

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg Division

QUINTIN L. GRACIANO,

Plaintiff,

V.

LANCE KURETZA, individually and as an agent and employee of the Monongalia County Commission and Monongalia County Sheriff's Department,

and

JOHN DOES 1-6, individually and as agents and employees of the Monongalia County Commission and Monongalia, County Sheriff's Department,

and

MONONGALIA COUNTY,
COMMISSION, a West Virginia political
subdivision,

Defendant.

AMENDED COMPLAINT

NOW COMES the Plaintiff, Quintin L. Graciano, by and through his undersigned counsel, Robert G. McCoid, Esq., of McCoid Law Offices, P.L.L.C., and Todd F. La Neve, Esq., of La Neve Law Offices, and, pursuant to 42 U.S.C. § 1983, the federal Constitution, and the Constitution and laws of the State of West Virginia, for his cause of action against Defendants, Lance Kuretzka, John Does one (1) through six (6), and the Monongalia County Commission (and its subdivision, the Monongalia County Sheriff's Department), pleads and avers as follows:

I. STATEMENT OF JURISDICTION

1). This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983. This Court has pendent jurisdiction over all State law claims herein asserted pursuant to *United Mine Workers v. Gibbs*, 388 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

II. GENERAL RECITALS

2). Plaintiff, Quintin L. Graciano (“Mr. Graciano”), is a citizen and resident of the State of South Carolina.

3). Defendant, Lance Kuretza (“Dep. Kuretza”), was at all times relevant hereto a citizen and resident of the State of West Virginia, and is, or was, employed as a law enforcement officer and deputy sheriff by the Monongalia County, West Virginia Sheriff’s Department. At all times relevant hereto, Dep. Kuretza acted both individually and within the scope of his agency as employee, agent, or servant of the Monongalia County Sheriff’s Department and the Monongalia County Commission.

4). Defendants, John Does 1-6 (“the John Does”), were at all times relevant hereto citizens and residents of the State of West Virginia, and are, or were, employed as law enforcement officers and deputy sheriffs by the Monongalia County, West Virginia Sheriff’s Department. At all times relevant hereto, the John Does acted both individually and within the scope of their agency as employees, agents, or servants of the Monongalia County Sheriff’s Department and the Monongalia County Commission.

5). At all times relevant hereto and for years preceding January 20, 2018, Defendant Kuretza, while acting within the scope of his employment as a law enforcement officer and under color of the laws of the State of West Virginia, exhibited

an on-going pattern of violating the constitutional rights of citizens and arrestees, including by employing unlawful and excessive force on detainees and arrestees in derogation of U.S. CONST. AMD. 4 and W. VA. CONST. ART. III, § 6.

6). Defendant, Monongalia County Commission (“MCC”), is a political subdivision organized and existing pursuant to the laws of the State of West Virginia, and is in the business of furnishing various services to the public that it serves, including law enforcement services through its subordinate agency and subdivision, Monongalia County Sheriff’s Department (“MCSD”).

7). The MCC and the MCSD and their agents, supervisors, and management employees had actual, subjective, specific knowledge of the proclivity of Dep. Kuretza to violate the constitutional rights of citizens and detainees by employing unlawful and excessive force on detainees and arrestees as aforesaid and otherwise had subjective knowledge of Dep. Kuretza’s predilection for violence, immoderation, and intemperance when dealing with arrestees and citizens.¹ Nevertheless, the MCC and the MCSD and their agents, supervisors, and management employees tolerated, ignored, and otherwise failed to remediate Dep. Kuretza’s conduct as aforesaid. Specifically, the MCC and

