

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION**

ROBERT FRANCIS HOWARD, CASE FILE 20 CV _____/_____

Plaintiff,

COMPLAINT

vs.

JURY DEMANDED

BEN WEIDEMANN, Badge #820
in his individual capacity acting under color of law as a White Earth Tribal Police Officer,

and

BRANDON MEYER, Badge #806,
in his individual capacity acting under color of law as a White Earth Tribal Police Officer,

Defendants.

INTRODUCTION

Plaintiff Robert Francis Howard, a White Earth Band of Ojibwe Native American Elder and honorably discharged veteran of the United States Army, suffering from permanently disabling, service-connected hearing impairment, sues Officer Ben Weidemann and Brandon Meyer, jointly and severally, for false arrest and infliction of excessive, unreasonable force acting under color of law as a uniformed White Earth Band of Ojibwe peace officer, acting under color of law, on 27 April 2018 in White Earth Township, on the White Earth Reservation, in Becker County, Minnesota, in violation of his clearly protected right under the Fourth and Fourteenth Amendments to the United States Constitution to be free from infliction of excessive, unreasonable force and his peaceful verbal communication to Officer Weidemann. He sues Officer Weidemann and

Officer Brandon Meyer jointly and severally for common law battery for the same misconduct. He demands a jury trial.

JURISDICTION

1. This lawsuit asserts claims under United States law, specifically, U.S. Const. amend. IV and XIV, through 42 U.S.C. § 1983.
2. 28 U.S.C. § 1331 vests jurisdiction in this court.

VENUE

3. The substantial number of events at the heart of this lawsuit took place in White Earth Township, Becker County, Minnesota.
4. Plaintiff lays venue in the District of Minnesota per 28 U.S.C. § 1291.
5. Plaintiff lays venue in the Sixth Division of the District of Minnesota per LR D. Minn. 83.11.

PARTIES

6. Plaintiff Robert Francis Howard is an adult individual.
7. Mr. Howard domiciles at 37560 Spirit Lake Lane, Waubun, Minnesota 56689.
8. Mr. Howard is a White Earth Band of Ojibwe Native American Elder.
9. Mr. Howard earned an Honorable Discharge from the United States Army.
10. Mr. Howard is retired, from service in the Bureau of Indian Affairs as a realty officer.
11. Mr. Howard has a permanent, service-connected hearing disability that necessitates the use of hearing aids and, at all times relevant to this action, substantially impaired Mr. Howard's major life activity of hearing, by being unable to hear ordinary volume

voices outdoors without hearing aids.

12. Mr. Howard receives treatment for his service-connected hearing impairment at the United States Department of Veterans Affairs Health Administration's Veterans' Affairs Medical Centers.

13. On the date of 27 April 2018, Mr. Howard's hearing aids were not functioning properly.

14. Mr. Howard had a scheduled appointment for 11 May 2018 at the Fargo, ND Veterans Administration Medical Center for hearing examination and repair-or-replacement of his hearing aids; the VA upgraded his hearing disability to 40%.

15. Mr. Howard suffers the permanently disabling disease of diabetes, which he has suffered for more than twenty years, which substantially affects his major life activities of digestion, eating, and blood circulation.

16. Mr. Howard suffers from the chronic disability of coronary artery disease, which slows Mr. Howard down by substantially his major life activities of breathing and blood circulation.

17. At all times relevant to the lawsuit, Mr. Howard communicated to Defendant Weidemann that he was hard of hearing.

18. Defendant Ben Weidemann is an adult individual.

19. At all times relevant to this lawsuit, Defendant Weidemann acted under color of law as a uniformed White Earth Reservation peace officer.

20. At all times relevant to this lawsuit, the White Earth employed Defendant Weidemann as an active duty, uniformed peace officer.

