

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

Civil Case No. 17-cv-02694

DWIGHT C. CREWS,

Plaintiff,

v.

STEVEN GERDJIKIAN, and
RYAN MARKER

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Dwight C. Crews, by his attorneys Mark Silverstein and Sara Neel of the ACLU of Colorado and Sarah J. Parady and J. Bennett Lebsack of Lowrey Parady, LLC, files this Complaint and Jury Demand against Defendants Steven Gerdjikian, and Ryan Marker, and complains as follows:

INTRODUCTION

1. Late one night, after Mr. Crews intervened to stop his stepdaughter's husband from physically assaulting her, two Aurora police officers, Defendants Steven Gerdjikian and Ryan Marker, banged on the front door to Mr. Crews' home, threatening to kick the door down and demanding loudly that Mr. Crews come outside. When Mr. Crews calmly complied and exited his home, the officers immediately restrained him. Mr. Crews saw his pet cat escaping through the open door and exclaimed, "My cat's outside!" upon which the Defendants violently forced him to the ground, where he was handcuffed and arrested with his family and multiple

neighbors watching. Mr. Crews brings claims under the Fourth Amendment and 42 U.S.C. § 1983 for a warrantless seizure inside his home and for use of excessive force.

PARTIES

2. Plaintiff Dwight C. Crews is, and was at all times material hereto, a resident of Aurora, Colorado.

3. Defendant Steven Gerdjikian was an officer with the Aurora Police Department residing within the District of Colorado and acting under color of state law at all times relevant to this Complaint. Defendant Gerdjikian is sued in his individual capacity.

4. Defendant Ryan Marker was an officer with the Aurora Police Department residing within the District of Colorado and acting under color of state law at all times relevant to this Complaint. Defendant Gerdjikian is sued in his individual capacity.

JURISDICTION and VENUE

5. Plaintiff brings this action under 42 U.S.C. § 1983 to redress violations of rights protected by the Constitution. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, and 28 U.S.C. § 1343(a)(3) and (4).

6. The constitutional violations alleged below were committed within the State of Colorado and Defendants reside therein. Accordingly, venue lies in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

7. Dwight C. Crews is a Black resident of the City of Aurora. He is 60 years old and is disabled due to a spine injury sustained in a car accident.

8. Mr. Crews is a property manager who lives, with his wife Marlene Riley and his three children, in the multi-unit property he manages.

9. Mr. Crews also has a stepdaughter, Ms. Riley's daughter, Elizabeth Coffman, who is married to Lance Coffman. Mr. Coffman is white.

10. Mr. Crews has a concealed carry permit. To obtain the permit, he underwent an extensive criminal background check.

11. On November 14, 2015, around 1:00 a.m., Mr. Crews was in his bedroom watching television when Ms. Riley called him on the phone to say that Mr. Coffman was attacking her and Ms. Coffman in the street outside Mr. Crews' home.

12. Ms. Crews ran outside barefoot, saw Mr. Coffman hitting Ms. Coffman, and yelled at him to stop hitting her and let her go.

13. When he did not, Mr. Crews intervened physically, and Mr. Coffman finally released Ms. Coffman.

14. Mr. Crews then saw Mr. Coffman walk across the street and make a phone call. Mr. Coffman was calling 911.

15. Mr. Crews went into his home with Ms. Riley and Ms. Coffman, and he returned to watching television in his third-floor bedroom.

16. When Mr. Coffman dialed 911 after Mr. Crews stopped him from beating his wife, Mr. Coffman falsely told the 911 operator that Mr. Crews "came outside and started assaulting" him. He also said that he believed Mr. Crews had a gun back in his house.

17. As a result of the 911 call, Defendants Gerdjikian and Marker were dispatched to Mr. Crews' address.

18. The Defendants spoke to Mr. Coffman in the street. Mr. Coffman claimed that Mr. Crews had attacked him.

19. Just after 2:00 a.m., Defendants Gerdjikian and Marker began knocking on Mr. Crews' door.

20. Their actions were recorded on Defendant Marker's body camera.

21. The Defendants continued to knock loudly on the door and shine flashlights in the windows for two minutes. Their knocking grew louder until they were pounding on the door.

