

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

ROBERT MCPHERSON,

Plaintiff,

vs.

Civil Action No. _____

DEREK SNAVELY, individually,
CITY OF HINTON, a municipal
corporation.

Defendants.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, as well as the Fourth Amendment to the United States Constitution, arises out of the Defendants' use of excessive force on the Plaintiff on or about January 7, 2016, in the City of Hinton, Summers County, West Virginia, within the Southern District of West Virginia, as well as the development and implementation of a pattern or practice of excessive force which led to the said incident.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1343.

PARTIES

1. The Plaintiff was at all times relevant hereto a resident of Hinton, Summers County, West Virginia, within the Southern District of West Virginia. He is currently in the custody of the West Virginia Department of Corrections. On October 14, 2016, he was sentenced to an indeterminate period of not less than one year nor more than five years of incarceration.

2. Defendant Derek Snavelly was at all times relevant hereto a police officer employed by the Hinton Police Department, which is established, equipped and maintained by the City of Hinton, West Virginia, and was at all times relevant hereto acting under color of law and within the scope of his employment. Said Defendant is named herein in his individual capacity.

3. Defendant City of Hinton, a municipal corporation, is a political subdivision of the State of West Virginia. See West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1, et seq.

FACTS

4. Plaintiff incorporates by reference the allegations in all previous paragraphs.

5. On January 7, 2016, the Plaintiff, Robert McPherson, and his significant other, Leanne Price, entered the Kroger grocery store in Hinton, Summers County, West Virginia, as customers, in order to buy some groceries.

6. The Plaintiff used the bathroom while in the store, proceeded to do his shopping, pay for his items, and exited the store, along with Ms. Price. They purchased groceries.

7. After exiting the store, the Plaintiff saw an acquaintance and began to have a conversation with the man.

8. Unbeknownst to the Plaintiff, a Kroger employee called law enforcement and reported that he suspected the Plaintiff to be using drugs while in the bathroom of the store. The individual did not witness the Plaintiff with any illegal drugs. The Plaintiff was a legitimate customer of Kroger.

9. Hinton Police Department chief, Derek Snavelly, arrived at the store and was unable to find the Plaintiff. The Kroger employee then reported to Defendant Snavelly that the Plaintiff was now outside the store.

10. Defendant Snavelly then approached the Plaintiff, who was outside the store, holding a bag of groceries, with Ms. Price beside him. The encounter was being captured by the store's video surveillance camera pointed outside the store's entrance.

11. Defendant Snavelly identified himself and asked the Plaintiff if he had been using illegal drugs. The Plaintiff replied, no.

12. Defendant Snavelly asked if the Plaintiff had anything illegal on him, and the Plaintiff replied, no, and produced a prescription pill bottle from his left pocket.

13. The prescription bottle was Ms. Price's prescription medication. She was present with the Plaintiff at the time, and had asked the Plaintiff to carry the bottle with her during the trip to Kroger.

14. The Plaintiff had not had any prior encounters with Defendant Snavelly. However, he knew him by reputation, including from reading newspaper reports about Snavelly's official misconduct, and was fearful of him.

15. The Plaintiff knew at the time that Defendant Snavelly had previously been a police officer employed by the West Virginia State Police, and that Snavelly resigned from the state police following accusations that Snavelly had sexual relations while on duty with an intoxicated woman whom he had pulled over for suspected DUI.

16. According to a Charleston Gazette-Mail newspaper article, Defendant Snavelly performed a traffic stop on a young woman leaving a bar in downtown Charleston, West Virginia. Shortly thereafter, he was alleged to have started kissing

and fondling her. A surveillance video subsequently captured Snavelly, in uniform, in the woman's residence, where she alleged she was forced to perform sexual acts with Defendant Snavelly in exchange for not being arrested for DUI. See Trooper Accused of Rape Resigns, Charleston Gazette-Mail, <http://www.wvgazette.com/article/20081211/ARTICLE/312119998>.

17. It was also reported in the Charleston Gazette-Mail that Defendant Snavelly falsified his official log in connection with the traffic stop of the alleged rape victim, a criminal violation, and that evidence of the falsification was withheld from prosecutors looking into Snavelly's actions. See Prosecutor Not Told Ex-Trooper Falsified Log, Charleston Gazette-Mail, <http://www.wvgazette.com/article/20081211/ARTICLE/312119998>.

