

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §1331, 28 U.S.C. § 1343, and 42 U.S.C. §1983.

3. Jurisdiction for state law claims against all Defendants pursuant to the law of the State of Montana is conferred upon this Court pursuant to 28 U.S.C. §1367.

4. Venue in this case is proper under 28 U.S.C. §1391 and LR 1.2. Wolf Point is located in the Great Falls Division of the United States District Court for the District of Montana. The events giving rise to the claims in this case occurred in this judicial district.

5. Because Plaintiffs make no allegations against the State of Montana, pursuant to MCA §2-9-301, they are not required to file administrative claims against the City of Wolf Point prior to filing this action.

THE PARTIES

6. Plaintiffs are citizens of the State of Montana and a residents of Wolf Point, Montana. Plaintiffs are enrolled tribal members of the Fort Peck Indian Reservation.

7. Based on information and belief, Defendant Chris Dschaak is a citizen of the State of Montana and a resident of Roosevelt County, Montana. Defendant

Dschaak was mayor of the City of Wolf Point at all times pertinent to this matter.

He is sued in both his individual and official capacities.

8. Defendant City of Wolf Point is a municipality of the State of Montana and is located in Roosevelt County.

FACTUAL ALLEGATIONS

9. On or about April 17, 2019, at about 8:00 a.m., Plaintiffs Violet Siljenberg, Corey Schindler, and Danny Ackerman were drinking vodka near the gazebo in a park in Wolf Point, Montana.

10. Violet was holding a pint bottle of vodka.

11. Defendant Dschaak approached them carrying a baseball bat.

12. Defendant Dschaak held the bat to Violet's face and told Violet to give him the vodka.

13. Violet gave Defendant Dschaak the vodka.

14. Defendant Dschaak told Violet, Danny, and Corey that the next time he saw them with vodka he was going to hit them with the bat.

15. Then Defendant Dschaak struck Corey's left arm with the bat and shoved Danny's left shoulder with the bat.

16. Defendant Dschaak then told the three to get out of the park, and they left the park.

17. On or about April 17, 2019 at about 7:00 p.m., Adam Runs Through, Matthew Black Eagle, Harris McConnell, Clint Jackson, and Olivia Jorgenson were standing in a circle on tribal grounds east of the Albertson's store in Wolf Point, Montana, singing an Assiniboine song.

18. Defendant Dschaak drove up to them and got out of his vehicle and approached them carrying a baseball bat.

19. Defendant Dschaak jabbed Adam in the chest with the baseball bat and told them, "I hate you fucking Indians. We should have wiped you out a long time ago."

20. Harris told Defendant Dschaak, "Fuck you."

21. Defendant Dschaak hit Harris in the chest with the bat three times.

22. Then Defendant Dschaak hit Clint in the head with the baseball bat.

23. Defendant Dschaak told them, "Get the fuck out of here, this is my town."

24. Adam, Matthew, Harris, Clint, and Olivia all left the area.

COUNT 1

42 USC § 1983

25. Plaintiffs hereby incorporate all prior paragraphs.

26. At all times in which he interacted with Plaintiffs on April 17, 2019, Defendant Dschaak acted under color of law, statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of the City of Wolf Point.

27. At all times in which he interacted with Plaintiffs on April 17, 2019, Defendant Dschaak acted within the course and scope of his employment.

28. Defendant Dschaak, while acting under color of law, deprived Plaintiffs of their civil rights under the Fourteenth Amendment to equal protection and due process.

29. The acts and omissions of Defendant Dschaak, while carried out under color of law, have no justification or excuse in law, and instead constitute a gross abuse of governmental authority and power, shock the conscience, are fundamentally unfair, arbitrary and oppressive, and unrelated to any activity in which governmental officers may appropriately and legally undertake in the course of protecting persons or property, or ensuring civil order. The above acts and omissions were consciously chosen from among various alternatives.

30. Defendant Dschaak struck Plaintiffs with a baseball bat in violation of rights guaranteed to them under the United States Constitution.

31. This unnecessary and unwarranted use of force was an unlawful and excessive use of force, in violation of Plaintiffs' rights.

32. Each of the foregoing acts and/or omissions in this Count directly and proximately caused or contributed to Plaintiffs' constitutional deprivations, injuries, and damages. Plaintiffs suffered and will continue to suffer great mental and physical pain, suffering, anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to reputation, and apprehension, which have caused Plaintiffs to sustain damages in a sum to be determined at trial.

COUNT 2

42 USC § 1983

33. Plaintiffs hereby incorporate all prior paragraphs.

34. Defendant City of Wolf Point established policies, customs, and practices that caused the violation of Plaintiffs' rights under the United States Constitution.

35. The policies, customs, and practices implicitly or explicitly adopted by Defendant City of Wolf Point amounted to deliberate indifference to and conscious disregard of Plaintiffs' constitutional rights and ratification of violation of those rights.