¹ Prior to the initiation of this action, undersigned counsel, as plaintiff *pro se*, filed a request pursuant to W. Va. Code § 29B-1-1, *et seq.*, the West Virginia Freedom of Information Act (“FOIA”), with the Monongalia County Sheriff’s Department seeking, *inter alia*, information relating to all prior, concluded excessive force complaints, formal and informal, lodged against Dep. Kuretza. Despite the undersigned’s narrowly tailored request and manifestly controlling authority speaking to the right of a citizen to such information under FOIA, the Sheriff’s Department issued, through counsel, a perfunctory denial of the FOIA request. In December, 2019, the undersigned filed a FOIA enforcement action, although the same is not scheduled for hearing until January 24, 2020. *See McCoid v. Monongalia County Commission, et al.*, Civ. Act. No. 19-C-393 (DS), Circuit Court of Monongalia County. Thus, the information necessary to plead herein with more specificity claims of deliberate indifference against the sheriff’s department regarding Dep. Kuretza’s prior instances of excessive force is being sandbagged by the very agency that has elected to stonewall the undersigned request.

MCSD were aware of the following specific instances of unlawful and unconstitutional conduct by Dep. Kuretza while acting within the scope of his agency and under color of law as a law enforcement officer:

a). In or around a time between 2008 and 2018, Dep. Kuretza falsely arrested and otherwise unlawfully battered and employed force excessive to what was reasonably necessary on an arrestee in Monongalia County, thereby resulting in unlawfully inflicted injury and loss to the arrestee.

b). In or around a time between 2008 and 2018, Dep. Kuretza falsely arrested and otherwise unlawfully battered and employed force excessive to what was reasonably necessary on an arrestee in Monongalia County, thereby resulting in unlawfully inflicted injury and loss to the arrestee.

c). In or around a time between 2008 and 2018, Dep. Kuretza falsely arrested and otherwise unlawfully battered and employed force excessive to what was reasonably necessary on an arrestee in Monongalia County, thereby resulting in unlawfully inflicted injury and loss to the arrestee.

d). Prior to hiring Dep. Kuretza as a deputy sheriff sometime between 2008 and 2018, MCC and MCSD were aware that Dep. Kuretza, while in the employ of another law enforcement agency, including the Granville Police Department and/or the Star City Police Department and/or another law enforcement agency, had engaged in a pattern of making false arrests and otherwise employing unlawful excessive force against lawfully arrested detainees, yet, in spite of this subjective knowledge, elected to hire him as a deputy sheriff.

8). At all times relevant hereto, MCC and MCSD and their agents, supervisors, and management employees had actual knowledge of the proclivity and tendency for

violence, excessive force, abusiveness, and intemperance of Dep. Kuretza. Nevertheless, MCC and MCSD, despite their actual knowledge of these facts, hired and employed Dep. Kuretza and thereafter permitted and authorized Dep. Kuretza to continue in the capacity of deputy sheriff and retained him as a deputy sheriff and failed to supervise or oversee his employment as a deputy sheriff, thereby subjectively endorsing, ratifying, and exhibiting deliberate indifference to his on-going pattern of unlawful and unconstitutional misconduct punctuated by violence, excessive force, abusiveness, and intemperance.

9). On or about January 20, 2018, Mr. Graciano was an overnight hotel guest at the Residence Inn hotel located in the City of Morgantown, Monongalia County, West Virginia.

10). On or about January 20, 2018, various deputies of the MCSD, including Dep. Kuretza and the John Does, responded to a disturbance involving various individuals in a guest room at the Residence Inn. Mr. Graciano was not involved in the matters giving rise to the disturbance, and at all time relevant hereto, including at the time that the disturbance arose, was fast asleep in bed in his guest room, which was located adjacent to the room in which the disturbance occurred.

11). On the date aforesaid, the said deputies, including Dep. Kuretza and the John Does, conducted their investigation involving other guests, concluded no basis existed for arresting any of them, and, at the direction of the management of Residence Inn, were in the process of escorting them off the hotel property.

12). As the other guests were about to be escorted off the property, and lacking any lawful basis or justification whatsoever, Dep. Kuretza commanded one of the ejected guests to open the room in which Mr. Graciano, minding his own business and having

engaged in no unlawful conduct whatsoever that would have warranted law enforcement initiating contact with him, was fast asleep.

