

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

ELECTRONICALLY
FILED
Jan 15 2021
U.S. DISTRICT COURT
Northern District of WV

WILLIAM COX,

Plaintiff,

v.

CIVIL ACTION NO: 1:21-CV-4
JUDGE Keeley

**AARON DALTON, in his individual capacity
as a City of Westover Police Officer;
JUSTICE CARVER, in his individual capacity
as a City of Westover Police Officer; and
THE CITY OF WESTOVER,**

Defendants.

COMPLAINT

COMES NOW, Plaintiff, William Cox, by and through counsel, P. Gregory Haddad, Esq. and Travis A. Prince, Esq. of Bailey Glasser, LLP and Samuel D. Madia, Esq. and Jonathan Wesley Prince, Esq. of Shaffer Madia Law, PLLC, upon information and belief, and states and alleges as follows for his Complaint against Defendants, Aaron Dalton, in his individual capacity as a City of Westover Police Officer, Justice Carver, in his individual capacity as a City of Westover Police Officer, and The City of Westover:

Preface

1. This cause of action arises out of the false arrest and excessive force used on William Cox by Defendants, Aaron Dalton and Justice Carver, at approximately 11:00 a.m. on August 25, 2019, near the 400 block of Dunkard Avenue in Westover, West Virginia.

2. This cause of action is for monetary damages brought pursuant to 42 U.S.C. §1983 to redress the deprivation under color of state law of William Cox's clearly established rights as secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution against (1) Defendants, Aaron Dalton (Officer Dalton) and Justice Carver (Officer Carver), in their

respective capacities as duly-certified law enforcement officers employed by the Westover Police Department (collectively, Defendant Officers), for their respective violations of Mr. Cox's right to freedom of speech, substantive due process, to be free from false arrest, and to be free from the use of excessive force; and (2) Defendant City of Westover for its unconstitutional policies, customs, and/or practices under *Monell*, *Canton*, and their progeny.

Jurisdiction and Venue

3. This Court has jurisdiction over federal questions pursuant to 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. §§ 1983, 1988.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all incidents, events, and occurrences giving rise to this action occurred in the Northern District of West Virginia and, upon information and belief, all of the parties reside in this Judicial District.

Parties

5. Plaintiff, William Cox, was at all times material hereto a citizen of the United States and The City of Westover, County of Monongalia, State of West Virginia.

6. The City of Westover is and was at all times material hereto a political subdivision of the State of West Virginia, organized and existing under and by virtue of the laws of West Virginia. The City of Westover Police Department (sometimes hereinafter "police department" or "WPD") is and was at all times material hereto a City of Westover agency that provided the law enforcement officers through which The City of Westover fulfilled its policing functions.

7. Upon information and belief, Aaron Dalton is and was at all times material hereto a citizen of the United States and the State of West Virginia.

8. Officer Dalton was at all times material hereto employed by The City of Westover as a duly appointed and sworn police officer and was acting in his individual capacity and/or under color of state law and within the scope of his employment.

9. Upon information and belief, Justice Carver is and was at all times material hereto a citizen of the United States and the State of West Virginia.

10. Officer Carver was at all times material hereto employed by The City of Westover as a duly appointed and sworn police officer and was acting in his individual capacity and/or under color of state law and within the scope of his employment.

Factual Allegations

A. The attack on William Cox

11. At approximately 11:00 a.m. on August 25, 2019, Mr. Cox was waiting for a Mountain Line bus at the bus stop on Dunkard Avenue in The City of Westover to transport him to work.

12. On August 25, 2019, Mr. Cox was employed full-time as a dishwasher at a local restaurant.

13. At approximately 11:00 a.m. on August 25, 2019, Officer Dalton and Officer Carver (sometimes hereinafter “Defendant Officers”) were on vehicle patrol in a police cruiser in uniform along Dunkard Avenue in The City of Westover. Officer Dalton was driving while Officer Carver occupied the front passenger seat.

14. On August 25, 2019, Defendant Officers were equipped with body cameras.

15. As Officer Dalton drove The City of Westover police vehicle past where Mr. Cox was standing and waiting on a bus, Mr. Cox began recording the Defendant Officers with his cell phone.

16. Mr. Cox used his cell phone to record his entire interaction with Defendant Officers on August 25, 2019.

17. Upon seeing Mr. Cox with his cell phone, Officer Dalton turned around and drove the police cruiser toward Mr. Cox.

18. Officer Carver proceeded to roll down his window and ask Mr. Cox why he was recording video of the police cruiser on his cell phone. Mr. Cox advised that it was his right to do so and continued to record the interaction on his cell phone.

19. Officer Carver advised Mr. Cox that the officers could also record video, grabbed his body camera, and appeared to be activating his body camera as he gestured it toward Mr. Cox.

20. Mr. Cox responded that he was relieved the Defendant Officers had body cameras and if necessary, he would submit a Freedom of Information Act (FOIA) request for the video footage.

21. Mr. Cox also stated the he hoped the Defendant Officers had activated their body cameras.

22. Officer Dalton responded by telling Mr. Cox that he was “too stupid to know what FOIA means.” Mr. Cox, being offended by the disparaging remarks, responded by stating “I know exactly what it means.”

23. Rather than de-escalating a situation caused exclusively by Defendant Officers, as Mr. Cox was violating no laws and exercising his first amendment rights, Officer Dalton and Officer Carver immediately exited the police cruiser and violently attacked Mr. Cox, subjecting him to a merciless onslaught of punches, kicks, and pepper spray when he was defenseless, and posing no threats to the Defendant Officers.

24. The attack was captured on a video surveillance camera of a nearby business.

25. Specifically, upon exiting the police cruiser, Officer Carver is depicted on surveillance footage as immediately raising his fist and attempting to strike Mr. Cox in the face as he stood on the sidewalk.

26. Upon exiting the vehicle, Officer Dalton is depicted on surveillance footage running around the front of the police cruiser and executing a football-spear tackle maneuver to unlawfully, and with great force, seize Mr. Cox's person, causing Officer Carver and Mr. Cox to be knocked forcefully to the ground.

27. While on the ground Defendant Officers, without provocation or justification, repeatedly bludgeoned Mr. Cox in the head and face with closed fists.

28. While on the ground Defendant Officers, without provocation or justification, repeatedly jammed a knee into Mr. Cox's hip with such force that he was not able to stand or walk for an extended period of time.

29. After Defendant Officers had thrown Mr. Cox to the ground and while they were attacking him without provocation or justification, Defendant Officers proceeded to repeatedly pepper spray Mr. Cox's eyes and face from close distance.

30. Mr. Cox cried out for help after the Defendant Officers slammed his body to the ground, repeatedly punched him in the head and face with a closed fist, kicked him with knee strikes to his lower body, and pepper sprayed his eyes and face.

