

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

At Bluefield

JAMES A. JOHNSON,

Plaintiff,

v.

Civil Action No. 1:17-cv-04404

MCDOWELL COUNTY SHERIFF DEPARTMENT,
A Political Subdivision, and **DEPUTY SHERIFF RON**
BLEVINS, individually and in his official capacity as
Deputy of the McDowell County Sheriff Department,

Defendants.

COMPLAINT

For his **COMPLAINT** against Defendants McDowell County Sheriff Department and Deputy Sheriff Ron Blevins, Plaintiff James A Johnson states the following:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1334 and under the Court's authority to decide pendent state law claims.
2. Plaintiff files this **COMPLAINT**, pursuant to 42 U.S.C. §1983, alleging violations of his constitutional rights. Specifically, Plaintiff alleges that his rights under the Fourth, Eighth, and Fourteenth Amendment to the United States Constitution and under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution were violated by Defendants when Defendants used excessive and wrongful force during the course of arresting Plaintiff on or about April 8, 2016.

Parties

3. Plaintiff James A. Johnson at all times relevant to this **COMPLAINT** was a resident of McDowell County, West Virginia, the Assistant Chief of the Berwind Volunteer Fire Department, and a “first responder” within the meaning with regard to motor vehicle accidents.
4. Defendant McDowell County Sheriff Department is, and at all times relevant hereto was, a political subdivision providing policing services to the citizens of McDowell County, West Virginia.
5. Defendant Ron Blevins at all times relevant to this **COMPLAINT** was a member of the McDowell County Sheriff Department. At all times alleged herein, Defendant Blevins was acting under color of law and within the scope of his employment.

Facts

12. This case involves a pattern of violation of due process and civil liberties rights over a period of several years culminating in an incident occurring on April 8, 2016 wherein Defendant Blevins illegally tased Plaintiff multiple times rendering him unable to stand or walk.
13. Plaintiff spent nearly two years attempting to resolve the actions of a rogue officer with local and state law enforcement prior to being forced to bring the instant civil action.
14. On January 8, 2015, Plaintiff was dispatched as a first responder to the scene of an

accident at Big Augar/Rt. 17.

15. The accident involved a white Chevy Silverado being driven by a man named Martin Wright who had driven the vehicle off the road.
16. Upon arriving at the scene, Plaintiff detected the smell of alcohol on Mr. Wright and noticed a blue and white cooler in the vehicle, contact local authorities who arrived on scene, performed a field sobriety test, and arrested Mr. Wright.
17. Defendant Blevins was among the investigating officers on the scene.
18. Defendant Blevins performed no search of the vehicle or surrounding area at the time of arrest.
19. Defendant Blevins did take the blue and white cooler from the vehicle and placed it in the patrol car before leaving the scene.
20. After Defendant Blevins left the scene, Plaintiff discovered narcotics on the scene in the form of 30 blue Xanax pills, 15 peach Xanax pills, and 2, 20 mg Oxycontin tablets.
21. Plaintiff contacted emergency personnel to have Defendant Blevins return to the scene to recover the evidence.
22. Plaintiff was told that the Defendant Blevins would recover the evidence the next day.
23. On January 9, 2015, Plaintiff contacted the McDowell County Sherriff's Department at two different times attempting to have officers obtain the illegal narcotics.
24. Plaintiff prepared a report regarding the incident which was not favorable to

Defendant Blevins and filed the same.

