

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

NICHOLAS PETTIT,)	
)	
Plaintiff,)	
)	
vs.)	
)	Civil Action No. 21-cv-115
JAMES MORROW and JOSEPH)	
PODOLSKI, in their individual and official)	
capacities as Police Sergeants, and)	Judge
KENNETH DALE and GLENN)	
THIVENER in their individual)	
and official capacities as Police Officers,)	Jury Trial Demanded
Defendants.)	
)	
)	
)	

COMPLAINT

INTRODUCTION

On April 24, 2019, Nick Pettit was standing on the front porch of his Columbus home. He had come out because he heard a disturbance in his neighborhood: approximately 6 members of a Columbus Police SWAT team were across the street serving a search warrant at a neighboring home; more police cars and officers were further down his street. SWAT was evacuating and then questioning a family, a grandmother and two grandchildren, whom Mr. Pettit knew as his neighbors. Concerned, Mr. Pettit took out his cellphone and began filming the interaction while standing on his porch. He recorded the police mistreating his neighbors, including smacking the compliant teenaged grandson on the face. Mr. Pettit told the police to stop it, and said that he had them on camera. They told him to go inside. He did not, and kept filming.

In response, two of the officers and their commanding Sergeant, clad in SWAT gear and carrying automatic rifles, crossed the street, opened Mr. Pettit's gate, and marched through his yard and onto his porch, yelling at him to get back into his house. Then they slammed him down, threatened him, took his phone, roughed him up, and arrested him. This is a civil rights complaint for damages for Defendants' retaliation against Mr. Pettit for exercising his rights under the First Amendment, for their use of unlawful force, and their unlawful seizure.

JURISDICTION AND VENUE

1. Because this civil rights action arises under the United States Constitution, this Court has jurisdiction under Article III of the Constitution and under 28 U.S.C. §§ 1331 and 1343(3) and (4). The relief sought is authorized by the United States Constitution and by 42 U.S.C. § 1983. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. §1367.
2. This judicial district is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). The actions giving rise to this suit took place in this judicial district. The Defendants work in this judicial district.

PARTIES

Plaintiff

3. **Nicholas Pettit** (Mr. Pettit) is a 35-year-old resident of Columbus, Ohio. He works third shift at Taco Bell to support his family.

Defendants

4. **Defendant Sergeant James Morrow** (Sgt. Morrow) is a Sergeant in the Columbus Police Department. He was the commanding officer present who oversaw and also participated in the commission of the abuses that are the subject of this Complaint. He had both a direct and a supervisory role in these abuses. He is sued in his official and individual capacities.
5. **Defendant Sergeant Joseph Podolski** (Sgt. Podolski) is a Sergeant in the Columbus Police Department. He had a direct and supervisory role over the abuses that are the subject of this Complaint. He is sued in his official and individual capacities.
6. **Defendant Officers Kenneth Dale and Glenn Thivener** (together, the Officers or separately, Officers Dale or Thivener) are officers in the Columbus Police Department who directly committed the abuses that are the subject of this Complaint. They are each sued in their official and individual capacities.
7. At all times relevant to this Complaint, all Defendants were acting under color of state law.

FACTS

8. On April 24, 2019, at approximately 8:00 p.m., Nick Pettit came out onto his front porch and began using his cellphone to film a police interaction with his neighbors that was occurring on the public street in front of his house.
9. Approximately six Columbus Police and SWAT Police stood in the street in front of his home, along with an armored vehicle. Upon information and belief, Sgt. Podolski was among them.
10. Further away, several houses down from Mr. Pettit, additional police and SWAT police gathered with additional police vehicles. Upon information and belief, these police included Officers Thivener and Dale and Sgt. Morrow.
11. The police were there to execute a search warrant for alleged unlawful weapons in a home diagonally across the street from Mr. Pettit's residence. Although upon information and belief they discovered no weapons, the police evacuated the family who lived there, a grandmother and two grandsons, from the home and into the street.
12. Mr. Pettit knew the family from barbequing with them as his neighbors; he was concerned about their safety and his own during this police interaction.
13. When Mr. Pettit stepped onto his front porch and began filming, the police had already concluded their search and the family members were coming out into the street, one with his hands up, to be questioned.
14. Mr. Pettit saw, and recorded on video, an officer smack his teenage neighbor on the face, without provocation. Upon information and belief, this officer was Sgt. Podolski.