31. Mr. Cox's cell phone was recording the entire interaction with Defendant Officers as well as the attack and unlawful arrest; however, Mr. Cox's cell phone was never returned to his possession.

32. Upon information and belief, Defendant Officers destroyed Mr. Cox's cell phone used to record the attack and/or intentionally failed to recover it as evidence at the scene of the attack.

33. Although Defendant Officers were equipped with body cameras on August 25, 2019, and Mr. Cox indicated he hoped Defendant Officers had activated their body cameras, neither Defendant Officer activated their body camera at any point during the entirety of their interaction with Mr. Cox or otherwise deleted and destroyed the body camera footage to hide evidence of their unlawful and unconstitutional conduct.

34. After repeatedly assaulting Mr. Cox in the face with closed fists without provocation or justification, repeatedly and without provocation or justification pepper spraying Mr. Cox's eyes and face, and repeatedly and without provocation or justification delivering knee strikes to Mr. Cox's lower body, Mr. Cox was unlawfully placed in handcuffs, arrested, loaded into a police cruiser, and taken into custody.

35. At no point prior to or following the attack by the Defendant Officers was Mr. Cox read a Miranda Warning, nor did he receive any explanation of his rights.

36. Upon Mr. Cox's unlawful arrest, Defendant Officers took Mr. Cox to the Monongalia County Sheriff's Department located at 116 Walnut Street, Morgantown, WV 26505.

37. Upon arrival at the Monongalia County Sheriff's Department, Mr. Cox was humiliated, treated like a criminal, photographed, fingerprinted and unlawfully detained.

38. The processing officer at the Monongalia County Sheriff's Department choked, coughed, and had difficulty breathing due to the strong odor of the unusually large amount of pepper spray visible on Mr. Cox's face and in his eyes.

39. Mr. Cox pleaded for assistance cleaning the pepper spray residue from his face and eyes but was not provided any relief.

40. Mr. Cox was placed in a solitary padded holding cell at the Monongalia County Sheriff's Department where his limp body was handcuffed and chained to the floor.

41. Due to the repeated knee strikes by Defendant Officers during his unlawful arrest, Mr. Cox painfully forced himself to stand to determine if his leg was broken.

42. Due to the injuries Mr. Cox sustained in his unlawful arrest, Mr. Cox had difficulty seeing out of his right eye.

43. Due to the injuries Mr. Cox sustained in his unlawful arrest, Mr. Cox was transported to J.W. Ruby Memorial Hospital (Ruby) in Morgantown, West Virginia, for medical treatment.

44. Mr. Cox underwent multiple imaging studies including a CT scan of his head that revealed a maxillary facial fracture sustained during the attack by Defendant Officers.

45. Upon discharge from Ruby on August 25, 2019, Mr. Cox was transported back to the Monongalia County Sheriff's Department in preparation for transport to North Central Regional Jail ("NCRJ").

46. Defendant Officers fraudulently charged Mr. Cox with violating W. Va. Code § 61-6-1B(a); W. Va. Code § 61-5-17(a); and W. Va. Code § 61-2-10B(c).

47. On August 25, 2019, Mr. Cox was arraigned by Magistrate Gail L. Roush and bond was set at \$25,000.00 cash/surety in Case No. 19-M31M-03821.

48. Mr. Cox was transported to NCRJ following his arraignment as he was unable to post the bond.

49. Shortly after arrival to NCRJ, Mr. Cox was humiliated, forced to strip naked, and sprayed head to toe with a delousing chemical agent.

50. Mr. Cox continued to experience burning in his eyes and face from Defendant Officers' pepper spray for days after his arrival at NCRJ.

51. Mr. Cox continued to receive medical treatment while incarcerated at NCRJ for the injuries he sustained during the brutal and unlawful attack by Defendant Officers.

52. On August 26, 2019, while Mr. Cox was still incarcerated for false allegations, Officer Carver reviewed the video footage of the attack on Mr. Cox captured by a nearby business.

53. On September 7, 2019, while Mr. Cox was still incarcerated for false allegations, Sergeant Shaun Hilling reviewed the video footage of the attack on Mr. Cox captured by a nearby business.

54. Upon information and belief, Officer Carver, Officer Dalton, Officer Hilling, nor any other agent of The City of Westover Police Department provided the surveillance video of the attack on Mr. Cox to the Monongalia County Prosecuting Attorney assigned to pursue the false allegations against Mr. Cox.

55. The City of Westover failed to provide the surveillance footage of the attack on Mr. Cox to the Monongalia County Prosecuting Attorney because it is inconsistent with the false narrative and false police reports prepared by the Defendant Officers and used to justify the filing of false criminal charges and unprovoked/unlawful attack against Mr. Cox.

56. On October 2, 2019, Magistrate James E. Nabors granted Mr. Cox's *Motion for Reduction of Bail* and reduced Mr. Cox's bond to a personal recognizance bond.

57. After spending thirty-nine (39) nights unlawfully incarcerated in NCRJ, Mr. Cox was finally released from NCRJ on October 3, 2019 on a personal recognizance bond.

58. Mr. Cox maintained his innocence throughout his incarceration and defense against the Defendant Officers' false and fraudulent allegations.

59. For over a year, Mr. Cox lived in constant fear of potential incarceration over the false and fraudulent charges, as well as fearing that the smallest infraction, or another instance of targeted false criminal charges by a City of Westover police officer, would result in his immediate return to NCRJ.

60. On October 7, 2020, Magistrate James E. Nabors granted Mr. Cox's *Motion to Dismiss* all of the aforementioned criminal charges.

61. The baseless, false, and fraudulent criminal allegations used by Defendant Officers to justify the unlawful arrest of Mr. Cox have been completely resolved in Mr. Cox's favor.

62. All Defendants acted with malice and reckless disregard for Mr. Cox's constitutional rights to be free from unlawful arrest and unreasonable seizure.

63. All Defendants acted with malice and reckless disregard for Mr. Cox's constitutional right to freedom of speech.

64. All Defendants acted with malice and reckless disregard for Mr. Cox's constitutional right to substantive due process.

65. A reasonable police officer, acting in the same or similar circumstances as Defendant Officers, would have known that their conduct violated Mr. Cox's constitutional rights.

66. As a direct and proximate result of Defendants' unlawful conduct, Mr. Cox suffered damages that include but are not limited to:

- invasion of his privacy and decency;
- loss of his 4th Amendment right to be free from unlawful seizure;
- loss of his 1st Amendment right to freedom of speech;

- loss of his 14th Amendment right to substantive due process;
- mental anguish, embarrassment, and humiliation;
- physical injuries, pain, and suffering;
- thirty-nine (39) days of unlawful incarceration;
- cost of time investment to successfully contest false criminal charges;
- costs related to losing his job during unlawful imprisonment;
- costs related to losing his apartment during unlawful imprisonment; and
- damage to personal property.