21. At all times relevant to this lawsuit, Defendant Weidemann acted in the course and scope of his employment as a uniformed White Earth Indian Reservation peace officer.
22. Defendant Brandon Meyer is an adult individual.
23. At all times relevant to this lawsuit, Defendant Brandon Meyer acted under color of law as a uniformed White Earth Reservation peace officer.
24. At all times relevant to this lawsuit, the White Earth employed Defendant Brandon Meyer as an active duty, uniformed peace officer.
25. At all times relevant to this lawsuit, Defendant Brandon Meyer acted in the course and scope of his employment as a uniformed White Earth Indian Reservation peace officer.

THE FACTS

26. On 27 April 2018, Plaintiff drove to the Post Office in White Earth to check his wife's and his post office box for any mail deliveries.
27. Plaintiff visits the post office as a daily routine since retirement; the trip occasionally includes a trip to the local MW Convenience Store for the daily newspaper.
28. Plaintiff exited my vehicle to enter the Post Office.
29. Plaintiff faintly heard some yelling and turned around and noted a Police Officer, later identified as Ben Weidemann, looking in his direction.
30. At that point Plaintiff realized his hearing aid was again not working as it should.
31. Plaintiff tried to explain his hearing aid dilemma to Weidemann, but Weidemann would not listen.

32. At all times Mr. Howard was peaceful, soft-spoken, and civil-tongued without profanity in his interactions with Weidemann and Meyer.
33. The Fargo Veteran Administration Hospital Audiology Department, during that time period, was addressing Plaintiff's hearing aid issue.
34. Plaintiff had a scheduled appointment to receive new hearing aids on May 11, 2018 at the Fargo VA, from follow-up visits in April 9, and March 21, 2018.
35. This appointment was due to a lost hearing aid for his left ear and the follow-up process in reference to the diminishment of Plaintiff's speech discrimination from 94% to 36% by the VA Staff Audiologist Jennifer Maershbecker.
36. This was later addressed by the Chief Audiologist Doctor, John Jones, M.D., in a scheduled March 21, 2018, Otolaryngology consultation appointment who recommended that I prepare for a future MRI in reference to my diminished speech discrimination.
37. At the time of the 27 April 2018 incident, Plaintiff was already received Veterans Administration permanent disability benefits for service-connected hearing loss, then rated at 10%; after 11 May 2018, the VA upgraded his hearing loss to 40%.
38. Weidemann falsely accused Plaintiff of drinking alcohol and smelling of alcohol.
39. At that point Weidemann called another police officer who showed up; the second officer was later identified as Brandon Meyer.
40. Together the Defendants gave Plaintiff an alcohol test that did not register on their test equipment, both officers attempted four times, but each reading came out zero alcohol.

41. Plaintiff told them that he was diabetic and did not drink alcohol.
42. Plaintiff also demanded politely whether he were speeding, and, if so, how fast was he going.
43. Plaintiff reasonably believed he was clocked by radar.
44. The only answer Weidemann gave to Plaintiff was that he was speeding, with no specific speed, no specific speed limit, and no specific location where Plaintiff was allegedly speeding.
45. Weidemann issued Citation No. 001918001676 to Plaintiff.
46. The citation indicates an alcohol test was taken, but no speeding indicator reading.
47. The alleged speeding ticket, which listed the Becker County Attorney as the prosecutor, not the White Earth Solicitor General as prosecutor, was dismissed on or about 28 December 2018.
48. On information and belief, the citation indicated the Becker County Attorney as prosecutor because Defendants were acting as the agents of Becker County, not White Earth Band, in enforcement of a civil-regulatory statute on reservation land.
49. Clearly established law, in Public Law 280 and *State v. Stone*, 572 N.W.2d 725 (Minn. 1997), that any reasonably trained peace officer acting under color of law would have known, comprehended, and obeyed on 27 April 2018, holds that civil-regulatory citations, including speeding on reservation lands, cannot be prosecuted by Minnesota state prosecutors or their agents.
50. It was shortly after the alcohol conversation that Weidemann and Meyer jointly and severally handcuffed Plaintiff.

