

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

GARY CRITES and  
HUNTER CRITES,

Plaintiffs,

v.

CIVIL ACTION NO: 2:18-cv-00415  
The Honorable Thomas E. Johnston

KANAWHA COUNTY SHERIFF'S  
DEPARTMENT, a division of the  
Kanawha County Commission;  
KANAWHA COUNTY COMMISSION,  
a political subdivision of Kanawha  
County, West Virginia;  
J. M. MARTIN, a deputy sheriff of Kanawha County;  
T. J. CUMBERLEDGE, a deputy sheriff of Kanawha County;  
B. J. PAULEY, a deputy sheriff of Kanawha County;  
JOHN DOE #1, a deputy sheriff or sheriff of Kanawha County;  
JOHN DOE #2, a deputy sheriff or sheriff of Kanawha County;  
CITY OF DUNBAR, a municipal corporation; and  
SCOTT HAYES, a police officer of the City of Dunbar,

Defendants.

**AMENDED COMPLAINT**

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1. The plaintiffs, Gary and Hunter Crites, bring this action against the defendants, pursuant to 42 U.S.C. §1983, alleging violations of their constitutional rights. Specifically, the plaintiffs allege that their rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution were violated by the defendants when the defendants

used excessive and wrongful force during the course of unlawfully entering the plaintiffs' home and unlawfully detaining the plaintiffs on or about March 12, 2016.

**PARTIES**

2. The plaintiff, Gary Crites, was at all times relevant herein, a resident of Kanawha County, West Virginia.

3. The plaintiff, Hunter Crites, was at all times relevant herein, a resident of Kanawha County, West Virginia.

4. The defendant, Kanawha County Sheriff's Department, is a division of the Kanawha County Commission and was, at all times relevant herein the public employer for the defendants J. M. Martin, T. J. Cumberledge, B. J. Pauley, and John Doe #1-2 and is located in Kanawha County, West Virginia.

5. The defendant, Kanawha County Commission, is a political subdivision of Kanawha County, West Virginia, and was, at all times relevant herein, the official entity responsible for the oversight of the Kanawha County Sheriff's Department and the oversight and employment of the defendants J. M. Martin, T. J. Cumberledge, B. J. Pauley, and John Doe #1-2.

6. The defendant, J. M. Martin, was at all times relevant herein, employed by the Kanawha County Sheriff's Department and the Kanawha County Commission as a deputy sheriff, acting under the authority of a deputy sheriff of Kanawha County, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, J. M. Martin, is sued only in his individual capacity.

7. The defendant, T. J. Cumberledge, was at all times relevant herein, employed by the Kanawha County Sheriff's Department and the Kanawha County

Commission as a deputy sheriff, acting under the authority of a deputy sheriff of Kanawha County, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, T. J. Cumberledge, is sued only in his individual capacity.

8. The defendant, B. J. Pauley, was at all times relevant herein, employed by the Kanawha County Sheriff's Department and the Kanawha County Commission as a deputy sheriff, acting under the authority of a deputy sheriff of Kanawha County, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, B. J. Pauley, is sued only in his individual capacity.

9. The defendants, John Doe #1-2, were at all times relevant herein, employed by the Kanawha County Sheriff's Department and the Kanawha County Commission as a deputy sheriff or sheriff, acting under the authority of deputy sheriffs or sheriffs of Kanawha County, and were at all times relevant herein acting under the color of the law and within the scope of their employment. The defendants, John Doe #1-2, are sued only in their individual capacities.

10. The defendant, the City of Dunbar, is a municipality in Kanawha County, West Virginia and was, at all times relevant herein the public employer for the defendant Scott Hayes and is located in Kanawha County, West Virginia.

11. The defendant, Scott Hayes, was, at all times relevant herein, employed by the City of Dunbar as a police officer, acting under the authority of a police officer of the City of Dunbar, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, Scott Hayes, is sued only in his individual capacity.

**FACTS**

12. On or about the morning of March 12, 2016, at approximately 3:45 a.m., the plaintiffs were asleep at their home located at 1911 Dunbar Ave., Dunbar, West Virginia, 25064.

13. On or about the morning of March 12, 2016, the defendants and agents of the defendants arrived at the plaintiffs' home and loudly pounded on the door and repeatedly yelled "open up" and "open the door!"

14. The plaintiffs awoke to this pounding and went to the front door.

15. The plaintiff Hunter Crites began to cry from the pounding and yelling.

16. The defendants and agents of the defendants then responded that the plaintiffs should "open up because you're making your old lady cry."

17. During this time, the defendants and agents of the defendants did not identify themselves.

18. The plaintiff Gary Crites then began to reluctantly open the front door with his hands in a defensive position.

19. Once the plaintiff Gary Crites began to open the door, numerous rifles and lights of the defendants and agents of the defendants were pointed at his head.

20. The defendants and agents of the defendants told the plaintiff Gary Crites to put his hands up as rifles were pointed at his head and flashlights shined in his eyes.

21. Then, immediately and forcibly, the defendants and agents of the defendants pushed open the door the rest of the way and entered the plaintiffs' home without consent.