B. The City of Westover Fails to Train its Officers on De-escalation tactics

67. The City of Westover maintains a De-escalation policy. See, Ex. A.

68. The City of Westover De-escalation policy states that Officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available.

69. De-escalation tactics and techniques are actions used by officers, when safe and feasible without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.

70. The goal of de-escalation tactics is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved.

71. De-escalation tactics are intended to be used to resolve situations without the use of physical force.

72. Upon information and belief, The City of Westover failed to adequately train its police officers on its De-escalation policy.

73. On August 25, 2019, Officer Dalton and Officer Carver escalated their unprovoked and unlawful interaction with Mr. Cox instead of complying with The City of Westover De-escalation policy.

74. Officer Dalton and Officer Carver's escalation of the unprovoked and unlawful interaction with Mr. Cox directly caused Mr. Cox to be unlawfully tackled to the ground with great force, sustain repeated punches to his head and face, kicks to his torso, pepper sprayed in his face and eyes, all resulting in severe injuries, as well as his unlawful arrest and incarceration.

75. The City of Westover's failure to train its police officers on its De-escalation policy directly caused Mr. Cox to be unlawfully tackled to the ground with great force, sustain repeated punches to the head and face, kicks to his torso, pepper sprayed in his face and eyes, all resulting in severe injuries, as well as his unlawful arrest and incarceration.

C. The City of Westover Fails to Train its Officers on the Use of Force

76. The City of Westover maintains a Use of Force Policy. See, Ex. B.

77. The City of Westover Use of Force Policy states that Officers shall only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law enforcement objective.

78. The City of Westover Use of Force Policy states that Officers will use physical force only when no reasonably effective alternative appears to exist and only then to the degree which is reasonable to effect a lawful purpose.

79. The City of Westover Use of Force Policy states that police officers shall issue a verbal warning to the subject that pepper spray will be used and defer using pepper spray a reasonable amount of time to allow the subject to comply with the warning.

80. The City of Westover Use of Force Policy states that police officers shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control.

81. The City of Westover Use of Force Policy states that an Officer is prohibited from using physical force against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function.

82. Upon information and belief, The City of Westover failed to train its police officers on its Use of Force policy.

83. On August 25, 2019, Officer Dalton and Officer Carver used unprovoked and unlawful physical force against Mr. Cox following only a verbal interaction.

84. The verbal interaction between Defendant Officers and Mr. Cox did not impede a legitimate law enforcement function.

85. Defendant Officers' haste exit from their police cruiser and to tackle Mr. Cox to the ground following a strictly verbal interaction was in violation of The City of Westover's Use of Force policy.

86. Defendant Officers' haste in exiting their police cruiser and repeatedly striking Mr. Cox in his face with closed fists following a strictly verbal interaction was unlawful, unprovoked, and in violation of The City of Westover's Use of Force policy.

87. Defendant Officers' repeatedly striking Mr. Cox with their knees while he lay helpless on the ground following a strictly verbal interaction was unlawful, unprovoked, and in violation of The City of Westover's Use of Force policy.

88. Officer Dalton and Officer Carver's repeated use of oleoresin capsicum (pepper spray) on Mr. Cox's face and eyes as he lay helpless and defenseless on the ground was unlawful, unprovoked, and in violation of The City of Westover's Use of Force policy.

89. The City of Westover's failure to train its police officers on its Use of Force policy caused Mr. Cox to be unlawfully tackled to the ground with great force, sustain repeated punches to the head, repeated kicks to his body, pepper sprayed in his face and eyes, resulting in severe injuries and his unlawful arrest and incarceration.

D. The City of Westover Knowingly Hires Dangerous Officers

90. The City of Westover knowingly and frequently hires police officers with a history of demonstrating patterns of aggressive behavior, criminal conduct, and professional misconduct.

91. The pattern and practice of The City of Westover to hire police officers who have a history of demonstrating patterns of improper aggressive behavior and professional misconduct recklessly places citizens, including but not limited to William Cox, at an increased risk for harm and exposure to danger.

a. Officer Aaron Dalton

92. Upon information and belief, prior to joining The City of Westover Police Department, Officer Dalton was employed as a police officer with The City of Fairmont Police Department in Fairmont, West Virginia.

93. Officer Dalton was terminated and/or forced to resign from The City of Fairmont Police Department for misconduct and/or unsatisfactory service.

94. While employed at The City of Fairmont Police Department, Officer Dalton was sued in his individual capacity for taking part in an unprovoked attack at a social gathering. See, Ex. C, Compl. N.D.W. Va. 1:10-cv-00068.

95. In N.D.W. Va. 1:10-cv-00068, the plaintiff alleged that Officer Dalton was among several officers that grabbed and forced him to the ground and proceeded to kick his body, punch him in the face, taser him, and pepper spray him in the face. *Id.*

96. In N.D.W. Va. 1:10-cv-00068, the plaintiff suffered a fractured nose, two black eyes, a cut over one of his eyes, bruises to his head, ribs, and left leg, a lacerated elbow, and ripped ears. *Id.*

97. Officer Dalton was also accused of racial profiling while employed by The City of Fairmont Police Department. See Ex. D, Compl., N.D.W. Va., Case No. 1:12-cv-00132.

98. The allegations stated in N.D.W. Va. Case No. 1:10-cv-00068 and N.D.W. Va. Case No. 1:12-cv-00132 were a matter of public knowledge and known to The City of Westover upon hiring Officer Dalton.

99. The City of Westover was fully aware of Officer Dalton's violent history of improper and unlawful conduct when considering whether to hire Officer Dalton to join its police department.

100. The City of Westover was fully aware that Officer Dalton was terminated by The City of Fairmont Police Department due to his excessive force and racial profiling.

101. The City of Westover acted with reckless disregard for the health and safety of the public when it completely ignored the documented dangerous behavior of Officer Dalton and decided to hire Officer Dalton.

b. Officer Zachary Fecske

102. On or around October 8, 2017, Officer Zachary Fecske was hired as a police officer by The City of Westover.

103. Upon information and belief, The City of Westover performed a background check on Officer Fecsko prior to offering him a position as a police officer.

104. Upon information and belief, The City of Westover was aware of Officer Fecsko's criminal background before offering him a position as a police officer.

105. Prior to being hired by The City of Westover, Officer Fecsko was accused of domestic battery and assault after he grabbed his ex-girlfriend by the throat, threw her body against a wall, shoved her, and slapped her face – leaving her with scratches, bruises, and scrapes scattered across her body.

106. The day after Officer Fecsko physically attacked his ex-girlfriend, he allegedly broke into his ex-girlfriend's apartment and destroyed personal belongings.

107. It was further alleged that Officer Fecsko threatened to kill his ex-girlfriend, post nude/unflattering photos of her in a public online forum, withdraw her from college courses, and frame her for a death under investigation.

