

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

**ANDRE P. HOWTON,**

**Plaintiff,**

**v.**

**Civil Action No. 1:20-CV-135**

**Judge: Hon. Thomas S. Kleeh**

**ZACHARY FECSKO, in his  
official and individual capacity;  
AARON DALTON, in his official  
and individual capacity;  
RICHARD PANICO, in his official  
and individual capacity.**

**Defendants.**

**FIRST AMENDED COMPLAINT**

**PRELIMINARY STATEMENT**

This is an action brought under 42 U.S.C. §1983 and the laws of the State of West Virginia to hold the City of Westover, *via* its policymaker, the Chief of Police, and two of its officers accountable for their unreasonable, unlawful, malicious violations of the Plaintiff's rights.

In or around the early morning hours of New Year's Day, 2019, the Plaintiff, Andre Howton, was unlawfully, physically pulled out of his home by Defendant Zachary Fecsko ("Fecsko"). As Defendant Fecsko pulled the Plaintiff across the threshold, he angrily yelled "get your ass out here *boy!*" The Plaintiff is a Black male in his fifties, the officer a White male in his twenties. Defendant Fecsko then threw the Plaintiff onto the concrete and maliciously assaulted and battered him—beating him in the torso and face, striking him no less than thirteen (13) times, ultimately fracturing multiple facial bones, breaking out at least three (3) teeth, and causing other serious and permanent injuries.

Unbeknownst to Defendant Fecsko at the time of the attack, his partner that evening, Defendant Aaron Dalton (“Dalton”), had his body camera running and much of this misconduct was caught on film. During the events giving rise to this action, Defendant Dalton encouraged the beating by his fellow officer, attacked a bystander who attempted to protect the Plaintiff, and actively ignored his lawful duty to protect Mr. Howton – who was lying immobilized on the pavement – from Defendant Fecsko’s attack. Notably, Defendant Dalton was forced to resign from his previous position after tasing and beating a man in handcuffs with multiple other officers; a fact that was known by the City of Westover at the time of hiring.

After maliciously assaulting and battering the Plaintiff, the Defendants refused to render much needed medical aid. Instead, they charged him with four crimes – none of which were related to their reason for being at his home – which was to remove another person. Bleeding and in severe pain, Mr. Howton was then taken to the police station, hauled into court for an arraignment, and driven over an hour away to the North Central Regional Jail. When they finally arrived at the jail, Mr. Howton was turned away due to the severity of his injuries. Rather than take him to a hospital, Defendant Fecsko drove the Plaintiff back to his residence and told him, “don’t say I didn’t show you any mercy.” As for the charges lodged against the Plaintiff, after he and his counsel refused all plea offers and requested what would have been the City of Westover’s first jury trial in anyone’s memory, all charges were dropped.

The Plaintiff now turns to this Honorable Court in pursuit of justice.

### **JURISDICTION AND VENUE**

1. This Complaint seeks remedies pursuant to 42 U.S.C. §§1983 and 1988, alleging violations of the First and Fourth Amendments to the Constitution of the United States of America, as well as the laws of the State of West Virginia.

2. Jurisdiction is conferred upon this Honorable Court pursuant to 28 U.S.C §§1331,1343, and 1367.

3. Venue is proper before this Honorable Court pursuant to 28 U.S.C. §1391(b).

### **PARTIES**

4. The Plaintiff, Andre P. Howton (the “Plaintiff”), is a resident of Monongalia County, and at all times relevant hereto, resided in the City of Westover, West Virginia.

### **Defendant Zachary Fecsko**

5. At all times relevant hereto, Defendant Zachary Fecsko (“Fecsko”) was employed by the Westover Police Department (“WPD”).

6. Prior to being hired by the WPD, Defendant Fecsko was charged with domestic battery and burglary after he allegedly broke into his ex-girlfriend’s apartment in the middle of the night and destroyed her belongings. *See e.g., William Dean, Westover Police Officer Has Criminal Past, THE DOMINION POST (July 21, 2019), <https://www.dominionpost.com/2019/07/21/westover-police-officer-has-criminal-past/> (attached hereto as “Ex. A”).*

7. It was further alleged that, the day prior, Defendant Fecsko had a physical altercation with his ex-girlfriend. During which, he grabbed her by the throat, threw her against a wall, shoved, and slapped her – leaving scratches, bruises, and scrapes in various locations on her body. *Id.*

