

Pro Se 1 (Rev. 09/16) Complaint for a Civil Case

UNITED STATES DISTRICT COURT
for the
8TH District of SOUTH DAKOTA

FILED

FEB 27 2017

[Signature]
CLERK

MARK ALLEN BURGESS
ELIZABETH DIANE BURGESS
(MINOR CHILD) M.S.B. [REDACTED] /01
(MINOR CHILD) A.N.B. [REDACTED] /04
(MINOR CHILD) E.J.B. [REDACTED] /15

Case No.

17-4027

(to be filled in by the Clerk's Office)

Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint
If the names of all the plaintiffs cannot fit in the space above,
please write "see attached" in the space and attach an additional
page with the full list of names)

Jury Trial: (check one) Yes No

-v-

"See Attached"

Defendant(s)
(Write the full name of each defendant who is being sued. If the
names of all the defendants cannot fit in the space above, please
write "see attached" in the space and attach an additional page
with the full list of names)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	MARK ALLEN BURGESS
Street Address	1205 N. HARLEM AVE
City and County	SIOUX FALLS MINNEHAHA
State and Zip Code	57104
Telephone Number	6054137577
E-mail Address	markburgess323@yahoo.com

LIST OF DEFENDANTS

1. CITY OF SIOUX FALLS
2. SIOUX FALLS POLICE DEPARTMENT
3. OFFICER MACFARLANE #943
4. OFFICER WESTRUM #898
5. OFFICER BRANCH #884

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name CITY OF SIOUX FALLS

Job or Title (*if known*) CITY GOVERNMENTStreet Address 224 W. 9TH ST.

City and County SIOUX FALLS MINNEHAHA

State and Zip Code SD 57104

Telephone Number 6053678000

E-mail Address (*if known*) WWW.SIOUXFALLS.ORG

Defendant No. 2

Name SIOUX FALLS POLICE DEPARTMENT

Job or Title (*if known*) LAW ENFORCEMENTStreet Address 320 W. 4TH ST

City and County SIOUX FALLS MINNEHAHA

State and Zip Code SD 57104

Telephone Number 6053677212

E-mail Address (*if known*) WWW.SIOUXFALLS.ORG

Defendant No. 3

Name OFFICER JEFF MACFARLANE #943

Job or Title (*if known*) SIOUX FALLS POLICE OFFICERStreet Address 320 W. 4TH ST

City and County SIOUX FALLS MINNEHAHA

State and Zip Code SD 57104

Telephone Number 6053677212

E-mail Address (*if known*) WWW.SIOUXFALLS.ORG

Defendant No. 4

Name IAN BRANCH #884

Job or Title (*if known*) SIOUX FALLS POLICE OFFICERStreet Address 320 W.4TH ST

City and County SIOUX FALLS MINNEHAHA

State and Zip Code SD 57104

Defendant #5

Chad Westrum #898

Sioux Falls Police Officer

320 W. 4th St.

Sioux Falls Minnehaha

SD 57104

6053677212

WWW.SIOUXFALLS.ORG

Pro Se 1 (Rev 09/16) Complaint for a Civil Case

Telephone Number	6053677212
E-mail Address <i>(if known)</i>	WWW.SIOUXFALLS.ORG

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

- Federal question Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

AMENDMENT XIV SECTION 1
 AMENDMENT IV
 42 U.S.C. SECTION 1983

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* MARK BURGESS, is a citizen of the State of *(name)* SOUTH DAKOTA.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

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

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, *(name)* CITY OF SIOUX FALLS, is incorporated under the laws of the State of *(name)* SOUTH DAKOTA, and has its principal place of business in the State of *(name)* SOUTH DAKOTA. Or is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* SOUTH DAKOTA.

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

3. The Amount in Controversy

The amount in controversy-the amount the plaintiff claims the defendant owes or the amount at stake-is more than \$75,000, not counting interest and costs of court, because *(explain)*:

I am requesting \$500,000 per plaintiff compensatory damages and requesting \$10,000,000 in punitive damages per plaintiff, due to the egregiousness of acts of the Sioux Falls Law Enforcement Officer's Actions.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

*****PLEASE SEE ATTACHED COMPLAINT*****

Official Complaint

Official Complaint against law enforcement officers on 2-27-16 at the residence of 1205 N. Harlem Ave around 12:19 am to 12:57 am.

Complaint to be submitted to Sioux Falls City Council Members, Mayor Mike Huether, Greg Neitzert, Pat Starr, Michelle Erpenbach, Marshall Selberg, Christine Erickson, Theresa Stehly, Rex Rolfing, and Rick Riley, as well as Lt. Matt Burns, Sioux Falls Police Department and Loren McManus also of the Sioux Falls Police Department.

Enclosed is a description of the incident.

The allegations against the Sioux Falls Police Department are as follows: Excessive use of Force, Assault, Unlawful Arrest, Unlawful Search and Seizure, Unlawful Questioning of a Minor and various Civil Rights Violations including, but not limited to, violation of my 4th Amendment Civil Rights, and 14th Amendment rights.

Complaint:

On 2-27-16 at approximately 12:15 am I, Mark Allen Burgess, DOB 11/27/83 resident at 1205 N. Harlem Ave, Sioux Falls, SD, woke up to my wife, Elizabeth Burgess, DOB 07/09/1984 also a resident of 1205 N. Harlem Ave, Sioux Falls, SD having a seizure (although I did not know it was a seizure at the time-my wife had just had gallbladder surgery 02/25/16) she was not breathing, not responsive, foam was coming out of her mouth. She could not speak or respond. I immediately called 911, requesting an ambulance. (See 911 dispatch recording), during this call I started administering CPR and could restore breathing, and consciousness, however Elizabeth, was not alert, or aware of her medical incident. She initially did not recognize me, my oldest son Mark who is 15 or her infant daughter who was 6 months old.