108. Despite these allegations, criminal charges, and plea agreement entered into as a result, The City of Westover hired Officer Fecsko as a police officer.

109. The City of Westover acted with reckless disregard for the health and safety of the public when it completely ignored the documented dangerous behavior of Officer Fecsko and decided to hire Officer Fecsko as a police officer.

110. The City of Westover has demonstrated a troubling systemic pattern and practice of hiring police officers with a known and documented history of dangerous, violent conduct towards the public for which they are employed to protect and serve.

111. Plaintiff incorporates by reference the patterns of aggressive behavior, criminal conduct, and professional misconduct of police officers hired by The City of Westover that have not yet been identified and are discovered during discovery of this matter.

E. The City of Westover’s Notice of Prior Incidents of Excessive Force and Retention of Dangerous Officers

112. The City of Westover knowingly and frequently retains police officers with a history of demonstrating patterns of improper and unlawful aggressive behavior, criminal conduct, and professional misconduct.

a. Aaron Dalton and Zachary Fecsco

113. On or about December 31, 2018, Officer Dalton and Officer Zachary Fecsco arrived at the residence of Andre Howton, in The City of Westover, West Virginia. Ex. E, Compl., N.D.W. Va. 1:20-cv-00135.

114. Officer Fecsco became enraged at Mr. Howton, an African American male, and forcefully removed him from his home screaming “get your ass out here, boy!” *Id.*

115. Officer Fecsco proceeded to punch and kick Mr. Howton until he suffered multiple facial and jaw fractures, broken teeth, black eyes, and severe lacerations and abrasions. *Id.*

116. Throughout the attack on Mr. Howton, Officer Dalton was present and refused to intervene to protect Mr. Howton’s health and safety. *Id.*

117. To the contrary, Officer Dalton instead encouraged Officer Fecsco to escalate his beating of Mr. Howton by shouting “Spray that motherfucker! Spray him!” *Id.*

118. As Mr. Howton laid on the ground reeling in pain and visibly injured, Officer Dalton yells “you asked for that, Andre. You earned it.” *Id.*

119. The attack on Mr. Howton by Officer Fecsco and Officer Dalton was captured on Officer Dalton’s body camera footage.

120. Despite the entire attack being captured on Officer Dalton's body camera footage, including the dragging of Mr. Howton out of his home, the merciless beating by Officer Fecscko, and the chilling enjoyment, encouragement, and cruel failure to intervene by Officer Dalton, The City of Westover and the Westover Police Department failed to reprimand, retrain, or remove Officer Dalton from duty.

121. The City of Westover and Westover Police Department's failure to remove Officer Dalton from duty permitted him to be on patrol on August 25, 2019, only eight (8) months after the attack on Mr. Howton, and placed him directly in the path of Mr. Cox who was innocently attempting to board public transit on his way to work.

122. The City of Westover and Westover Police Department's failure to remove Officer Dalton from duty directly endangered Mr. Cox and countless other citizens of The City of Westover and Monongalia County.

123. On August 30, 2020, Officer Dalton's fellow City of Westover Police Officers accused him of repeatedly committing the following acts:

- violating civil rights;
- threatening to kill other police officers;
- lying on official paperwork;
- having sexual relations with a citizen of Westover while on city property and wearing The City of Westover police uniform;
- intimidating and/or causing a level of fear in complainants that have come forward against him;
- targeting and harassing citizens;

- using racial profanity to incite reactions out of minorities or those who have minority family members;
- promoting a culture of aggression and disrespect towards citizens and arrestees alike;
- enticing physical altercations between officers and arrestees;
- destroying evidence and property of citizens;
- targeting Officers and bullying them resulting in a hostile work environment;
- disregarding direct orders;
- speaking negatively about the Chief of Police and City Mayor to new hire officers;
- instructing Officers not to abide by lawful and direct orders given by the Chief and other high-ranking officers;
- causing division in the department;
- breaking the chain of command constantly and consistently for self-gain; and
- treating fellow Officers of other neighboring agencies with disrespect and malice which has led to fellow City of Westover Police Officers being ridiculed for his actions. Ex. F, Aug. 30, 2020, Ltr. to City of Westover from Police Officers.

124. Upon information and belief, the eleven (11) police officers' reference to the destruction of evidence by Officer Dalton is a reference to Officer Dalton's destruction and/or failure to preserve Mr. Cox's cell phone used to record the attack on August 25, 2019.

125. Upon information and belief, the eleven (11) police officers' reference to lying on official paperwork is a reference to Officer Dalton's false statements justifying his and Officer Carver's attack on Mr. Cox.

126. The City of Westover was and remains aware of the conduct of Officer Dalton alleged in Exhibit F by his fellow police officers and knowingly chose to ignore the same in favor of Officer Dalton remaining in the Department to torment, intimidate, and harass citizens, as well as his fellow police officers.

127. The eleven (11) City of Westover Police Officers warn in Exhibit F that Officer Dalton “is a risk to not only this city, but to those he has been entrusted with protecting.” *Id.*

128. Upon information and belief, none of the behavior highlighted by the complaints of Officer Dalton’s fellow Officers resulted in discipline, retraining, or his removal from The City of Westover Police Department.

129. Upon information and belief, Officer Dalton remains gainfully employed by The City of Westover as a Police Officer despite eleven (11) of his fellow police officers openly accusing him of civil rights violations, lying on official paperwork, and destroying evidence, among other heinous offenses.

130. Upon receipt of the letter signed by eleven (11) police officers in The City of Westover Police Department, the City of Westover referred the matter to the Monongalia County Prosecuting Attorney and West Virginia State Police for further investigation.

131. The referral of this matter to the Monongalia County Prosecuting Attorney and West Virginia State Police occurred too late to save William Cox, Andre Howton, and countless other individuals referenced in the aforementioned letter from unlawful and unconstitutional physical, mental, and emotional abuse by Officer Dalton.

b. Justice Carver and Aaron Dalton

132. On September 7, 2019, Sergeant Shawn Hilling of The City of Westover Police Department reviewed surveillance footage of the attack on Mr. Cox.

133. Upon information and belief, Sergeant Shawn Hilling also reviewed the narrative or written description submitted by Defendant Officers of the attack on Mr. Cox.

134. The narratives submitted by Officer Carver and Officer Dalton are starkly inconsistent with the surveillance footage.

135. The surveillance footage reviewed by The City of Westover depicts Officer Carver exiting the vehicle and immediately moving toward Mr. Cox, raising his arm with a closed fist, and swinging at Mr. Cox.

136. Officer Carver's report states Mr. Cox "struck me in the face with a closed fist" is patently false as evidenced upon review of the surveillance footage.

137. Officer Carver's report states that he "struck Mr. Cox in the face with a closed fist in order to defend myself" is patently false as evidenced upon review of the surveillance footage.