18. Also reported by the Charleston Gazette-Mail is the fact that the City of Hinton hired Defendant Snavelly as their Chief of Police amid the sexual misconduct and falsification accusations. The newspaper noted that, although efforts were underway to review Defendant Snavelly's law enforcement certification before the state's Law Enforcement Training subcommittee, he was allowed to be the City of Hinton's police chief of police. See Prosecutor Not Told Ex-Trooper Falsified Log, Charleston Gazette-Mail, <http://www.wvgazette.com/article/20081211/ARTICLE/312119998>.

19. The Gazette-Mail also noted there had already been complaints by residents in Summers County since the transfer of Defendant Snavelly to the City of Hinton:

In November 2009, the Gazette-Mail reported that several citizens had complained that Snavelly harassed them. Robin Crawford claimed that Snavelly harassed him August 2009 while giving him a parking ticket in the Summers County town.

Crawford, who in 1987 was beaten by four officers from the Hinton police and Summers County Sheriff's Office, said he came out of the post office and Snavelly told him not to drive off because he was going to write him a parking ticket. Crawford said he knew there was no money in the meter and didn't argue, but got in his car and waited for the ticket. "Then he jerks me out of my car and starts barking instructions like I was on a plantation," said Crawford, who is black. "He said, 'I'll take your goddamn ass to jail.'"

On Friday, Crawford said that he lives in Hinton, but doesn't often go out at night for fear of the chief of police. "I don't feel safe being there," he said. "I live there, but I do all my business out of town. I hesitate to be caught by him."

See Prosecutor Not Told Ex-Trooper Falsified Log, Charleston Gazette-Mail, <http://www.wvgazette.com/article/20081211/ARTICLE/312119998>.

20. It was reported in the Herald-Dispatch newspaper, that the newly-appointed West Virginia State Police spokesperson said, of Snavelly, "We can't have things like this," waving a newspaper with an article about Snavelly's alleged misconduct, stating that, "it reflects poorly on me and [the superintendent] . . . it kills me." He noted that it was important for the state police to do "everything we can to acknowledge and address these incidents, and then we need to move forward." See W. Va. State Police Col. Focusing on Standards, The Herald-Dispatch, http://www.herald-dispatch.com/news/recent_news/w-va-state-police-col-focusing-on-standards/article_2d9b2963-a067-59b1-93d1-ac4e8004ccfe.html.

21. Knowing Snavelly's reputation, the Plaintiff requested that another officer arrive to the scene. Snavelly refused, and attempted to forcibly search the Plaintiff's groceries and his pockets.

22. The Plaintiff then requested, by name, another local law enforcement officer whom he knew was trustworthy, Gary Wheeler.

23. Suddenly, and without justification or provocation, Defendant Snavelly violently attacked the Plaintiff, in response to the Plaintiff's perceived disrespect in requesting another officer, punching the Plaintiff in the face with a closed fist. Snavelly's actions were caught on video.

24. It is observed on video that at the time the Defendant violently began punching the Plaintiff, that the Plaintiff was not attacking the Defendant, or anyone else. It can be clearly seen on video that at the time Plaintiff was attacked, he was not a threat to the Plaintiff, or anyone else. He was merely a Kroger customer attempting to walk to his vehicle in the parking lot.

25. At the time the Plaintiff was violently attacked, he was not under arrest. There was no arrest warrant pending. He had not committed any crime. He was merely suspected of personal drug use - though no such behavior was witnessed by the Defendant.

26. At the time he was attacked, the Plaintiff was not in possession of any illegal drugs, or any other illegal items.

27. At the time he was attacked, the Defendant had no reason to believe that the Plaintiff was in possession of any weapons, or that he may be in possession of any weapons. Defendant Snavelly never inquired whether the Plaintiff had any weapons prior to punching him.

28. Defendant Snavelly began to violently beat the Plaintiff, who recoiled from the blows. The Plaintiff was in fear for his life and resisted the beating. However, at no time during the beating did the Plaintiff ever strike, attempt to strike, or threaten to

strike, the Defendant in any way. The Defendant confirmed in sworn testimony that the Plaintiff never struck him.

