

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

THOMAS SCOTT VANDEGRIFT,

Plaintiff

v.

C.A. _____

CITY OF ROANOKE SHERIFF'S OFFICE,

Serve: **Octavia L. Johnson, Sheriff
340 Campbell Ave., SW
Roanoke, VA 24016**

JURY TRIAL DEMANDED

**OCTAVIA L. JOHNSON, individually and
in her official capacity as Roanoke City
Sheriff;**

**BRANDON YOUNG, individually and
in his official capacity as Roanoke City
Sheriff's Office Deputy;**

**DEPUTIES JOHN DOES, individually and
in their official capacity as Roanoke City
Sheriff's Office Deputies;**

and

**DEPUTIES JANE DOES, individually and
in their official capacity as Roanoke City
Sheriff's Office Deputies,**

Defendants.

COMPLAINT

1. This is an action for deprivation of civil rights under the Civil Rights Act, pursuant to 42 U.S.C. Secs. 1983, and under state law for assault and battery. Plaintiff brings this civil rights action to redress the deprivation under color of state law of the rights, privileges and immunities

secured to him by the Constitution of the United States and the laws of the United States and the Commonwealth of Virginia. Plaintiff brings claims for violation of his right to be free from the unreasonable and excessive use of force upon his person during arrest and detention in violation of the Fourteenth Amendment, for civil conspiracy pursuant to 42 U.S.C. Sec. 1983, and state law claims for assault and battery. Plaintiff brings this action against the deputies responsible for his injuries, against the sheriff as the supervisory officer responsible for the conduct of the deputies and final policymaker for the City of Roanoke Sheriff's Office, and against the Sheriff's Office, which is sued as a person under 42 U.S.C. Sec. 1983, as the entity responsible for the promulgation of a policy or custom regarding the use of excessive force. Plaintiff seeks compensatory and punitive damages, declaratory and injunctive relief, and attorney's fees and costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sections 1331, 1343, and 1367.

3. Venue is proper in this District under 28 U.S.C. Sec. 1391(b), as a substantial part of the unconstitutional acts and omissions complained of occurred in the Roanoke Division of the Western District of Virginia.

PARTIES

4. Plaintiff Thomas Scott Vandegrift is a citizen of the United States of America and resides in Roanoke Virginia.

5. Defendant, City of Roanoke Sheriff's Office, is a political entity or subdivision organized to provide, among other things, the orderly operation and management of the Roanoke

City Jail and the transportation of prisoners. The Roanoke City Sheriff's Office, along with Sheriff Johnson, was responsible for the operation of the city jail, as well as the training, supervision, and conduct of the deputies employed by the Sheriff's Office, and was responsible for promulgating policies and customs regarding the training and supervision of deputies and the use of force during arrest and detention. The City of Roanoke Sheriff's Office is sued as a person under 42 U.S.C. Sec. 1983.

6. At all relevant times, Defendant Sheriff Johnson was the duly elected Sheriff of the City of Roanoke. As such she was the commanding officer of the deputy defendants and was responsible for their training, supervision and conduct. She was also responsible by law for enforcing the regulations of the Roanoke City Sheriff's Office and for ensuring that personnel obey the laws of the Commonwealth of Virginia and the United States. Sheriff Johnson served as the final policymaker for the Roanoke City Sheriff's Office, and was vested with the responsibility and authority to hire, train, supervise, set and enforce policies and procedures, and to provide protection to the citizens of the City of Roanoke, including the plaintiff. Upon information and belief, Defendant Johnson participated in the investigation and cover up of the February 22, 2008 assault upon Mr. Vandegrift. At all times, Sheriff Johnson was acting as the agent, servant and employee of the Roanoke City Sheriff's Office. Defendant Sheriff is sued in her individual and official capacities.

7. At all times relevant hereto, Defendant Deputy Brandon Young was a citizen of the Commonwealth of Virginia and a sheriff's office deputy employed by the Roanoke City Sheriff's Office. Upon information and belief, defendant Young participated in the assault on Mr. Vandegrift which occurred in the Roanoke City Jail on February 22, 2008, as well as in the

investigation and cover up of the incident. At all times, Defendant Young was acting as the agent, servant and employee of the Defendant City of Roanoke Sheriff's Office. Defendant Young is sued in his official and individual capacities.

8. At all times relevant hereto, defendants John Does and Jane Does were officers of the Roanoke City Sheriff's Office. Upon information and belief, Defendants Does participated in the attack upon Mr. Vandegrift which occurred at the Roanoke City Jail on February 22, 2008, as well as in the investigation and cover up of the incident. The true name and capacity of each defendant Doe are presently unknown to the plaintiff. Plaintiff alleges on information and belief, that defendant Does are responsible for the injuries alleged herein by their actions in injuring Plaintiff. Plaintiff sues defendant Does by such fictitious name and will move for leave to amend this Complaint to add his or her true name when the same has been ascertained. At all times, Defendant Does were acting as the agent, servant and employee of the Defendant City of Roanoke Sheriff's Office. Defendants Doe are sued in their official and individual capacities.