138. Officer Dalton's report states that "Cox struck Carver in the face before Carver grabbed him" is patently false as evidenced upon review of the surveillance footage.

139. Upon reviewing the surveillance footage and Defendant Officers' false reports, The City of Westover ignored the inconsistencies and failed to reprimand Defendant Officers.

140. Officer Carver, Officer Dalton, and The City of Westover knowingly and intentionally failed to provide the surveillance footage to Mr. Cox while his criminal charges were pending because each knew it was inconsistent with the false report and false allegations.

141. The City of Westover has never reprimanded Officer Carver for his false report or his unwarranted attack on Mr. Cox.

142. The City of Westover has never reprimanded Officer Dalton for his false report or his unwarranted attack on Mr. Cox.

143. The City of Westover continues to permit Defendant Officers to patrol The City of Westover without limitations or restrictions.

144. The failure of The City of Westover to reprimand, punish, retrain, or terminate Defendant Officers for their role in the attack on Mr. Cox and subsequent filing of false police reports inconsistent with surveillance footage represents a systemic failure in the patterns, practice, and governance of the police department by The City of Westover.

145. Plaintiff incorporates by reference the patterns of aggressive behavior, criminal conduct, and professional misconduct of police officers retained by The City of Westover that have not yet been identified and are discovered during discovery of this matter.

F. The City of Westover Fails to Train its Officers on Body Camera Footage Policy

146. The purpose of The City of Westover Body Camera Footage policy is to visually and audibly record specific categories of interactions between officers and the public and to retain associated video for a period of time. Ex. G, The City of Westover Body Camera Policy.

147. The City of Westover Body Camera Footage policy mandates that each officer is trained in the use of the body-worn camera prior to issuance and deployment. The training shall include training on mandatory, discretionary, and non-permissible uses of body-worn cameras. *Id.*

148. The City of Westover Police Body Camera Footage policy mandates each officer to make every reasonable effort to activate the body-worn camera prior to initiating all enforcement encounters including all incidents involving a use of force. *Id.*

149. Upon information and belief, despite The City of Westover Body Camera Footage policy in place on August 25, 2019, The City of Westover did not provide its police officers with adequate training on when and how to activate their body-worn cameras.

150. Upon information and belief, despite the Body Camera Footage policy in place on August 25, 2019, City of Westover police officers were not provided adequate training on when and how to preserve footage captured on body-worn cameras.

151. Upon information and belief, despite the Body Camera Footage policy in place on August 25, 2019, Officer Dalton and Officer Carver failed to activate their body-worn cameras and/or preserve footage captured on body-worn cameras during the attack on Mr. Cox.

152. Upon information and belief, the failure of Officer Dalton and Officer Carver to activate their body-worn cameras and/or preserve footage captured on body-worn cameras during the attack on Mr. Cox was not the first instance said failures occurred.

153. Upon information and belief, The City of Westover routinely uses body-worn camera footage to accelerate plea deals against criminal defendants; however, body-worn camera footage that exonerates criminal defendants or implicates police officers in misconduct is routinely not recorded, missing, or destroyed.

154. The body-worn camera policy in place in The City of Westover when Officer Dalton and Officer Carver attacked Mr. Cox does not identify any discipline or punishment for police officers that fail to comply with said policy.

155. The failure of The City of Westover to discipline or punish police officers that fail to comply with the body-worn camera policy has created a systemic environment in which police officers recklessly fail to comply with said policy without consequences, resulting in the failure to capture critical evidence of unlawful and unconstitutional police abuses.

156. The failure of Officer Dalton and Officer Carver to activate their body-worn cameras and/or failure to preserve footage captured on body-worn cameras during the attack on Mr. Cox constitutes a known systemic failure by The City of Westover.

157. The failure of Officer Dalton and Officer Carver to activate their body-worn cameras during the attack on Mr. Cox constitutes the knowing destruction of evidence.

158. The failure of Officer Dalton and Officer Carver to preserve footage captured on body-worn cameras during the attack on Mr. Cox constitutes the knowing destruction of evidence.

G. The City of Westover Fails to Train its Police Officers on its Evidence Collection Policy

159. The City of Westover maintains an Evidence Room Control policy. Ex. H, The City of Westover Evidence Room Control Policy.

160. The City of Westover Evidence Room Control policy identifies the collection and preservation of evidence as one of the most important aspects of the investigation of any crime.

161. The City of Westover Evidence Room Control policy requires property recovered at a scene and/or found on a suspect be documented by media and returned to the victim and/or lawful owner.

162. The City of Westover Evidence Room Control policy requires property recovered at a scene or found on a suspect that cannot be returned be seized as evidence and entered into the evidence room.

163. The City of Westover Evidence Room Control policy requires a report to accompany all evidence submitted that includes explanation of why, where, and when evidence is submitted.

164. The City of Westover Evidence Room Control policy requires two chain of custody forms – one submitted to the police clerk and one attached to the evidence submitted.

165. Upon information and belief, despite The City of Westover Evidence Control policy in place on August 25, 2019, The City of Westover did not provide its police officers with adequate training on when and how to preserve evidence.

166. Upon information and belief, despite this policy in place on August 25, 2019, Officer Dalton and Officer Carver failed to collect and/or preserve the cell phone used by Mr. Cox to film the attack at issue.

167. Upon information and belief, the failure of Officer Dalton and Officer Carver to collect and/or preserve Mr. Cox's cell phone used to film the attack on Mr. Cox was not the first instance said failures occurred.

168. Specifically, Officer Dalton is known to The City of Westover and his fellow police officers to frequently destroy evidence and property of citizens. Ex. F.

169. The Evidence Room Control policy in place in The City of Westover when Officer Dalton and Officer Carver attacked Mr. Cox does not identify any discipline or punishment for police officers that fail to comply.

170. The failure of The City of Westover to discipline or punish police officers that fail to comply with the Evidence Room Control policy has created a systemic environment in which police officers recklessly fail to comply with said policy without consequences resulting in the failure to collect and preserve critical evidence.

171. The failure of Officer Dalton and Officer Carver to collect and/or preserve Mr. Cox's cell phone used to film the attack on Mr. Cox constitutes a known systemic failure by The City of Westover.

172. The failure of Officer Dalton and Officer Carver to collect and/or preserve Mr. Cox's cell phone used to record the attack on Mr. Cox constitutes the knowing destruction of evidence.

173. Mr. Cox has been exonerated of all the false and fraudulent allegations filed by Officer Dalton and Officer Justice; however, the cell phone used to record the attack on Mr. Cox has not been returned.

174. The failure by Officer Dalton and Officer Carver to collect and preserve Mr. Cox's cell phone used to record the attack and their failure to activate body-worn cameras to record the attack were intentional acts to prevent Mr. Cox's ability to defend against the false and fraudulent charges against him and to support the claims asserted herein of unlawful and unconstitutional conduct.

