

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

WILLIAM ALLEN MEANS,

Plaintiff,

v.

Civil Action No. 2:20-561

**E.M. PETERSON, D. HARVEY, and
THE CITY OF SOUTH CHARLESTON,**

Defendants.

COMPLAINT

Plaintiff William Allen Means (“Billy Means”) brings this civil action under the law of the State of West Virginia and 42 U.S.C. § 1983 against Corporal EM Peterson, Patrolman D. Harvey, and the City of South Charleston to recover damages and other cognizable relief for his personal injuries stemming from a motor vehicle crash and subsequent excessive force on or about May 2, 2020, on Emmons Road near Brounland Road in the vicinity of State Route 119 in South Charleston, West Virginia. In support of his complaint Plaintiff states as follows:

PARTIES

1. Plaintiff William Allen Means (“Billy Means”) is a citizen of West Virginia and a resident of Loudendale, Kanawha County, West Virginia.
2. Defendant Corporal EM Peterson (“Peterson”) is a citizen of West Virginia, and, upon information and belief, is a resident of Kanawha County, West Virginia. At all relevant times, Corporal Peterson has been an officer in the South Charleston Police Department (“SCPD”).

3. Defendant Patrolman D. Harvey (“Harvey”) is a citizen of West Virginia, and, upon information and belief, is a resident of Kanawha County, West Virginia. At all relevant times, Patrolman Harvey has been an officer in the South Charleston Police Department (“SCPD”).

4. Defendant City of South Charleston is a political subdivision of the State of West Virginia, located in Kanawha County, West Virginia. The City of South Charleston operates the South Charleston Police Department (“SCPD”).

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 1331, because Plaintiff seeks damages and other remedies pursuant under federal law, specifically 42 U.S.C. § 1983.

6. Venue is proper in because all Parties are located in the Southern District of West Virginia, and the actions giving rise to this civil action occurred within the territorial boundaries of this District.

FACTS

7. On May 2, 2020, while on patrol on State Route 119, in South Charleston, West Virginia, Defendant Peterson observed Billy Means riding his motorcycle. Peterson decided to trail Billy with the intention of eventually pulling him over, evidently because Billy’s motorcycle was painted black, and the registration did not appear to match the motorcycle.

8. Thereupon, and without turning on his lights or siren or otherwise signaling to Billy to pull over, Peterson began following Billy.

9. A lengthy unofficial pursuit, lasting perhaps 15 minutes, ensued, as Billy traveled turned off Route 119 onto Trace Fork Road, then Brounland Road, then Emmons Road, all with Peterson following him closely without his lights flashing. During the pursuit, Peterson called for back-up,

and Patrolman Harvey joined the conversation and attempted to intercept them, and then eventually fell in line behind Peterson.

10. Peterson can be overheard early on the police radio saying he had not flashed his lights yet and admits in his report that he did not initially turn on his lights while following Billy along Route 119. Peterson claims in his report, however, that he did signal Billy to pull over when Billy turned off Route 119. In the conversation over the police radio between Peterson, Harvey, and another individual (presumably the dispatcher), however, sirens can only be heard when Patrolman Harvey's microphone is on, not when Peterson is talking.

11. Peterson can also be heard on police radio commenting on how slowly Billy was driving during Peterson's unofficial pursuit. Because Billy was not speeding away as they traversed winding country roads, Peterson, in a marked SUV, was able to stay close behind Billy's motorcycle.

12. Unfortunately for Billy, Peterson was following dangerously, perhaps recklessly, close to Billy. As Billy slowed down to go over railroad tracks on Emmons Road, Peterson's SUV struck the rear tire of Billy's motorcycle, causing Billy to lose control and go careening into a sludge pond beside the road. Peterson then brought his SUV to a full stop right on the railroad tracks.

13. By this point, Patrolman Harvey had basically joined the unofficial chase a little distance behind Peterson. Harvey got out and assisted Peterson at the scene of the crash.

