

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

XAVIER TYREESE THOMAS and
MARTIN XAVIER THOMAS,
Plaintiff,

v.

Civil Action No.: 3:13-CV-22159

CITY OF HUNTINGTON,
HUNTINGTON HOUSING CORPORATION
AND THE HUNTINGTON HOUSING AUTHORITY,
BRIAN LUCAS IN HIS PERSONAL
CAPACITY, HIS OFFICIAL CAPACITY
AS AN OFFICER OF THE HUNTINGTON
POLICE DEPARTMENT, AND HIS CAPACITY
AS AN EMPLOYEE OF THE HUNTINGTON
HOUSING CORPORATION/AUTHORITY;
DOES IN THEIR PERSONAL CAPACITY,
THEIR OFFICIAL CAPACITY AS OFFICERS OF THE HUNTINGTON
POLICE DEPARTMENT.

Defendants.

COMPLAINT

Plaintiffs, Xavier and Martin Thomas, for their Complaint against the defendant's
states as follows:

I. NATURE OF THE CASE

1. This civil rights action challenges as unconstitutional the officers of the
Huntington Police Department unwarranted attack and malicious prosecution of Xavier
Thomas. It also challenges the unwarranted search and seizure of Martin Thomas' vehicle
as well as the search, seizure and destruction of Martin Thomas' property based upon his
exercise of rights under the federal and West Virginia Constitutions to document the
conduct of HPD officers performing their public duties in a public place. It challenges the

Huntington Police Department and the City of Huntington's illegal use of the charge of obstruction. Finally, it charges the Huntington Police Department, the City of Huntington and the Huntington Housing Authority with negligently supervising its Officers.

II. JURISDICTION AND VENUE

2. 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).

3. 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.

4. 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, WV which is located in the Southern District of West Virginia.

III. PARTIES

5. Plaintiffs, Xavier and Martin Thomas, brothers, were at the times relevant to this Complaint residents of Cabell County, West Virginia and subject to the unlawful actions of the Defendants.

6. 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.

7. Defendant, Brian Lucas, 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. Officer Lucas was also an officer employed by the Huntington Housing Corporation and Huntington Housing Authority (hereinafter collectively referred to as “Housing Authority”). He is sued in both his individual capacity, his official capacity as an Officer of the Huntington Police Department, and as his capacity as an employee of the Housing Authority.

8. Defendant, does, are police officers employed by HPD. They are “persons” within the meaning of 42 U.S.C. § 1983 and at all relevant times were acting under color of state law.

9. Defendant, Housing Authority, was at all times relevant to this Complaint a corporation registered with the West Virginia Secretary of State that was authorized to, and was, in fact, conducting business in Cabell County, West Virginia.

IV. FACTS

10. During the late night hours of August 2, 2012 and the early morning hours of August 3, 2012 Xavier Thomas worked the midnight shift as a Janitor at Marshall University.

11. Xavier's shift ended just before 1:00 a.m. on August 3, 2012 and his brother, Martin Thomas, picked him on Marshall University's campus on 3rd Avenue in Huntington.

12. Martin and Xavier drove their white, Chevy truck just around the corner from Marshall University to the Speedway gas station off of Hal Greer Blvd and parked their truck just to the inside and to the left of (looking from the gas station to the parking lot) of the first row of gas pumps to the right of the parking lot.

13. At the time Martin and Xavier pulled into the Speedway parking lot, HPD Officer Brian Lucas, was conducting a traffic stop on a vehicle on the left side of the middle row of gas pumps of Speedway.

14. Officer Lucas was also working security for the Housing Authority at the time of this incident, but was driving a HPD cruiser and was not on the Housing Authorities property.

15. Martin and Xavier got out of their truck and walked straight into Speedway to make a purchase.

16. While Martin was still in Speedway making a purchase, Xavier walked out the door and straight back to his vehicle and sat in the passenger side to wait on his brother's return.

17. While he was waiting on his brother, Xavier was, like everyone else at Speedway that morning, watching what was going on with Officer Lucas' traffic stop.