Count I – 42 U.S.C. § 1983 – Use of Excessive Force and Seizure without Cause in Violation of the Fourth Amendment of the United States Constitution

175. Plaintiff incorporates and re-alleges all preceding paragraphs as though fully pleaded herein.

176. The conduct of the officers identified in this count and described herein constituted excessive force and seizure of Mr. Cox's person without probable cause in violation of the Fourth Amendment of the United States Constitution and clearly established law.

177. At all material times hereto, Officer Dalton and Officer Carver were acting under color of state law, as agents and employees of The City of Westover, and within the scope of their employment and authority as duly certified law enforcement officers of The City of Westover.

178. At all material times, Officer Dalton and Officer Carver had no reason to believe that Mr. Cox was armed, dangerous, or violating any laws.

179. At all material times, Officer Dalton and Officer Carver did not have a reasonable fear of imminent bodily harm as they sat in their police vehicle and spoke to Mr. Cox.

180. At all material times, Officer Dalton and Officer Carver did not have a reasonable fear of imminent bodily harm when they hurriedly exited their police cruiser to launch an unprovoked attack on Mr. Cox.

181. At all material times, Officer Dalton and Officer Carver did not have a reasonable fear of imminent bodily harm when they repeatedly punched Mr. Cox in the head and face with closed fists as he screamed for help and begged his attackers to stop.

182. At all material times, Officer Dalton and Officer Carver did not have a reasonable fear of imminent bodily harm when they repeatedly rammed Mr. Cox with their knees as he laid face down on the sidewalk unable to move.

183. At all material times, Officer Dalton and Officer Carver did not have a reasonable fear of imminent bodily harm when they repeatedly pepper sprayed Mr. Cox's face and eyes from close range until he was no longer able to see the direction from which his attackers would strike again.

184. Officer Dalton's use of force in the form of tackling Mr. Cox to the ground, repeatedly punching him in the head and face with a closed fist, repeatedly ramming his knee into Mr. Cox, and pepper spraying his eyes and face from close distance was objectively unreasonable, unprovoked, and violated clearly established law.

185. Officer Carver's use of force in the form of tackling Mr. Cox to the ground, repeatedly punching Mr. Cox in the head and face with a closed fist, repeatedly ramming his knee into Mr. Cox, and pepper spraying his eyes and face from close distance was objectively unreasonable, unprovoked, and violated clearly established law.

186. As a result of Officer Dalton and Officer Carver's unjustified, excessive, and illegal use of force, Mr. Cox experienced conscious pain and suffering.

187. As a result of Officer Dalton and Officer Carver's unjustified, excessive, and illegal use of force, Mr. Cox experienced serious physical injuries.

188. As a result of Officer Dalton and Officer Carver's unjustified seizure of Mr. Cox's person, and his subsequent incarceration, Mr. Cox experienced conscious pain and suffering.

189. None of the Defendant Officers **ever** had a reasonable fear of imminent bodily harm, nor did they have a reasonable belief that any other person was in danger of imminent bodily harm from Mr. Cox at **any point in time**.

190. As a direct and proximate result of the acts and omissions described herein, Mr. Cox suffered compensatory and special damages as defined under federal common law and in an amount to be determined by a jury.

191. Punitive damages are available and are hereby claimed as a matter of federal law pursuant to *Smith v. Wade*, 461 U.S. 30 (1983), and, as such, are not subject to the pleading requirements, limitations, or different standard of proof set forth in W. Va. Code Section 29-12A-7.

192. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

Count II – 42 U.S.C. § 1983 – Retaliation and Use of Excessive Force in Violation of First Amendment of the United States Constitution

193. The Plaintiff incorporates and re-alleges all preceding paragraphs as though fully pleaded herein.

194. 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 plaintiff's 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)).

195. Officer Dalton and Officer Carver, 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 while waiting to catch a bus on his way to work.

196. Officer Dalton and Officer Carver, while acting under the color of the law, violated the Plaintiff's constitutional rights by using excessive force against him and arresting him for recording video using his cell phone while waiting to catch a bus on his way to work.

197. Taking photographs, video, and audio in public spaces, much like speaking in a public space, is a right protected by the First Amendment to the United States Constitution, which necessarily includes recording video of law enforcement officials carrying out their duties in public.

198. Officer Dalton and Officer Carver took retaliatory action against the Plaintiff that adversely affected the Plaintiff's constitutionally protected speech, when they approached him on the sidewalk, slammed him to the concrete, repeatedly punched him in the head and face, kicked him with their knees, repeatedly sprayed his face and eyes with pepper spray, and unlawfully placed him under arrest and processed his incarceration.

199. The attack by Officer Dalton and Officer Carver was directly motivated by the Plaintiff's speaking mere words and/or recording video with his cell phone while waiting at the bus stop.

200. Officer Dalton and Officer Carver lacked reasonable suspicion or probable cause when they took these retaliatory actions against Mr. Cox.

201. As a direct and proximate result of the acts and omissions described herein, Mr. Cox suffered compensatory and special damages as defined under federal common law and in an amount to be determined by a jury.

202. Punitive damages are available and are hereby claimed as a matter of federal law pursuant to *Smith v. Wade*, 461 U.S. 30 (1983), and, as such, are not subject to the pleading requirements, limitations, or different standard of proof set forth in W. Va. Code Section 29-12A-7.

203. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

Count III – 42 U.S.C. § 1983 – Withholding Exculpatory Evidence in Violation of the Fourth and Fourteenth Amendments of the United States Constitution

204. The Plaintiff incorporates and re-alleges all preceding paragraphs as though fully pleaded herein.

205. The conduct of the officers identified in this count and described herein deprived Mr. Cox of substantive due process in violation of the Fourteenth Amendment of the United States Constitution and clearly established law.

206. Police officers have an affirmative duty to protect against pre-trial violations of rights guaranteed to arrestees by the Fourth and Fourteenth Amendments to the United States Constitution.

207. The acts and omissions of Defendant Officers and The City of Westover by failing to provide the surveillance footage of the attack on Mr. Cox to the Monongalia County Prosecuting Attorney constitutes a conscious-shocking deliberate indifference to the life and liberty guaranteed to Mr. Cox by the Fourth and Fourteenth Amendments to the United States Constitution.

208. The surveillance footage withheld from Mr. Cox captured the attack by Defendant Officers and establishes that at no point did Mr. Cox act with any aggression toward Defendant Officers or pose a threat to their safety or well-being.

209. The Defendant Officers and The City of Westover, by and through its agents, consciously and in bad faith, chose not to disclose the surveillance footage while Mr. Cox was incarcerated or while the false criminal charges were pending against him.

210. The surveillance footage withheld by Defendant Officers and The City of Westover was material to Mr. Cox's defense against the false allegations levied against him and its suppression casts serious doubt on the integrity of the criminal proceedings against Mr. Cox.

