

IN THE UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO

Civil Action No. 02-M-0337

DANIEL UNIS; ROSA UNIS; DAVID UNIS; and MARCOS UNIS,

Plaintiffs,



v.

PAT A. CROUCH, an agent of the Colorado Bureau of Investigation; DAVID SANDERS, an agent of the Drug Enforcement Administration; PAUL J. ROACH, an agent of the Drug Enforcement Administration; KENT L. FLORENCE; an agent of the Drug Enforcement Administration; WILLIAM ELDRIDGE, an agent of the Drug Enforcement Administration; LUIS M. TORRES, an agent of the Drug Enforcement Administration; ROBERT BERTON, an agent of the Drug Enforcement Administration; JASON HEFLIN, a Pueblo police officer; LEIDE DEFUSCO, a Pueblo police officer; JEFFREY CARPENTER, a Pueblo police officer; ANDREW MCLACHLAN, a Pueblo police officer; all of whom are all sued in their individual capacities; and CITY OF PUEBLO, COLORADO,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs Daniel Unis, Rosa Unis, David Unis and Marcos Unis, for their Complaint against Defendants Pat A. Crouch, David Sanders, Paul J. Roach, Kent L. Florence, William Eldridge, Luis M. Torres, Robert Berton, Jason Heflin, Leide DeFusco, Jeffrey Carpenter, Andrew McLachlan, and City of Pueblo allege as follows:

INTRODUCTION

1. On Saturday, August 19, 2000, Dan and Rosa Unis and their two sons were peacefully enjoying the privacy of their own home when black-masked, black-helmeted men brandishing automatic weapons and wearing all-black uniforms with no insignias suddenly burst

into the house, kicked the family's dog across the floor, ordered the entire family to "get on the fucking floor," held them at gunpoint, searched the house, carted off the family's two sons, Dave and Marcos, and imprisoned them illegally and without charges.

2. The perpetrators of this lawless action -- Defendants in this lawsuit -- are agents of the Drug Enforcement Administration, the Colorado Bureau of Investigation, and the Pueblo Police Department, all of whom acted without a warrant and without any other legal authority. Plaintiffs file this action seeking compensatory and punitive damages for this flagrant violation of their constitutional rights.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States, including Bivens v. Six Unknown Named Fed. Narcotics Agents, 403 U.S. 388 (1971) and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1367 and 1343.

4. 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

5. Plaintiff Daniel Unis (hereafter "Mr. Unis") is a social worker employed by the County of Pueblo, Colorado. Plaintiff Rosa Unis (hereafter "Mrs. Unis") teaches Spanish at McClelland School in Pueblo. Mr. and Mrs. Unis have been married for 24 years. For the last five years they have resided in the City of Pueblo, and they own their residence at 611 East Evans in Pueblo. They are the parents of Dave and Marcos Unis.

6. At the time of the incident described in this complaint, Marcos Unis (hereafter "Marcos") was 22 years old. He is a student at the University of Southern Colorado in a

preparatory program for veterinary medicine. He works as a laboratory technician at the Animal Emergency Room and serves as a research assistant in the Minority Biomedical Research Program.

7. At the time of the incident described herein, David Unis (hereafter “Dave”) was 19 years old. He is also a student at the University of Southern Colorado.

8. At all times relevant to this complaint, all Plaintiffs resided at 611 East Evans in Pueblo and are citizens of the United States.

9. Defendant Pat A. Crouch was at all times relevant to this complaint duly appointed and acting as an officer of the Colorado Bureau of Investigation (“CBI”). He is sued individually.

10. Defendant David Sanders was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration (“DEA”). He is sued individually.

11. Defendant Paul J. Roach was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration. He is sued individually.

12. Defendant Kent J. Florence was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration. He is sued individually.

13. Defendant William Eldridge was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration. He is sued individually.

14. Defendant Luis M. Torres was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration. He is sued individually.

15. Defendant Robert Berton was at all times relevant to this complaint duly appointed and acting as an agent of the United States Drug Enforcement Administration. He is sued individually.

16. Defendant City of Pueblo is a municipality incorporated under the law of the State of Colorado. It carries out law enforcement activities through the Pueblo Police Department. At all times relevant to this complaint, Chief of Police James W. Billings, Jr. served as the final policy-maker for the City of Pueblo with regard to matters relating to the Pueblo Police Department.

