

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2019 APR -9 PM 4:51

JEFFREY P. COLWELL
CLERK

BY _____ DEP. CLK

Civil Action No. 1:18-cv-03112-RBJ-STV
(To be supplied by the court)

Sean Slatton, Plaintiff

v.

Todd Hopkins,

Brandon Barnes,

John Hutto,

Fort Collins Police Department, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names of the defendants listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Sean Slatton, 951 20th St #8971, Denver, CO 80202

(Name and complete mailing address)

(720)926-2890, shslatton@gmail.com

(Telephone number and e-mail address)

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Todd Hopkins, 2221 S. Timberline Road Fort Collins, CO 80525

(Name and complete mailing address)

(Telephone number and e-mail address if known)

Defendant 2: Brandon Barnes, 2221 S. Timberline Road Fort Collins, CO 80525

(Name and complete mailing address)

(Telephone number and e-mail address if known)

Defendant 3: John Hutto, 2221 S. Timberline Road Fort Collins, CO 80525

(Name and complete mailing address)

(Telephone number and e-mail address if known)

Defendant 4: Fort Collins Police, 2221 S. Timberline Road Fort Collins, CO 80525

(Name and complete mailing address)

(970)419-3273

(Telephone number and e-mail address if known)

C. JURISDICTION

Identify the statutory authority that allows the court to consider your claim(s): (check one)



Federal question pursuant to 28 U.S.C. § 1331 (claims arising under the Constitution, laws, or treaties of the United States)

List the specific federal statute, treaty, and/or provision(s) of the United States Constitution that are at issue in this case.

42 U.S.C. § 1983, 490 U.S. 386, 396-97, 519 U.S. 357, 18 U.S.C. § 1503

18 U.S.C. § 242



Diversity of citizenship pursuant to 28 U.S.C. § 1332 (a matter between individual or corporate citizens of different states and the amount in controversy exceeds \$75,000)

Plaintiff is a citizen of the State of _____.

If Defendant 1 is an individual, Defendant 1 is a citizen of _____.

If Defendant 1 is a corporation,

Defendant 1 is incorporated under the laws of _____ (name of state or foreign nation).

Defendant 1 has its principal place of business in _____ (name of state or foreign nation).

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: *False Arrest:* Civil Rights Act of 1871. (42 U.S.C. § 1983.) A section 1983 claim alleges that the defendant, "under color of law," violated the plaintiff's constitutional rights. The use of excessive force constitutes a valid claim under section 1983 because it violates the Fourth Amendment prohibition against "unreasonable seizures."

CLAIM TWO: *Excessive Force/Physical Assault:* the government must, in most cases, prove that the law enforcement officer used more force than is reasonably necessary to arrest or gain control of the victim. This is an objective standard dependent on what a reasonable officer would do under the same circumstances. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

CLAIM THREE: *False Imprisonment:* Invalid Use of Legal Authority — An example of an invalid use of legal authority is the detainment or arrest of a person without a warrant, with an illegal warrant, or with a warrant illegally executed. So long as the person is deprived of his personal liberty, the amount of time actually detained is inconsequential. See, e.g. *Schenck v. Pro Choice Network*, 519 U.S. 357 (1997)

CLAIM FOUR: *Obstruction of Justice:* 18 U.S.C. § 1503 defines "obstruction of justice" as an act that "corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice."

CLAIM FIVE: *Police Misconduct:* The federal criminal statute that enforces Constitutional limits on conduct by law enforcement officers is 18 U.S.C. § 242. Section 242 provides in relevant part: "Whoever, under color of any law, ...willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States [shall be guilty of a crime]."

CLAIM SIX: *Failure to Intervene:* An officer who purposefully allows a fellow officer to violate a victim's Constitutional rights may be prosecuted for failure to intervene to stop the Constitutional violation. To prosecute such an officer, the government must show that the defendant officer was aware of the Constitutional violation, had an opportunity to intervene, and chose not to do so. This charge is often appropriate for supervisory officers who observe uses of

excessive force without stopping them, or who actively encourage uses of excessive force but do not directly participate in them.

SUPPORTING FACTS:

On December 3rd, 2016, the Plaintiff was attending his spouses' sorority event.

The Defendants instructed the Plaintiff to leave the event due to false information.

The Plaintiff calmly and immediately complied with the Defendants. The Plaintiff exited the building and began ordering a car service to drive the Plaintiff back to the hotel where he was staying.

Completely unprovoked, the Defendants attacked the Plaintiff as he waited next to the parking lot of the building the event was in.

Video footage from the Defendants' body cameras, along with security camera footage from the event building showed the unwarranted actions occurred within a single minute of the Plaintiff being told to exit the building. The Plaintiff was absolutely compliant and non-threatening.

