

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

Civil Action No. 07-cv-_____

DELVIKIO FAULKNER,

Plaintiff,

v.

KENNETH HARDY, in his individual capacity,

Defendant.

COMPLAINT

Delvikio Faulkner, by and through his attorneys, Jacobs Chase Frick Kleinkopf & Kelley, LLC, and Mark Silverstein and Taylor Pendergrass of the American Civil Liberties Union Foundation of Colorado, for his Complaint states as follows:

I. INTRODUCTION

1. Shortly after midnight on July 2, 2005, Defendant Kenneth Hardy was on duty as an officer of the Colorado Springs Police Department (“CSPD”). His deliberately aggressive and provocative policing mission, according to documents later released to Plaintiff’s lawyers, was to “stop as many cars as we can, try to toss the cars if we can” and to “make arrests, not just verbal warnings.”

2. Plaintiff Delvikio Faulkner, a young African-American army veteran, was riding as a passenger with two other young African-American men in a validly registered car that happened to be missing one of its two license plates. Defendant Hardy and his partner stopped the car, and soon thereafter, Defendant Hardy savagely and unjustifiably assaulted Mr. Faulkner

by bashing him in the head multiple times with a heavy-duty metal police-issued flashlight. As a result of the brutal assault, Mr. Faulkner required hospital treatment, including eight staples to close his head wounds.

3. In this action, Mr. Faulkner asserts a claim for the violation of his Fourth Amendment rights and seeks compensation for his injuries as well as punitive damages.

II. JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b)(2). The events described in this Complaint occurred in the District of Colorado.

III. PARTIES

6. Delvikio Faulkner is a United States citizen and a resident of Colorado. At the time of the incident, Mr. Faulkner was twenty-five years old. Mr. Faulkner served in the United States in the Army, came to know Colorado Springs during his enlistment, and decided to reside in Colorado Springs after his Army service was complete.

7. At all times relevant to this Complaint, Defendant Hardy was a police officer employed by the Colorado Springs Police Department. Defendant Hardy is sued in his individual capacity.

8. At all times relevant to this Complaint, Defendant Hardy acted under color of state law and as an officer of the Colorado Springs Police Department.

IV. FACTUAL ALLEGATIONS

A. Incident of July 2, 2005

9. On July 2, 2005, Defendant Hardy was paired up with Officer Jackson Andrews and the two rode in the same patrol vehicle. Their supervisor had instructed members of the unit, in the words of Defendant Hardy and Officer Andrews, to “stop as many cars as we can,” “try to toss the cars if we can,” – that is, to search and rummage through all the property in a car if given any possible justification to do so – and to “make arrests, not just verbal warnings.”

10. Just after midnight, Defendant Hardy and Officer Andrews pulled over a car containing three young African-American men, including Mr. Faulkner who was a passenger in the backseat. Although the car was validly registered and had a rear license plate, it was missing its front license plate. After some brief questioning, the officers ordered the occupants out of the car.

11. When asked for his identification, Mr. Faulkner told the officers that he did not have any identification and gave them a false name.

12. When Defendant Hardy subsequently discovered Mr. Faulkner’s identification in the back seat as he was rooting through the car, he realized that Mr. Faulkner had given the officers a false name.

13. Defendant Hardy immediately stopped his search, turned around and yelled out that Mr. Faulkner was not the person he said he was. Defendant Hardy marched toward Mr. Faulkner and ordered him to put his hands behind his back.

14. Mr. Faulkner complied, but as Defendant Hardy began to apply handcuffs, he concluded that Mr. Faulkner intended to run away.

15. There was no reasonable possibility that any attempt to flee could have succeeded.

16. Defendant Hardy had Mr. Faulkner in his grasp the entire time. In addition, Officer Andrews was just a few feet away, closely monitoring the arrest and was prepared to assist and halt any movement by Mr. Faulkner. Furthermore, a long chain-link fence bordering the sidewalk would have effectively prevented any attempted escape by Mr. Faulkner.

17. At no time did the 140-pound, unarmed Mr. Faulkner present any danger to the safety of the two officers, nor did he attempt to actively resist the arrest or threaten the officers in any way.