13). Upon entry into the room, Dep. Kuretza encountered Mr. Graciano fast asleep in bed. Lacking reasonable suspicion, probable cause, or, frankly, any good reason whatsoever, Dep. Kuretza aggressively began attempting to wake Mr. Graciano, and battered him by shaking him and striking him on the feet.

14). Half asleep, Mr. Graciano repeatedly waved Dep. Kuretza off and verbalized his wish that he be left alone.

15). Apparently offended, incensed, and irate over a lowly citizen wanting to continue to sleep unmolested in his bed and ill-content to treat Mr. Graciano like a human being and bent on continuing to molest Mr. Graciano's slumber despite the absence of any justification, reasonable suspicion, probable cause, or lawful basis for doing so, Dep. Kuretza persisted, escalating his encounter with Mr. Graciano, hurled him to the floor and began to savagely and repeatedly beat and batter the half-asleep Mr. Graciano about his head, face, and body. Dep. Kuretza further battered Mr. Graciano, restrained and detained him against his will, and forcibly held Mr. Graciano down as John Does 1-6, who had subsequently entered Mr. Graciano's room, arrived and joined Dep. Kuretza in battering and beating Mr. Graciano and handcuffing him.

16). At no time herein had Mr. Graciano engaged in, or attempted to engage in, any unlawful act that would have justified the actions of Dep. Kuretza and John Does 1-6 in beating and battering him, as Mr. Graciano was then and there a citizen at liberty.

17). At all times described herein, Dep. Kuretza and John Does 1-6 were acting in their official capacities as officers of the law and under color of the laws of the State of West Virginia.

18). Dep. Kuretza and/or John Does 1-6 thereafter arrested Mr. Graciano for the statutory misdemeanor offenses of “obstructing an officer” and “battery on police officer,” old Monongalia County Sheriff’s Department classics. Upon taking him into custody, Dep. Kuretza threatened Mr. Graciano and spoke to Mr. Graciano in a vile and profane manner that would make a sailor blush.

19). At no time during any of the events alleged herein had Mr. Graciano engaged in any unlawful conduct or committed any offense for which he could have been subjected to an arrest, warrantless or otherwise.

20). The force used on Mr. Graciano by Dep. Kuretza and John Does 1-6 was excessive, unlawful, unjustified, and unreasonable in relation to the lawful actions of Mr. Graciano.

21). Mr. Graciano was thereafter imprisoned and held against his will. He eventually posted bond and was released.

22). The foregoing criminal charges were lodged against Mr. Graciano in Monongalia County Magistrate Court in *State of West Virginia v. Quintin L. Graciano*, Case No. 18-M31M-00216, and the allegations framed by Dep. Kuretza therein were deceitful, defamatory, specious lies. Mr. Graciano thereafter retained criminal trial counsel at his own expense to defend against the charges.

23). The Magistrate Court of Monongalia County thereafter granted the unsolicited motion of the Monongalia County Prosecuting Attorney’s Office to dismiss the matter, thereby resulting in Mr. Graciano’s total vindication on all charges that had been lodged against him.

24). Mr. Graciano incurred costs and expenses in the form of counsel fees, medical bills to treat the severe injuries to his face and head and other costs associated with defending against the specious allegation raised against him.

25). At all times as aforesaid, Dep. Kuretza and John Does 1-6 were without lawful justification, authority, or excuse to arrest Mr. Graciano, and, despite knowing so, unlawfully arrested him in the absence of process or probable cause.

26). Defendant Kuretza and/or John Does 1-6 effectuated the warrantless arrest of Mr. Graciano in the absence of probable cause and in derogation of U.S. CONST. AMDS. 1, 4 and 14 and W. VA. CONST. ART. III, § 6. Moreover, the conduct of Dep. Kuretza and John Does 1-6 in molesting and battering Mr. Graciano in the absence of any reasonable, articulable suspicion, placing their hands upon Mr. Graciano's person in the absence of any reasonable, articulable suspicion, hurling Mr. Graciano to the floor, and thereafter beating and battering Mr. Graciano, and placing Mr. Graciano into custody, and otherwise employing excessive force in effectuating Mr. Graciano's arrest violated his rights secured under U.S. CONST. AMDS. 1, 4 and 14 and W. VA. CONST. ART. III, § 6.