211. The surveillance footage withheld by Defendant Officers and The City of Westover is direct evidence that the police reports filed by Defendant Officers regarding Mr. Cox were false, unconstitutional, and that their arrest of Mr. Cox was without probable cause.

212. By the acts and omissions described above, Defendant Officers and The City of Westover violated the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to be free of unlawful, reckless, deliberately indifferent, and conscience shocking conduct as secured by the Fourteenth Amendment;
- b. The right to be free from unlawful arrest, seizure, and detainment for lack of probable cause as secured by the Fourth Amendment;
- c. The right to be free from the deprivation of life, liberty, and property without substantive due process;
- d. And in such other particulars as may be learned through discovery.

213. As a direct and proximate result of the conscience-shocking withholding of the exculpatory video footage that clearly depicts Defendant Officers' attack, Mr. Cox remained incarcerated for nearly thirty-nine (39) days.

214. As a direct and proximate result of the conscience-shocking withholding of the exculpatory video footage that clearly depicts Defendant Officers' attack, for over a year, Mr. Cox lived in constant fear of potential incarceration over the false and fraudulent charges, as well as fearing that the smallest infraction, or another instance of false criminal charges by a City of Westover police officer, would result in his immediate return to NCRJ.

215. As a direct and proximate result of the acts and omissions described herein, Mr. Cox suffered compensatory and special damages as defined under federal common law and in an amount to be determined by a jury.

216. Punitive damages are available and are hereby claimed as a matter of federal law pursuant to *Smith v. Wade*, 461 U.S. 30 (1983), and, as such, are not subject to the pleading requirements, limitations, or different standard of proof set forth in W. Va. Code Section 29-12A-7.

217. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

Count IV – 42 U.S.C. § 1983 – *Monell*¹ Liability

218. Plaintiff incorporates and re-alleges all preceding paragraphs as though fully pleaded herein.

219. The City Charter for The City of Westover states that “[t]he Mayor shall appoint City officers and employees as provided by law, this Charter or ordinance. Such appointments

¹ *Monell v. Dept. of Social Serv.*, 436 U.S. 658 (1978).

shall be subject to the approval of Council. The Mayor may, [...] suspend without pay or suspend without pay with intent to discharge, any City officer or employee at his or her pleasure, whether such officer or employee was appointed by the Mayor. Such removal shall be subject to the approval of Council.” Chart. City of Westover, Art. II, Section 2.01(1).

220. The City Charter and City Code for The City of Westover do not address the roles and duties of the Chief of Police or otherwise identify the responsibilities of the person tasked with leading its police department.

221. The City Charter and City Code for The City of Westover do not address or identify the individual responsible for training police officers on the policies and procedures in the police department.

222. Pursuant to W.Va. Code § 8-10-1, unless otherwise stated in the charter of a municipality, the Mayor for the municipality has control of the police department.

223. Collectively, the Mayor, City Council, and Police Chief had final policymaking authority with regard to establishing written policies and training programs governing the conduct of police officers employed by The City of Westover to perform policing functions.

224. The written policies and training established and/or approved by the Mayor, The City Council, and the Police Chief constitute the official policy of The City and were the moving force behind and caused Mr. Cox’s injuries.

225. The lack of training, lack of accountability, and culture of non-compliance with policies within The City of Westover police department were the moving force behind and caused Mr. Cox’s injuries.

226. The lack of training, lack of accountability, and culture of non-compliance with The City of Westover policies established by the Mayor, City Council, and Police Chief created

an environment where police officers were not adequately trained on The City of Westover policies concerning de-escalation tactics, use of force, use of body-worn cameras, and/or collection of evidence, among others yet to be identified in discovery of this matter.

227. The City of Westover, acting by and through its Mayor and/or other policymakers, had knowledge of the unconstitutional patterns and practices in its police department and knowledge that the same gave rise to a risk of violations of citizens' federal rights.

228. The City of Westover, acting by and through its Mayor and/or other policymakers, made a deliberate and/or conscious decision to disregard the known risk of harm that would result from its police department's unconstitutional patterns and practices and was deliberately indifferent to and/or tacitly authorized the same.

229. On or prior to August 25, 2019, The City of Westover, with deliberate indifference to the rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, or ratified a number of customs, patterns, or practices that failed to provide for the safety of arrestees, detainees, and the like during arrest, including but not limited to the use of force, use of body worn cameras, and collection of evidence.

230. On or prior to August 25, 2019, The City of Westover, with deliberate indifference to the rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, or ratified a number of customs, patterns, or practices that shall be further identified in discovery.

231. The City of Westover, with deliberate indifference to the rights of arrestees, detainees, and the like, continued to employ several police officers, including but not limited to Officer Dalton, Officer Fecsko, and Officer Carver, despite knowledge of their repeated unconstitutional, unlawful, or other improper conduct.

232. The City of Westover had the power to terminate or appropriately discipline Officer Dalton for his misconduct prior to August 25, 2019 but failed to do so despite The City's knowledge of a pattern of complaints including but not limited to the destruction of evidence, false statements on official documents, violations of civil rights, and the use of excessive force.

233. By refusing to terminate Officer Dalton, The City of Westover accepted and created a culture of noncompliance that directly caused Officer Dalton, Officer Carver, and other police officers to act with impunity and without fear of retribution.

234. The City of Westover's failure to terminate or properly discipline Officer Dalton and other police officers with a history of similar behavior is part of its larger custom, policy, or practice of failing to supervise, terminate, or properly discipline its officers for unconstitutional, unlawful, or otherwise improper conduct, and thereby encouraged Officer Dalton and other police officers to continue engaging in unlawful acts towards arrestees, including but not limited to Mr. Cox.

235. On or prior to August 25, 2019, The City of Westover, with deliberate indifference to the rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, or ratified its agents providing improper and harmful training to officers regarding its police departments and procedures.

236. The unconstitutional policies, practices, and customs defined herein were the moving force behind Mr. Cox's injuries.

237. Mr. Cox was injured as a direct and proximate result of the acts and omissions by The City of Westover.

238. As a direct and proximate result of the acts and omissions described herein, Mr. Cox suffered compensatory and special damages as defined under federal common law and in an amount to be determined by jury.

239. Punitive damages are available and are hereby claimed as a matter of federal law pursuant to *Smith v. Wade*, 461 U.S. 30 (1983), and, as such, are not subject to the pleading requirements, limitations, or different standard of proof set forth in W. Va. Code Section 29-12A-7.

240. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

Count V – 42 U.S.C. § 1983 – *Canton*² Liability

241. Plaintiff hereby incorporates and re-alleges all preceding paragraphs as though fully pleaded herein.

242. The City of Westover failed to properly train or modify its training to Defendant Officers and its other officers, including but not limited to, matters related to the reasonable and appropriate use of force during such arrests, and intervention in the excessive use of force by fellow officers.