8. It was further alleged that Defendant Fecsko threatened to kill his ex-girlfriend, post nude and/or unflattering photos of her online, withdraw her from her college courses, and pin the murder of Nolan Burch on her.<sup>1</sup> *Id.*

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<sup>1</sup> Nolan Burch was a freshman pledge at Kappa Sigma Fraternity, where Fecsko was President, who tragically died in 2014. *See Bob Hazen and Matt Bellanger, 18-year-old student mourned at West Virginia University While Investigation Continues, WTAE Pittsburgh Action News (November 15, 2014)*

9. It was further alleged that while making these threats, Defendant Fecsko told his ex-girlfriend that, due to his relationship with an ex-sheriff, he “owned the town.” *See* “Ex. A.”

10. Despite these allegations, charges, and the fact that he ultimately pled guilty to a crime as a result, Defendant Fecsko was hired by the WPD as an officer.

11. Upon information and belief, shortly after the attack and beating of Mr. Howton, Defendant Fecsko received a promotion by the WPD.

### **Defendant Aaron Dalton**

12. On the day of the events giving rise to this action and for a period prior thereto, Defendant Aaron Dalton (“Dalton”) was employed by the WPD.

13. Prior to being hired by the WPD, Defendant Dalton, was employed by the City of Fairmont, West Virginia, Police Department (“FPD”).

14. Defendant Dalton was terminated and/or encouraged to resign from the FPD for misconduct or unsatisfactory service. *See* Excerpts from Defendant Dalton’s Personnel File obtained from the City of Westover *via* FOIA Request at 3 (attached hereto as “Ex. D”).

15. While employed at the FPD, Defendant Dalton was sued in his individual and official capacity for taking part in an unprovoked attack on two men at a party. *See e.g.*, Kyla Asbury, [Man Sues Fairmont Police for Attack](https://wvrecord.com/stories/510598111-newsinator-man-sues-fairmont-police-for-attack), WEST VIRGINIA RECORD (April 6, 2010), <https://wvrecord.com/stories/510598111-newsinator-man-sues-fairmont-police-for-attack> (attached hereto as “Ex. E”).

16. During the incident referenced in the above paragraph, victims were wrestled to the ground, punched in the face, tased, kicked, beaten, and had mace sprayed directly in the face. *Id.*

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<https://www.wtae.com/article/18-year-old-student-mourned-at-west-virginia-university-while-investigation-continues/7468795> (attached hereto as “Ex. B”) and Excerpts from Defendant Fecsko’s Personnel File, obtained from the City of Westover *via* FOIA Request, at 4, (attached hereto as “Ex. C”).

17. The victims made no resistance, attempted to follow all directives, and begged the officers to stop. Nonetheless, the officers continued to kick the men mercilessly for several minutes. *See e.g.*, Compl. Civil Action No. 10-C-172 (attached hereto as “Ex. F”).

18. After handcuffing the victims, the officers then fractured one of the victim’s noses. *Id.* and *See* “Ex. E.”

19. In addition to the fractured nose, the victim further suffered a cut over one of his eyes; two black eyes; bruises behind his ears, on his ribs, and leg; a lacerated elbow; and ripped ears. *Id.*

20. The lawsuit was settled out of court within three (3) months of being filed. *See* U.S. District Court Northern District of West Virginia Civil Docket Report for Case #: 1:10-cv-00068-IMK (attached hereto as “Ex. G”).

21. Additionally, a note in the WPD’s personnel file for Defendant Dalton reads “[h]e was involved in a lawsuit filed against the city for racial profiling??” *See* “Ex. D” at 13.

22. Defendant Dalton’s personnel file also notes a deficiency regarding his background check and references to his current employment, as he was on Administrative Leave at the time he applied to the WPD, contrary to what he listed on his application. *Id.* at 14 - 15.

23. Knowing the above facts, the WPD hired Defendant Dalton as an officer.

24. Following the initial filing of this lawsuit, the media attention to it, and the public outrage which followed, a letter authored by fellow WPD officers was obtained and published by WBOY Channel 12 News on or about October 28, 2020, indicating rampant civil rights and criminal violations by, upon information and belief, Defendant Dalton. *See* Letter obtained and published by WBOY on or about October 28, 2020 (attached hereto as “Ex. H”).