14. Billy's spinal cord was broken in his mid-back, at T5, from the crash and landing in the pond. As a result, he was and remains paralyzed from the waist down.

15. Peterson and Harvey got out and Harvey pepper sprayed Billy before they dragged him out of the pond.

16. Unbeknownst to the officers, two women in a passing motor vehicle saw the crash, pulled over, and began video-recording the interactions between the officers and Billy.

17. As Billy was lying paralyzed from the waist down on the side of the road, one of the two officers ran to his car, while the other—upon information and belief Peterson, but it could have been Harvey—stomped down hard on Billy’s head.

18. Because neither Peterson nor Harvey recorded the events with their own body cameras or dashboard cameras, and because they were unaware that the stomping had been caught on video by bystanders, they felt at liberty to make up facts and include these in their official incident reports as a means of concealing their unlawful acts.

19. The subsequent police reports Peterson include the following lies and omissions: (1) Peterson claims he turned on his lights to signal to Billy to pull over. In fact, he did not. (2) Peterson claims Billy struck the railroad tracks themselves and lost control of his motorcycle without Peterson’s involvement. In fact, the SUV that Peterson was driving struck Billy’s motorcycle because Peterson was driving dangerously close to Billy to intimidate him. (3) Neither Peterson’s nor Harvey’s police report mentions stomping on Billy’s head while he lay paralyzed on the railroad tracks where they had dragged him from the sludge pond beside the road.

20. As a result of these events of May 2, 2020, Billy is paralyzed from the waist down from the crash and suffered unnecessary pain from the stomping blow to his head.¹

COUNT I – NEGLIGENCE, GROSS NEGLIGENCE, AND RECKLESS DISREGARD IN THE OPERATION OF A MOTOR VEHICLE AS TO DEFENDANTS PETERSON AND CITY OF SOUTH CHARLESTON

21. Plaintiff re-alleges and incorporates all previous paragraphs as though separately set forth herein.

¹ <https://youtu.be/ijJLbW4c4os>

22. Defendant Peterson was negligent AND grossly negligent in the operation of his SUV during his unofficial pursuit of Billy in multiple ways, including by driving too fast, by not maintaining a safe distance between his SUV and Billy's motorcycle (especially given the windy road ways and need to traverse elevated train tracks), by not utilizing his lights, by not heeding signs and indications of a railroad crossing, and by failing to maintain control of his vehicle as it struck Billy's motorcycle from behind.

23. Defendant Peterson operated the vehicle with reckless disregard for the safety of others, including Plaintiff Billy Means.

24. Pursuant to W. Va. Code § 17C-2-5(c), Defendant Peterson is liable for ordinary negligence in the operation of his vehicle because he did not have his lights flashing or his siren on.

25. In the alternative, should the factfinder determine that Defendant Peterson did turn on his lights and siren prior to causing the crash (as Peterson himself claimed in his police report), then Peterson is still liable because his conduct in the operation of his SUV rose to the level of gross negligence and reckless disregard for the safety of others under W. Va. Code § 17C-2-5(d).

26. Defendant Peterson was an employee of the City of South Charleston acting within the scope of his employment during this unofficial chase. Therefore, the City of South Charleston is liable for the negligent conduct of Peterson in the operation of his SUV pursuant to W. Va. Code § 29-12A-4(c)(1).

27. As a result of this conduct, Billy Means was paralyzed from the waist down.

**COUNT II – EXCESSIVE FORCE IN VIOLATION OF THE LAWS AND
CONSTITUTIONS OF WEST VIRGINIA AND THE UNITED STATES**

28. Plaintiff re-alleges and incorporates all previous paragraphs as though separately set forth herein.

29. The laws and constitutions of the State of West Virginia and the United States both prohibit the use of excessive force to accomplish otherwise legitimate law enforcement actions, such as to effectuate the arrest or seizure of a person.