17. Defendants Jason Heflin, Leide DeFusco, Jeffrey Carpenter, and Andrew McLachlan were at all times relevant to this complaint duly appointed and sworn police officers working for the police department of the City of Pueblo, Colorado. They are sued individually. In the course of carrying out the actions and omissions that violated the rights of the plaintiffs, Defendants Heflin, DeFusco, and Carpenter concealed their identities and covered their faces with black masks. At this time, Plaintiffs do not know which black-masked officer was which. In this Second Amended Complaint, Plaintiffs refer to Black Masked Officer #1, Black-Masked Officer #2, and Black-Masked Officer #3. In each case, the black-masked officer is either Defendant Heflin, Defendant DeFusco, or Defendant Carpenter.

18. All defendants acted under color of state law. Alternatively or in combination, defendants, including defendants employed by the federal government, acted under color of federal law.

FACTUAL ALLEGATIONS

19. On information and belief, the events described in this Complaint were the subject of a series of briefings and meetings that occurred on August 18, 2001 and August 19, 2001. On information and belief, most if not all of the Defendants participated in or were represented at these briefings. On information and belief, all Defendants were informed at these briefings that there was no arrest warrant for Dave Unis and Marcos Unis and that there was no search warrant for the Unis residence.

20. On August 19, 2000, the Unis family was enjoying a quiet Saturday afternoon in their home. Mr. and Mrs. Unis had just finished a meal, and Marcos was in the kitchen preparing some food for himself. Dave was dozing in his bedroom.

21. Suddenly, Black-Masked Officer #1 burst into the house through the unlocked front screen door. He wore an all-black uniform without any insignia, with a black helmet and a black ski mask. He carried an M-16 assault rifle and aimed it at members of the Unis family as he ordered them to “get on the fucking floor.” He repeated it. “Get on the fucking floor. Get on the fucking floor.”

22. Defendants Sanders and Roach entered the home behind Black-Masked Officer #1. Defendants Sanders and Roach were working under the direction of Defendant Kent Florence, who was not present at the Unis residence but maintained contact with Defendants Sanders and Torres via radio.

23. Plaintiffs' dog barked at the uninvited intruders. In response, Black-Masked Officer #1 kicked the family dog across the floor and continued ordering "get on the fucking floor."

24. At the same time, Defendant Black-Masked Officer #2 suddenly appeared in the kitchen, having entered through the back screen door after kicking the gate of the back fence off its hinges. He was masked and dressed the same as Black-Masked Officer #1. He pressed a gun to the back of Marcos's head, ordered him to "get on the fucking ground," and slammed him to the floor.

25. Dave heard the commotion and started to come out of his bedroom, while still in his underwear. Black-Masked Officer #3, apparently entering from the back door, put a gun to Dave's head and ordered him to the floor.

26. None of the Defendants knocked or otherwise announced their presence before entering the Unis home. At no time did any of the Defendants request consent to enter the Unis home, nor was any consent granted.

27. All members of the Unis family complied with Defendants' unexplained orders. They lied face-down on the floor while they were held at gunpoint. Defendants handcuffed Dave and Marcos behind their backs. Defendants continued to hold all of the members of the Unis family at gunpoint, even after none of the members showed any signs of resistance.

28. All of the Black-Masked Officers were operating under the supervision of and under assignment given by Defendant Andrew McLachlan, a Sergeant of the Pueblo Police Department. None of the intruders offered any information about the identity or the employers of the black-masked officers.

29. After the boys were handcuffed, Defendant Sanders showed a badge and identified himself as an agent of the Drug Enforcement Administration. The police were not in hot pursuit of either David Unis or Marcos Unis, as both were relatively easy to find, and no police engaged in any sort of chase of either David or Marcos.

30. After cuffing the hands of Marcos and Dave behind their backs, Defendants yanked the young men up from the floor by pulling on the handcuffs.

31. Defendants conducted a search, concentrating on the bedrooms of Dave and Marcos. Defendants moved furniture, turned over beds, threw cushions off of couches, went through drawers, and generally overturned the contents of the two bedrooms.

32. Mr. Unis asked twice to see a warrant, but the Defendants ignored him.

33. Defendants had no arrest warrant, no search warrant, nor any other legal authority for any of their actions at the Unis family home.

34. Defendants found no drugs, illegal weapons, or any other contraband.

35. Defendants conferred by telephone or portable police radio with a supervising officer. The supervising officer, who was not physically present in the Unis home, instructed that Dave and Marcos be taken into custody. On information and belief, that supervisor is Defendant Pat Crouch and/or Kent Florence.

36. The Pueblo Police Department was called to send a squad car to transport Dave and Marcos.

37. Defendants then led Dave and Marcos, still handcuffed behind their backs, out of the home.

38. Defendant Sanders told Mr. Unis to contact Defendant CBI Agent Pat Crouch at the Colorado Bureau of Investigation for any further information concerning the arrest of his sons.