22. During that time, Defendant Gerdjikian shouted that "We're not going away," "I don't like kicking doors in," and Defendant Marker shouted, "You're gonna get a warrant for your arrest if you don't come down here to resolve this."

23. After that, Mr. Crew's 21-year-old son Archibald "Archie" Crews opened the door.

24. Archie opened the door because Defendants would not stop pounding on the door, shining lights in the windows, and making threats about what would happen if the occupants did not open the door.

25. Mr. Crews did not hear the pounding on his door until there was a pause in the sound of the television show he was watching, and responded to the Defendants' threats just as his son answered the door.

26. Defendant Marker asked Archie, "Are you Dwight? Where's Dwight?" and Mr. Crews responded from inside the house, "I'm Dwight."

27. Defendant Marker responded by aggressively ordering Mr. Crews to come outside, shouting, "Dwight, come out here, come talk to us, man, you shouldn't have to make us bounce around like that for two minutes! Jesus!"

28. Mr. Crews obeyed Defendant Marker's order and stepped outside the door onto his porch. As he did so, Mr. Crews explained that he had been in his room watching television.

29. Mr. Crews did not exit his home voluntarily, but did so only because he was ordered to by Defendant Marker.

30. When Defendant Marker ordered him to leave his home, Mr. Crews was under arrest and was not free to leave.

31. Mr. Crews was arrested inside his home without a warrant.

32. As Mr. Crew stepped onto the porch, Defendant Gerdjikian grabbed Mr. Crews by the arm and pulled him to the side. Defendant Gerdjikian ordered Mr. Crews to turn around and spread his feet. Mr. Crews complied. Although Mr. Crews was complying fully with Gerdjikian's instructions, Defendant Marker shouted at him in irritation, "Dwight, listen to this officer!"

33. Defendant Gerdjikian then began to conduct a patdown search of Mr. Crews.

34. Mr. Crews had no weapon.

35. Mr. Crews then saw the family cat run out the open door.

36. Mr. Crews pointed at the cat and said, "My cat's outside!," and he shouted to Archie to get his attention.

37. Immediately after Mr. Crews pointed at his cat, Defendant Gerdjikian took him to the ground, slamming him on top of jagged loose rocks.

38. This use of force was not necessary for officer safety, to effectuate an arrest, or for any other reason.

39. Defendant Gerdjikian then handcuffed Mr. Crews.

40. Several of the property tenants saw Mr. Crews lying cuffed in his own front yard.

41. The cuffs were placed improperly on the lower part of Mr. Crews' hands. They were so tight on one side that the application of the handcuffs resulted in an indentation in Mr.

Crews' hand that lasted for nearly a week. The Defendants refused Mr. Crews' repeated requests to loosen them.

42. This use of force was not necessary for officer safety, to effectuate Mr. Crews' arrest, or for any other reason.

43. In his report, Defendant Gerdjikian wrote, untruthfully, that Mr. Crews was taken to the ground because he was "clench[ing] his fist and [making] a motion towards his waist band" and because Mr. Crews "refused to relax."

44. Defendant Marker told Mr. Crews' family that Mr. Crews was "squirring" during the patdown and that was the reason he was thrown to the ground.

45. Later, Defendant Gerdjikian testified at trial that Mr. Crews was taken to the ground because he was clenching his fists and "swerving," which Gerdjikian described as "moving his body back and forth in a resisting type of manner."

46. Mr. Crews was then taken to the Aurora Police Station. After several hours, he was booked by Defendant Gerdjikian.

47. Defendant Gerdjikian issued an arrest ticket to Ms. Crews, charging him with simple assault on Mr. Coffman, battery of Mr. Coffman, and resisting arrest.

48. Mr. Crews asked Defendant Gerdjikian why he was arrested, and was told, "for resisting arrest and failure to obey," specifically by clenching his fist.

49. Defendant Gerdjikian conducted a computer search for Mr. Crews' criminal history. Defendant Gerdjikian was noticeably shocked when he failed to find any past arrests or criminal charges.

50. Mr. Crews was released at 6:30 a.m., about 4.5 hours after the officers came to his door, on \$1,000 bail.

51. Mr. Crews went to trial on April 7, 2016 on the charge of simple assault of Mr. Coffman. The judge dismissed the charge of resisting arrest for lack of evidence, and the jury found him not guilty on the grounds of defense of another (his stepdaughter, Ms. Coffman).

