

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

TIMOTHY MICHAEL MAZZA,
Plaintiffs,

vs.

Civil Action No. 6:10-0834

**NATHAN R. DEULEY, individually and in his
capacity as a City of Parkersburg
Police Officer,
M.W. EICHHORN, individually
and in his capacity as a City of Parkersburg
Police Officer, and R.L. KOHER, individually, and in his
capacity as a City of Parkersburg Police Officer,
THE CITY OF PARKERSBURG,
a West Virginia municipal corporation,**

Defendants.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, 1985 & 1988, the Fourth and Fourteenth Amendments to the United States Constitution, the West Virginia Constitution, Statutes and common law, arises out of the Defendants' unlawful arrest, detention, and brutalization of the plaintiffs on or about October 30, 2009 in the City of Parkersburg, Wood County, West Virginia, within the Southern District of West Virginia.

JURISDICTION

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

PARTIES

1. The Plaintiff at all times relevant to this Complaint was a resident of Wood County, West Virginia, within the Southern District .

2. Defendant Deuley, at all times relevant to this complaint, was a police officer for the City of Parkersburg Police Department acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.
3. Defendant Eichhorn, at all times relevant to this complaint, was a police officer for the City of Parkersburg Police Department acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.
4. Defendant Koher, at all times relevant to this complaint, was a police officer for the City of Parkersburg Police Department acting under the color of law and within the scope of his employment. Said Defendant is sued in his individual and official capacities.
5. Defendant City of Parkersburg is a municipal corporation existing under the statutes and laws of the State of West Virginia and is a political subdivision of the State of West Virginia.

FACTS

The Plaintiffs incorporate by reference paragraphs 1-5, supra.

6. On or about the 30th day of October, 2009, defendants Deuley, Eichhorn and Koher, while on duty as police officers with the City of Parkersburg Police Department, without probable cause and without a warrant of entry or arrest, each aiding, abetting, and assisting the other, entered upon the property of the plaintiff in Parkersburg, Wood County, West Virginia, and within the Southern District of West Virginia, confronted the plaintiff in Parkersburg, Wood County, West Virginia, and viciously assaulted, kicked and struck the plaintiff, detained him against his will, both prior to and subsequent to handcuffing, all of which was without probable cause or provocation, and without any resistance whatsoever. All the while the said defendants

were cursing, belittling, humiliating and degrading the plaintiff and using derogatory terms intended to belittling, humiliating and degrading the plaintiff.

7. Thereafter, at the Parkersburg police station, in Wood County, West Virginia, the plaintiff was further subjected to verbal and emotional battery and detained against his will on the part of the defendant police officers, was ordered to sign official documents without being permitted to fully read and amend the same, and was held for a period of approximately eight hours.

STATE LAW CLAIMS

COUNT I - -CONSTITUTIONAL TORT

8. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 7 of this **COMPLAINT**.
9. Count I alleges a constitutional tort action under the West Virginia Constitution, pursuant to the common law of West Virginia.
10. The actions of Defendants violated the constitutional rights guaranteed to plaintiffs under Article III, Sections 1, 5, 10, and 14 of the West Virginia Constitution, which incorporates the constitutional rights guaranteed to Plaintiffs under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.
11. The actions of defendants Deuley, Eichhorn and Koher were done in bad faith, were done maliciously, and were in violation of clearly established law, or in a wanton or reckless manner.
12. As a proximate result of Defendants' actions, plaintiff sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation,

annoyance, inconvenience, deprivation of liberty, sustained lost wages and loss of future wages and suffered otherwise, and is entitled to recover damages for the same.

COUNT II - - VICARIOUS LIABILITY

13. Plaintiff incorporates herein by reference the allegations contained in Paragraph Nos. 1 through 12 of this complaint as if re-stated herein verbatim.
14. Defendant City of Parkersburg has the authority to formulate, implement, and administer the policies, customs, and practices of Defendant City of Parkersburg, and the actions of Defendant City of Parkersburg's agents and employees, hereinbefore designated as Defendants Deuley, Eichhorn and Koher, represent the official policy of Defendant City of Parkersburg and/or subject the defendant City of Parkersburg to vicarious liability based upon the employee relationship.
15. As a proximate result of Defendants' actions, plaintiff sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, sustained lost wages and loss of future wages and suffered otherwise, and is entitled to recover damages for the same.

COUNT IV - - NEGLIGENCE

16. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 15 of this COMPLAINT, as if re-stated verbatim herein.
17. Defendant City of Parkersburg failed to exercise reasonable care in the hiring, retention, and/or supervision of their employees, defendants Deuley, Eichhorn and Koher.

COUNT III - - BATTERY

18. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 17 of this COMPLAINT, as if re-stated verbatim herein.

19. The actions of the defendants Deuley, Eichhorn and Koher constitute battery upon plaintiff and is actionable per se.
20. As a proximate result of Defendants' actions, plaintiff sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, sustained lost wages and loss of future wages and suffered otherwise, and is entitled to recover damages for the same.