Around 12:19 SFFD arrives on scene, but was given wrong address by dispatch, and did not enter until Officers arrived on scene). (See SFPD Dashcam)

Three Officers arrived; **Officer MacFarlane #943, Westrum #898, & Branch #884 (See Police reports)** with the first arriving at 12:21 AM.

Ambulance did not arrive until 12.42 AM, more than 27 minutes after initial call to 911 was placed. Ambulance company determined to be Paramedics Plus Unit #1965.) (See SFPD Dashcam)

At 12:21 AM The Initial Arriving Officer arrived, with a Ride Along, **(Ride Along Passenger identity unknown and stayed with the patrol vehicle for the time being)** and entered the residence of Mark and Elizabeth Burgess. **(Information on Ride Along will be requested and her statement by subpoena.)**

At 12:22 AM Elizabeth Burgess asked the Officer, "what are you doing here, why are you in my house repeatedly." Mark explained to her that she needed help and needed medical attention, and an argument ensued with the officer involved.

At this point, with all of us arguing, the officer stated **10-50**, a call to fellow officers to **“approach with caution”** this call was repeated **twice** to **Officer Jeff Macfarlane** by **Officer Westrum** however Officer **MacFarlane** heard **10-15**, a call to fellow officers to **“arrest the subject”**. At which time Officer MacFarlane grabbed Mark by the arm in his bedroom. Mark stated **“get your hands off me!”** **(Unbeknownst to him, a call had been made and misheard by the Officer Macfarlane.)** Mark walked to the opposite side of the bed and picked up his unfolded pocket knife as it’s his routine to do so when leaving his home, as he expected to be headed to the hospital with his wife Elizabeth.

Upon turning around **Officer Macfarlane** (remaining in arrest the subject mode) had advanced around Marks bed and was near the corner of the room, **seeing the unfolded knife**, Officer Macfarlane took this as a sign of aggression. **Weapons were drawn, officers pistol, OC Spray, and a Taser, and was pointed at Marks head by the Officers.** Mark was requested to put the weapon down by these Officer’s. Which Mark complied by tossing the unfolded pocket knife onto the bed.

Officer MacFarlane then requested Mark to get on the ground, (which there is very limited room between the bed for a 6’2” tall man to lay down,) Mark did not, but asked repeatedly **“are you going to help my wife”**, taking this as a sign of non-compliance and aggression, **Officer MacFarlane** deployed OC Spray **(with his wife and 6 month old child in the room)** Officer Branch did at that point remove his wife and child from the room, but not until after the OC Spray had been used. **(See officer reports)**

Officers MacFarlane and Officer Westrum then engaged Mark, striking him in the face, neck, and body with fists, and Officer Branch Tazed Mark twice. Mark was then cuffed, and taken into custody.

Officer MacFarlane seeing an active camera in the living room of his home, found it necessary to try and find the footage from that camera for **“evidence”** and asked other officers if they thought it (the camera) was **“just a baby monitor”**, upon further examination of the camera, Officer MacFarlane realized it was a Home Monitoring System. And mumbled very clearly **“damn”**.

Officers then questioned without parental permission Mark and Elizabeth’s Son and Daughter **M.B.** and **A.B.**

After Mark was taken into the Minnehaha County Jail, remaining officers illegally searched Mark and Elizabeth’s home after Mark had been taken into custody and Elizabeth taken to the Hospital.

Summary:

We find it very *amazing*, and *conscience shocking*, that all of these events took place in a matter of 6 minutes upon the arrival of the first officer. Indeed, we find that the officers acted intentionally due to previous interaction with Mark in his past, and intentionally entered his home with the intent of creating an incident.

We find this to be an unlawful arrest due to the false call of 10-15/10-50 allegedly heard by Officer MacFarlane. Officer Westrum advised Officer MacFarlane twice that Mark was 10-50 very clearly. (See Officer Dashcam)

We find this to be an assault on his Wife Elizabeth, M.B. & A.B., and Mark, due to the deployment of weapons in his home, and physically attacking Mark with fists and other means.

We find that, no Officer had declared Mark to be under arrest at any time, by any officer at the scene, proceeding the incident with Mark, and that the possession of his private personal property, namely an unfolded pocket knife 4" long at most, was legal to possess under South Dakota Codified Law, until an arrest had been declared. Mark, had not, even when Mark had possession of his pocket knife, did not threaten any officer, and made no threatening gestures. The pocket knife remained inanimate, and unfolded, and of course at that moment was legal to possess.

All Mark asked at the time, was "are you going to help my Wife", which Officer MacFarlane took as a sign of aggression.

The actions of the Sioux Falls Police Department Officer's MacFarlane, Branch, and Westrum are egregious to say the least, and intentional due to the knowledge of Officers Westrum and Branch that the call was misheard by Officer MacFarlane, and allowed MacFarlane to proceed, instead of clarifying the situation.

We find that the actions of these law enforcement officers to be negligent, that their actions may have caused long term physical, medical issues, and mental health issues to Mark, Elizabeth, and they're 3 children who were home at the time of the incident.

These officers held off the ambulance intentionally, for more than 27 minutes, impeding much needed medical attention. By impeding medical attention, long term medical problems may indeed occur as a result of this intentional delay by Law Enforcement.

We find that the Search and Seizure of 1205 N. Harlem Ave, illegal, and without warrant and with no probable cause to substantiate a search and/or seizure.

End of Complaint

Mark Burgess

Dated Feb / 27 / 17

Complaint filed by Mark A. Burgess

[Signature]

Date 2/27/17