

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
(Martinsburg Division)**

STEVEN C. SCOTT,

Plaintiff,

v.

**CITY OF RANSON, W.V., RANSON
POLICE DEPARTMENT, RANSON
POLICE CHIEF WILLIAM ROPER, In
His Official Capacity, BERKELEY
COUNTY COMMISSION,
BERKELEY COUNTY SHERIFF'S
DEPARTMENT, SHERIFF RANDY
SMITH, In His Official Capacity, and
TASER INTERNATIONAL, INC., and
DOES 1 TO 10,**

Defendants'.

Docket No: 3:07cv138

**AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. 42 U.S.C. § 1983,
DEPRIVATION OF THE
RIGHTS OF PLAINTIFF;**
- 2. W.VA. CODE §61-6-21(b);**
- 3. ASSAULT and BATTERY;**
- 4. POLICE NEGLIGENCE;**
- 5. PRODUCTS LIABILITY;
NEGLIGENCE, and**
- 6. PRODUCTS LIABILITY;
STRICT LIABILITY.**

DEMAND FOR JURY TRIAL

AMENDED COMPLAINT

JURISDICTION

1. Jurisdiction against the governmental defendants' is conferred upon this Court by 42 U.S.C. §1983; 28 U.S.C. § 1331 (federal question) and 1343(3) (civil rights).

2. The state law claims for relief are within the supplemental jurisdiction of the Court, pursuant 28 U.S.C. § 1367.

VENUE

3. Plaintiff's claims herein arises out of an incident involving Ranson Police Officers, and Berkeley County Deputy Sheriffs', in Jefferson and Berkeley Counties, State of West Virginia, and within this judicial district.

PARTIES

4. Plaintiff Steven C. Scott is an adult under prescribed medications for a mental illness known as "schizophrenia", inter alia.

5. Defendant City of Ranson is a government entity operating, pursuant to the laws of the State of West Virginia.

6. Defendant Ranson Police Department is a public agency subject to suit.

7. Defendant William Roper is the Ranson Chief of Police. He is the decision maker for the Ranson Police Department.

8. Defendant Berkeley County Commission is a government entity operating, pursuant to the laws of the State of West Virginia.

9. Defendant Berkeley County Sheriff's Department is a public agency subject to suit.

10. Defendant Randy Smith is the Sheriff of the Berkeley County Sheriff's Department. He is the decision maker for the Berkeley County Sheriff's Department.

11. Defendant Taser International, Inc., is a Delaware Corporation with its principal place of business in the State of Arizona. As alleged herein, Taser International, inc., defectively manufactured and marketed the unreasonably dangerous "Taser" with which individual Defendants' repeatedly shocked and burned Plaintiff Scott, proximately causing his injuries, as alleged herein.

12. Plaintiff sue defendants' Does 1 to 10 by their fictitious names and will amend this complaint to allege their true identities when ascertained.

FACTS

A. General Allegations on Policy and Practice

13. Plaintiff is informed and believe, and on the basis of such information and belief allege, that the governmental entity defendants' and their decision makers, with deliberate indifference, gross negligence, and reckless disregard to the safety, security, and constitutional and statutory rights of Plaintiff Scott, and all persons similarly situated, maintained, enforced, tolerated, permitted, acquiesced in, and applied policies, practices, or customs and usages of, among other things:

- a. Subjecting people to reasonable uses of force against their persons;
- b. Selecting, retaining, and assigning employees with demonstrable propensities for excessive force, violence, and other misconduct;
- c. Failing to adequately train, supervise, and control employees in the dangers of repeated Taser shocks, including, without limitation, the use of potentially lethal tactics, including multiple Taser shocks followed by restraint, for the taking into custody of persons such as Plaintiff Scott, who are perhaps mentally ill, but not otherwise engaged in criminal activity, and who may have pre-existing medical conditions which make such tactics unreasonably dangerous;
- d. Failing to adequately discipline officers involved in misconduct;
- e. Condoning and encouraging officers in the belief that they can violate the rights of persons such as Plaintiff Scott in this action with impunity, and that such conduct will not adversely affect their opportunities for promotion and other employment benefits;
- f. Failing to adequately train, supervise, and make employees aware of the dangers of the lethal combination of flammable pepper spray and Taser shocks;
- g. Failing to adequately train, supervise, and make employees aware of equipment used by other local law enforcement agencies to prevent injuries to persons.

