

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

CHRISTOPHER JAMES HAFNER,

Plaintiff,

v.

Civil Action No. 3:17-04265

CITY OF HUNTINGTON, d/b/a CITY OF
HUNTINGTON POLICE DEPARTMENT,
a municipal corporation; DAKOTA DISHMAN,
individually and in his official capacity,

Defendants.

COMPLAINT

Plaintiff Christopher James Hafner, for his Complaint against the defendants, states as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked under 28 U.S.C. §§1343 et. seq. This action at law for money damages arises under 42 U.S.C. §§ 1983, 1988, the United States Constitution, the laws and Constitution of West Virginia and common law principles to redress a deprivation under color of state law of rights, privileges and immunities secured to Plaintiff by said statutes and by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. This Court has jurisdiction over Plaintiff's claims for violations of his federal constitutional rights pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

2. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. 1367(a) because these claims arise out of the same set of facts as the federal claims such that all claims form part of the same case or controversy.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events giving rise to the claim occurred in the Cabell County which is located in the Southern District of West Virginia.

II. PARTIES

4. Plaintiff, Christopher James Hafner, was at the times relevant to this Complaint a resident of Cabell County, West Virginia and subject to the unlawful actions of the Defendants.

5. Defendant, City of Huntington, is a municipal corporation established by the laws of West Virginia. Pursuant to West Virginia law, the City created a police force, the Huntington Police Department ("HPD"). HPD is subject to the authority, control and discipline of its administrative authority, the City of Huntington. The City of Huntington is a "person" as that term is defined in 42 U.S.C. § 1983.

6. Defendant, Dakota Dishman, is a police officer employed by HPD. He is a "person" within the meaning of 42 U.S.C. § 1983 and at all relevant times was acting under color of state law. He is sued in both his individual and official capacities.

III. FACTS

7. On or about November 4, 2015, Officer Dakota Dishman of the Huntington Police Department responded to a disturbance in the alleyway behind WSAZ in Huntington, West Virginia.

8. Officer Dishman encountered Plaintiff in the alleyway drinking an alcoholic beverage.

9. While actively taking a drink of his beverage, Officer Dishman approaches Plaintiff grabbing Plaintiff's arms and placing them behind his back causing Plaintiff's beverage to fall to the ground.

10. While being placed in handcuffs, Officer Dishman unexpectedly and unnecessary delivers an excessive leg sweep maneuver on the defenseless Plaintiff and slams his head off the bricks of the alley knocking Plaintiff unconscious.

11. After effectuating the leg sweep, Officer Dishman then drives his knee into the back of the unconscious plaintiff placing his full body weight on the helpless Plaintiff.

12. Officer Dishman verbally acknowledges that Plaintiff is unconscious, yet rather than providing or immediately calling for emergency medical services, he first takes the time to place Plaintiff's hands in handcuffs despite the fact that Plaintiff was laying incapacitated and unable to move.

13. Plaintiff was later charged arrested and charged with public intoxication, disorderly conduct and obstruction.

14. Plaintiff plead guilty to disorderly, but the obstruction and public intoxication charges were later dismissed.

IV. ALLEGATIONS

A. The Huntington Police Department has engaged in a pattern, practice or custom of using excessive force, particularly using "leg-sweeps," to summarily punish detainees/arrestees.

14. As stated in *Evans v. City of Huntington, et. al.*, Civil Action: 3:13-cv-05316, the Huntington Police Department maintains a pattern and practice, or custom of

performing unnecessary leg sweep maneuvers to inflict pain upon detainees/arrestees that is in no way related to effectuating an arrest.

15. A leg sweep is a maneuver in which HPD members sweep the legs out from under an individual and attempt to cause as much damage to that individual as possible by forcing their face or head into the ground.

16. The momentum cause is aggressive tactic, when the head or face slams the ground, causes maximal damage to the individual and is in no way related to the force used or needed to arrest.

17. This technique, used against Plaintiff, even when he posed no physical threat to Officer Dishman, caused him severe and disabling damage to his head.

B. The Huntington Police Department has engaged in a pattern, practice or custom of using obstruction as a charge when no facts support it as a charge.