9. Plaintiff has been, and continues to be adversely affected by the acts of defendants and/or their agents.

10. The actions of defendants complained of herein, individually and/or in conjunction with other employees of the City of Roanoke Sheriff's Office, constitute the official policy, practice or custom of the City of Roanoke Sheriff's Office. Defendants' conduct represents a reckless or callous indifference to plaintiff's rights. The violation of Mr. Vandegrift's constitutional rights resulted from the execution of a government policy, custom or official decision. The Roanoke City Sheriff's Office and Sheriff Johnson's tacit approval of the use of excessive force, and the failure of these defendants to exercise proper care in the hiring, training,

or supervising of their employees were proximate causes of the injuries suffered by the plaintiff.

11. All of the actions, omissions and conduct complained of were undertaken by the defendants under color of state law.

STATEMENT OF FACTS

12. On February 22, 2008, Mr. Vandegrift was arrested and charged with driving a motor vehicle under the influence of alcohol.

13. Mr. Vandegrift has a medical condition, acid reflux, which causes excessive burping. The arresting officer became irritated with Mr. Vandegrift as a result of the excessive burping, and Mr. Vandegrift was taken before a magistrate. When Mr. Vandegrift continued with the excessive burping before the magistrate, he was charged with “refusing a breath analysis” and taken to the Roanoke City Jail.

14. Mr. Vandegrift was taken into a cell by several deputies. Upon information and belief, these deputies were Defendants Young and John Does. Upon reaching the cell, he was assaulted by Defendants Young and John Does. His arm was twisted behind his back, and he was forced onto his knees and repeatedly struck. Deputy Jane Doe, an African-American woman, then came into the cell and kned Mr. Vandegrift in the head two to three times. Mr. Vandegrift was handcuffed throughout the assault. Defendants Young, John and Jane Does then removed the handcuffs, and slammed Mr. Vandegrift into the metal bunk. All of his clothes, except for his boxer shorts, were then removed. Mr. Vandegrift was left alone in the cell, unclothed, until his arraignment, approximately three hours later.

15. After his arraignment, Mr. Vandegrift was again left in the cell for twelve hours and was refused medical attention. Mr. Vandegrift asked another female deputy, Defendant Jane

Doe, for medical attention and an ambulance, but she refused to provide any medical assistance.

16. Mr. Vandegrift was released on bond, and was taken by his parents to the Roanoke Memorial Hospital emergency room. Mr. Vandegrift was diagnosed with a right wrist strain, a right forearm strain, a left ear contusion, and a right flank abrasion. At the hospital, Mr. Vandegrift was attended by a forensic nurse and photographs were taken of his injuries.

17. Mr. Vandegrift filed a formal complaint with the Roanoke City Sheriff's Office regarding the treatment to which he was subjected and the injuries he received on February 22, 2008. Mr. Vandegrift received a letter dated June 19, 2008 from the Roanoke City Sheriff's Office, signed by Defendant Sheriff Octavia Johnson, stating that the investigation of Mr. Vandegrift's complaint had been completed, and that the information currently available to the office indicated that the deputies followed the appropriate departmental policies and procedures.

18. Mr. Vandegrift made a request pursuant to the Freedom of Information Act for the records of the investigation of his complaint. Defendants Johnson and Roanoke City Sheriff's Office denied the request and refused to provide any documents to Mr. Vandegrift.

19. In January, 2010, Mr. Vandegrift went to the Roanoke City Sheriff's Office and again requested a copy of the investigative report prepared in response to his complaint. Defendants denied the request and would not give him the report of the investigation.

20. As a proximate result of the defendants' actions, Mr. Vandegrift received serious injuries, endured significant pain and suffering, incurred medical expenses, and suffered other injuries, including, but not limited to, humiliation, psychological pain, suffering and mental anguish.

21. On information and belief, the excessive force to which plaintiff was subjected was

an institutionalized practice of the Roanoke City Sheriff's Office which practice was known to and ratified by the Sheriff. The Sheriff and Roanoke City Sheriff's Office were aware of the use of excessive force by the deputies, but took no effective action to prevent personnel from engaging in such misconduct.

22. Upon information and belief, the City of Roanoke Sheriff's Office, and Sheriff Johnson, had prior notice of the deputy defendants' vicious and malicious tendencies, but took no steps to train them, correct their abuse of authority, or to discourage their unlawful use of authority.