14. Plaintiff Scott is informed and believe, and on the basis of such information and belief allege, that the entity Defendants' and their decision makers ordered, authorized, acquiesced in, tolerated, permitted or maintained custom and usage permitting the other Defendants' herein to engage in the unlawful and unconstitutional actions, policies, practices, and customs or usages set forth in the foregoing paragraph. Defendants' conduct as alleged herein constitutes a pattern of constitutional violations based either on a deliberate plan by Defendants' or on Defendants' deliberate indifference, gross negligence, or reckless disregard to the safety, security, and rights of Plaintiff Scott.

B. Allegations Regarding Plaintiff Being Pepper Sprayed and Taser Shocked.

15. On October 23, 2006, Plaintiff Scott had not taken his medications for several days prior, went to an automobile dealership located in Ranson, West Virginia and test drove a Lexus SUV automobile. He did not return the vehicle in a timely manner. Plaintiff Scott drove the vehicle west bound on Route 9 towards Martinsburg, West Virginia, and law enforcement officers began pursuit advertising their emergency lights and sirens.

16. Plaintiff Scott drove the vehicle to the sally port entrance of the Eastern Regional Jail, located on Route 9, in Berkeley County, West Virginia.

17. Plaintiff Scott's agitation and paranoia escalated and he locked himself in the vehicle and a deputy sheriff used his ASP baton and broke out the window of the vehicle.

18. Plaintiff Scott was removed from the vehicle by law enforcement officers.

19. Plaintiff Scott did not resist arrest but was pepper sprayed and taser shocked by law enforcement officers.

20. An officer armed with a Taser fired at Plaintiff Scott. One set of Taser prongs hit his skin, the other set lodged in his shirt and eventually he went down on the ground. He was screaming in agony. Taser wires ran from his body to the officer's

weapon. The officer continued to discharge his Taser, multiple times, until another officer pepper sprayed Plaintiff Scott, at which point, the flammable pepper spray ignited the Taser electrical charge, and Plaintiff Scott caught on fire and received severe burns to his body.

21. Paramedics administered care to Plaintiff Scott and he was transported to the hospital.

22. Throughout this incident, Plaintiff Scott presented with a medical problem, not a law enforcement problem. Defendants' acted in deliberate indifference to his medical needs, as alleged below.

C. Allegations Regarding Damages.

23. Plaintiff Scott sustained shocks, severe burns to his body and emotional distress, all in amounts in accordance with proof. Plaintiff Scott incurred medical and other related expenses. Plaintiff Scott sustained general damages, including pain and suffering, in an amount in accordance with proof.

24. The conduct of the individual Defendants' was willful, malicious, oppressive and in reckless disregard for the constitutional rights of Plaintiff Scott, and thus justifying punitive damages against the Defendants' in an amount in accordance with proof.

D. Allegations Regarding Exhaustion of Administrative Remedies

25. Plaintiff timely filed an administrative notice of claim with the City of Ranson, and the Berkeley County Commission, pursuant to West Virginia Code §55-17-3(a). The claims have been ignored and believed denied.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 - DEPRIVATION OF THE RIGHTS OF PLAINTIFF)

(All Defendants except Taser International, Inc.)

26. Defendants', acting under color of state law, deprived Plaintiff Scott of his rights in violation of the Fourth Amendment and without due process of law in violation of the Fourteenth Amendment by use of unreasonable unjustified force and

violence, causing injuries which resulted in Plaintiff Scott's injuries, all without provocation, and all in violation of rights, privileges, and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution.

27. As a proximate result of the foregoing wrongful acts of Defendants', and each of them, Plaintiff Scott sustained severe injuries and general damages, including emotional distress, pain and suffering and special damages, in an amount in accordance with proof.

28. In doing the foregoing wrongful acts, Defendants', and each of them, acted in reckless and callous disregard for the constitutional rights of Plaintiff Scott. The wrongful acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus warranting the award of punitive damages against each individual Defendant in an amount adequate to punish the wrongdoers and deter future misconduct.

SECOND CLAIM FOR RELIEF

(West Virginia Code §61-6-21(b))

(All Defendants except Taser International, Inc.)