COUNT IV - - OUTRAGEOUS CONDUCT/INTENTIONAL INFLICTION

21. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 20 of this COMPLAINT, as if restated herein verbatim.
22. The actions of individual defendants Deuley, Eichhorn and Koher as aforesaid were outrageous, constitute the intentional infliction of mental, physical and emotional distress, were reprehensible, fraudulent, wilful and wanton, malicious, and in blatant and intentional disregard of Plaintiff's rights, thereby justifying an award of punitive damages.
23. As a proximate result of Defendants' actions, plaintiff sustained physical, mental and emotional damages, incurred medical expenses, suffered embarrassment, humiliation, annoyance, inconvenience, deprivation of liberty, sustained lost wages and loss of future wages and suffered otherwise, and is entitled to recover damages for the same.
25. All causes of action complained of herein against the municipal defendant and the individual defendants in their official capacities seek only to recover to the extent said defendants are covered by liability insurance and do not seek to recover taxpayer payments.

**FEDERAL LAW CLAIMS
COUNT 1 - - ILLEGAL DETENTION COGNIZABLE UNDER 42 U.S.C. 1983**

24. The Plaintiff incorporates herein by reference paragraphs 1-23 above.
25. No objectively reasonable police officer would have believed, based upon the actual facts of the case, that probable cause existed to enter upon the property of the plaintiff, detain the plaintiff, and transport him to the City of Parkersburg Police Station.
26. Said defendants actions were objectively unreasonable, unlawful, unwarranted, and in violation of the said Plaintiff's clearly-established procedural and substantive rights, of which a reasonable person should have known, pursuant to the First, Fourth and Fourteenth Amendments to the United States Constitution and its counterparts in the West Virginia Constitution. Said Defendants' actions were willful, wanton, intentional, malicious and done with callous and reckless disregard for the Plaintiff's constitutional rights. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for discovery.

**COUNT II - - MONELL AND SUPERVISORY LIABILITY COGNIZABLE
UNDER 24 U.S.C. 1983**

27. The Plaintiff, by reference, incorporates paragraphs 1-26 above.
28. The above-described deprivation of Plaintiff's constitutional rights were caused by implementation of customs, policies or official acts of Defendants City of Parkersburg to wit: the failure of said Defendants to adequately hire, train, supervise, and discipline its police officers regarding the circumstances which constitute probable cause for an arrest and the necessity of conducting a reasonable investigation.

29. Said policy, practice or custom was the direct and proximate cause of the injuries and Constitutional violations which the Plaintiff suffered.

**COUNT III - - ARBITRARY AND UNREASONABLE STATE CONDUCT
PURSUANT TO THE FOURTEENTH AMENDMENT COGNIZABLE UNDER 42 U.S.C.
SECTION 1983**

30. The Plaintiff by reference incorporates paragraphs 1-29 above.
31. Defendants unlawfully arrested, imprisoned and prosecuted the Plaintiffs. Said actions were wholly arbitrary, unreasonable and malicious thus constituting a violation of the Plaintiffs's clearly established substantive and procedural due process rights protected by the Fourteenth Amendment.

**COUNT IV - - UNLAWFUL CONSPIRACY COGNIZABLE UNDER 42 U.S.C
1983 & 1985**

32. The Plaintiff by reference incorporates paragraphs 1-31 above.
33. Based on the above facts and after a reasonable opportunity for discovery the Plaintiff will establish that the Defendants unlawfully conspired to deprive the Plaintiff of his constitutionally protected rights as more fully described above.
34. Said defendants' actions were objectively unreasonable and violated the Plaintiff's clearly established constitutional rights all in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution and their counterparts in the West Virginia Constitution. The allegations in these paragraphs are likely to have support after a reasonable opportunity for discovery.

PRAYER

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

1. Damages against Defendants in an amount to be determined at trial which will fairly and reasonably compensate the Plaintiffs for:
 - a. Past, present and future medical expenses;
 - b. Past, present and future economic damages;
 - c. Past, present and future pain and suffering;
 - d. Loss of enjoyment of life;
 - e. Annoyance aggravation and inconvenience;
 - f. Psychological, emotional distress and loss of consortium; and
 - g. Any other compensatory damages to be proven at trial;
 - h. Punitive damages against the individual defendants in an amount to be determined at trial;
 - I. Reasonable attorney fees and costs;
 - j. Any other relief that this Court deems just and equitable;
 - k. All other damages provided by law;
 - l. Injunctive relief requiring appropriate training, supervision and discipline in order to remedy all constitutional deprivations which the Plaintiffs suffered; and
 - m. Declaratory judgment relief establishing the Defendants' above-described conduct violate the Plaintiff's clearly established constitutional rights.

PLAINTIFF DEMANDS A JURY TRIAL

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by Counsel

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