27). The conduct of Mr. Graciano at all time relevant hereto was both lawful and protected.

III. 42 U.S.C. § 1983 – UNLAWFUL ARREST

28). Mr. Graciano repleads *in haec verba* the allegations contained within §§ 1-27 as if the same were set forth fully herein.

29). In negligently, wantonly, recklessly, unlawfully, intentionally and/or maliciously battering and arresting Mr. Graciano, and by arresting Mr. Graciano and/or procuring his arrest without justification or probable cause, and thereafter causing his

detention and imprisonment as aforesaid in derogation of Mr. Graciano's right to be free from unreasonable searches and seizures as guaranteed by U.S. CONST. AMD. 4, Defendant Kuretza and John Does 1-6, while acting under color of the laws of the State of West Virginia and otherwise, deprived Mr. Graciano of his civil rights, including his rights secured and guaranteed to him under U.S. CONST. AMDS. 1, 4, and 14 and W. VA. CONST. ART. III, § 6, all within the meaning of 42 U.S.C. § 1983 and otherwise.

30). In acting as aforesaid, Dep. Graciano and John Does 1-6, individually and as agents for the MCC and MCSD, proximately caused Mr. Graciano to sustain, and continue to sustain, losses and damages, including physical harm, extreme fear, torment and suffering of his body and mind, embarrassment, loss of enjoyment of life, humiliation, aggravation and inconvenience, unlawful deprivation of his civil rights under color of state law, and other losses and damages, including, but not limited to, damage to his reputation. Additionally, Mr. Graciano sustained pecuniary losses and damages in the form of lawyer fees and associated costs relative to defending the criminal charges against him.

IV. 42 U.S.C. § 1983 – EXCESSIVE FORCE

31). Mr. Graciano repleads *in haec verba* the allegations contained within §§ 1-30 as if the same were set forth fully herein.

32). In negligently, wantonly, recklessly, unlawfully, intentionally and/or maliciously battering and arresting Mr. Graciano in the absence of probable cause and otherwise and irrespective of the legality of his arrest, Dep. Kuretza and John Does 1-6, in derogation of Mr. Graciano's right to be free from unreasonable searches and seizures as guaranteed by U.S. CONST. AMD. 4, while acting under color of the laws of the State of

West Virginia and otherwise, used excessive and unnecessarily brutal force on the person of Mr. Graciano, thereby depriving Mr. Graciano of his civil rights, including his rights secured and guaranteed to him under U.S. CONST. AMDS. 1, 4, and 14 and W. VA. CONST. ART. III, § 6, within the meaning of 42 U.S.C. § 1983 and otherwise.

33). In acting as aforesaid, Dep. Kuretza and John Does 1-6 proximately caused Mr. Graciano to sustain, and continue to sustain, losses and damages, including physical harm, extreme fear, torment and suffering of his body and mind, embarrassment, loss of enjoyment of life, humiliation, aggravation and inconvenience, unlawful deprivation of his civil rights under color of state law, and other losses and damages, including, but not limited to, damage to his reputation. Additionally, Mr. Graciano sustained pecuniary losses and damages in the form of lawyer fees and associated costs relative to defending the criminal charges against him.

V. 42 U.S.C. § 1983 – DELIBERATE INDIFFERENCE

34). Mr. Graciano repleads *in haec verba* the allegations contained within §§ 1-33 as if the same were set forth fully herein.

35). In negligently, wantonly, recklessly, unlawfully, intentionally and/or maliciously permitting and authorizing Dep. Kuretza to continue in the capacity of deputy sheriff and retaining him as a deputy sheriff and failing to supervise or oversee his employment as a deputy sheriff despite their actual knowledge of his proclivity and tendency for violence, excessive force, abusiveness, and intemperance, all engaged in under color of state law, directed toward members of the public, including Mr. Graciano, and in failing to halt, remediate, or correct Dep. Kuretza's behavior as a aforesaid, MCC and MCSD subjectively endorsed, ratified, and exhibited deliberate indifference to Dep.