15. At that moment Mr. Pettit began not just filming, but also speaking to the police. Mr. Pettit shouted, “hey, you ain’t supposed to smack him like that, the fuck is wrong with you? Hey I got all that shit on camera, what’s your name bro? Hey you ain’t supposed to smack him in the face, the fuck is wrong with you.”
16. Police officers shouted back to Mr. Pettit, “get back in the house.” Upon information and belief, these officers included the Defendants.
17. In response, Mr. Pettit said “hell no man, I’m on my private property, you can’t come over here and do nothing to me.”
18. A few moments later, in response to Mr. Pettit’s filming and his statements, Officers Thivener and Dale, followed by Sgt. Morrow, crossed the street from their position down the street from the interrogation of Mr. Pettit’s neighbors, and toward Mr. Pettit’s own home.
19. These officers opened Mr. Pettit’s front gate, marched through his yard, and came up onto his porch, shouting at him as they approached, “get in the house,” “go in the house dude,” and “you’re under arrest” among other things.
20. Meanwhile, with his camera still on, Mr. Pettit was saying, “hey look, I’ve got you all on camera, right now, I’m on my private property.”
21. Defendant Officers Thivener and Dale did not stop their march toward Mr. Pettit. They shouted “you’re under arrest,” grabbed him, and slammed him against the outer wall of his house and then onto the ground, injuring his shoulder and bruising his face.
22. “I didn’t even do nothing except record this whole situation,” Mr. Pettit said as the officers tackled him.

23. One of the officers (upon information and belief, either Officer Thivener or Officer Dale) shouted at Mr. Pettit to hand over the phone he was using to film the scenario.
24. The phone dropped, the screen cracked, and Defendants seized it.
25. Mr. Pettit did not fight back.
26. Mr. Pettit's sister-in-law, Crystal Pettit, was also standing on the porch during this time. He asked her to call 911 for help as the Officers were attacking him.
27. Upon information and belief, Officer Thivener, Officer Dale or Sgt. Morrow told Ms. Pettit not to call 911, shoved her, and threatened her.
28. Immediately after the attack, Ms. Pettit did call 911 for help, to report that SWAT Police were at her house, had shoved her, and had punched and arrested her brother-in-law. The dispatcher told her she would be charged with Misuse of 911 and transferred her to the non-emergency line, where the call dropped.
29. In the meantime, Officers Thivener and Dale and Sgt. Morrow dragged Mr. Pettit to a police vehicle down the street.
30. There, while Mr. Pettit was handcuffed, Sgt. Podolski took photographs of and wrote down Mr. Pettit's injuries from the attack, which included a scraped face.
31. Afterwards, Columbus Police Officers Taylor and Daniel continued to detain Mr. Pettit in handcuffs; put him first into one, then into another police vehicle; drove him for processing to a police building; and ultimately booked him into the Franklin County Jail that night.
32. Sgts. Morrow and Podolski both oversaw and directly assisted while the other officers tackled and arrested Mr. Pettit, threatened and shoved Ms. Pettit, took Mr. Pettit's phone, and removed him from his property into police custody.

33. Mr. Pettit was held in jail for five days before charges were brought against him for this event. On April 29, he was finally charged under R.C. 2317.13(a)(1), for Misconduct at an Emergency.

34. Under this statute, no person shall knowingly:

Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

Id.

35. On April 29, in service of the Misconduct charge, Officer Thivener submitted a complaint and affidavit in support of probable cause for Mr. Pettit's supposed crime, specifically indicating Mr. Pettit's "yelling" as the basis for his arrest.

36. Defendants did not have probable cause to arrest Mr. Pettit.

37. Before the Misconduct at an Emergency allegations against Mr. Pettit went to trial, on or about October 7, 2019 the Columbus City Prosecutor dropped the charges based on "insufficient evidence."

38. After the attack on Mr. Pettit and subsequent arrest, Sgt. Morrow reviewed the other Officers' behavior and advised that their use of force and other conduct was acceptable.

39. Upon information and belief, neither Sgt. Morrow, Sgt. Podolski, nor any other commanding officer at the Columbus Police Department issued any discipline or further action based on the treatment of Mr. Pettit.