25. The letter alleges that the incidents and misconduct referred to therein had been “reported multiple times and action has not been taken.” *Id.* at 2.

26. To date, Defendant Dalton remains an employee of WPD. However, after the above referenced letter was received, Defendant Dalton was placed on Administrative Leave. *See e.g.*, Amanda Mueller, [12 News Exclusive: 11 Westover Police Officers Call for the Removal of One of Their Own; Investigation Under Way](https://www.wboy.com/news/monongalia/12-news-exclusive-11-westover-police-officers-call-for-the-removal-of-one-of-their-own-investigation-under-way/), WBOY (October 28, 2020), <https://www.wboy.com/news/monongalia/12-news-exclusive-11-westover-police-officers-call-for-the-removal-of-one-of-their-own-investigation-under-way/> (attached hereto as “Ex. I”).

**Defendant Richard Panico.**

27. At all times relevant herein, Defendant Richard Panico (“Panico”) was employed by the WPD and, upon information and belief, was a resident of Monongalia County West Virginia.

28. At all times relevant herein, Defendant Panico was the Chief of Police for the WPD and its “policymaker,” as contemplated by the governing laws pertinent to this action.

29. Despite the video evidence in this case, Defendant Panico has publicly condoned the other Defendants’ behavior and stated that it was aligned with the WPD’s policies. *See e.g.*, William Dean, [Defense Attorneys: Video Shows Police Used Excessive Force During Arrest of Westover Man](https://www.dominionpost.com/2019/06/08/defense-attorneys-video-shows-police-used-excessive-force-during-arrest-of-westover-man/), THE DOMINION POST (June 8, 2019), <https://www.dominionpost.com/2019/06/08/defense-attorneys-video-shows-police-used-excessive-force-during-arrest-of-westover-man/> (attached hereto as “Ex. J”).

30. At all times relevant herein, the acts and omissions of the Defendants were pursuant to the customs, policies, practices, and/or procedures of the City of Westover *via* its law

enforcement entity, the WPD, and its policymaker(s), including, but not necessarily limited to, Defendant Panico.

31. At all times relevant herein, each Defendant acted under the color of the laws, statutes, and regulations of the State of West Virginia.

32. Shortly after the letter referenced in paragraphs 24 – 26 above was made public, Defendant Panico “resigned.” *See* “Ex. I.”

## FACTS

### The Officers’ Visit to The Plaintiff’s Residence

33. In or about the early morning hours of New Year’s Eve/New Year’s Day, ringing in 2019, Defendants Fecsko and Dalton, while working as officers for the WPD, arrived at the Plaintiff’s residence in Westover, Monongalia County, West Virginia.

34. During the visit, the Plaintiff requested the officers assist in removing a woman from his home.

35. An argument had taken place between the Plaintiff and the woman because of her wish to use drugs.

36. The Plaintiff opposed the woman’s wish to use drugs, which is well-reflected in Defendant Dalton’s bodycam footage from that night. *See generally* Dalton Body Cam Footage.<sup>2</sup>

37. During the first few minutes of the officers being in the Plaintiff’s residence, he made several comments to the woman, a social friend, about his disappointment in her choices to use drugs.

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<sup>2</sup> Because this piece of evidence is a video, it cannot be attached hereto. However, all Defendants have access to the video, as they provided it to the undersigned counsel through discovery, when the WPD charged the Plaintiff with Disturbing the Peace, Disorderly Conduct, Obstruction, and Battery on an Officer following the events at issue herein. All of these charges were later dropped.

### **“A Free Country”**

38. The woman complained to Defendant Fecsko about this, and Defendant Fecsko responded – “it’s a free country, he can make comments. You ignore him.” *See* Dalton Body Cam Footage at 7:20 – 7:23.

39. When the woman continued to complain about the Plaintiff’s remarks, Defendant Fecsko said “we’re in his house right now ma’am.” *Id.* at 7:54 – 7:57.

40. Defendant Fecsko told the woman to ignore the Plaintiff’s comments several more times before finally escorting her out of the home. *Id.* at 11:19 – 11:21, 11:25, and 12:06 – 12:08.

41. After the woman was taken into the police cruiser just a few feet from the Plaintiff’s front door, he was still very upset about the situation and continued to make statements to the woman, calling her a “crack head” and other similar things, from within his residence.