23. Upon information and belief, the Roanoke City Sheriff's Office and Sheriff Johnson failed to take corrective action regarding the use of excessive force by the deputies, and failed to provide appropriate training and supervision regarding the proper use of force during the arrest and detention of individuals.

24. Upon information and belief, the City of Roanoke Sheriff's Office and Sheriff Johnson failed to instruct, supervise, control and train defendants regarding the proper use of force during the arrest and detention of individuals. This failure was the result of official policy or custom and practice of the City of Roanoke Sheriff's Office and Sheriff Johnson. Defendant City of Roanoke Sheriff's Office and Sheriff Johnson had knowledge, or had they diligently exercised their duties to instruct, supervise, control, train, or discipline on a continuing basis, should have had knowledge, that the wrongs which were done were being committed. Defendant City of Roanoke Sheriff's Office and Sheriff Johnson had the power to prevent or aid in preventing the commission of these wrongs, and could have done so by reasonable diligence, but it intentionally, knowingly, or recklessly failed or refused to do so.

25. Upon information and belief, defendants City of Roanoke Sheriff's Office, Sheriff Johnson, defendant Young and defendant Does failed to conduct an adequate investigation of Mr. Vandegrift's complaint, falsified information in the investigation, and covered up the true actions of the deputies towards Mr. Vandegrift. Upon information and belief, all the defendants agreed to alter the defendant deputies' version of the incident and include falsified information in the investigation in order to cover up the assault and unconstitutional actions taken by the defendants towards Mr. Vandegrift on February 22, 2008.

26. The defendants' conduct was intentional and done with deliberate indifference to the Plaintiff's rights.

27. The acts of defendants as set forth above were wanton, malicious, and oppressive, thus entitling Plaintiff to an award of punitive damages.

COUNT I - USE OF EXCESSIVE FORCE

28. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

29. Upon information and belief, defendants Young, John and Jane Does intentionally and maliciously beat Mr. Vandegrift without provocation or reason resulting in serious injuries, including, but not limited to, a right wrist strain, a right forearm strain, a left ear contusion and a right flank abrasion, requiring medical attention and treatment.

30. This use of excessive force was deliberate and intentional and was not objectively reasonable under the circumstances. The force was applied maliciously and sadistically for the very purpose of causing harm, and inflicted unnecessary and wanton pain and suffering.

31. Mr. Vandegrift posed no immediate threat to the safety of the deputies or others.

32. By using excessive force on Mr. Vandegrift, defendants Young, John and Jane Does

deprived Mr. Vandegrift of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of rights enforceable under 42 U.S.C. Sec. 1983, including, without limitation, rights guaranteed by the Fourteenth Amendment to the United States Constitution.

33. Defendant Johnson is responsible for the training, supervision and conduct of the deputies employed by her office. She is responsible for providing training regarding the use of appropriate force upon the arrest and detention of individuals, and further is responsible for assuring that the deputies employed by her office do not use excessive and unreasonable force in the arrest and detention of individuals. Defendant Johnson, with final policy-making authority for the City of Roanoke and the City of Roanoke Sheriff's Office, was responsible for violation of Plaintiff's constitutional rights.

34. Defendant City of Roanoke Sheriff's Office was responsible for assuring that the Roanoke City Sheriff's Office did not violate the rights of pretrial detainees by using excessive force, and for assuring that individuals employed in the Roanoke City Sheriff's Office were properly trained and supervised regarding the use of excessive force.

35. Defendants Johnson and City of Roanoke Sheriff's Office were personally involved in and responsible for the excessive force used against Mr. Vandegrift in that:

- a. They created a policy and custom, and they allowed the continuance of a policy and custom, under which pretrial detainees and individuals brought to the Roanoke City Jail, would be subjected to the use of excessive and unreasonable force; and
- b. They were deliberately indifferent in supervising and training subordinates

who committed the wrongful acts described herein.

36. The gross indifference by the Sheriff and the Sheriff's Office to the conduct of deputies which includes repeated failures to follow policy and procedures, unnecessary use of excessive force, roughness during arrest, and intimidation of suspects during arrests and booking procedures led to the violation of Mr. Vandegrift's constitutionally protected rights. The failure of Sheriff Johnson and the Roanoke City Sheriff's Office to take corrective action after learning of instances of deputy misconduct, and the failure to properly train the deputies, led to these violations.

37. All defendants acted pursuant to the policies, regulations and decisions officially adopted or promulgated by those persons whose acts may fairly be said to represent official policy or were pursuant to a governmental custom, usage or practice of the Roanoke City Sheriff's Office and Sheriff Johnson.

38. These actions by defendants Young, Does, Johnson and City of Roanoke Sheriff's Office were of a malicious and intentional nature and manifested a deliberate indifference to the constitutional rights of Mr. Vandegrift.