22. Upon entering the plaintiffs' home unlawfully, the defendants and agents of the defendants made physical contact with the plaintiffs, pushing them aside and/or grabbing and pulling them.

23. At this point, the defendants and agents of the defendants did not identify themselves nor did the defendants or agents of the defendants have any of the lights on their vehicles turned on.

24. At this point, the defendants and agents of the defendants did not state why they were in the plaintiffs' home.

25. The defendants and agents of the defendants did not have a warrant to enter the plaintiffs' home.

26. At no point did the plaintiffs give, nor the defendants or agents of the defendants seek, consent to enter the plaintiffs' home.

27. One of the defendants and an agent of the defendants put one of his fingers in the face of the plaintiff Hunter Crites and said "if that car's plates come back to you, you're an accomplice."

28. The defendants and agents of the defendants screamed at the plaintiffs and demanded that the plaintiffs tell them where their attic was.

29. The defendants and agents of the defendants separated the plaintiffs from each other and unlawfully detained the plaintiffs during the unlawful search of the plaintiffs' home.

30. After, the defendants and agents of the defendants raided the plaintiffs' attic and damaged the stairs to the attic.

31. The defendants and agents of the defendants also damaged the plaintiffs' front door and garage door.

32. The defendants and agents of the defendants then stormed through and searched the plaintiffs' home including tossing the items from the bedroom of the plaintiff Gary Crites all over the floor of his room.

33. Then, the defendants and agents of the defendants abruptly left and offered no explanations or reasoning for their illegal entrance into and search of the plaintiffs' home.

34. As a result of these actions, the plaintiffs suffered physical pain and suffering, mental pain and suffering, indignity, embarrassment, humiliation, annoyance, inconvenience, degradation, and emotional distress.

35. The defendants and agents of the defendants did not have probable cause to enter and search the plaintiffs' home.

36. The defendants and agents of the defendants acted in bad faith and without reasonable belief that probable cause existed to enter and search the plaintiffs' home.

37. No reasonable police officer in the defendants and agents of the defendants' positions could have believed that it was reasonable to forcibly enter the plaintiffs' home, point rifles at the plaintiffs' heads, and search the plaintiffs' home without the plaintiffs' consent.

38. At the time the defendants and agents of the defendants entered the plaintiffs' home, it was clearly established as a matter of law that a police officer may not enter an individual's home without probable cause to believe that the individual had committed, was committing, or was about to commit a criminal offense.

39. No reasonable police officer in the position of the defendants and agents of the defendants could have believed that he had legal authority to unlawfully detain the plaintiffs given that the defendants and agents of the defendants knew the plaintiffs were on private property and had not committed, were not committing, or were about to commit a criminal offense.

**FIRST CAUSE OF ACTION**

**(42 U.S.C. §1983 – Excessive Force)**

40. The defendants and agents of the defendants, while acting under the color of law, violated the plaintiffs' constitutional rights.

41. The actions of the defendants and agents of the defendants violated the constitutional rights guaranteed to the plaintiffs under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

42. The actions of the defendants and agents of the defendants were not taken in good faith and were in violation of clearly established law.

43. The defendants and agents of the defendants violated the plaintiffs' constitutional rights, as described and identified herein, by using excessive force and wrongful force during the course of unlawfully entering the plaintiffs' home on or about March 12, 2016.

44. When the defendants and agents of the defendants used excessive force against the plaintiffs, no objectively reasonable police officer could have perceived the force as necessary.

45. As a direct and proximate result of the defendants and agents of the defendants' unconstitutional actions, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;
- D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

46. In addition to these compensatory damages, the plaintiffs also seek to recover, under 42 U.S.C. §1988 the attorney fees and costs incurred during the course of this litigation.

47. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiffs further seek to have the Court order the defendants to undergo additional training and education addressing the defendants' use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

48. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.



**SECOND CAUSE OF ACTION**

**(42 U.S.C. §1983 – Unlawful Search)**

49. The defendants and agents of the defendants, while acting under the color of law, violated the plaintiffs' constitutional rights.

50. The actions of the defendants and agents of the defendants violated the constitutional rights guaranteed to the plaintiffs under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

51. The actions of the defendants and agents of the defendants were not taken in good faith and were in violation of clearly established law.

52. The defendants and agents of the defendants violated the plaintiffs' constitutional rights, as described and identified herein, by unlawfully entering and searching the plaintiffs' home on or about March 12, 2016.

53. The defendants and agents of the defendants' entry into the plaintiffs' home was unlawful, as the defendants and agents of the defendants could not have believed that they had legal authority to enter the plaintiffs' home, given that the plaintiffs were on private property and had not committed, were not committing, or were about to commit a criminal offense.

54. As a direct and proximate result of the defendants and agents of the defendants' unconstitutional actions, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;

D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and

E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

55. In addition to these compensatory damages, the plaintiffs also seek to recover, under 42 U.S.C. §1988 the attorney fees and costs incurred during the course of this litigation.

56. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiffs further seek to have the Court order the defendants to undergo additional training and education addressing the defendants' use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

57. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

### **THIRD CAUSE OF ACTION**

#### **(42 U.S.C. §1983 – Unlawful Detainment)**

58. The defendants and agents of the defendants, while acting under the color of law, violated the plaintiffs' constitutional rights.

59. The actions of the defendants and agents of the defendants violated the constitutional rights guaranteed to the plaintiffs under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

60. The actions of the defendants and agents of the defendants were not taken in good faith and were in violation of clearly established law.

61. The defendants and agents of the defendants violated the plaintiffs' constitutional rights, as described and identified herein, by unlawfully detaining the plaintiffs during the course of unlawfully entering the plaintiffs' home on or about March 12, 2016.

62. When the defendants and agents of the defendants unlawfully detained the plaintiffs, no objectively reasonable police officer could have perceived that action as appropriate or necessary.

63. As a direct and proximate result of the defendants and agents of the defendants' unconstitutional actions, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;
- D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

64. In addition to these compensatory damages, the plaintiffs also seek to recover, under 42 U.S.C. §1988 the attorney fees and costs incurred during the course of this litigation.

65. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiffs further seek to have the Court order the defendants to undergo additional training and education addressing the defendants' use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

66. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

#### **FOURTH CAUSE OF ACTION**

##### **(State Constitutional Violations)**

67. This cause of action alleges a constitutional tort action under the West Virginia Constitution, pursuant to the common law of West Virginia, and specifically is not filed pursuant to 42 U.S.C. §1983 or any other federal statute.

68. The actions of the defendants and agents of the defendants violated the constitutional rights guaranteed to the plaintiffs under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution.

69. The actions of the defendants and agents of the defendants also violated the constitutional rights guaranteed to the plaintiffs under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

70. The actions of the defendants and agents of the defendants were not taken in good faith and were in violation of clearly established law.

71. The defendants and agents of the defendants violated the plaintiffs' constitutional rights, as described and identified herein, when the defendants and agents of the defendants used excessive force and wrongful force during the course of unlawfully entering and searching the plaintiffs' home and when the defendants and agents of the defendants unlawfully detained the plaintiffs on or about March 12, 2016.

72. The defendants Kanawha County Sheriff's Department and Kanawha County Commission are vicariously liable for the acts of the defendants J. M. Martin, T. J. Cumberledge, B. J. Pauley, and John Doe #1-2 committed within the scope of their employment.

73. The defendant City of Dunbar is vicariously liable for the acts of the defendant Scott Hayes committed within the scope of his employment.

74. As a direct and proximate result of the defendants and agents of the defendants' unconstitutional actions, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;

D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and

E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

75. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiffs further seek to have the Court order the defendants to undergo additional training and education addressing the defendants' use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

76. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

#### **FIFTH CAUSE OF ACTION**

##### **(Invasion of Privacy – Unreasonable Intrusion upon the Seclusion of Another)**

77. The defendants and agents of the defendants unreasonably intruded upon the seclusion of the plaintiffs which proximately caused their injuries.

78. As a direct and proximate result of the defendants and agents of the defendants' intrusion upon the seclusion of the plaintiffs, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;

C. Injuries resulting from the defendants' conduct;

D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and

E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

79. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

#### **SIXTH CAUSE OF ACTION**

##### **(Battery)**

80. The defendants and agents of the defendants committed batteries upon the plaintiffs which proximately caused their injuries.

81. As a direct and proximate result of the defendants and agents of the defendants' batteries, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

A. Physical pain and suffering, past and future;

B. Mental pain and suffering, past and future;

C. Injuries resulting from the defendants' conduct;

D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and

E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

82. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

### **SEVENTH CAUSE OF ACTION**

#### **(Assault)**

83. The defendants and agents of the defendants committed assaults upon the plaintiffs which proximately caused their injuries.

84. As a direct and proximate result of the defendants and agents of the defendants' assaults, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;
- D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

85. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

### **EIGHTH CAUSE OF ACTION**



**(Negligence)**

86. The defendants and agents of the defendants were negligent in the performance of their duties within the scope of their employment and such negligence was the proximate cause of the plaintiffs' injuries.

87. As a direct and proximate result of the defendants and agents of the defendants' negligence, the plaintiffs seek to recover damages in an amount to be determined by the jury to compensate them for:

- A. Physical pain and suffering, past and future;
- B. Mental pain and suffering, past and future;
- C. Injuries resulting from the defendants' conduct;
- D. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- E. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

88. The defendants and agents of the defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiffs, thereby entitling the plaintiffs to punitive damages in an amount to be determined by the jury.

**PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs, Gary and Hunter Crites, pray for the following relief:

- 1. Damages set forth in their Amended Complaint, including punitive damages in an amount to be determined by the jury;
- 2. Pre-judgment interest as provided by law;

3. Attorney fees and costs; and
4. Such further relief as this Court may deem just and equitable.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES TRIABLE TO A  
JURY.

GARY CRITES and  
HUNTER CRITES  
By Counsel

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