52. Mr. Crews' prior back injuries were exacerbated by the officers' violent takedown, and he has lived with significantly increased pain since the night of the arrest. He was humiliated to be arrested in front of his family and the tenants of the property he manages.

53. Mr. Crews was unconstitutionally seized in his home without a warrant, ordered to leave his home without a warrant, and was subjected to unconstitutional excessive force.

FIRST CLAIM FOR RELIEF
Fourth Amendment and 42 U.S.C. § 1983 – Excessive Force

54. Plaintiff incorporates by reference and adopts all foregoing and subsequent paragraphs of this Complaint, as if set forth herein.

55. The actions of Defendants described herein, taken while acting under color of state law, intentionally deprived Plaintiff of his constitutional right to freedom from unreasonable seizures as guaranteed by the Fourth Amendment, in that the Defendants seized his person by means of excessive force despite his compliance with their orders and thereby restrained his freedom.

56. Defendants' actions, as described above, were objectively unreasonable in light of the facts and circumstances confronting them.

57. Defendants' actions, as described herein, were motivated by intent to harm Plaintiff and were undertaken maliciously, intentionally, willfully, and wantonly.

58. Defendants' conduct violated clearly established rights belonging to Plaintiff of which reasonable law enforcement officers knew or should have known.

59. Plaintiff has been and continues to be damaged by Defendants' use of excessive force against him.

60. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

61. As a direct result of Defendants' unlawful action as described above, Plaintiff suffered actual physical, emotional, and economic injuries in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
Fourth Amendment and 42 U.S.C. § 1983 – Warrantless Arrest

62. Plaintiff incorporates by reference and adopts all foregoing and subsequent paragraphs of this Complaint, as if set forth herein.

63. The actions of Defendants described herein, taken while acting under color of state law, intentionally deprived Plaintiff of his Constitutional right to freedom from unreasonable seizures as guaranteed by the Fourth Amendment, in that the Defendants had no warrant to arrest Mr. Crews but nonetheless forcibly seized him inside his home, and forced him to come outside his home.

64. Defendants' actions, as described above, were objectively unreasonable in light of the facts and circumstances confronting them.

65. Defendants' actions, as described herein, were motivated by intent to harm Plaintiff and were undertaken maliciously, intentionally, willfully, and wantonly.

66. Defendants' conduct violated clearly established rights belonging to Plaintiff of which reasonable law enforcement officers knew or should have known.

67. Plaintiff has been and continues to be damaged by Defendants' use of excessive force against him.

68. The acts or omissions of each Defendant were the legal and proximate cause of Plaintiff's damages.

69. As a direct result of Defendants' unlawful action as described above, Plaintiff suffered actual physical, emotional, and economic injuries in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court grant the following relief:

- (a) Compensatory and consequential damages, including damages for emotional distress, loss of reputation, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (b) All economic losses on all claims allowed by law;
- (c) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (d) Attorney fees and the costs associated with this action on all claims allowed by law;
- (e) Pre- and post-judgment interest at the lawful rate; and
- (f) Any further relief that this Court deems just and proper, and any other relief allowed by law.

JURY TRIAL DEMAND

The plaintiff hereby requests a jury trial on all questions of fact raised by this Complaint.

Respectfully submitted this 13th day of November, 2017.

s/ Mark Silverstein

Mark Silverstein
Sara R. Neel
ACLU FOUNDATION OF COLORADO
303 E. Seventeenth Ave., Suite 350
Denver, CO 80203
Phone: (720) 402-3107
Fax: (303) 777-1773
Email: msilverstein@aclu-co.org
sneel@aclu-co.org

s/ Sarah J. Parady

Sarah J. Parady
J. Bennett Lebsack
LOWREY PARADY, LLC
1725 High Street, Suite 1
Denver, CO 80218
Tel. (303) 593-2595
Fax (303) 502-9119
sarah@lowrey-parady.com
Ben@lowrey-parady.com

Plaintiff's Address:

c/o ACLU of Colorado
303 E. 17th Ave., Suite 350
Denver, CO 80203