42. For some unknown reason, Defendant Fecsko immediately changed his feelings about the fact that this is a free country, and that the Plaintiff’s speech was protected by the First Amendment, which is nearly fully acknowledged just minutes earlier.

### **Defendant Fecsko Attacks Plaintiff While Defendant Dalton Watches and Encourages the Brutality**

43. Defendant Fecsko became enraged, he said to the Plaintiff “you’re in your own house you can do that stuff. If you’re going to come out here and yell, you’re going to see a different person. Do you understand me?” *Id.* at 13:58 – 14:03.

44. When Mr. Howton replied, “I’m in my house,” Defendant Fecsko pointed his finger directly in Mr. Howton’s face and shouted “get in your house and shut up. You hear me?” *Id.* at 14:01 – 14:07.

45. Defendant Fecsko, still shouting in the Plaintiff's face, then taunted him by motioning for him to come towards him and saying "come outside again and start yelling." *Id.* at 14:09 – 14:11.

46. Once again, the Plaintiff replied "no, I'm in my house;" to which, Defendant Fecsko stated "Exactly. Inside. I'll be back down here tonight if you come outside again." *Id.* at 14:11 – 14:15.

47. As he walks away from the Plaintiff's home, Defendant Fecsko says "I don't care if you're in your doorway." *Id.* at 14:21 – 14:23.

48. The Plaintiff, still upset, says "crack head" to the woman, and Defendant Fecsko begins his attack. *Id.* at 14:18 – 14:23.

49. Suddenly, Defendant Fecsko, who is nearly to his police cruiser, turns around, aggressively marches back, and grabs the Plaintiff—who is still standing inside of his home—by the collar of his shirt, stating, "get your ass out here, *boy!*" *Id.* at 14:23 – 14:26.

50. At the time Defendant Fecsko called Mr. Howton "boy," Defendant Fecsko, a white male, was in his twenties.

51. Mr. Howton is a Black male in his fifties.

52. Defendant Fecsko's use of the word "boy" towards the Plaintiff was due to Mr. Howton's race.

53. History, literature, and lived experience have established "boy" as a racial epithet used by white Americans to diminish, humiliate, and subordinate Black men.

54. During slavery and the Jim Crow era, whites often referred to Black men – regardless of their age or position – as "boy" or "n\*gger." Doing so helped emphasize the belief in white superiority, a belief critical to maintaining the institutions of slavery and Jim Crow

government. Other times, white residents would substitute in a common name, such as “Jack,” to address Black men whose name they didn’t know.

55. In his 1845 autobiography, Frederick Douglass recalled a slaveholder coming upon a Black man on a road, observing that the white man “addressed him in the usual manner of speaking to colored people on the public highways of the south: ‘Well, boy, whom do you belong to?’” Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* 18 (1845). More than a century later, “addressing the call for African Americans to be ‘patient’ in their quest for civil rights, [Dr. Martin Luther King, Jr.] wrote ‘...when your first name becomes ‘n\*gger,’ your middle name becomes ‘boy’ (however old you are) and your last name becomes ‘John’...then you will understand why we find it difficult to wait.’” Br. for Civil Rights Leaders U.W. Clemon et al. as Amici Curiae Supp’g Pl.-Appellant, *Ash v. Tyson Foods, Inc.*, 664 F.3d 883 (11th Cir. 2011) (No. 08-16135-BB) (quoting Martin Luther King, Jr., *Why We Can’t Wait* 69 (1964)).

56. After swearing at the Plaintiff and calling him “boy,” Defendant Fecsko then pulls the Plaintiff from inside of his home with such force that he also pulls out a bystander, Plaintiff’s neighbor, from the residence and into the concrete parking lot. *Id.* at 14:26 – 14:29.

57. After being thrown to the ground, the Plaintiff looks at Defendant Fecsko and says, “you pulled me out.” *Id.* at 14:33 – 14:36.

58. Immediately, Defendant Fecsko attacks the Plaintiff without any provocation or justifiable use of force, grabbing him by the neck and punching him in the torso repeatedly. *Id.* at 14:36 – 14:41.

59. Defendant Fecsko, proceeds to beat the Plaintiff in various positions until he suffers serious and permanent injuries, including, but not limited to, multiple facial and jaw fractures, broken teeth, black eyes, and severe lacerations and abrasions. *Id.* at 14:51 – 15:15.