29. The United States Constitution, Amendment IV, and the West Virginia Constitution, Art. III § 3-6 guarantees the right of persons to be free from excessive force. Both constitutions guarantee the right to appropriate medical attention for people in police custody. Defendants', by engaging in the wrongful conduct alleged herein, denied these rights to Plaintiff Scott, thus giving rise to claims for damages pursuant to West Virginia Code §61-6-21(b).

30. As a direct and proximate cause of the aforementioned acts of Defendants', Plaintiff Scott was injured as set forth above, and is entitled to statutory damages under applicable West Virginia law, as compensatory and punitive damages according to proof.

31. In doing the foregoing wrongful acts, Defendants', and each of them, acted in reckless and callous disregard for the constitutional rights of Plaintiff Scott.

The wrongful acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus warranting the award of punitive damages against each individual Defendant in an amount adequate to punish the wrongdoers and deter future misconduct.

THIRD CLAIM FOR RELIEF

(Assault and Battery)

(All Defendants except Taser International, Inc.)

32. Defendants' assaulted and battered Plaintiff Scott, causing his shock and burn injuries.

33. As a direct and proximate cause of aforementioned acts of Defendants', Plaintiff Scott was injured as set forth above, and are entitled to compensatory and punitive damages according to proof.

FOURTH CLAIM FOR RELIEF

(Police Negligence)

(All Defendants except Taser International, Inc.)

34. By virtue of the foregoing, Defendants' owed Plaintiff Scott a duty of due care, and that duty was breached in that Defendants' negligence and failure to exercise due care in dealing with Plaintiff Scott proximately caused his burn injuries.

35. As a direct and proximate cause of the aforementioned acts of Defendants', Plaintiff Scott was injured as set forth above, and is entitled to compensatory damages according to proof.

FIFTH CAUSE OF ACTION

(PRODUCTS LIABILITY - NEGLIGENCE)

(Against Defendant Taser International, Inc., and Does)

36. At all times herein mentioned, Defendant Taser International, Inc., and Does were engaged in the business and profession of designing, manufacturing, selling, distributing, installing, fabricating, assembling, buying, inspecting, testing, servicing repairing, marketing, warranting and advertising Taser electronic shock weapons

which these Defendants knew or, in the exercise of reasonable care should have known, would be used without inspection for defects or dangers in their parts, mechanisms or design. Defendant Taser International's product is unreasonably dangerous and defective for use on human beings because, among other reasons, it was sold without warnings as to the effect of multiple shocks, the danger of shocking people who are mental ill, and the effects of Taser shocks cause unnecessary burns, pain, agitation and irritability.

37. Defendant Taser International, Inc., and Does sold Taser ordnance to local law enforcement agencies such as Defendants' without adequate warning or training in its potential for causing burns, pain, agitation and irritability and great bodily injury.

38. At all times herein mentioned, Defendant Taser International, Inc., and Does negligently and carelessly designed, manufactured, sold, distributed, installed, fabricated, assembled, bought, inspected, altered, maintained, serviced, tested, repaired, marketed, warranted, and advertised their unreasonably dangerous and defective Taser ordnance, in that it was capable of causing, and in fact did cause, personal injuries to persons while being used in a manner reasonably foreseeable, thereby rendering the product unsafe and dangerous for use in its intended manner.

39. As alleged above, Defendants' shocked Plaintiff Scott repeatedly, while he was in an irrational and delirious state. As a direct and proximate result of the aforementioned conduct of Defendant Taser International, Inc., and Does, alone and in combination with the wrongful conduct of the other Defendants' as alleged above, Plaintiff Scott was injured and sustained damages as alleged herein, including severe burns to his body.

40. Plaintiff Scott is informed and believe and thereon allege that Defendants Taser International, Inc., and Does acted in a despicable, malicious and oppressive manner, in conscious disregard of the rights of Plaintiff Scott, was likely to be shocked with Taser ordnance by law enforcement officers not adequately warned or trained about the extreme and unreasonable danger of this product, and that the weapons posed an unreasonable risk of serious bodily injury to Plaintiff Scott.