18. Officer Lucas observed Xavier watching what was going on and immediately and unjustifiably began targeting Xavier as the only one paying attention to the stop.

19. Officer Lucas began yelling at Xavier to “look away,” “mind his own business,” and that this “isn’t a freak show.”

20. Xavier responded to Officer Lucas by saying he wasn’t doing anything wrong and was simply watching what was going on with the traffic stop.

21. Officer Lucas then began walking towards Xavier holding his hand cuffs up in the air and threatening Xavier by telling him to “get the *uck out of the vehicle.”

22. Xavier continues to tell Officer Lucas that he wasn’t doing anything wrong.

23. As Officer Lucas continues to demand Xavier out of the vehicle, Martin walks out of the store, walks to his driver side of the truck and is immediately ordered by Officer Lucas to unlock the door.

24. Martin unlocks the door from the driver’s side of the truck and then pulls his cell phone out of his pocket and began recording Xavier’s interaction with Officer Lucas.

25. At this point, Officer Lucas became enraged and began to physically extract Xavier from his vehicle.

26. Xavier Thomas grabbed onto the steering wheel of the truck to prevent extraction and physical abuse by the police.

27. This caused the officers to escalate their assault and battery on Xavier. During this assault they ripped his shirt and choked him inside the vehicle.

28. Finally, Officer Lucas, with the aid HPD Officer Todd Veazey, successfully ripped Xavier out of the vehicle and dragged him several feet from his vehicle before performing a “leg sweep” technique against Xavier smashing his face into the ground.

29. While Xavier was taken to the ground, Martin walked around the front of his vehicle and stood in front of his truck, but well away from Officer Lucas and Veazy, with his cell phone out continuing to video his brother's attack.

30. At this time, Doe officers responded to the scene and immediately surrounded Martin, took his cell phone and placed him in handcuffs.

31. After Martin was placed in handcuffs, the Doe officers passed his cell phone around and one of the Doe Officers deleted the video footage that Martin shot of his brother being violently taken to the ground.

32. The Doe Officers then illegally searched Martin and his vehicle inside and out without his consent, but found nothing.

33. As the Doe Officers were searching the vehicle, Xavier was placed inside a police cruiser and transported to HPD headquarters where he was continually berated and cursed at.

34. While still at Speedway and after Xavier was taken to HPD headquarters, Doe Officers asked Officer Lucas whether or not arrest Martin and he replied that he would let him go tonight, he would get warrants and come back later in the morning to lock the whole family up.

35. Later Xavier was taken to Western Regional Jail after being charged with "Public Intoxication" and "Obstruction." Although there was no probable cause to arrest Xavier for either charge, Officer Lucas created false facts in the Criminal Complaints, under oath.

36. Before the case went to trial, Officer Lucas viewed surveillance video from Speedway, which clearly displays that Xavier did not stagger back to his truck as falsely alleged in his complaint.

37. Nevertheless, Officer Lucas did not dismiss the charges because he knew that he was going to be sued and the only chance he had to avoid a lawsuit was the criminal charges terminating in the State's favor.

38. Xavier's criminal charges were tried in the Cabell County Magistrate Court at a bench trial before the Honorable Johnny McCallister on February 20, 2013.

39. Magistrate McCallister directed a verdict after the State presented their case-in-chief in favor of Xavier on the charge of "Public Intoxication" finding there was no evidence presented concerning the "Public Intoxication" charge.

40. Magistrate MaCallister then found Xavier "Not Guilty" of the charge of "Obstruction" after the both side rested their case.

V. ALLEGATIONS

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

41. 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.

42. The momentum caused by this 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 to arrest.

43. This technique, used against Xavier, even when he posed no physical resistance, caused him severe and disabling damage to his face and body.

44. HPD maintains a pattern, practice or custom of using excessive force, particularly a “leg sweep” to punish and harm detained individuals. *See Evans v. City of Huntington, et. al.*, Civil Action: 3:13-cv-5316.

B. 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.

45. As stated in *Pniewski v. City of Huntington, et. al.*, Civil Action: 3:12-cv-04675, *Evans v. City of Huntington, et. al.*, Civil Action: 3:13-cv-5316, 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.