60. While watching the beating, Defendant Dalton shouts “spray that motherfucker! Spray him!” *Id.* at 14:56-14:58.

61. As Mr. Howton is pinned to the ground, unable to move, Defendant Dalton yells for Defendant Fecsko to “spray” Mr. Howton several more times. *Id.* at 15:10 – 15:13.

62. After Defendant Fecsko finally stops beating the Plaintiff, while the Plaintiff is lying on the ground, visibly injured and reeling in pain, Defendant Dalton yells “you asked for that Andre. You earned it.” *Id.* at 15:37 – 15:40.

63. At no time during this encounter did Mr. Howton threaten either officer, or anyone else, nor did he represent a danger to himself or others.



Above and below: Photos of Andre Howton taken approximately three days after the beating.



## COUNT I

### **42 U.S.C. §1983- Retaliation and Use of Excessive Force in Violation of 1st Amendment of the United States Constitution.**

64. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-63, as if fully set forth herein.

65. When alleging a First Amendment retaliation claim, a Plaintiff must show “(1) that [plaintiff’s] speech was protected; (2) defendant’s alleged retaliatory action adversely affected the plaintiffs constitutionally protected speech; and (3) a causal relationship exists between [plaintiff’s] speech and the defendant’s retaliatory action.” *See Dickerson v. Duncan*, Civil Action No. 7:19CV00802, 2020 U.S. Dist. LEXIS 2543, at 6-7 (W.D. Va. Jan. 7, 2020) (internal quotations omitted) (citing *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685-86 (4th Cir. 2000)).

66. Defendant Fecsko, while acting under the color of the law, violated the Plaintiff's constitutional rights by using excessive force against him and arresting him for speaking mere words from inside of his own home.

67. The Plaintiff was engaged in protected speech, as Defendant Fecsko clearly states more than once during the encounter.

68. Defendant Fecsko took retaliatory action against the Plaintiff that adversely affected the Plaintiff's constitutionally protected speech, when he pulled him out of his own home, aggressively beat, and arrested him.

69. As stated by Fecsko, these actions were directly motivated by the Plaintiff's speech. *See Dalton Body Cam Footage at 13:58-14:03.*

70. Defendant Fecsko is a white man in his twenties. His action in calling Mr. Howton, a 55-year old man, "boy" prior to pulling him out of his home is further evidence of the retaliation and excessive force against Mr. Howton for exercising his First Amendment rights in his home.

71. It is well established and widely understood that the use of the word "boy" to describe a Black man is deeply offensive and a close cousin of other racial epithets. *Br. for Civil Rights Leaders U.W. Clemon et al. as Amici Curiae Supp'g Pl.-Appellant, Ash v. Tyson Foods, Inc.*, 664 F.3d 883 (11th Cir. 2011) (No. 08-16135-BB). This word is rooted in our nation's history of discrimination which is filled with examples of "African-American men being ridiculed and taunted by whites who call them 'boy.'" *Id.* at 9. Using "the word 'boy' is both a signifier of and vehicle for the racial discrimination, degradation, and oppression endured by African-American men." *Id.* at 10. Even among white people, "[t]he use of 'boy' to a black American adult now would be considered offensive . . . and a positive insult." Leslie Dunkling, *A Dictionary of Epithets and Terms of Address* 57 (1990).

72. These retaliatory acts violated the constitutional rights guaranteed to Mr. Howton by the First Amendment of the United States Constitution. Defendant Fecsko's actions were not taken in good-faith and were in violation of clearly established law.

73. Defendant Fecsko lacked probable cause when he took these retaliatory actions against the Plaintiff.

74. During the encounter, Defendant Fecsko personally stated multiple times that the Plaintiff could say whatever he wanted inside his own home.

75. Nevertheless, Defendant Fecsko violated Mr. Howton's First Amendment rights to the freedom of speech when he assaulted, battered, and arrested the Plaintiff for his mere use of words, which were not even directed at Defendant Fecsko.

76. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

77. Because Defendant Fecsko's actions, and possibly other employees, agents, and/or representatives of the WPD, were "motivated by evil motive or intent" and/or "involve[d] a reckless or callous indifference to the federally protected rights of [the Plaintiff]," an award of punitive damages is appropriate to the fullest extent permitted by law. *See Morning v. Dillon Cty.*, No.: 4:15-cv-03349-RBH-TER, 2018 U.S. Dist. LEXIS 163072, at \*12 (D. S.C. Jun. 12, 2018) (quoting *Smith v. Wade*, 461 U.S. 30 (1983)).

