

And The Defense Wins

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On March 31, 2017, following a three-week trial in federal court, DRI members [Kathleen Wieneke](#) and [Jacob Lee](#) obtained a defense verdict on behalf of two police officers and the City of Scottsdale, Arizona, in *Kevin Fuciarelli v. Good, et al.*, 2:14-cv-01078-GMS (D. Ariz.).

Plaintiff, a dermatological surgeon, filed suit under 42 U.S.C. § 1983, alleging the officers illegally detained and falsely arrested him, and used excessive force in making the arrest, in violation of the Fourth Amendment. Plaintiff also asserted a state-law negligence claim, alleging the officers failed to follow departmental training and policies.

Scottsdale Police Officers Chrisman and Good responded to a disturbance call at a commercial office complex on March 10, 2013. When they arrived, they learned that Plaintiff was refusing to allow a non-tenant to retrieve her personal property from inside the locked office suite, namely a set of keys consisting of a key chain that was a gift from the woman's children, her car key, her house key, and her mailbox key. Suspecting a theft was occurring, Officer Chrisman asked Officer Good to stand by with Plaintiff while he researched whether, under Arizona commercial landlord-tenant law, Plaintiff had a legal right to keep the property of a non-tenant (already knowing Plaintiff could keep any personal property of the tenant that was in the building at the time of the lockout). Before Officer Chrisman could complete his investigation, Plaintiff advanced quickly on Officer Good, yelling and shaking his fist in a manner that lead Officer Good to believe Plaintiff was about to attack him. When Plaintiff resisted Officer Good's attempts to restrain him, Officer Good used reasonable force to gain compliance. Plaintiff was charged with disorderly conduct and failure to obey.

Plaintiff argued that Officers Chrisman and Good failed to follow their training and City of Scottsdale policies when they inserted themselves into a civil landlord tenant dispute by attempting to force Plaintiff to allow the woman into the office to get her keys after the tenant had been locked out. Plaintiff argued the officers' investigation was unreasonable, as Officer Chrisman was not investigating the facts, but was researching Arizona commercial landlord-tenant law, which he did not know at the time. Plaintiff further argued that because the officers lacked reasonable suspicion for the initial detention and investigation, all of their subsequent actions were unreasonable and negligent, as they would not have occurred but for the detention.

Plaintiff claimed permanent injuries to his neck as a result of the arrest, reducing the number of surgeries he can perform each day and limiting his earning potential. Plaintiff sought \$196,000 in past and future medical expenses; \$25 million in past and future lost earnings; \$5 million in pain and suffering; and \$5 million in punitive damages. The jury deliberated approximately one and a half hours before returning a defense verdict on all claims.

Kathleen Wieneke is a founding partner at **Struck Wieneke & Love PLC** in Chandler, Arizona. Jacob Lee is an associate at the firm.

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