25. On February 6, 2015, Defendant Blevins and another deputy came to the home of Plaintiff, unannounced, and entered the premises to complain about the report.
26. Defendant Blevins and the other officer entered Plaintiff's residence in a threatening manner and argued with Plaintiff regarding the report.
27. Defendant Blevins was asked numerous times to leave Plaintiff, his wife, and his grandson in peace; but refused to leave.
28. Plaintiff's wife was forced to call 911 in order to have Defendant Blevins leave their home.
29. Plaintiff, Defendant Blevins, and the local prosecutor's office had numerous interaction and confrontation regarding the January 8, 2015 arrest and Defendant Blevins' subsequent, harassing conduct toward Plaintiff.
30. On April 7, 2016, Plaintiff was dispatched as a first responder to the scene of an accident on Horsepen Road involving a truck versus tree accident involving a multi-color Ford F-150 being driven by William A. Hagan, Jr.
31. In the performance of his duties, Plaintiff prepared a safe flagging system to allow traffic to continue while they worked the scene of the accident, which dealt with an injured driver.
32. Defendant Blevins arrived on the scene speeding, with no lights or siren, and drive through the barricades set up by Plaintiff.
33. Plaintiff ran after Defendant Blevins' vehicle attempting to have it slow down and/or stop to avoid injuring pedestrians, first responders, ambulance personnel,

and others on the scene.

34. When Plaintiff questions Defendant Blevins' conduct, the two engaged in a verbal argument.
35. Subsequent to the verbal altercation, Plaintiff was walking away when Defendant Blevins pulled his agency-issued service taser and fired the weapon hitting Plaintiff in the back.
36. After being knocked to the ground, Defendant Blevins continued to tase Plaintiff numerous times to the point that Plaintiff could not stand or walk on his own
37. Plaintiff's injuries required him to be transported by emergency personnel to the hospital for treatment.
38. Subsequent to receiving treatment, Plaintiff was shocked to learn that Defendant Blevins had obtained a Warrant for Plaintiff's arrest for the charges of Obstructing an Officer, Fleeing the Scene (other than vehicle), and Disorderly Conduct.
39. Defendant Blevins ultimately obtained a conviction by plea agreement against Plaintiff for a sole count of Disorderly Conduct.
40. Plaintiff, at no time, deviated from his primary purpose as a first responder to protect the public and work the scene of an accident.
41. Plaintiff's record now includes a conviction for Disorderly Conduct for nothing more than performing his job as a first responder.
42. Defendant Blevins' actions were done with malice aforethought, and with the motivation of vengeance for a personal grudge against Plaintiff.

COUNT I

42 U.S.C. §1983

43. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 42 of this **COMPLAINT**.
44. Defendants, while acting under color of law, violated Plaintiff's constitutional rights, resulting in permanent and debilitating injuries.
45. The actions of Defendants violated the constitutional rights guaranteed to Plaintiff under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.
46. The actions of Defendants were not taken in good faith and were in violation of clearly established law.
47. Defendants violated Plaintiff's constitutional rights, as described and identified herein, by using excessive and wrongful force during the course of the incident of April 7, 2016.
48. Defendants also violated Plaintiff's constitutional rights, as described and identified herein, by failing to intercede and preventing the other Defendants from using excessive and wrongful force during the course of the incident of April 7, 2016.
49. As a proximate result of Defendants' unconstitutional actions, Plaintiff seeks to recover damages to compensate him for:
 - A. Physical pain and suffering, past and future;
 - B. Mental pain and suffering, past and future;

- C. Permanent injuries;
- D. Past and future medical bills;
- E. Loss of earning capacity and lost wages;
- F. Scarring;
- G. Humiliation, embarrassment, and degradation;
- H. All other injuries proven by a preponderance of the evidence proximately caused by Defendants.

50. In addition to these compensatory damages, Plaintiff also seeks to recover, under 42 U.S.C. §1988 the attorneys' fees and costs incurred during the course of this litigation.

51. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, Plaintiff further seeks to have the Court order Defendants to undergo additional training and education addressing Defendants use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Defendants to hold them accountable for their wrongful actions.

52. The actions of Defendants against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard of the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent that such damages are covered by Defendants' applicable insurance coverage.