18. As he maintained his hold on Mr. Faulkner with one hand, Defendant Hardy brandished his full-sized police-issued metal Maglite flashlight with his other hand and delivered a massive blow to the back of Mr. Faulkner's head.

19. The impact completely dazed Mr. Faulkner, who immediately stopped moving and stood hunched over, motionless.

20. Defendant Hardy had become enraged and yelled at the unresponsive Mr. Faulkner, "Don't you fucking run from me!" Officer Hardy then slammed the flashlight into Mr. Faulkner's head and shoulders at least five more times.

21. Officer Andrews witnessed Faulkner's head snap forward and then back with the momentum of the blows from the flashlight.

22. Officer Andrews heard the distinctive sound of the flashlight making repeated contact with Mr. Faulkner's skull.

23. When the strikes from Defendant Hardy finally ceased, Mr. Faulkner was lying on the ground in a pool of his own blood.

24. As Officer Andrews assisted Defendant Hardy in handcuffing Mr. Faulkner, Office Andrews turned to Defendant Hardy and exclaimed, “What the fuck?”

25. The officers called for medical assistance and a supervisor. When the supervisor arrived, he saw Mr. Faulkner lying face down on the ground in a pool of blood and believed that Mr. Faulkner had been shot.

26. In the hours after the incident, Defendant Hardy attempted to rationalize and justify his use of extreme force on an unarmed, 140-pound suspect who posed no threat to either officer and who had no reasonable possibility of being able to flee.

27. In describing the incident to a supervisor at the scene, Defendant Hardy distorted and altered facts in an attempt to justify his use of force.

28. Later that night at the police station, Defendant Hardy acted as though Mr. Faulkner’s beating was an unremarkable occurrence.

29. Defendant Hardy repeatedly struck Mr. Faulkner in the head with the flashlight, not because Mr. Faulkner had any actual chance of escape nor because he posed any threat to Defendant Hardy or Officer Andrews, but simply in order to punish Mr. Faulkner.

B. Internal Investigation

30. Officer Andrews filed a police incident report describing what he witnessed on the night of July 2, 2005. In his report, Officer Andrews described his version of the events:

As I made my way to the left side of [Defendant] Hardy, Mr. Faulkner pulled away from [Defendant] Hardy's grasp and attempted to run towards to the North. It appeared that [Defendant] Hardy was able to keep his left hand on Mr. Faulkner [sic] left shoulder area during this attempted escape.

I knew that Mr. Faulkner would not be able to escape since he had only taken approximately two steps towards the North and was going to be hindered by the chain-link fence. Based on that fact, I had the intention of tackling Mr. Faulkner near the fence. Before I could move into position, I observed [Defendant] Hardy strike Mr. Faulkner on the back of his head with his full-sized flashlight as he was facing away from him.

Immediately after the strike, I saw Mr. Faulkner stop and both of his feet somewhat stayed planted on the ground which appeared to me that he had surrendered and he was not trying to flee. It appeared that as a result of the strike, Mr. Faulkner was dazed. Immediately after the strike, [Defendant] Hardy stated, "Don't you try fucking running from me!" At one point, Mr. Faulkner moved from facing north to facing southeast. Within a second, [Defendant] Hardy began delivering additional blows to Mr. Faulkner's head with his flashlight. In all, I believe that [Defendant] Hardy struck Mr. Faulkner approximately six times using his flashlight, at least three times to Mr. Faulkner's head.

When [Defendant] Hardy struck Mr. Faulkner, I clearly observed [Defendant] Hardy's flashlight strike Mr. Faulkner's head causing it to snap forward enough that the momentum made his head return back. While the strikes were being delivered, I saw Mr. Faulkner standing with no indication that he was still trying to escape. At no point did Mr. Faulkner try to fight with officers and made no comments.

31. The above report, in addition to other statements made by Officer Andrews to his supervisors that night, precipitated an investigation by the CSPD Internal Investigations unit. The Internal Investigations unit is responsible for investigating allegations of misconduct by CSPD officers.

32. The internal affairs investigators found that Mr. Faulkner's actions did not place Defendant Hardy or Officer Andrews in any danger on July 2, 2005, nor was Defendant Hardy's

use of force necessary or justified to prevent what he perceived as Mr. Faulkner's attempt to escape.