40. Months after the attack and arrest, a Columbus Police representative admitted on local news, “we probably should have let that go,” and said further, “legally, was anything done wrong? I look at it more, was something tactically done at that point that could have harmed somebody.” 10TV WBNS, Columbus Police respond to viral video showing officers, man struggle during SWAT situation, Oct. 22, 2019, 11:03 PM, *available at* <https://www.10tv.com/article/news/local/columbus-police-respond-viral-video-showing-officers-man-struggle-during-swat-situation-2019/530-67fb36f5-c94e-44ca-93d5-3edc63b4ef29>
41. Before the events that are the subject of this Complaint occurred, Mr. Pettit had been about to be employed by Big Lots. He was putting his life back together after recovering from time in the criminal justice system. Because of his arrest and detention, he lost this job opportunity. It was not until one year after his arrest that he was able to recover enough to secure employment again, this time with Taco Bell. The attack, arrest, and seizure of his belongings had other fallout: he was physically injured. His spouse’s bank card was seized, which contained his family’s rent money for that month. His cell phone was broken and seized. He experienced continuing trauma from the 5 days he was imprisoned without charges in jail, in addition to the trauma from his police-caused injuries and the violation of his rights. His family experienced trauma and loss as well.
42. Mr. Pettitt brings this case against the officers who assaulted and arrested him, and their commanding officers, for violation of his rights to freely speak, criticize, and record the police in a public space, and his right to be free from harm at the hands of the police. He asks this Court for redress based on the police’s seizure of his property,

use of force against him, unlawful arrest and jailing, and violation of his constitutional rights to film and speak to the police and to express himself.

CAUSES OF ACTION

COUNT ONE

**Constitutional and Civil Rights Pursuant to 42 U.S.C. § 1983
Violation of First and Fourteenth Amendment
And the Ohio Constitution
Retaliation Based on Speech and Conduct
(Against all Defendants)**

43. The foregoing allegations are incorporated as if re-alleged herein.
44. Speech and expressive conduct, including the right to film and to criticize the police, are protected by the First Amendment to the United States Constitution.
45. Defendants' intentional and malicious actions in attacking the Plaintiff, harming him, arresting and charging him without probable cause, and seizing his phone were motivated by the Plaintiff's exercise of his First Amendment rights.
46. The use of force, seizure, and arrest of Plaintiff by the Defendants constituted retaliation against Plaintiff for the exercise of his First Amendment rights.
47. In addition to the direct actions of all Defendants causing these violations, Sergeants Morrow and Podolski further failed to supervise or discipline the Officer Defendants for this conduct.
48. Defendants' actions violated clearly established law.
49. As a direct result of the constitutional violations committed by Defendants, Plaintiff has suffered serious personal injuries and is entitled to relief under the federal and state constitutions and 42 U.S.C. § 1983.

COUNT TWO
Constitutional and Civil Rights Pursuant to 42 U.S.C. § 1983
Violation of Fourth and Fourteenth Amendment Rights
And the Ohio Constitution
Use of Excessive Force and Unlawful Seizure
(Against all Defendants)

50. The foregoing allegations are incorporated as if re-alleged herein.
51. Defendants through their intentional, malicious, and objectively unreasonable acts, in entering the Plaintiff's property unlawfully, attacking him, arresting him, and seizing his phone violated the Fourth and Fourteenth Amendment prohibitions on the excessive use of force and against unlawful seizure and injured Plaintiff as a result.
52. In addition to the direct actions of all Defendants causing these violations, Sergeants Morrow and Podolski further failed to supervise or discipline the Officer Defendants for this conduct.
53. Defendants' actions violated clearly established law.
54. As a direct result of the constitutional violations committed by Defendants, Plaintiff has suffered serious personal injuries and is entitled to relief under the federal and state constitutions and 42 U.S.C. § 1983.

COUNT THREE
Assault and Battery
(Against All Defendants)

55. The foregoing allegations are incorporated as if re-alleged herein.
56. Defendants through their intentional, malicious, reckless, and bad faith actions in unlawfully entering the Plaintiff's property and attacking him, slamming him into the wall and onto the ground, violated the state law against assault and battery.

57. As a direct result of the assault and battery committed by the Defendants, Plaintiff has suffered serious personal injuries and is entitled to relief under state law.

PRAYER FOR RELIEF

Plaintiff requests that this Court enter judgment against Defendants providing the following relief:

- A. Damages in whatever amount Plaintiff is found to be entitled, including compensatory and punitive damages;
- B. Declaratory relief;
- C. An award of costs and reasonable attorney's fees; and
- D. All such other and further relief as the Court deems appropriate.

Respectfully Submitted,

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