Kuretzka's on-going pattern of unlawful and unconstitutional conduct punctuated by violence, excessive force, abusiveness, and intemperance, all engaged in under color of state law, and thereby exposed members of the public, including Mr. Graciano, to deprivation of their civil rights, including their rights secured and guaranteed to them under U.S. CONST. AMDS. 1, 4, and 14 and W. VA. CONST. ART. III, § 6, within the meaning of 42 U.S.C. § 1983 and otherwise.

36). In acting as aforesaid by exhibiting deliberate indifference to Dep. Kuretzka's on-going pattern of unlawful and unconstitutional conduct punctuated by violence, excessive force, abusiveness, and intemperance, all as engaged in under color of state law, MCC (and its subordinate agency and subdivision, MCSD), proximately caused Mr. Graciano to sustain, and continue to sustain, losses and damages, including physical harm, extreme fear, torment and suffering of his body and mind, embarrassment, loss of enjoyment of life, humiliation, aggravation and inconvenience, unlawful deprivation of his civil rights under color of state law, and other losses and damages, including, but not limited to, damage to his reputation. Additionally, Mr. Graciano sustained pecuniary losses and damages in the form of lawyer fees and associated costs relative to defending the criminal charges against him.

VI. TORT OF OUTRAGE/ INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

37). Mr. Graciano repleads *in haec verba* the allegations contained within ¶¶ 1-36 as if the same were set forth fully herein.

38). Dep. Kuretzka and John Does 1-6 bullied and battered Mr. Graciano and acted toward Mr. Graciano in a manner which was atrocious, utterly intolerable in a

civilized community, and so extreme and outrageous as to exceed all possible bounds of decency and with intent to inflict emotional distress on Mr. Graciano, or, alternatively, Dep. Kuretza and John Does 1-6 acted recklessly in such manner, when it was certain or substantially certain that such distress to Mr. Graciano would result from Dep. Kuretza's and John Does 1-6's conduct, thereby proximately causing Mr. Graciano to suffer emotional distress which was so severe that no reasonable person could be expected to endure it.

39). As a direct and proximate cause of the acts and omissions of Dep. Kuretza and John Does 1-6 as aforesaid, Mr. Graciano sustained and continues to sustain damages, including physical harm, extreme fear, torment and suffering of his body and mind, embarrassment, loss of enjoyment of life, humiliation, employment income, aggravation and inconvenience, unlawful deprivation of his civil rights under color of state law, and other losses and damages, including, but not limited to, damage to his reputation.

VII. BATTERY

40). Mr. Graciano repleads *in haec verba* the allegations contained within ¶¶ 1-39 as if the same were set forth fully herein.

41). Dep. Kuretza and John Does 1-6, in acting as aforesaid, battered Mr. Graciano, and thereby proximately caused Mr. Graciano to sustain damages and losses, including, but not limited to, physical harm, extreme fear, torment and suffering of his body and mind, embarrassment, humiliation, aggravation and inconvenience, and other losses and damages.

42). As a direct and proximate cause of the acts and omissions of Dep. Kuretza and John Does 1-6 as aforesaid, Mr. Graciano sustained and continues to sustain damages, including damage to his reputation, severe emotional trauma, physical pain, counsel fees, emotional pain and suffering, embarrassment, humiliation, loss of enjoyment of life, aggravation and inconvenience, and other losses and damages.

VIII. NEGLIGENT HIRING AND RETENTION

43). Mr. Graciano repleads *in haec verba* the allegations contained within ¶¶ 1-42 as if the same were set forth fully herein.

44). The MCC and MCSD, in hiring and/or in later retaining Dep. Kuretza as an employee, knew, or, in the exercise of due and reasonable diligence and care, should have known, of his proclivity for violence and predisposition toward making false arrests, employing excessive force, threatening the citizenry, and engaging in profane abusiveness toward the citizenry proximately.