The Plaintiff was hospitalized after being hit with a baton and pepper sprayed.

The Plaintiff was taken from the hospital to the Larimer County Jail.

On the night of December 3rd, 2016, the Plaintiff was arrested by the Defendants and charged with:

18-04-0504 *3rd Degree Criminal Trespassing*
18-08-0104 *Obstructing a Peace Officer/Fireman*
18-08-0103 *Resisting Arrest*

[Plaintiff] was released from jail in the early morning hours of December 4th, 2016.

The District Attorney filed a motion to drop all of the charges against [Plaintiff] and dismiss the case.

The motion/proposed order was granted by the county Court Judge on September 14, 2017.

All charges against [Plaintiff] were dismissed. The actions of the Defendants on the night of December 3rd, 2016 were extremely excessive, unwarranted, and violated the constitutional rights of [Plaintiff].

The Defendant who caused the most offense is no longer a member of the Police Department.

Since the incident which occurred on December 3rd 2016, the main offending Defendant was involved in an incident where questionable amounts of force was used which gained massive amounts of public attention from news and social media. In the aforementioned incident, the Defendant struck a short, overweight woman with his baton for several minutes as an attempt to control her.

“After an internal affairs investigation, ([Defendants] Police Services Chief) said Thursday the recommendation by ([officer] Defendant) chain of command was for him to be fired.”
-9News.com

This incident brings forth serious concerns regarding the incident that occurred on December 3rd, 2016 with t [Plaintiff].

[Plaintiff] is a larger than average male with a very large cyst in the back of his brain. The incident on the night of December 3rd, 2016 was completely unnecessary. The Plaintiff endured extreme damages due to the actions of the Defendants. Due to the Plaintiff having an invisible disability, both the Plaintiff and the Defendants are lucky the incident on December 3rd did not result in a death.

Regarding Officer Hopkins, [Plaintiff] will subpoena any and all material and information in FCPD possession concerning the officer—including, but not limited to that contained in personnel, Internal Affairs and Performance Standards Unit files—related to (1) use of force and other acts of aggression or violence; (2) noncompliance with FCPD rules, regulations and policies or the law and (3); untruthfulness or other acts indicative of dishonesty.

- 1) Use of Force and Other Acts of Aggression or Violence: The Fort Collins Police Services Policy Manual effective as of July 2014 (*hereinafter* FCPD Manual) and available at <http://www.fcgov.com/police/pdf/policy-manual-7-14.pdf>, provides that both the use of a police baton and the use of OC spray are “Type 1” uses of force. FCPD Manual § 301.2.2. The manual also requires that whenever Type 1 force is used, the involved employees are to complete an Early Intervention System (*hereinafter* EIS) incident report. FCPD Manual §1021.5.1. Officer Hopkins used both a police baton and OC spray against [Plaintiff] during the events preceding the charging of [Plaintiff] in the matter at bar. In addition, Officer Hopkins was investigated for *and cleared of* accusations of sexual assault by FCPD Internal Affairs. See <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjO-ubu0s3SAhUK-mMKHb4yBLYQFggkMAI&url=http%3A%2F%2Fcitydocs.fcgov.com%2F%3Fcmd%3Dconvert%26vid%3D218%26docid%3D2697059%26dt%3DREAD%2BBEFORE%2BPACKET&usq=AFQjCNEN-qSRZDbuRwJ2Y9YPB47n->

y5H1g&sig2=M2Mo6pHabPXJeaucv1orw&bvm=bv.149397726,d.cGc. *See also Walker* at 122 (there is no distinction between sustained and unsustained complaints). As such, there is much more than a reasonable likelihood that material and information related to the use of force and other acts of aggression or violence by or otherwise involving Officer Hopkins exist.