41. Based on these facts, Defendants Taser International, Inc., and Does knew that the Taser ordnance could not be used safely for the purpose for which it was intended, and that this weapon was defective and dangerous, but despite that knowledge, in conscious disregard of the safety of the public, Defendants Taser International, Inc., and Does placed this product on the market without warning customers or the unknowing public of the defects and dangers, and knew when it did so that this weapon would be sold to and used by law enforcement agencies without adequate knowledge of its defects and dangers and expressly and impliedly represented that it was safe for the purpose for which it was intended. In doing the things aforementioned, Defendants Taser International, Inc., and Does were guilty of malice and oppression and despicable conduct, and Plaintiff Scott is therefore entitled to recover exemplary and punitive damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(PRODUCTS LIABILITY - STRICT LIABILITY)

(Against Defendants Taser International, Inc., and Does)

42. Defendants Taser International, Inc., and Does designed, manufactured, sold, distributed, installed, fabricated, assembled, bought, inspected, tested, serviced, marketed, warranted, and advertised the subject Taser ordnance which contained design and/or manufacturing defects, which were capable of causing, and in fact did cause, personal injuries to people while being used in the manner reasonably foreseeable, thereby rendering same unsafe and dangerous for its intended use.

43. As a direct and proximate result of the above-described defects in the subject product, as aforementioned, and the conduct of Defendants Taser International, Inc., and Does as alleged above, in combination with the wrongful conduct of the other Defendants, Plaintiff Scott sustained serious personal injuries and other injuries as alleged herein.

44. With respect to the subject ordnance, Defendants Taser International, Inc., and Does were the designers, assemblers, manufacturers, sellers, distributors, installers,

fabricators, buyers, inspectors, testers, services, repairers, marketers, maintainers, warrantors, and/or advertisers thereof, or were otherwise involved in the stream of commerce to the extent that the law of the State of West Virginia impose strict liability in tort for injuries caused by defects therein.

45. Plaintiff Scott is informed and believe and thereon allege that Defendants Taser International, Inc., and Does knew that the Taser weapon's design, manufacture, assembly, marketing and distribution by them was defective and dangerous; that each of the Defendants knew that because of the defects, the weapon could not be used safely for the purpose for which it was intended; that Defendants, and each of them, knowing that its weapon was defective and dangerous, in conscious disregard of the safety of the public placed this product on the market without warning customers or the unknowing public of the defects and dangers and knew when it did so that this weapon would be sold and used without knowledge of the defects and dangers; and that Defendants and each of them, by placing the defective and dangerous weapon on the market expressly and impliedly represented that it was safe for the purpose for which it was intended. The other Defendants herein, in purchasing and using the defective weapon as herein alleged, did rely on each of the Defendants' representations. In doing the things aforementioned, Defendant Taser International, Inc., and Does and each of them, were guilty of malice, oppression and fraud, and Plaintiff Scott is therefore entitled to recover exemplary and punitive damages in an amount to be determined at trial.

PRAYER

WHEREFORE, Plaintiff Scott prays for judgment as follows:

On All Causes of Action

- (a) Compensatory general damages in the amount of Sixty Million Dollars (\$60,000,000.00) and special damages in accordance with proof;
- (b) Cost of suite necessarily incurred herein; and
- (c) Such further relief as the Court deems just or proper.

On the First, Second, Third, Fourth, Fifth and Sixth Causes of Action

(d) Reasonable attorney's fees and expenses of litigation;

On the First, Second, Third, Fourth, Fifth and Sixth Causes of Action

(e) Exemplary damages against the Defendants in an amount sufficient to make an example of those Defendants and to deter future misconduct.

DEMAND FOR JURY TRIAL

Plaintiff Scott hereby demands trial by jury pursuant to Fed. R. Civ. P. 38(b), and the West Virginia Constitution Article III, § 3-13.

STEVEN C. SCOTT
By Counsel

//s// Sherman L. Lambert, Sr.

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Docket No. 3:07cv138

CITY OF RANSON, W.V., et al.

Defendants'.

CERTIFICATE OF SERVICE

I, Sherman L. Lambert, Sr., Attorney for Plaintiff, Steven C. Scott, do hereby certify that I have served a true copy of the **AMENDED COMPLAINT**, by serving same upon Michael D. Lorensen, Esquire, legal counsel for Defendants', at his business address of Bowles Rice McDavid Graff & Love, PLLC, to Drawer 1419, Martinsburg, WV 25402-1419, by electronic filing with the Clerk of the Court using the CM/ECF system, and by United States Mail, on this 29th day of October 2008.

SHERMAN L. LAMBERT, SR.