45). As a direct and proximate result of the acts and omissions of the MCC and MCSD as aforesaid in hiring and/or in later retaining Dep. Kuretza, Mr. Graciano suffered and sustained damages, including extreme fear, torment and suffering of his body and mind, embarrassment, humiliation, aggravation and inconvenience, and other losses and damages, including, but not limited to, pecuniary losses and damages in the form of counsel fees and other expenses associated with defending against the specious criminal charges lodged against Mr. Graciano.

IX. NEGLIGENT TRAINING AND SUPERVISION

46). Mr. Graciano repleads *in haec verba* the allegations contained within ¶¶ 1-45 as if the same were set forth fully herein.

47). The MCC and MCSD negligently failed to provide adequate training to, and engage in meaningful supervision of, Dep. Kuretza and John Does 1-6 commensurate with the training and supervision accorded by law enforcement agencies to law enforcement employees in various areas, including, but not limited to, assessment of probable cause to arrest, dealing with sleeping citizens, the circumstances in which arrests may be made, and the continuum of the use of force and the use of force matrix.

48). As a direct and proximate result of the failure of the MCC and MCSD City to provide such supervision and training as aforesaid, Mr. Graciano sustained losses and damages, including extreme fear, torment and suffering of his body and mind, embarrassment, humiliation, aggravation and inconvenience, and other losses and damages, including, but not limited to, pecuniary losses and damages in the form of counsel fees and other expenses associated with defending against the specious criminal charges lodged against Mr. Graciano.

WHEREFORE, your Plaintiff, Quintin L. Graciano, prays for judgment against Defendants, Lance C. Kuretza, John Does 1-6, and the Monongalia County Commission (including its subordinate agency and subdivision, the Monongalia County Commission not herein named as an individual defendant), for his injuries, losses, and damages as aforesaid, exemplary damages, attorney fees as authorized by common law and 42 U.S.C. § 1988, the costs of this action and for such other legal and equitable relief to which he may be entitled. **Plaintiff demands a trial by jury.**

Respectfully submitted,

QUINTIN L. GRACIANO,
Plaintiff.

By: /s/Robert G. McCoid
Of Counsel

Robert G. McCoid, Esq.
West Virginia Bar I.D. No. 6714
McCOID LAW OFFICES, P.L.L.C.
56-58 Fourteenth Street
Post Office Box 1
Wheeling, WV 26003
(304) 242-2000 (office)
(304) 232-3548 (telefacsimile)
robert@mccoidlaw.com

Todd F. La Neve, Esq.
West Virginia Bar I.D. No. 6238
LA NEVE LAW OFFICES
117 1/ 2 Nicholas Street
Clarksburg, WV 26301
(304) 624-1700 (office)
(304) 624-1800 (telefax)
tlaneve@877wvlaws.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg Division

QUINTIN L. GRACIANO,

Plaintiff,

v.

LANCE KURETZA, individually and as
an agent and employee of the Monongalia
County Commission and Monongalia
County Sheriff's Department, *et al.*

:
:
:
: Civ. Act. No. 1:20-CV-14
: Honorable Thomas S. Kleeh
:
:
:
:
:
:

CERTIFICATE OF SERVICE

Service of the foregoing **Amended Complaint** was had upon the following by
delivering a true and correct copy thereof to him via CM/ECF notification this 30th day
of November, 2020.

Keith C. Gamble, Esq.
PULLIN FOWLER FLANAGAN
BROWN & POE, P.L.L.C.
2414 Cranberry Square
Morgantown, WV 26508
kgamble@pffwv.com

By: /s/Robert G. McCoid
Of Counsel

Robert G. McCoid, Esq.
West Virginia Bar I.D. No. 6714
McCOID LAW OFFICES, P.L.L.C.
56-58 Fourteenth Street
Post Office Box 1
Wheeling, WV 26003
(304) 242-2000 (office)
(304) 232-3548 (telefacsimile)
robert@mccoidlaw.com