- 2) Noncompliance with FCPD Rules, Regulations and Policies or the Law: FCPD Manual § 308.2 authorizes officers to use control devices such as police batons and OC spray “to control subjects who are violent or who demonstrate the intent to be violent.” Section 308.7 explicitly states that OC Spray “should not [] be used against individuals . . . who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.” FCPD Manual § 388.2 provides that off-duty officers may take reasonable action to minimize “an imminent threat of serious bodily injury or death or significant property damage.” *See also* FCPD Manual § 420.2.1. Section 388.5 provides that, when reasonably possible, an officer “shall notify and receive approval of an agency supervisor” before taking any off-duty enforcement action. *See also* FCPD Manual § 420.2.1. C.R.S. §§ 18-1-707 and 18-8-804 provide for the use of reasonable force by peace officers according to adopted departmental policies. C.R.S. § 18-8-804 and FCPD Manual § 106.1 require all FCPD employees to comply with the departmental policies in the manual. The force used against [Plaintiff] in this matter violated all of the foregoing provisions of the FCPD Policy Manual and Colorado law (not to mention the Plaintiff’s rights under the U.S. and Colorado constitutions). Further, FCPD Manual § 106.2.1 provides that violations of the manual form the basis for administrative action and § 1020.8 shows that administrative action records are kept on file by the FCPD. Accordingly, it is reasonably likely that there exists material and information related to Officer Hopkins’ noncompliance with FCPD rules, regulations and policies or the law.
- 3) Untruthfulness or Other Acts Indicative of Dishonesty: Officer Hopkins makes several statements in his report that are both malicious in nature and clearly contradicted by the footage from his own and Officer Barnes’ point of view (body worn) cameras. Further, while determined to be *unsustained*, at least one of the allegations made against Officer Hopkins that led to his recent Internal Affairs investigation is that he lied in order to manipulate citizens into doing his bidding. *See* [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjO-ubu0s3SAhUK-mMKHb4yBLYQFggkMAI&url=http%3A%2F%2Fcitydocs.fcgov.com%](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjO-ubu0s3SAhUK-mMKHb4yBLYQFggkMAI&url=http%3A%2F%2Fcitydocs.fcgov.com%2F)

2F%3Fcmd%3Dconvert%26vid%3D218%26docid%3D2697059%26dt%3DREAD%2BBEFORE%2BPACKET&usg=AFQjCNEN- qSRZDbuRwJ2Y9YPB47ny5H1g&sig2=M2Mo6pHabPXJeaucv1orw&bvm=bv.149397726,d.cGc. *See also Walker at 122* (there is no distinction between sustained and unsustained complaints). As such, there is a high likelihood that material and information exists related to untruthfulness or other acts indicative of dishonesty by or otherwise involving Officer Hopkins, exists.

Regarding Officer Barnes, [Plaintiff] will subpoena any and all material and information in FCPD possession concerning the officer—including, but not limited to that contained in personnel, Internal Affairs and Performance Standards Unit files—related to use of force and other acts of aggression or violence. [Plaintiff] incorporates by reference the FCPD Manual provisions detailed in ¶ 10.a.1), *supra*. Officer Hopkins used both a police baton and OC spray against [Plaintiff] during the events preceding the charging of [Plaintiff] in this matter; Officer Barnes was present and working together with Officer Hopkins at that time and was witness to Officer Hopkins' use of force against [Plaintiff]. Officer Barnes was therefore an employee involved in Type I use of force required to complete an EIS incident report per FCPD Manual § 1021.5.1. Officer Barnes was also involved with the shooting of a suspect by the FCPD in January of this year. *See* <http://kdvr.com/2017/01/21/police-shoot-burglary-suspect-in-ft-collins/>. Thus, there is a reasonable likelihood that material and information related to the use of force and other acts of aggression or violence by or otherwise involving Officer Barnes, exists.

[Plaintiff] will limit his subpoena to material that goes to the issues of officer propensity for violence, officer propensity for misconduct and officer credibility. Given the assertions of excessive force, self-defense, failure to intervene, and untruthfulness, these issues are central to the Plaintiff's defense. [Plaintiff] has laid out in the paragraphs above why he believes the subpoenaed materials exist. They would assist his defense and he has no other way to secure them. *See* ¶¶ 10.-13., *supra*. [Plaintiff] is not asking for unfettered access to the FCPD's files in the mere hope he might find something he could use for his defense. *See Neal* at *3 ("without having seen the personnel files, the Court cannot imagine how Defendant could be more specific"). Further, compliance with his subpoena would not unnecessarily impose on the FCPD, or Officers Hopkins, or Barnes, nor affect the ability of either the FCPD or the officers to perform their functions and duties, or otherwise be unreasonable or oppressive. *See Spykstra* at 664, 667; Crim. P. 17(c).

E. REQUEST FOR RELIEF

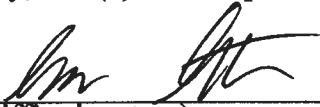
State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "E. REQUEST FOR RELIEF."

PLAINTIFF HAS REQUESTED \$2,000,000. IF THE DEFENDANTS WOULD LIKE TO SETTLE BEFORE TRIAL, DISCUSSION MAY ENSUE. The Plaintiff understands that Defendant #1 is no longer a police officer. The police chief of (FCPD) has since changed as well, and likely wants this incident to be forgotten. Despite these changes, there are numerous currently active police officers of (#3) who were involved with the incident involving the Plaintiff on December 3, 2016. The Plaintiff wants to ensure that what happened to him, does not happen to other innocent people.

F. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



(Plaintiff's signature)

4/9/2019

(Date)

(Revised December 2017)