29. Suavely violently punched and attacked the Plaintiff. After about ten minutes, the Defendant became physically tired from beating on the Plaintiff and attempting to manhandle him, he shot the Plaintiff with his taser gun. The first shot was immediately removed by the Plaintiff. The Defendant shot the Plaintiff again. The Plaintiff fell to the ground, but was still conscious.

30. The Defendant then shot the Plaintiff a third time with the taser - this time using the direct contact mechanism, where the officer physically touches the taser to the individual. As the Plaintiff was being shocked by the taser, the Plaintiff grabbed the taser and threw it beyond the Defendant's reach.

31. The Plaintiff's grab and throw of the taser gun happened very quickly, and was caught on video. At no time did the Plaintiff ever attempt to use the taser on the Defendant. The grab and throw lasted mere seconds. It was an unconscious reaction during a time in which the Plaintiff was being shocked, meant to protect himself from further electrical shock that the Defendant was inflicting upon him. That the Plaintiff meant no harm with the taser was obvious by the fact that the Defendant threw the taser out of his reach.

32. The Plaintiff was subsequently taken into custody.

33. The Defendant later testified that he believed that a use of force continuum was "old school" and that his modus operandi was to go directly to whatever level of force he wanted to, regardless of reasonableness, such as punching a subject in the face in the absence of any threat to physical safety.

34. Moreover, the Defendant further testified that, his only regret was not shooting the Plaintiff after he grabbed and threw his taser - despite the fact that deadly force was not necessary under the circumstances - both at the time and in hindsight.

35. The Plaintiff was charged by indictment with Unlawful Assault on a Police Officer, as well as Disarming a Police Officer.

36. Following a jury trial before the Circuit Court of Summers County, a jury found the Plaintiff Not Guilty of Unlawful Assault on a Police Officer. However, they found him guilty of Disarming a Police Officer.

37. Following the jury trial, at least one juror approached the Plaintiff's counsel and remarked that the jury had to find the Plaintiff guilty of Disarming a Police Officer given the fact that he was captured on video throwing Snavelly's taser. However, they were appalled by the excessive nature of the beating inflicted upon the Plaintiff by Snavelly prior to the throwing of the taser, and encouraged the Plaintiff to file a lawsuit.

38. As a result of the the beating by Defendant Snavelly, the Plaintiff was injured and suffered damages for which he is entitled to recover.

COUNT ONE - EXCESSIVE FORCE UNDER 42 U.S.C. 1983

VIOLATION OF THE FOURTH AMENDMENT

39. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs.

40. The defendant law enforcement officer, under color of state law, used excessive force against the Plaintiff, as described above in detail, on January 7, 2016.

41. When the defendant law enforcement officer violently and repeatedly began to punch and attack the Plaintiff outside the Kroger grocery store, causing the

Plaintiff bodily injury, no objectively reasonable officer could have perceived the Plaintiff as posing an immediate threat to the safety of the officer or anyone else so as to require the infliction of such violent physical force.

42. At the said time, the Plaintiff was not under arrest. He had committed no crime. He was merely suspected of personal drug use by a Kroger employee who was attempting to spy on him in the bathroom. He was unarmed - nor was there any reason to suspect him of being armed.

43. At the time Derek Snavelly began to punch the Plaintiff, the Plaintiff was being compliant. He was not attempting to flee. He was not attempting to assault or strike the officer in any way. He was not threatening to assault or strike the officer in any way. He had merely requested the presence of another police officer given his knowledge of the Defendant's past misconduct, as verified by the West Virginia State Police a public statement.

44. At the time the Defendant began to use violent physical force, the Plaintiff was not engaging in any physical resistance and was shocked, and in fear for his life, during the beating. The Defendant desperately wanted assistance from another law enforcement officer and believed his life to be in danger.

45. Defendant Snavelly's actions were objectively unreasonable, unlawful, unwarranted, and in violation of Mr. McPherson's clearly established procedural and substantive rights, including the right to be free from excessive force under the Fourth Amendment of the United States Constitution. Fourth Circuit case law has long been clear that physical force by a police officer, including striking someone with a fist, and especially repeated strikes and kicks, is excessive in response to "mere words" by an

arrestee where the arrestee “never pushed, kicked, or threatened anyone.” Jones v. Buchanan, 325 F.3d 520 (4th Cir. 2003).