39. Defendants acted under pretense and color of state law. Defendants acted willfully, knowingly, and with the specific intent to deprive Mr. Vandegrift of his constitutional rights secured by 42 U.S.C. Sec. 1983 and by the Fourteenth Amendment to the United States Constitution.

40. As a direct and proximate result of the defendants' actions, Mr. Vandegrift has suffered and will continue to suffer physical pain and suffering, physical injury, medical expenses, humiliation, psychological pain, suffering and mental anguish, and other damages.

COUNT II - CONSPIRACY TO VIOLATE CIVIL RIGHTS

41. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

42. Defendants acted jointly and in concert to violate Mr. Vandegrift's civil rights.

43. All defendants took some overt act in furtherance of the conspiracy, and all defendants agreed to act together to violate Mr. Vandegrift's civil rights. Namely, each defendant either actually participated in the use of excessive force, or witnessed the excessive force but failed to intervene, or acquiesced in the actions taken or covered up the actions taken when the matter was investigated after Mr. Vandegrift filed a formal complaint regarding the deputies' actions. All defendants agreed to alter the deputy defendants' version of the event to cover up the assault, to include false information in the report of the investigation, to conduct an inadequate investigation of the February 22, 2008 incident, and to refuse to release the investigative report associated with the February 22, 2008 incident to Mr. Vandegrift.

44. The acts and omissions of the defendants proximately caused Mr. Vandegrift's suffering, pain and injuries.

45. The defendants knowingly participated in a conspiracy to violate Mr. Vandegrift's civil rights, thus subjecting him to pain, physical and mental injury in violation of his rights under the Fourteenth Amendment to the United States Constitution.

COUNT III - ASSAULT AND BATTERY

46. Plaintiff incorporates by reference herein the preceding paragraphs of this Complaint.

47. Upon information and belief, deputy defendants Young, John and Jane Does repeatedly touched Mr. Vandegrift in a vicious, rude, insulting, brutal, unwanted and offensive

manner. Upon information and belief, defendants Young, John and Jane Does without provocation or excuse twisted Mr. Vandegrift's arms behind his back, forced him to his knees and struck him repeatedly, kneed him in the head, then slammed him into the metal bunk. These touchings were unsolicited by Mr. Vandegrift, unwarranted, and inappropriate. The unwanted touchings were not consented to, excused or justified. Furthermore, Deputy defendants Young, John and Jane Does engaged in acts intending to cause harmful or offensive contact with Mr. Vandegrift or to create a reasonable apprehension of an immediate, unwanted touching for Mr. Vandegrift. These actions constitute assault and battery.

48. At the time the tortious conduct that injured Plaintiff was committed, defendants Young, John and Jane Does were acting within the scope of their employment duties and their tortious conduct was therefore imputable to defendants Roanoke City Sheriff's Office, and Sheriff Johnson.

49. Sheriff's Johnson's failure to properly train and supervise Deputy defendants Young, John and Jane Does proximately caused Mr. Vandegrift's injuries.

50. The tortious conduct that was committed by Deputy defendants Young, John and Jane Does which injured plaintiff as described above, was subsequently ratified by the Roanoke City Sheriff's Office, and Sheriff Johnson and thus, such tortious conduct is imputable to defendants City of Roanoke Sheriff's Office and Sheriff Johnson.

51. The actions of the defendants were malicious, intentional and amounted to extreme and outrageous conduct, causing Plaintiff to suffer emotional distress necessitating medical treatment and consequent medical expenses.

52. As a proximate result of the defendants' actions as set forth above, Plaintiff has

suffered and will continue to suffer, physical pain and suffering, physical injury, medical expenses, humiliation, psychological pain, suffering and mental anguish, and other damages.

WHEREFORE, plaintiff requests damages as follows:

A. Against all defendants, jointly and severally, for compensatory damages in the amount of three million dollars (\$3,000,000.00);

B. Against all defendants, jointly and severally, for punitive damages in the amount of three million dollars (\$3,000,000.00);

C. Declaratory relief that the policies, practices, procedures, conditions and customs of the defendant violate the Plaintiff's right to be free from the use of excessive force as secured to him by the Fourteenth Amendment to the United States Constitution;

D. Injunctive relief enjoining the defendants from engaging in the use of excessive force and other actions violative of the Plaintiff's rights under the Fourteenth Amendment to the United States Constitution;

E. For costs and reasonable attorneys' fees pursuant to 42 U.S.C. Sec. 1988; and

F. For such further relief as the Court deems just and proper.

Respectfully submitted,

THOMAS SCOTT VANDEGRIFT

By: /s/ John P. Fishwick, Jr.
Counsel

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