46. In West Virginia, “obstructing” is a crime wherein “any person who threatens, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer, probation officer or parole officer acting his or her official capacity” W.Va. Code §61-5-1(a).

47. This charge is often made as an “add-on” charge or invalid reason to arrest, or as in Xavier’s case, in an attempt to protect the officer from charges of excessive force by providing a pretextual reason for using excessive force and reason to arrest without any criminal activity being committed.

C. Huntington Police Department has engaged in a pattern, practice or custom of Denying the First Amendment Rights to those that Videotape their Officials Duties.

48. Observing and recording public police activities, without interfering with those duties, is a legitimate means of gathering information for public dissemination and therefore speech protected by the First Amendment to the United States Constitution.

49. By detaining Martin Thomas, seizing his cell phone video camera, and deleting the footage on the camera, the officers retaliated against Martin Thomas for exercising his right to free speech.

50. Officer Does acted under the Huntington Police Department's policy practice or custom when they detained Martin Thomas, seized his cell phone video camera, searched the cell phone video camera, and destroyed the footage stored on the cell phone video-camera.

51. HPD caused these constitutional violations by implementing, following, or failing to remedy a policy, practice, or custom that encouraged the restriction of individual's rights protected by the First Amendment. Moreover, in the absence of judicial intervention these defendants will continue to cause similar constitutional violations by implementing, following, or failing to remedy this illegal pattern.

52. As a result of defendants' retaliation against Martin Thomas' constitutionally protected speech, he suffered damages including emotional trauma, humiliation, distress, and damage to personal property.

53. Martin Thomas' speech, protected by the First Amendment, is chilled by the defendant's policy of barring video recordings of police officers performing official duties in public.

COUNT I
CIVIL RIGHTS VIOLATION

(Excessive Force– 42 U.S.C. § 1983)

54. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 53 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

55. Any use of force against Xavier Thomas, and the degree of force actually used against him, was objectively unreasonable, excessive and unwarranted and violated the Plaintiff's clearly established rights, 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.

56. Officer Lucas' actions were willful, wanton, intentional, malicious and done with callous or reckless disregard for Xavier Thomas' constitutional rights.

COUNT II
CIVIL RIGHTS VIOLATION

(Unlawful Seizure Of Person – 42 U.S.C. § 1983 “Xavier Thomas”)

57. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 56 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

58. Officer Lucas placed Xavier Thomas in handcuffs and arrested him, and therefore seized him, without any lawful justification.

59. Officer Lucas' actions were objectively unreasonable, excessive, and unwarranted in violation of Plaintiff's clearly established right to travel on the public roadways without being seized unless reasonable suspicion exists, that a reasonable

officer would have known, pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the Constitution of West Virginia.

60. Officer Lucas' actions were willful, wanton, intentional, malicious and done with callous or reckless disregard for Xavier Thomas' constitutional rights.

COUNT III
CIVIL RIGHTS VIOLATION

(Unlawful Seizure Of Person – 42 U.S.C. § 1983 “Martin Thomas”)

61. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 60 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

62. Officer Does placed Martin Thomas in handcuffs and arrested him, and therefore seized him, without any lawful justification.

63. Officer Does' actions were objectively unreasonable, excessive, and unwarranted in violation of Plaintiff's clearly established right to travel on the public roadways without being seized unless reasonable suspicion exists, that a reasonable officer would have known, pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the Constitution of West Virginia.

64. Officer Does' actions were willful, wanton, intentional, malicious and done with callous or reckless disregard for Martin Thomas' constitutional rights.

COUNT IV
CIVIL RIGHTS VIOLATION

(Unlawful Restraint of First Amendment, Taking Property Without Due Process,
Unlawful Search And Seizure Of Person And Property – 42 U.S.C. § 1983 – “Martin
Thomas”)

65. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 64 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

66. The officers unlawfully detained Martin Thomas, seized his cell phone video camera, and searched through it and deleted his video without any lawful justification.

67. The officers unlawfully detained Martin Thomas, seized his vehicle and searched through it without lawful justification, reasonable suspicion that evidence of a crime would be found.