## COUNT II

### **42 U.S.C. §1983 - Violation of the 4th Amendment of the United States Constitution.**

78. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-77, as if fully set forth herein.

79. Defendant Fecsko, while acting under the color of the law, violated Mr. Howton's constitutional rights by unreasonably seizing Mr. Howton and using excessive force against him, as described herein throughout, which resulted in Mr. Howton's injuries.

80. Defendant Fecsko's actions violated the constitutional rights guaranteed to Mr. Howton by the Fourth Amendment of the United States Constitution.

81. Defendant Fecsko's actions were not taken in good-faith and were in violation of clearly established law.

82. Defendant Fecsko used excessive force at the time he unreasonably and unlawfully pulled Mr. Howton from his home and aggressively beat him.

83. Defendant Fecsko's actions were unnecessary, unreasonable, unlawful, and unjustified.

84. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

85. Because Defendant Fecsko's actions, and possibly other employees, agents, and/or representatives of the WPD, were "motivated by evil motive or intent" and/or "involve[d] a reckless or callous indifference to the federally protected rights of [the Plaintiff]," an award of

punitive damages is appropriate to the fullest extent permitted by law. *See Morning v. Dillon Cty.*, No.: 4:15-cv-03349-RBH-TER, 2018 U.S. Dist. LEXIS 163072, at \*12 (D. S.C. Jun. 12, 2018) (quoting *Smith v. Wade*, 461 U.S. 30 (1983)).

### COUNT III

#### **42 U.S.C. §1983- Failure to Intervene in Violation of the 4th Amendment of the United States Constitution.**

86. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-85, as if fully set forth herein.

87. Defendant Dalton had a duty to intervene when Defendant Fecsko was violating Mr. Howton's constitutional rights, which resulted in the infliction of excessive force upon Mr. Howton.

88. Defendant Dalton observed and/or had reason to know that excessive force was being inflicted upon Mr. Howton without a legitimate goal or justification.

89. Defendant Dalton had the opportunity and means to prevent the excessive use of force and/or violations of Mr. Howton's constitutionally protected rights from occurring.

90. Not only was Defendant Dalton deliberately indifferent to Defendant Fecsko's attack on Mr. Howton, he encouraged the beating, repeatedly telling Defendant Fecsko to "spray" the Plaintiff, even after Mr. Howton had been visibly injured and immobilized.

91. "The concept of bystander liability is premised on a law officer's duty to uphold the law and protect the public from illegal acts, regardless of who commits them." *See Randall v. Prince George's Cty., Md.*, 302 F.3d 188, 203 (4th Cir. 2002). "[A]n officer may be liable under § 1983, on a theory of bystander liability, if he: (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act." *Id.* at 204 (internal footnote omitted).

92. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

93. Because the Defendants' actions, and possibly other employees, agents, and/or representatives of the WPD, were "motivated by evil motive or intent" and/or "involve[d] a reckless or callous indifference to the federally protected rights of [the Plaintiff]," an award of punitive damages is appropriate to the fullest extent permitted by law. *See Morning v. Dillon Cty.*, No.: 4:15-cv-03349-RBH-TER, 2018 U.S. Dist. LEXIS 163072, at \*12 (D. S.C. Jun. 12, 2018) (quoting *Smith v. Wade*, 461 U.S. 30 (1983)).

#### COUNT IV

##### **42 U.S.C. §1983 – *Monell* Liability.**

94. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-93, as if fully set forth herein.

95. The WPD is the law enforcement agency in the City of Westover, Monongalia County, West Virginia.

96. The Chief of the WPD is the "policymaker" with respect to WPD, as a law enforcement agency. *See e.g., Revene v. Charles County Comm'rs*, 882 F. 2d 870, 874 (4th Cir. 1989).

97. Municipal liability can attach under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), for even a single decision made by a final policymaker in certain circumstances, regardless of whether or not the action is taken once or repeatedly. *See Pembaur v. City of*

*Cincinnati*, 475 U.S. 469, 481, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986). If an authorized policymaker approves a subordinate's decision and the basis for it, such ratification would be chargeable to the municipality under *Monell*. See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

98. Defendant Panico, as the chief of police and policymaker for the City of Westover, has a custom, pattern, practice, and/or procedure of hiring police officers who he knows have committed acts of violence and/or have a propensity to do so.