46. The defendant police officers’ actions were willful, wanton, intentional, malicious and done with a callous and reckless disregard for Mr. McPherson’s Fourth Amendment right to be free from excessive force.

47. The Plaintiff suffered harm and damages for which he is entitled to recover.

COUNT TWO - MUNICIPAL LIABILITY

UNDER 42 U.S.C. 1983

48. Plaintiff incorporates by reference all the previous paragraphs.

49. The City of Hinton instituted an official policy, custom and practice of subjecting arrestees, or innocent citizens who are the subject of questioning, to civil rights violations in violation of the U.S Constitution. Specifically, the City of Hinton hired as its Chief of Police, the Defendant, who was in the midst of criminal investigation for committing sexual misconduct, and other misconduct against a woman while on duty and subsequently falsifying a police report. Since he has been in Hinton, he has upon information and belief, been the subject of numerous complaints of civil rights violation, many of which were similar in nature to what occurred to the Plaintiff.

50. Derek Snavely’s actions in illegally using excessive force against the Plaintiff were taken in furtherance of the official policy, custom, and practice adopted and ratified by the City of Hinton.

51. As a direct and proximate result of the said policy, custom and practice, the Plaintiff was damaged on January 7, 2016 when he was beaten by the Defendant, as described above in detail, for which he is entitled to recover.

COUNT THREE - STATE LAW CLAIM FOR NEGLIGENCE

52. Plaintiff incorporates by reference all previous paragraphs.

53. Defendant City of Hinton specifically owed Plaintiff a duty of reasonable care. It was reasonably foreseeable to Defendant that Plaintiff would be harmed as a result of Defendant's actions.

54. Defendant City of Hinton, by and through the Mayor and other employees of the city involved in the hiring of a police chief, breached that duty as detailed above and incorporated herein, and furthermore by:

a. negligently hiring Derek Snavelly as the Chief of Police of the Hinton Police Department when they had knowledge that Snavelly had engaged in gross misconduct and dishonesty as a West Virginia State Police trooper;

b. negligently retaining Derek Snavelly as the Chief of Police of the Hinton Police Department when they had knowledge of Snavelly's misconduct as a state trooper, as well as knowledge of Snavelly's misconduct while serving as Chief of Police of the Hinton Police Department.

55. As a direct and proximate result of the Defendant's negligence, Plaintiff suffered harm, including personal injuries, emotional distress, medical expenses, pain and suffering, and continues to suffer damages, and is entitled to recover damages for the same.

PRAYER

WHEREFORE, based on the above stated facts, the Plaintiff respectfully requests that this Honorable Court award:

1. Damages against the Defendants in an amount to be determined at trial

which will fairly and reasonably compensate the Plaintiff for:

- a. Past, present and future medical expenses;
- b. Past, present and future pain and suffering;
- c. Loss of enjoyment of life;
- d. Psychological and emotional distress;
- e. Any other compensatory damages to be proven at trial;
- f. Punitive damages against the individual Defendants in an amount to be determined at trial;
- g. Reasonable attorney fees and costs;
- h. Any other relief that this Court deems is just and fair;
- i. All other damages provided by law;
- j. Injunctive relief requiring appropriate training, supervision and discipline in order to remedy all constitutional deprivations which the Plaintiff suffered;
- k. Declaratory judgment relief establishing the Defendants' above-described conduct violates the Plaintiff's clearly established constitutional rights.

PLAINTIFF DEMANDS A TRIAL BY JURY

ROBERT MCPHERSON
By Counsel

/s John H. Bryan
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for the Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROBERT MCPHERSON

(b) County of Residence of First Listed Plaintiff Summers (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John H. Bryan (304) 772-4999 P.O. Box 366 Union, WV 24983

DEFENDANTS

DEREK SNAVELY CITY OF HINTON

County of Residence of First Listed Defendant Summers (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983

Brief description of cause: Alleged use of excessive force under color of law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ n/a

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 12/8/2017 SIGNATURE OF ATTORNEY OF RECORD /John H. Bryan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.