30. As described above, Defendant Peterson used excessive force in multiple ways. First, in the event that it appears to the factfinder—as an alternative to the merely negligent and reckless allegations of the previous Count—that Defendant Peterson willfully struck the motorcycle Billy Means was riding, this was very plainly likely to result in the death or serious bodily injury to Billy Means and was plainly excessive force for effectuating a routine traffic stop for mere suspicion of a stolen motorcycle, given that Billy Means had given no indication that he was in any way a danger to himself or others, and was not even driving fast or recklessly or at most was driving fast in response to being pursued.

31. Defendant Harvey used excessive force when he sprayed pepper spray in the face of Billy Means as he lay paralyzed in a sludge pond. This was a gratuitous act of violence shown on the video recording made by bystanders, and in no way justified or excused by any actions of Billy Means, who lay paralyzed and submerged in a sludge pond.

32. Defendant Peterson—or in the alternative Defendant Harvey—used excessive, malicious force when he stomped on Billy's helmeted head as Billy lay motionless, after the two officers had pulled Billy out of the sludge pond and while the other officer retrieved something from his car.

33. As a result of this unlawful conduct, Billy Means suffered unnecessary and avoidable pain and suffering, including being paralyzed from the motorcycle crash, and suffering unnecessary pain from being sprayed in the face with pepper spray and stomped in the head.

34. Peterson and Harvey were acting in their capacity as law enforcement officers, under color of state law, when they committed these acts of excessive force. Accordingly, under 42 U.S.C. § 1983 and similar doctrines adopted by the State of West Virginia, Defendants are liable for the damages resulting from Billy's injuries and pain and suffering.

**COUNT III – SECTION 1983 CLAIM AGAINST
THE CITY OF SOUTH CHARLESTON**

35. Plaintiff re-alleges and incorporates all previous paragraphs as though separately set forth herein.

36. By May 2, 2020, the technology and state of the art for video-recording encounters between law enforcement and civilians was sufficiently developed and well-understood as an effective deterrent to police misconduct that no reasonable municipality or subdivision would have failed to have policies and procedures in place requiring, enforceable by suitable sanctions, officers to carry dash cams and body cams and record interactions such as the pursuit of Billy Means by Defendant Peterson and the apprehension of Billy Means by Peterson and Harvey.

37. South Charleston's failure to have such policies and procedures in place by May 2020 is tantamount to a policy and procedure encouraging officers to engage in acts of excessive force and then lie about and conceal those acts afterwards, as predictably happened in this incident.

38. As a result of the City of South Charleston's policy of encouraging excessive force by its law enforcement officers by failing to require video-recording of police encounters, Billy Means suffered unnecessary and avoidable pain and suffering, including being paralyzed from the motorcycle crash, and suffering unnecessary pain from being sprayed in the face with pepper spray and stomped in the head.

COUNT IV – CLAIM FOR INJUNCTIVE AND DECLARATORY RELIEF

39. Plaintiff re-alleges and incorporates all previous paragraphs as though separately set forth herein.

40. Plaintiff respectfully seeks an order declaring or requiring the City of South Charleston to provide for the video-recording of all police encounters with suspects and other civilians where there exists a potential for apprehension or misapprehension.

41. Plaintiff respectfully requests a declaration that in any such future encounter involving South Charleston police officers, where a dispute as to the events emerges between civilians and law enforcement after the encounter, and where video that would have been expected to shed light on that dispute was not available because the law enforcement officers did not record it, then there should be a presumption against the version of events told by the officers and in favor of the opposing version.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

42. Accordingly, for the foregoing reasons, Plaintiff Billy Means prays for the following relief:

- (a) Compensatory damages for his pain and suffering;
- (b) Special damages for his future medical care and lost earnings;
- (c) Pre-judgment and post-judgment interest;
- (d) Attorneys fees and costs;
- (e) Punitive damages;
- (f) Injunctive and declaratory relief as set forth above; and
- (g) Any and all other relief that this Court deems appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

WILLIAM ALLEN MEANS,
By counsel

s/Alex McLaughlin

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