99. When these officers inevitably commit acts of violence while working for the WPD, Defendant Panico would ratify their unconstitutional acts and assist in covering up the officer's bad actions by charging members of the community, who fall victim to these officers, of crimes.

100. As evidence of the above-stated custom, pattern, practice, and/or procedure, the WPD knew that Defendant Fecko had been charged with domestic violence and that Defendant Dalton had been sued for physically attacking two men at a party; and when the two attacked the Plaintiff and his neighbor, the victims were both charged with battery on an officer.

101. In the instances cited above, no person or law enforcement officer was in imminent danger and no exigent circumstances existed.

102. Following the attack on the Mr. Howton, Defendant Panico publicly ratified the actions of Defendants Fecko and Dalton. See "Ex. J".

103. Moreover, Defendant Panico was aware that civil rights violations, criminal acts, and other egregious misconduct had been carried out by his officers, but "no action ha[d] been taken," as evidenced by the letter signed by numerous WPD officers, which has now been made public. See "Ex. H."

104. Consistent with and as a result of WPD's customs, patterns, practices, and/or procedures, Defendant Fecsko unjustifiably and unlawfully pulled Mr. Howton from his home and beat him until he was severely and permanently injured.

105. As a direct and proximate result of the WPD's customs, patterns, practices, and/or procedures, as stated herein above, the Plaintiff's rights guaranteed to him by the Fourth Amendment of the United States Constitution were violated.

106. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

107. Pursuant to *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978), the City of Westover and the WPD, through its policymaker, Defendant Panico (and possibly other policymakers whose identities are not yet known) is liable for the harms and losses sustained by Mr. Howton.

## COUNT V

### **Intentional Infliction of Emotional Distress.**

108. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-107, as if fully set forth herein.

109. By pulling Mr. Howton from his home and viciously beating him, Defendant Fecsko engaged in actions that were atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

110. Defendant Fecsko acted with the intent to inflict emotional distress or acted recklessly when it was certain or substantially certain that emotional distress would result from his outrageous conduct.

111. Defendant Fecsko's actions caused Mr. Howton to suffer severe emotional distress as he was being beaten for no reason.

112. The emotional distress Mr. Howton experienced was so severe, no reasonable person could be expected to endure it.

113. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

114. The actions of Defendant Fecsko against the Plaintiff were carried out with (a) actual malice and/or (b) a conscious, reckless, and outrageous indifference to the health, safety, and welfare of others, thereby justifying an award of punitive damages to the fullest extent permitted by law.

## **COUNT VI**

### **Battery**

115. The Plaintiff hereby incorporates by reference the allegations contained paragraphs, 1-114, as if fully set forth herein.

116. Defendant Fecsko intentionally pulled the Plaintiff from his home, without his consent.

117. Defendant Fecsko then threw the Plaintiff to the ground and proceeded to beat him until the Plaintiff was severely injured.

118. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain and suffering.

**WHEREFORE**, the Plaintiff, Andre Howton, demands judgment against the Defendants for:

- a) Compensatory damages for all past and future economic losses and expenses incurred by the Plaintiff as a result of the Defendants' misconduct;
- b) General damages for all past and future physical pain, mental suffering, and emotional distress suffered by the Plaintiff;
- c) Punitive damages to the fullest extent permitted by law;
- d) Pre-judgment and post-judgment interest;
- e) Declare that the Defendants' acts, taken in their official capacities, as alleged above, violate the First and Fourth Amendment to the United States Constitution;
- f) Declare that the Defendants' acts, taken in their individual capacities, as alleged above, violate the First and Fourth Amendment to the United States Constitution;
- g) Immediately terminate Defendant Feckso and Defendant Dalton's employment relationship with the WPD, without severance;
- h) Enjoin Defendants from engaging in hiring practices that result in the hiring of police officers without proper vetting or review;

- i) Order the Defendants to adopt and implement policies, training, accountability systems, and practices to remedy the constitutional and statutory violations described herein;
- j) Costs incurred in this action and reasonable attorney fees under 42 U.S.C. §1988; and
- k) Such other further specific and general relief as may become apparent from discovery as this matter matures for trial.

**THE PLAINTIFF DEMANDS A TRIAL BY JURY.**

**ANDRE P. HOWTON,**  
By Counsel

/s/ Beth L. Lebow

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