18. As stated in *Pniewski v. City of Huntington, et al.*, Civil Action: 3:12-cv-04675 and in *Evans v. City of Huntington, et al.*, Civil Action: 3:13-cv-05316, HPD also maintains a pattern and practice, or custom of guiding officers to arrest persons for obstruction even though no such crime has been committed.

19. This charge is often made as an “add-on” charge or invalid reason to arrest, or as in Plaintiff’s case, in an attempt to protect the officer from excessive force by providing a pretextual reason for using excessive force.

COUNT I
CIVIL RIGHTS VIOLATION
(Excessive Force— 42 U.S.C. § 1983)

20. Plaintiff refers to and re-pleads each and every allegation contained in the preceding paragraphs of this complaint, and by this reference incorporates the same herein and make each a part hereof.

21. The degree of force actually used against Mr. Hafner was objectively unreasonable, excessive and unwarranted and violated the Plaintiff's clearly established right to be free from unnecessary and excessive use of force, which a reasonable police officer should have known pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the Constitution of West Virginia.

22. The officer's actions were willful, wanton, intentional, malicious and done with callous or reckless disregard for Mr. Hafner's constitutional rights.

23. The officer's actions were the direct and proximate cause of the injuries and constitutional violations of which Plaintiff complains.

COUNT III
MUNICIPAL LIABILITY

24. Plaintiff refers to and re-pleads each and every allegation contained in the preceding paragraphs of this Complaint, and by this reference incorporates the same herein and make each a part hereof.

25. The above-described deprivation of Mr. Hafner's constitutional rights were caused by implementation of customs, policies, or official acts of the Defendant City of Huntington; to wit, among other things: Permitting police officers to engage in law enforcement contacts without supervision, failure to adequately train, supervise and discipline its police officers regarding lawful detention, lawful detention techniques, the

proper use of force, and the proper use of force to effect an investigative detention and/or arrest.

26. The City of Huntington, by these acts and omissions has exhibited deliberate indifference to the unreasonable risk of the unlawful deprivation of citizens' constitutional rights which its customs and policies pose.

27. Their customs and policies violate the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and its West Virginia counterparts.

28. The customs, practices and policies of the City of Huntington were the direct and proximate cause of the injuries and constitutional violations of which Plaintiff complains.

COUNT IV STATE LAW CLAIMS

29. Plaintiff refers to and re-pleads each and every allegation contained in the preceding paragraphs of this complaint, and by this reference incorporates the same herein and make each a part hereof.

30. The above-described actions constitute the following state law claims against the Defendant officer:

- A. Assault and Battery
- B. Negligence

31. The above-described actions constitute the following state law claims against the City of Huntington:

- A. Negligent Hiring
- B. Negligent Retention
- C. Negligent Supervision

V. PRAYER FOR RELIEF

Wherefore, based upon the above stated facts, Plaintiff requests judgment against the defendants in an amount that will fully and fairly compensate him for his injuries including medical expenses, pain and suffering, loss of enjoyment of life, annoyance, aggravation, psychological distress and any other compensatory damages to be proved at trial. Mr. Hafner further requests punitive damages against the officer defendant, reasonable attorney fees and costs, all other damages provided by law and any other relief this Court deems just and fair.

PLAINTIFF DEMANDS A JURY TRIAL

CHRISTOPHER HAFNER,
An Individual,

By Counsel: s/Richard Weston
Richard W. Weston (WVSB #9734)
Connor Robertson (WVSB #11460)
WESTON | ROBERTSON
337 Fifth Avenue
Huntington, WV 25701
304.522.4100

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

Christopher James Hafner

(b) County of Residence of First Listed Plaintiff Cabell

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Richard Weston and Connor Robertson, WESTON | ROBERTSON, 337
Fifth Avenue, Huntington, WV. 25701. (304) 522-4100**DEFENDANTS**City of Huntington, d/b/a City of Huntington Police Department, a
municipal corporation; Dakota Dishman, individually and in his official
capacityCounty of Residence of First Listed Defendant Cabell

(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
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1331,1343; 42 USC 1981, 1983,1985

Brief description of cause:

Civil Rights violations

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/2/2017

S/ Richard W. Weston

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____