68. The officers actions were objectively unreasonable, excessive, and unwarranted in violation of Plaintiff's clearly established right to observe and record public police activities, without interfering with those duties, as a legitimate means of gathering information for public dissemination, and the rights to right to be free from unlawful search, seizure and takings, that a reasonable officer would have known, pursuant to the First and Fourth and Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of West Virginia.

69. Officer Does actions were willful, wanton, intentional, malicious and done with callous or reckless disregard for Martin Thomas' constitutional rights.

COUNT V
MUNICIPAL LIABILITY

70. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 69 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

71. The above-described deprivation of Xavier and Martin Thomas' 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 probable cause for an arrest, lawful detention, lawful detention and the proper use of force to effect an investigative detention and/or arrest.

72. 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.

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

74. 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 VI
STATE LAW CLAIMS AGAINST THE
CITY OF HUNTINGTON, OFFICER LUCAS AND DOE OFFICERS

75. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 74 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

76. The above-described actions constitute the following state law claims against Officer Lucas:

- A. Assault on Xavier Thomas
- B. Battery on Xavier Thomas
- C. Malicious Prosecution of Xavier Thomas

77. The above-described actions constitute the following state law claims against Doe Officers:

- A. Assault on Martin Thomas
- B. Battery on Marin Thomas
- C. Conversion of Martin Thomas' property

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

- A. Negligent Hiring;
- B. Negligent Retention; and,
- C. Negligent Supervision.
- D. Malicious Prosecution.

COUNT VII
STATE LAW CLAIMS AGAINST THE
HUNTINGTON HOUSING AUTHORITY
- NEGLIGENCE SUPERVISION/RETENTION

79. Plaintiff refers to and re-pleads each and every allegation contained in paragraphs 1 through 78 of this complaint, and by this reference incorporates the same herein and make each a part hereof.

80. At the time of this incident Officer Lucas was employed as a security guard for the Housing Authority.

81. The Housing Authority commonly employs HPD officers as security guards to protect their properties.

82. The Housing Authority negligently allow its HPD officers to come and go as they please and do whatever they want while employed as security guards.

83. The Housing Authority does not provide rules, guidelines, instruction, policy, or supervision to the HPD officers they higher.

84. The Housing Authority negligently failed to do the same with Officer Lucas on August 3, 2012.

VI. PRAYER FOR RELIEF

Wherefore, based upon the above stated facts, Plaintiff requests the Court to:

A. Order the City of Huntington to create a new policy on the use of leg-sweeps that:

1. Affirmatively sets forth when leg sweeps can be used;
2. Requires education or retraining on the proper application of leg-sweeps before an officer can use this technique;
3. Clearly describes that an officer is not allowed to leg sweep a person that has offered no physical resistance;
4. Provides clear guidance for supervisory review.

B. Order the City of Huntington to create a new policy on the crime of obstruction that:

1. Informs the HPD officers of the element of “obstruction” in West Virginia, provides examples of applications of facts to the elements and provides examples of actions that are, and are not, obstruction;
2. Provides that officers must be trained according to West Virginia caselaw on what is and is not obstruction.

C. Damages against the Defendants in an amount to be determined at trial that will fairly and reasonably compensate him for:

1. Past, present and future medical expenses and lost wages;
2. Past, present and future pain suffering, loss of enjoyment of life, annoyance, aggravation and psychological distress; and
3. Any other compensatory damages to be proven at trial.

D. Punitive damages against Officer Lucas in an amount to be determined at trial:

1. Reasonable attorneys’ fees and costs;
2. Any other relief that this Court deems just and fair; and,

3. All other damages provided by law.

E. Punitive damages against Doe Officers in an amount to be determined at trial:

1. Reasonable attorneys' fees and costs;
2. Any other relief that this Court deems just and fair; and,
3. All other damages provided by law.

F. Punitive damages against Huntington Housing Authority in an amount to be determined at trial:

1. Reasonable attorneys' fees and costs;
2. Any other relief that this Court deems just and fair; and,
3. All other damages provided by law.

PLAINTIFF DEMANDS A JURY TRIAL

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