

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

Civil Action No. 2020 CV 810

CHRISTIAN A. GUERRERO,

VICTOR J. GUERRERO

Plaintiffs,

v.

CITY OF PUEBLO, COLORADO;
POLICE SERGEANT STEPHEN JESIK, in his individual and official capacity;
OFFICER SETH JENSEN, in his individual and official capacity;
OFFICER JUSTIN PREEDY, in his individual and official capacity
OFFICER SHELBY CLAUSEN, in his individual and official capacity.

Defendants.

VERIFIED COMPLAINT

Plaintiffs Christian A. Guerrero and Victor J. Guerrero, by and through their attorney, Gregory C. Graf of the law firm Bertram & Graf, LLC, respectfully alleges for their Complaint as follows:

INTRODUCTION

1. This is an action for damages against the City of Pueblo and the Pueblo Police Department, Sergeant Stephen Jesik, Officer Seth Jensen, Officer Justin Preedy and Officer Shelby Claussen of the Pueblo Police Department for wanton and willful police brutality, false arrest, false imprisonment, and unlawful seizure of Plaintiffs Christian Guerrero and Victor Guerrero. Plaintiffs allege the Defendants wrongfully attacked, then arrested, detained and imprisoned Plaintiffs without a warrant and without probable cause. Further, the Defendants did

so willfully, intentionally, knowingly, recklessly, and in direct violation of the United States Constitution and Colorado Statutes and the Colorado Rules of Criminal Procedure. Defendants' conduct under color of state law proximately caused physical injuries to the Plaintiffs and deprived Plaintiffs of their federally protected rights. It is further alleged that the actions complained of herein are the custom, practice and policy of the City of Pueblo and the Pueblo Police Department.

2. Upon information and belief, other arrestees are subjected to similarly unlawful treatment at the hands of the City of Pueblo and the Pueblo Police Department.

JURISDICTION & VENUE

3. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Jurisdiction supporting Plaintiffs' claim for attorney fees is conferred by 42 U.S.C. § 1988.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the state of Colorado, and all of the parties are residents of the state.

PARTIES

5. The Plaintiff Christian A. Guerrero (Christian) is a twenty-two-year-old Hispanic male, and veteran of the United States Marine Corp who is a resident of the City of Pueblo, Colorado.

6. The Plaintiff Victor J. Guerrero (Victor) is a thirty-one-year-old Hispanic male, who is a resident of the City of Pueblo, Colorado.

7. The City of Pueblo is an incorporated municipality under the laws of the State of Colorado, with principal offices located at 1 City Hall Place, Pueblo, Colorado, 81003.

8. The Pueblo Police Department is a division of the City of Pueblo with principal offices located at 200 S. Main Street, Pueblo, Colorado 81003.

9. Sgt. Stephen Jesik is a police sergeant working for the Pueblo Police Department and as such was responsible for ensuring the Constitutional rights of the Plaintiffs were not violated and that federal and state laws relating to the police contact with the Plaintiffs were upheld and maintained. Sgt. Jesik was at all times relevant acting under color and authority of state law.

10. Officer Seth Jensen, , Officer Justin Preedy and Officer Shelby Claussen are all Pueblo Police Department Officers and were responsible for ensuring the Constitutional rights of the Plaintiffs were not violated and that federal and state laws relating to the police contact with the Plaintiffs were upheld and maintained. Jensen, Preedy and Claussen were at all times relevant acting under color and authority of state law.

FACTUAL BACKGROUND

11. On April 6, 2019 at approximately 0130 hours Plaintiff Victor Guerrero (Victor) was at a bar (“The Favorite”) located at 119 W. B Street, Pueblo Colorado celebrating his birthday with his two brothers Plaintiff Christian Guerrero (Christian) and Fabian Guerrero (Fabian).

12. Christian and Fabian went outside to smoke while Victor remained inside the bar. While inside the bar, Victor ordered an Uber taxi to pick up all three brothers to return home.

13. When Victor eventually went outside to meet his bothers, he saw a disturbance across the street with police officers present. There we a large number of persons outside on the side of the street the Plaintiff’s were located. Police estimated there were thirty to forty persons outside in front of the bar.