COUNT II

STATE CONSTITUTIONAL VIOLATIONS

53. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 52 of this **COMPLAINT**.
54. Count II alleges a constitutional tort action under the West Virginia Constitution, pursuant to the common law of West Virginia, and specifically is not filed pursuant to 42 U.S.C. §1983 or any other related federal statute.
55. The actions of Defendants violated the constitutional rights guaranteed to Plaintiff under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution.
56. The actions of Defendants also violated the constitutional rights guaranteed to Plaintiff under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.
57. The actions of Defendants were not taken in good faith and were in violation of clearly established law.
58. Defendants violated Plaintiff's constitutional rights, as described and identified herein, by using excessive and wrongful force during the course of the incident of April 7, 2016.
59. Defendants also violated Plaintiff's constitutional rights, as described and identified herein, by failing to intercede and preventing the other Defendants from using excessive and wrongful force during the course of the incident of April 7, 2016.
60. As a proximate result of Defendants' unconstitutional actions, Plaintiff seeks to recover damages to compensate him for:
 - A. Physical pain and suffering, past and future;

- B. Mental pain and suffering, past and future;
- C. Permanent injuries;
- D. Past and future medical bills;
- E. Loss of earning capacity and lost wages;
- F. Scarring;
- G. Humiliation, embarrassment, and degradation;
- H. All other injuries proven by a preponderance of the evidence proximately caused by Defendants.

61. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, Plaintiff further seeks to have the Court order Defendants to undergo additional training and education addressing Defendants use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Defendants to hold them accountable for their wrongful actions.
62. The actions of Defendants against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard of the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent that such damages are covered by Defendants' applicable insurance coverage.

COUNT III

BATTERY

63. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 62 of this **COMPLAINT**.

64. Defendants committed a battery upon the Plaintiff which proximately caused his injuries.
65. As a proximate result of Defendants' battery, Plaintiff seeks to recover damages to compensate him for:
- A. Physical pain and suffering, past and future;
 - B. Mental pain and suffering, past and future;
 - C. Permanent injuries;
 - D. Past and future medical bills;
 - E. Loss of earning capacity and lost wages;
 - F. Scarring;
 - G. Humiliation, embarrassment, and degradation;
 - H. All other injuries proven by a preponderance of the evidence proximately caused by Defendants.
66. The actions of Defendants against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard of the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent that such damages are covered by Defendants' applicable insurance coverage.

COUNT IV

NEGLIGENCE

67. Plaintiff hereby realleges and incorporates by reference each and every allegation made in paragraphs 1 through 66 of this **COMPLAINT**.
68. Defendants and agents and employees were negligent in the performance of their

duties within the scope of their employment and such negligence was the proximate cause of Plaintiff's injuries.

69. As a proximate result of Defendants' negligence, Plaintiff seeks to recover damages to compensate him for:
- A. Physical pain and suffering, past and future;
 - B. Mental pain and suffering, past and future;
 - C. Permanent injuries;
 - D. Past and future medical bills;
 - E. Loss of earning capacity and lost wages;
 - F. Scarring;
 - G. Humiliation, embarrassment, and degradation;
 - H. All other injuries proven by a preponderance of the evidence proximately caused by Defendants.
70. The actions of Defendants against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard of the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent that such damages are covered by Defendants' applicable insurance coverage.

PRAYER

WHEREFORE, based on the above stated facts, Plaintiff James A. Johnson respectfully requests that this Honorable Court award all damages, including attorneys' fees and costs, to Plaintiff to compensate him for the injuries he suffered as a proximate result of Defendants actions and inactions. Plaintiff also seeks an award of punitive damages to deter other similarly

situated law enforcement officers from committing similar acts. Finally, Plaintiff seeks whatever equitable relief the Court deems appropriate, such as requiring Defendants to undergo additional training and education addressing Defendants use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Defendants to hold them accountable for their wrongful actions.

PLAINTIFF RESPECTFULLY REQUESTS A TRIAL BY JURY.

JAMES A. JOHNSON, Plaintiff,

--By Counsel--

/s/ Travis A. Griffith, Esq.

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