243. Effectuating an arrest, using force to effectuate an arrest, and intervening in the observed use of excessive force is a usual and recurring situation with which The City of Westover law enforcement officers and other agents encounter on a regular basis.

244. As such, The City of Westover was aware of a need for additional and specified training. The City of Westover specifically knew that its officers needed training regarding the use

² *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989).

of de-escalation tactics, use of force, use of body-worn cameras, and evidence collection, and was required to provide its officers with such training.

245. With deliberate indifference to the rights of citizens, The City of Westover failed to provide adequate training to its officers on the use of de-escalation tactics, the use of force, use of body-worn cameras, evidence collection, and evidence production.

246. The City of Westover was aware that deprivation of the constitutional rights of citizens was likely to result from its lack of training and the failure to modify its training.

247. As such, The City of Westover was deliberately indifferent and exhibited reckless disregard with respect to the potential violation of constitutional rights.

248. The failure to train and/or to appropriately modify training constituted official City of Westover policies, practices, or customs.

249. The City of Westover's failure to train and/or to modify training caused the acts and omissions the Defendant Officers made toward Mr. Cox.

250. As a direct and proximate result of City of Westover's acts and omissions, Mr. Cox suffered injuries, was unlawfully arrested and incarcerated for manufactured crimes he did not commit, and experienced pain, suffering, and humiliation.

251. As a direct and proximate result of the acts and omissions described herein, Mr. Cox suffered compensatory and special damages as defined under federal common law and in an amount to be determined by jury.

252. Punitive damages are available and are hereby claimed as a matter of federal law pursuant to *Smith v. Wade*, 461 U.S. 30 (1983), and, as such, are not subject to the pleading requirements, limitations, or different standard of proof set forth in W. Va. Code Section 29-12A-7.

253. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

Count VI – Spoliation of Evidence

254. Officer Dalton and Officer Carver were aware of a potential civil action resulting from their attack on Mr. Cox when they failed to activate their body-worn cameras and/or, in the alternative, failed to preserve footage captured by their body-worn cameras.

255. Officer Dalton and Officer Carver had actual knowledge of a potential civil action resulting from their attack on Mr. Cox when they failed to activate their body-worn cameras and/or, in the alternative, failed to preserve footage captured by their body-worn cameras.

256. Officer Dalton and Officer Carver had a duty to activate their body-worn cameras and/or preserve footage captured on their body-worn cameras during their attack on Mr. Cox pursuant to special circumstances stemming from their role as police officers to act in accordance with public policy and The City of Westover policy on the use of body-worn cameras and preservation of said body-worn camera footage.

257. The City of Westover had a duty to train Officer Dalton and Officer Carver on its policy regarding the activation of body-worn cameras during the use of force and the preservation of body-worn camera footage.

258. The failure of The City of Westover to train Officer Dalton and Officer Carver on The City of Westover Policy regarding the mandatory use of body-worn cameras during the use of force caused body-worn footage to not be collected and/or preserved during the attack on Mr. Cox.

259. The failure of Officer Dalton and Officer Carver to activate their body-worn cameras constitutes an intentional effort to prevent the collection of evidence in a manner that is indistinguishable from the knowing destruction of evidence.

260. The failure of Officer Dalton and Officer Carver to preserve footage captured on body-worn cameras during the attack on Mr. Cox constitutes the knowing destruction of evidence.

261. The body-worn camera footage of Officer Dalton and Officer Carver's attack on Mr. Cox was vital to Mr. Cox's ability to prevail in his claims of an unconstitutional use of force and seizure of his person by said officers.

262. Officer Dalton and Officer Carver were fully aware that Mr. Cox was recording their interaction on his cell phone – it is the documented reason they initially approached and launched their attack.

263. The City of Westover had a duty to train Officer Dalton and Officer Carver on its policy regarding the collection and preservation of evidence.

264. The failure of The City of Westover to train Officer Dalton and Officer Carver on The City of Westover policy regarding the collection and preservation of evidence caused a cell phone with vital video footage to not be collected at the scene of the attack and/or destroyed.

265. Despite being fully aware that Mr. Cox was recording the attack on his cell phone, Officer Dalton and Officer Carver failed to collect his cell phone from the scene and/or destroyed said cell phone in violation of The City of Westover policy on the collection of evidence.

266. Officer Dalton and Officer Carver were aware of a potential civil action resulting from their attack on Mr. Cox when they knowingly and intentionally failed to collect his cell phone with video footage of the attack and/or, in the alternative, destroyed said cell phone.

267. Officer Dalton and Officer Carver had a duty to collect Mr. Cox's cell phone and or preserve the same as evidence of their attack on Mr. Cox pursuant to special circumstances stemming from their responsibility as police officers to collect evidence and The City of Westover policy on collection and preservation of evidence.

268. The failure of Officer Dalton and Officer Carver to collect Mr. Cox's cell phone as evidence at the scene of the attack constitutes an intentional effort to prevent the collection of evidence in a manner that is indistinguishable from the knowing destruction of evidence.

269. The failure of Officer Dalton and Officer Carver to preserve Mr. Cox's cell phone used to record the attack on Mr. Cox constitutes the knowing destruction of evidence.

270. The cell phone footage of Officer Dalton and Officer Carver's attack on Mr. Cox was vital to Mr. Cox's ability to prevail in his claims of an unconstitutional use of force by said officers.

271. The jury should be instructed to make an adverse inference against Officer Dalton, Officer Carver, and The City of Westover regarding their attack on Mr. Cox on August 25, 2019 due to (1) their knowing and intentional failure to activate body-worn cameras and/or preserve footage of the same in violation of public policy and the policy of The City of Westover and (2) their knowing and intentional failure to collect or preserve, and/or destruction of, Mr. Cox's cell phone used to record the attack at issue.

PLAINTIFF DEMANDS A JURY TRIAL AS TO ALL ISSUES OF FACT HEREIN.

Prayer for Relief

WHEREFORE, Plaintiff William Cox prays for judgment against Defendants as follows:

1. As to Counts I, II, III, IV, and V, a monetary judgment against Defendants, Aaron Dalton, Justice Carver, and The City of Westover, for compensatory, special, and punitive

damages together with costs and disbursements, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and prejudgment interest.

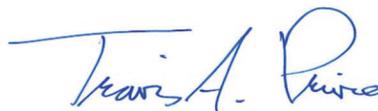
4. As to Count VI, an adverse inference jury instruction against Defendant Officers and The City of Westover arising from the spoliation of evidence of the attack on Mr. Cox by Officer Dalton and Officer Carver.

4. For the appointment of a receiver or similar authority to ensure that The City of Westover properly trains and supervises its police officers.

5. For such other and further relief as this Court deems just and equitable.

WILLIAM COX,

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