33. The internal investigation found that Defendant Hardy's "actions served no legitimate law enforcement purpose and exceeded the standards of minimal force necessary to accomplish a law enforcement purpose." The internal investigation concluded that Defendant Hardy violated four general orders/policies of the department, including excessive use of force.

34. The Deputy Chief of CSPD recommended a 200 hour suspension, revocation of Defendant Hardy's instructor status and a requirement that Hardy submit to a fitness evaluation. Defendant Hardy appealed the recommendation, but before the appeal process was completed, Defendant Hardy was terminated from the CSPD for unrelated misconduct.

C. Use of Deadly Force

35. CSPD's procedures and policies recognize that the use of the Maglite flashlight as a weapon may constitute deadly force.

36. Under those regulations, a Maglite flashlight is considered the equivalent of a Monadnock PR-24 baton, and is an "impact weapon." The CSPD severely limits the use of impact weapons such as the Maglite flashlight and PR-24 baton because of the potential for death or severe bodily injury from such weapons.

37. The CSPD uses a "Monadnock Baton Chart" (the "Chart") to train officers in the appropriate and lawful use of impact weapons. The Chart shows legal target areas where an officer may lawfully strike a suspect with an impact weapon such as a PR-24 baton or a Maglite flashlight. According to the Chart, the human head is considered a "red area" where use of an impact weapon may cause death.

38. Under CSPD procedures and policies, striking a person with an impact weapon such as a baton or a Maglite flashlight is appropriate only when it is absolutely necessary for the officer's safety. Consequently, CSPD policy instructs that an impact weapon like the Maglite "shall not be used to strike a person above the shoulders unless need for use of deadly force is indicated."

39. Defendant Hardy's use of his full-size metal flashlight to bash the head of Mr. Faulkner posed a substantial risk of death or serious physical harm, thus constituting deadly force under the Fourth Amendment.

40. The Fourth Amendment forbids police officers from using deadly force to apprehend suspects except in those limited circumstances when a) the suspect is fleeing after committing a felony; and b) deadly force is necessary to prevent the escape; and c) the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

41. Not one of the circumstances listed above were present in this case. Mr. Faulkner was not suspected of committing a felony. Deadly force was not necessary to prevent escape. Finally, Defendant Hardy did not have probable cause to believe that Mr. Faulkner posed any threat at all, let alone a significant threat of death or serious physical injury.

42. Defendant Hardy used deadly force where such force was wholly disproportionate and excessive, in violation of the Fourth Amendment.

V. CLAIM FOR RELIEF

(42 U.S.C. § 1983 - Excessive Force in Violation of the Fourth Amendment)

43. Plaintiff incorporates the allegations set for in paragraphs 1 through 42.

44. The Fourth Amendment prohibits unreasonable searches and seizures. Defendant Hardy unlawfully seized Mr. Faulkner by means of excessive physical force in violation of his constitutional rights.

45. Defendant Hardy's actions, as described above, were objectively unreasonable in light of the facts and circumstances confronting him.

46. A reasonable officer would have known, in light of clearly established law, that Defendant Hardy's use of force in this situation violated Mr. Faulkner's Fourth Amendment Rights.

47. As a direct result of Defendant Hardy's unconstitutional use of excessive and disproportionate force, Mr. Faulkner has suffered and continues to suffer from actual physical and emotional injuries in an amount to be proven at trial.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief as follows:

a. Damages as may be proven at trial for all medical costs incurred by Plaintiff as a result of Defendant Hardy's use of excessive force in violation of the Fourth Amendment;

b. Damages as may be proven at trial for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law;

c. Punitive damages as may be proven at trial;

- d. An award of Plaintiff's reasonable attorney's fees and costs of this action, pursuant to 42 U.S.C § 1988 and any other applicable law;
- e. Pre and post-judgment interest at the statutory rate; and
- f. Any further or other relief the Court deems just and proper.

VII. JURY DEMAND

Plaintiff requests a trial by jury in this matter.

Dated: July 2, 2007.

Respectfully submitted,

/s/ Elizabeth L. Harris

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