14. Victor turned to see bar security “bouncer” talking to his brothers Christian and Fabian. Christian was allegedly involved in an altercation with another patron while Victor was inside the bar.

15. Police Sgt Jesik was across the street at Union Station dealing with the original disturbance that caused police to be present in the area.

16. Sgt Jesik stated he heard “*loud talking*” going on across the street but he did not see a physical fight. Jesik later stated “*And at this point, I didn’t know if they had been involved in some kind of physical altercation or they were being separated or they were about to be and security was about to prevent that.*”

17. Sgt. Jesik ran across the street and grabbed Victor from behind in a bear hug without identifying himself as a police officer.

18. Sgt. Jesik never saw Victor or Christian Guerrero hit or punch anyone. Sgt Jesik had no probable cause to detain Victor Guerrero. Sgt. Jesik did not see Victor, Christian or Fabian commit a crime when he ran over and attacked Victor from behind. Sgt Jesik threw Victor Guerrero to the ground.

19. Christian Guerrero ran over to assist his brother Victor and was swarmed by police officers who began punching and kicking Christian Guerrero while he was on the ground.

20. Officer Seth Jensen kicked Christian Guerrero while Christian was on the ground on his hands and knees. Officer Jensen and Officer Shelby Claussen then delivered numerous punches to the face and head of Christian Guerrero who was defenseless on all fours knocking him unconscious.

21. Officer Jensen delivered at least fifteen punches to Christian’s head.

22. Officer Claussen falsely reported that he struck Christian Guerrero with an open hand. Civilian video shows both officers punching Christian in the face and head with closed fists.

23. Officer Jensen did not first attempt to pull Christian Guerrero's arms back to place him in handcuffs. Instead, Officer Jensen immediately started to kick and then kicked and then punch Christian Guerrero numerous times.

24. Police officers further brutalized Christian Guerrero attempting to force his unconscious body into a police cruiser. Only after several attempts to force the unconscious Christian Guerrero into a police vehicle did they call for an ambulance to take him to the hospital. Christian Guerrero suffered a concussion as well as numerous abrasions and contusions.

25. Victor Guerrero stood back up having committed no crime and was then attacked by Officer Justin Preedy. After telling the police to stop, officer Preedy punched Victor Guerrero in the face. Then, Officer Preedy and another officer tackled Victor to the ground, pushed and held his face into the cement.

26. The police officers arrested Victor Guerrero although he had committed no crime. Officer Preedy later bragged that he "laid out" Victor Guerrero.

27. Upon information and belief, the Pueblo Police Department routinely brutalize and arrests Hispanic Americans without Court authorized warrants or probable cause.

28. Officer Jensen subsequent to the arrest of the Plaintiffs did falsify a probable cause affidavit to include false and misleading facts and material omissions of fact.

FIRST CLAIM FOR RELIEF
(42 U.S.C. §1983)

29. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

30. The actions of Sergeant Stephen Jesik, Officer Seth Jensen, Officer Justin Preedy and Officer Shelby Claussen of the Pueblo Police Department as described herein, while acting under color of state law, intentionally deprived Plaintiffs of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful and unreasonable seizures as guaranteed by the Constitution of the United States of America and 42 U.S.C. §1983, in that the defendants wrongfully assaulted and then detained and arrested the Plaintiffs in direct violation of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Colorado state law including but not limited to *Colo.Rev.Stat.* §16-3-102, *Colo.Rev.Stat.* §18-3-303 and *Colo.R.Crim.P.* 4.2 and *Colo.R.Crim.P.* 41.

31. The defendants intentionally, knowingly, recklessly, willfully and wantonly, struck the Plaintiffs in the face and head and then arrested or caused to be arrested the Plaintiffs, seizing their persons.

