

1237 - Excessive Force - Off-duty police officer cleared of wrongdoing for striking drunk during arrest at Toughman Contest

Branham v. Corder & City of Louisville, 98 CI 4953

Plaintiff: Thomas Dyke, Louisville

Defense: Lisa Schweickart and Angela Dunham, *City of Louisville*, Louisville

Verdict: Zero Verdict

Circuit: **Jefferson** (10), J. Ryan,
9-14-00

On the evening of 1-16-98, Matthew Corder, a police officer for the City of Louisville was moonlighting as security for a Toughman Contest being held at The Louisville Gardens. During the excitement, Corder observed Gary Branham, age 36, toss a drink on one spectator and get into an argument with yet another. Corder approached Branham and attempted to escort him from the building. As Corder and another officer tried to remove Branham from the building, an altercation ensued during which Corder punched Branham in the face.

Branham was then arrested and taken to the arena's first aid center for treatment. As the suspect continued to resist, Corder doused him with pepper spray. Thereafter, Branham was charged with assault, alcohol intoxication, disorderly conduct and resisting arrest. The charges were later dismissed when Corder failed to appear at Branham's criminal hearing.

After the dismissal, Branham brought this suit for damages against Corder and the City. While admitting that he was drunk and had cursed the officers, he claimed that Corder's punching him amounted to an assault and that the actions in total constituted excessive force in effectuating his arrest.

He also claimed that the City of Louisville was responsible under the respondeat superior theory, as Corder's role changed from that of part-time security guard to police officer once he attempted to arrest Branham. He sought uncapped damages for physical and emotional suffering under both the assault and excessive force claims, plus uncapped sums for punitive damages.

Corder countered by stating that he was acting in self-defense and did not use more force than was necessary, instead describing Branham as combative. He further claimed that while being escorted from the premises, Branham pulled from the other officer's grasp and drew back as if to strike Corder. He claimed his punch was in response to this perceived threat and was not more force than was necessary.

Subsequently, Corder described Branham's behavior at the medical center as violent and threatening, thus warranting the use of the spray. Additionally, Corder claimed that his inability to testify at Branham's trial was due to a scheduling conflict and not a lack of probable cause as asserted by Branham. In response, Branham denied attempting to hit Corder, claiming that he was simply gesturing to the officer while asking what he had done wrong.

Schweickart closed on behalf of the City by recounting Branham's actions that night and scoffed at the idea he was not a threat. He described Branham as trying to show his friends how tough he was by not letting the police tell him what to do. She noted that all Corder wanted to do was calm him down by talking to him outside and that the police officers initially just wanted him to leave the building.

She continued by noting that other officers at the scene believed Branham was going to hit Corder, calling his response reasonable. Counsel questioned the credibility of Branham's witness who all admitted they had been drinking that night, and noted that Branham admitted to yelling at officers to "get their fucking hands off him." Schweickart summarized that "Branham was acting like a drunk and now is blaming Corder for what happened to him."

Defense counsel described how after being struck, Branham was taken to the first aid station where he was spitting, cursing and kicking after being warned to calm down. She conceded that Corder used his pepper spray at this time as he had been trained to do when someone must be subdued and does not respond to verbal commands. She flatly denied plaintiff's accounts that Branham had been also sprayed while held down during the initial struggle.

With regard to damages, Schweickart claimed that the embarrassment and humiliation suffered by Branham were by his own actions. She concluded by asking the jury to tell Branham that he must take responsibility for those actions.

Dyke then closed for Branham by telling jurors that they should be surprised and ashamed at the behavior of the police officers who appeared at trial. He described the environment in the police department as an "us against them" mentality that makes all non-police part of the problem.

Counsel accused Corder of attempting to hide his actions that night by failing to indicate the use of O.C. spray in the arrest citation and his failure to properly file the *Use of Force* form where he did indicate the use of the spray. Additionally, Dyke noted that Corder defied a subpoena by not appearing at Branham's criminal proceeding, summarizing that too many things went wrong with police procedures for this to have been a routine incident.

Dyke conceded that Branham was drunk that night, but noted that the environment invited such behavior. He asserted that when Branham learned that he was about to be expelled out into the street at the start of the program while all of his friends remained inside, he broke out of the officer's grasp to question why. It was at that time he was punched, tackled, hand-cuffed and subdued with pepper spray. He went on to question the severity of Branham's intoxication since medical personnel did not indicate any effects of alcohol on their assessment form. Lastly, Dyke questioned why Branham was charged with assault when he was the only one injured?

Dyke summarized the case as being about "us and them" and claimed that Branham was attacked for questioning the authority of the Louisville Police Department. He concluded by asking the jury to tell the police department that such actions will not be tolerated by awarding enough money that a message will be heard.

The jury retired with instructions to consider under the assault claim whether Corder (1) had hit Branham intentionally (2)

without reasonable grounds to believe he was in immediate danger and (3) whether he used more force than was necessary. Branham had to prove all three elements to prevail on assault.

The excessive force instruction only required that the panel find that Corder used more force than was necessary, and the claim against the City required that they find Corder was acting within his scope of employment as a police officer at the time. If Branham prevailed, he could be awarded uncapped sums for suffering and punitives.

The panel deliberated just over two hours before deciding in favor of Corder on the first two claims and for the City on the third, thus not reaching damages. A consistent judgment has since been entered for defendants. According to a published report, Corder has since explained the verdict “reaffirms my faith in the system.”

Editor’s Note: Officer Corder had been the subject of another excessive force claim stemming from the arrest of Adrian Reynolds on 1-1-98. According to published reports, an internal affairs investigation determined that Corder had hit Reynolds in the forehead with a flashlight and punched him, the latter breaking his nose. However, the investigation also found that Corder's actions were justified. Six days later, after a struggle with corrections officers, Reynolds died of a head injury.