39. Defendant Sanders stated that Defendant Crouch was “in charge of this case.”

40. Mrs. Unis was very upset. Immediately after Defendants left the house with her sons, she went to the bathroom and vomited. Since then, Mrs. Unis has suffered nightmares as a result of Defendants’ illegal armed invasion of her home and illegal abduction of her two sons.

41. Defendants first took Dave and Marcos to the Pueblo Field Office of the Colorado Bureau of Investigation at 3416 N. Elizabeth Street, Pueblo, Colorado. While Dave Unis was incarcerated there, he was questioned by Defendant Torres. Defendant Torres informed Dave Unis that he was not under arrest because there was no probable cause to justify his arrest.

42. Notwithstanding Defendant Torres' assurances that there was no probable cause justifying Dave Unis' detention, Defendants Torres and Eldridge purported to place Dave Unis under arrest on federal charges for cocaine distribution. On information and belief, Marcos Unis was also subject to similarly unlawful detention, questioning, and false charges.

43. A few hours later, Dave and Marcos were placed in handcuffs and leg shackles and taken in separate cars to the El Paso County Jail in Colorado Springs, where they were illegally and falsely imprisoned until the following Monday. David Unis and Marcos Unis were placed in the county jail with no prosecutorial interest in them because the jail was merely a holding facility; the jailors were waiting for federal officers to pick up David Unis and Marcos Unis.

44. Defendant Sanders and Defendant Berton drove Unis brothers to the El Paso County Jail, where Defendants Sanders and Berton placed an unlawful federal hold on the Unis brothers.

45. Dave and Marcos were never taken to appear before a magistrate or other judicial officer. They had no opportunity to post bail because no bail was ever set. They were never formally charged with any crime nor were they ever provided with any documents that purported to explain or justify their two-day imprisonment. The jail's documentation simply states "hold for DEA," along with a purported INS hold on Dave Unis.

46. On August 21, at or about 1:00 p.m. Dave and Marcos were released from the El Paso County Jail into the custody of officer Ervin, another agent of the Drug Enforcement Administration. He put Dave and Marcos in handcuffs and shackles and drove them to the CBI office in Pueblo.

47. At about 2 p.m., almost 48 hours after the Defendants first invaded the Unis home, Dave and Marcos were released, without charges, without explanation, and without an apology.

48. Dave and Marcos were denied a ride home. They were left to walk home from the CBI office in Pueblo.

49. During the two days that Dave Unis and Marcos Unis were incarcerated, Dan Unis attempted to find out where they were being held. Despite numerous calls to the CBI and other local agencies, Dan Unis was not informed of the whereabouts of his two sons.

50. In causing and carrying out the foregoing actions, all Defendants acted in concert.

FIRST CLAIM FOR RELIEF

(42 U.S.C. §1983, conspiracy to violate constitutional rights)

(Defendants Sanders, Crouch, Roach, Torres, Florence, Eldridge, Berton, Heflin, DeFusco,
Carpenter, and McLachlan)

51. The allegations of paragraphs 1 - 50 are incorporated by reference as though fully set forth herein.

52. The Defendants knew that they had no warrant or other lawful authority to enter or search the Unis home, nor any warrant or other lawful authority to arrest Dave and Marcos.

53. The Defendants agreed and conspired to violate the constitutional rights of the Plaintiffs by carrying out the actions described herein, including, but not limited to, entering and searching the Unis home illegally and arresting Dave and Marcos without lawful authority.

54. By conspiring with law enforcement officials who were acting under color of state law and by causing Dave and Marcos to be held in a county jail, Defendants Sanders, Roach, Florence, and Eldridge acted under color of state law.

55. The Defendants committed overt acts in furtherance of their agreement, including but not limited to their unreasonable entry into Plaintiffs' home, their detention of Plaintiffs at gunpoint, their search of Plaintiffs' home, and their illegal arrest and two-day imprisonment of Dave Unis and Marcos Unis.

56. Defendants Crouch and Florence are responsible for the actions of the on-the-scene defendants, over whom they had supervisory authority. On information and belief, they knowingly authorized the illegal actions beforehand, and ratified them afterwards. On

information and belief, they authorized, approved, and directed that Dave and Marcos be taken into custody and kept in custody.

57. The conspiracy and the overt acts committed in furtherance of it violated Plaintiffs' constitutional rights, including their right under the Fourth Amendment to be free of unreasonable searches and seizures and their right under the Due Process Clause to be deprived of liberty only in accordance with due process of law.

58. Wherefore, Plaintiffs respectfully request compensatory and punitive damages; an award of attorney's fees and costs; and all other relief to which Plaintiffs are entitled by law.