32. The City of Pueblo and the Pueblo Police Department, through its official policy, custom and practice did through inadequate and improper training, create and maintain a police department with officers so lacking in fundamental training in proper procedures that such officers would intentionally, knowing, recklessly, willfully and wantonly brutalize the Citizens of Colorado and violate the Fourth and Fifth Amendments to the United States Constitution and did subject Plaintiffs to physical assault and to a demeaning, illegal and unconstitutional seizure of their persons and property.

33. As the direct and proximate consequence of the defendants' actions and omissions in violation of the United States Constitution, Plaintiffs incurred damages and losses including

physical injuries, lost wages, emotional and psychological trauma, and personal indignity in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(False Imprisonment or Arrest)

34. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

35. The Defendants intentionally, knowingly, recklessly, willfully and wantonly, falsely imprisoned Plaintiffs, their person and property.

36. As the direct and proximate consequence of the defendants' actions and omissions in violation of the United States Constitution and the Colorado Constitution and state statutes, Plaintiffs incurred damages and losses including, physical injuries, lost wages, emotional and psychological trauma, and personal indignity in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Assault/Battery)

37. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

38. Sgt Jesik, without probable cause and acting under color of law assaulted Plaintiff Victor Guerrero by grabbing him from behind and then throwing him to the ground.

39. Officer Preedy, while acting under color of law, and without reasonable cause or justification did assault Victor Guerrero when he punched Victor Guerrero in the face.

40. Officer Preedy, while acting under color of law and without reasonable cause or justification did assault Victor Guerrero when he ground Victor Guerrero's face into the ground.

41. Officer Jensen, while acting under color of law, did assault Christian Guerrero when he kicked and punched Christian Guerrero numerous times.

42. Officer Shelby Claussen while acting under color of law, did assault Christian Guerrero when he kicked and punched Christian Guerrero numerous times.

43. As the direct and proximate consequence of the defendants' actions and omissions in violation of the United States Constitution and the Colorado Constitution and state statutes, Plaintiffs incurred damages and losses including, physical injuries, lost wages, emotional and psychological trauma, and personal indignity in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Excessive Force)
(C.R.S. §18-8-803)

44. Plaintiffs hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

45. Sgt Jesik, while acting under color of law, used excessive force when he grabbed Victor Guerrero from behind and threw him to the ground.

46. Officer Preedy, while acting under color of law, used excessive force when he punched Victor Guerrero in the face.

47. Officer Preedy, while acting under color of law, used excessive force when he ground Victor Guerrero's face into the ground.

48. Officer Jensen, while acting under color of law, used excessive force when he kicked and punched Christian Guerrero numerous times.

49. Officer Shelby Claussen while acting under color of law, used excessive force when he punched Christian Guerrero numerous times.

50. As the direct and proximate consequence of the defendants' actions and omissions in violation of the United States Constitution and the Colorado Constitution and state statutes,

Plaintiffs incurred damages and losses including, physical injuries, lost wages, emotional and psychological trauma, and personal indignity in an amount to be proven at trial.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant:

- (a) Appropriate declaratory and other injunctive and/or equitable relief;
- (b) Compensatory and consequential damages, including damages for physical injuries, emotional distress, loss of reputation, humiliation, degradation, fear, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (c) All economic losses on all claims allowed by law;
- (d) Attorney's fees and the costs associated with this action, as well as expert witness fees, on all claims allowed by law including but not limited to those permitted by 42 U.S.C. §1988;
- (f) Pre- and post-judgment interest at the lawful rate.
- (g) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,

BERTRAM & GRAF, LLC

/s/ Gregory C. Graf
Original Signature on File

By: _____

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Attorneys for Plaintiff

I, CHRISTIAN GUERRERO, being first duly sworn, declare under penalty of perjury that the foregoing Verified Complaint was read to me in its entirety, and the statements contained therein are true and correct to best of my knowledge and belief.

/s/Christian Guerrero

CHRISTIAN GUERRERO, Plaintiff

I, VICTOR GUERRERO, being first duly sworn, declare under penalty of perjury that the foregoing Verified Complaint was read to me in its entirety, and the statements contained therein are true and correct to best of my knowledge and belief.

/s/Victor Guerrero

VICTOR GUERRERO, Plaintiff