighboring owners and their invitees and licensees from entering the private parking lot.

62. Nevertheless, the Defendant law enforcement officers authorized the private videographer to accompany them into the secured area.

63. Neither the private videographer nor members of the public in general have any invitation or license to enter the private parking lot of Plaintiff's condominium for the purposes of carrying out the filming described in this complaint.

64. Plaintiff did not consent to being filmed at any time during the events described herein. Nevertheless, the Defendants authorized and permitted the private videographer to enter the secured area and to film her and other activities described in this complaint.

65. On information and belief, the private videographer entered not only the private parking lot shared by Plaintiff and neighboring property owners but also Plaintiff's home and/or curtilage.

66. In authoring the private videographer to enter the secured area and Plaintiff's curtilage, the Defendant law enforcement officers exceeded their legal authority and violated Plaintiff's rights under the Fourth Amendment.

67. Any reasonably well-trained law enforcement officer would have known that their actions violated clearly established Fourth Amendment law, as specified, for example, by the Supreme Court in Wilson v. Layne, 526 U.S. 603 (1999).

68. On information and belief, none of the individual law enforcement officers intervened or otherwise attempted to stop or regulate the videographer's movements within the secured area. Nor did any of the individual law enforcement officers intervene or attempt to stop the private videographer from filming the Plaintiff during the events described herein.

69. On information and belief, Defendant Moriarty personally authorized the presence and actions of the private videographer described herein. Accordingly, Plaintiff is entitled to an award of compensatory and punitive damages from the individual Defendants responsible for the violation of her rights; an award of compensatory damages from the NMDTF; an award of attorney's fees and costs, and all other relief to which Plaintiff is entitled by law.

THIRD CLAIM FOR RELIEF
(42 U.S.C. § 1983: Unreasonable strip search; Invasion of Privacy;
Violation of the Right of Bodily Integrity)
(All Defendants)

70. The allegations of paragraphs 1 – 69 are incorporated by reference as though fully set forth herein.

71. The Fourth Amendment and the Due Process Clause protect the right of individuals to be free from unreasonable searches and unjustifiable government invasions of privacy. The Due Process Clause also protects the right of bodily integrity.

72. At the time Defendants forced Plaintiff to submit to the ordeal of the “decontamination” process described herein, the search of Plaintiff’s home had been completed. On information and belief, each of the individual Defendants knew that they had not found a methamphetamine lab. On information and belief, each of the individual Defendants knew that they had found no evidence whatsoever of dangerous fumes or dangerous volatile chemicals.

73. Despite this knowledge, the Defendants nevertheless forced Plaintiff to submit to the “decontamination” process described herein.

74. In doing so, the Defendants unreasonably and unjustifiably strip searched Plaintiff; unreasonably and unjustifiably violated her right of privacy; and unjustifiably violated her right of bodily integrity.

75. In the absence of any dangerous chemicals or volatile fumes, the defendants’ actions were not justified by any arguable legitimate government interest in public safety or law enforcement.

76. By permitting the private videographer to observe and film any or all portions of the actions described herein, the Defendants further compounded the violations of Plaintiff's rights.

77. All of the individual law enforcement officers acted jointly and in concert to carry out the violations of Plaintiff's rights. None of them intervened on Plaintiff's behalf to prevent any of the Defendants from carrying out these violations of Plaintiff's rights.

78. Any reasonably well-trained officer would have known that the actions described herein violated Plaintiff's clearly-established constitutional rights.

79. Accordingly, Plaintiff respectfully requests an award of compensatory and punitive damages from the individual Defendants responsible for the violations of Plaintiff's rights; an award of compensatory damages from the NMDTF and the municipal defendants; an award of attorney's fees and costs, and all other relief to which Plaintiff is entitled by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks that this court award her compensatory and punitive damages from the designated individual Defendants; compensatory damages only from the NMDTF and the municipal defendants; attorney's fees and costs, and all other relief to which Plaintiff is entitled by law.

JURY DEMAND

Plaintiff requests a jury trial on all issues so triable.

DATED April 14, 2004

Respectfully submitted,

Mark Silverstein
**American Civil Liberties Union Foundation Of
Colorado**
400 Corona Street
Denver, CO 80218
(303) 777-5482

Norton Cutler
Chantell Taylor
Perkins Coie LLP
1899 Wynkoop Street, Suite 700
Denver, Colorado 80202-1043
(303) 291-2300
**In cooperation with the ACLU Foundation of
Colorado**

ATTORNEYS FOR PLAINTIFF