SECOND CLAIM FOR RELIEF

(Fourth Amendment - Unreasonable Search and Seizure)

(Defendants Sanders, Crouch, Roach, Torres, Florence, Eldridge, Berton, Heflin, DeFusco, Carpenter, and McLachlan)

59. The allegations of paragraphs 1 - 58 are incorporated by reference as though fully set forth herein.

60. The Fourth Amendment protects the right of all of the Plaintiffs to be secure in their home and persons and to be free of unreasonable searches and seizures.

61. Defendants entered and searched the Unis family home and seized each member of the family, without a warrant and without any other lawful authority, in violation of the Fourth Amendment.

62. The Defendants also conducted their entry and search in an unreasonable manner, by, for example, entering with guns drawn and without knocking and announcing, and by terrorizing the Unis family with automatic weapons and holding them at gunpoint.

63. Defendants Crouch and Florence are responsible for the actions of the on-the-scene defendants, over whom they had supervisory authority. On information and belief, they knowingly authorized the illegal actions beforehand, and ratified them afterwards.

64. Wherefore, Plaintiffs respectfully request an award of compensatory and punitive damages; an award of attorney's fees and costs; and all other relief to which Plaintiffs are entitled by law.

THIRD CLAIM FOR RELIEF

(Fourth Amendment & Due Process Clause -- Illegal Arrest and Detention)

(Defendants Sanders, Crouch, Roach, Torres, Florence, Eldridge, Berton, Heflin, DeFusco,
Carpenter, and McLachlan)

(Plaintiffs Marcos Unis and Dave Unis)

65. The allegations of paragraphs 1 - 64 are incorporated by reference as though fully set forth herein.

66. Defendants illegally arrested Dave and Marcos Unis and deprived them of their liberty, without a warrant, without probable cause, and without any other lawful authority, in violation of the Fourth and Fourteenth Amendments.

67. Defendants illegally deprived Dave and Marcos of their liberty without due process of law.

68. Defendants Crouch and Florence are responsible for the actions of the on-the-scene Defendants, over whom they had supervisory authority. On information and belief, they knowingly authorized the illegal arrests beforehand, and ratified them afterwards. On

information and belief, they authorized, approved, and directed that Dave and Marcos be taken into custody and kept in custody.

69. Wherefore, Plaintiffs respectfully request an award of compensatory and punitive damages; an award of attorney's fees and costs; and all other relief to which Plaintiffs are entitled by law.

FOURTH CLAIM FOR RELIEF

(City of Pueblo; all Plaintiffs)

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

71. On information and belief, Defendants of Defendants Heflin, DeFusco, and Carpenter carried out the actions complained of here as a result of a request for assistance made to the Pueblo Police Department by Defendant Sanders, Defendant Florence, Defendant Crouch, or by agents working in concert with them.

72. On information and belief, the City of Pueblo Police Department responded to that request for assistance by directing Sergeant McLachlan to assign Defendants Heflin, DeFusco, and Carpenters to assist Sanders and Crouch at the residence of the Unis family.

73. After the events of August 19, 2000, Pueblo Police Chief Billings received and reviewed a confidential memorandum relating the facts described in this complaint. On information and belief, the memorandum explained that Defendants Heflin, DeFusco, and Carpenter conducted a no-knock entry and that they assisted in the arrest of Dave and Marcos. On information and belief, the confidential memorandum failed to provide facts that would justify either the no-knock entry, the search of the house, or the arrest of Dave and Marcos.

74. On information and belief, Chief Billings ratified the actions of Defendants McLachlan, Heflin, DeFusco, and Carpenter. Such ratification is manifested, for example, by the decision to continue employing Defendants McLachlan, Heflin, DeFusco, and Carpenter as police officers and, on information and belief, by the decision to refrain from disciplining them.

75. On information and belief, the actions and omissions of Defendants McLachlan, Heflin, DeFusco, and Carpenter were carried out in a manner consistent with and pursuant to the training they received from the City of Pueblo Police Department and with the custom, practice, and usage of the Department. The custom, practice and usage of the Department is a proximate cause of the actions and omissions that violated the rights of the Plaintiffs.

76. The City of Pueblo is liable to all Plaintiffs for unreasonable search and seizure, in violation of the Fourth Amendment.

77. The City of Pueblo is liable to Dave and Marcos for their illegal detention and arrest, in violation of the Fourth Amendment, and their deprivation of liberty without due process of law, in violation of the Fourteenth Amendment.

Wherefore, Plaintiffs seek an award of compensatory damages; an award of attorney's fees and costs; and all other relief to which Plaintiffs are entitled by law.

Plaintiffs hereby demand a trial by a jury of six.

Dated July 29, 2002.