

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

HUNTINGTON DIVISION

WILLIAM ROBINSON,

Plaintiff,

v.

Civil Action No. 3:17-cv-02741

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

Defendants.

COMPLAINT

Plaintiff William Robinson, 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, William Robinson, 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, Ronnie Lusk, 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 September 5, 2015, HPD officer Ronnie Lusk performed a traffic stop on William Robinson.

8. Mr. Robinson pulled his vehicle to the side of the road and stuck his hands out the driver door window to surrender.

9. Numerous officers approached the vehicle with their guns drawn.

10. Officer Lusk approached the driver's side door with his gun drawn. He also had a K-9 with him.

11. Although Mr. Robinson had already surrendered and placed his hands out the window, the officers continued to yell and cuss at him causing confusion.

12. Even though he had surrendered and had his hands visible outside the car window, without warning, Lusk ordered the K-9 to attack Mr. Robinson.

13. The K-9 proceeded to viciously attack Mr. Robinson.

14. Even after the dog had Mr. Robinson on the ground, Lusk let the dog continue to bite and chew on Mr. Robinson.

15. Mr. Robinson suffered severe lacerations to the entirety of his left leg.

16. Even though he had suffered these severe lacerations, Mr. Robinson was not immediately taken to the hospital but was left in the back of a police cruiser to suffer.

17. Mr. Robinson was eventually taken to the emergency room.

18. Mr. Robinson later had to return to the emergency room due to infection of the lacerations.

19. Mr. Robinson has suffered permanent scarring due to the unwarranted attack.

IV. ALLEGATIONS

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. Robinson was objectively unreasonable, excessive and unwarranted and violated the Plaintiff's clearly established right to be free from a vicious dog attack when the person had already surrendered, 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. Robinson'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 II
CIVIL RIGHTS VIOLATION
(Failure to Provide Timely Medical Care— 42 U.S.C. § 1983)

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. Officer Lusk watched his canine rip apart Mr. Robinson's leg and heard him screaming in pain.

26. Despite his severe injuries, Lusk did not provide, or ensure that Mr. Robinson was immediately transported for emergency medical services.

27. Lusk did not immediately provide or transport Mr. Robinson for emergency medical services even though Mr. Robinson pleaded to be taken to the hospital immediately.

28. Lusk did not immediately provide or transport Mr. Robinson for emergency medical services in order to wantonly cause him unnecessary pain and suffering and emotional distress.

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

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

COUNT III

MUNICIPAL LIABILITY

31. 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.

32. The above-described deprivation of Mr. Robinson'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 use of K-9, and the proper use of force, failure to implement a policy regarding the use of force by K-9's, and the failure to adequately train, supervise and discipline its police officers regarding the requirement to provide immediate medical assistance to injured arrestees.

33. 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.

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

35. 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

36. 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.

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

- A. Assault and Battery
- B. Negligence

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

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

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. Robinson 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

WILLIAM ROBINSON,
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

By Counsel: s/A. Courtenay Craig
A. Courtenay Craig (WVSB# 8530)
337 Fifth Avenue
Huntington, WV 25701
304.697.4422

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

William Robinson

(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 and Ronnie Lusk in both his personal capacity and
his official capacity as an officer of the Huntington Police DepartmentCounty 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 type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place
of Business In This State | <input type="checkbox"/> 4 | <input 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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

05/05/2017

/S/ Richard W. Weston

FOR OFFICE USE ONLY

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