36. Defendant Dschaak is the official with final policy-making authority for the City of Wolf Point, thus the constitutional violations were acts of official governmental policies.

37. Each of the foregoing acts and/or omissions in this Count directly and proximately caused or contributed to Plaintiffs' constitutional deprivations, injuries, and damages. Plaintiffs suffered and will continue to suffer great mental and physical pain, suffering, anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to reputation, and apprehension, which have caused Plaintiffs to sustain damages in a sum to be determined at trial.

COUNT 3

MONTANA CONSTITUTIONAL RIGHTS

38. Plaintiffs hereby incorporate all previous paragraphs.

39. Pursuant to the Montana Constitution, *see Dorwart v. Caraway*, 58 P.3d 128 (Mont. 2002), Plaintiff have the fundamental, inalienable, and self-executing rights to individual privacy; to be secure in their person, papers, home, and effects from unreasonable searches and seizures; and not to be deprived of life, liberty, or property without due process of law.

40. Defendants' acts and omission related to the incidents involving Plaintiffs on April 17, 2019 violated Plaintiffs' constitutional rights.

41. Plaintiffs have the right to seek recourse against those who violate their constitutional rights.

42. Each of the foregoing acts and/or omissions in this Count directly and proximately caused or contributed to Plaintiffs' constitutional deprivations, injuries, and damages, and they are entitled to compensatory damages and attorneys' fees for Defendants' violations of their state constitutional rights.

COUNT 4

NEGLIGENCE

43. Plaintiffs hereby incorporate all previous paragraphs.

44. At all times pertinent to this Complaint, Defendant Dschaak was subject to a duty of care under state law to protect Dee's constitutional, statutory, and common law rights. The conduct of Defendant Dschaak as set forth in this Complaint does not comply with the standard of care, and included negligent use of excessive force; negligent enactment, enforcement, and violation of policies and procedures; negligent violation of Dee's constitutional, statutory, and common law rights; and negligent performance of official duties.

45. As a direct and proximate result of Defendants' negligence, Plaintiffs suffered injuries.

COUNT 5

ASSAULT AND BATTERY

46. Plaintiffs hereby incorporate all previous paragraphs.

47. Defendant Dschaak intentionally made harmful or offensive contact with Plaintiffs.

48. Defendant Dschaak's intentional acts constituted assault and battery upon Plaintiffs, and directly and proximately caused injuries to Plaintiffs.

COMPENSATORY DAMAGES

49. As a direct result of Defendants' unlawful conduct, Plaintiffs suffered violations of their constitutional rights as set forth above.

50. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs suffered physical and emotional pain and injuries.

PUNITIVE DAMAGES

51. Plaintiffs have filed this action against Defendant Dschaak in his individual and official capacities.

52. Defendant Dschaak acted knowingly, deliberately, intentionally, and maliciously without regard for Plaintiffs' rights, interests, and well-being.

53. Defendant Dschaak exhibited a reckless or callous disregard for Plaintiffs' constitutional, statutory, and common law rights; Defendant Dschaak intentionally violated federal law; and/or Defendant Dschaak's conduct was precipitated by evil motive or intent. Accordingly, imposition of punitive damages is proper and warranted under 42 USC §§1983 and 1985.

54. Defendant Dschaak's unlawful acts and omissions were willful and/or reckless; Defendants Dschaak deliberately acted with indifference to the high probability of injury to Plaintiffs. Such conduct justifies the imposition of punitive damages under MCA §§ 27-1-220, 221 in the amount sufficient to punish Defendant Dschaak and to serve as a warning to other persons and legal entities similarly situated that conduct of the kind engaged in by Defendant Dschaak is unacceptable in our society and will not be tolerated.

ATTORNEYS' FEES

55. Pursuant to 42 USC § 1988, the Court may allow an award of attorneys' fees to Plaintiffs if they prevail on claims asserted under 42 USC § 1983.

56. Plaintiffs are entitled to recover reasonable attorneys' fees for violations of state constitutional rights under Montana's private attorney general doctrine.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief:

1. For damages in a reasonable amount to compensate them fully for deprivation of their constitutional rights;

2. For damages in a reasonable amount to compensate them fully for physical injuries, loss of opportunity, pain and suffering, and past and future emotional distress;
3. For punitive damages in an amount sufficient to punish Defendants and serve as a warning to other similarly situated persons and entities that such conduct will not be tolerated;
4. For declaratory and injunctive relief;
5. For attorneys' fees pursuant to 42 USC § 1988;
6. For reimbursement of costs and expenses of suit; and
7. For such further relief as the Court deems fair and just.

Dated this 8th day of October, 2020.

/s/Timothy M. Bechtold
BECHTOLD LAW FIRM

Attorneys for Plaintiff