51. Weidemann and Meyer shoved Plaintiff against his car.
52. The Defendants then forced Plaintiff into the rear of the police vehicle that appeared to have no room for passengers.
53. Plaintiff was lodged between the front seats and back seat where the space was only about a foot-and-a-half in width.
54. Plaintiff's body was wedged into at a two o'clock position.
55. Approximately 15 minutes elapsed before the Defendants extracted Plaintiff from the vehicle.
56. Plaintiff could not move his hands because of the handcuffs.
57. The handcuffs were painfully tight located behind my back and appeared to be caught on the seatbelt fasteners.
58. The handcuffs left welts on both wrists.
59. Plaintiff's jean pocket was also torn.
60. Plaintiff's left arm with the tight handcuffs was pulled in way that caused enormous pain to Plaintiff.
61. Plaintiff believed that his left shoulder was pulled out of its socket because of the pain and the way his left shoulder did not move properly.
62. On Plaintiff's scheduled May 2, 2018, diabetic appointment, Doctor Schaffer, Plaintiff's Diabetic Team Doctor, indicated Plaintiff's health was generally good and that his diabetes was in check.
63. It was then Mr. Howard explained about his shoulder and arm and the pain.
64. Mr. Howard briefly told Dr. Schaffer about the 27 April 2018 incident with the

White Earth Police.

65. Dr. Schaffer recommended that Plaintiff have x-rays whereby, Dr. Schaffer contacted X-Ray, and the X-Ray results revealed a possible rotator cuff injury.

66. Dr. Schaffer rendered his diagnosis, his recommendations for activity, and prescription medications due to the injury.

67. Subsequent medical examination revealed that Plaintiff suffered a torn left shoulder rotator cuff at the joint and several hands of the Defendants on 27 April 2018.

68. Plaintiff suffered no criminal charges from the incident.

69. Plaintiff suffered the following physical injuries:

- Torn left shoulder rotator cuff;
- Extreme pain;
- Bruises around both wrists;
- Immobility of his left arm;
- Inability to do basic home chores, including sweeping;
- Inability to do home projects, including assembling a carport Plaintiff had purchased before the 27 April 2018 incident

70. Plaintiff suffered psychological injuries, including

- Recurrent nightmares;
- Lingering pain; and
- Severe emotional distress at the hands of the Defendants that required continued medical care.

71. Plaintiff required medical care from

- The Fargo Veterans Administration Medical Center; and
- White Earth Health Center

72. Plaintiff's medical bills total in excess of \$5,000.00.

73. Plaintiff suffered in excess of \$75,000.00 in compensatory, noneconomic damages, or such as a jury may award.

74. Defendants, jointly and severally, while acting under color of law as uniformed tribal police officers, by falsely accusing Plaintiff of drinking, by subject Plaintiff to multiple sobriety breath tests without any probable cause to seize him, let alone stop him, and by falsely accusing him of speeding without disclosing his alleged speed or disclosing any electro-optical (i.e., laser or radar) device to show he had been speeding, acted without probable cause either to stop him or lay hands on him, and acted with callous indifference to his safety and his constitutionally protected rights to be free from unreasonable seizure of his person and unreasonable infliction of excessive, unreasonable force to Plaintiff's person.

75. Plaintiff realleges and reasserts each and every claim and averment below

CLAIM I: EXCESSIVE FORCE (U.S. CONST. AMEND. IV AND XIV, THROUGH 42 U.S.C. § 1983)

76. Plaintiff realleges and reasserts each and every claim and averment above.

77. Defendants Ben Weidemann and Mike Brandon Meyer, jointly and severally, under color of law in their respective individual capacities as uniformed White Earth Tribal Police Officers, unreasonably seized and inflicted excessive, unreasonable force upon the person of Plaintiff Robert F. Howard, without lawful

authority, in violation of his clearly established Fourth Amendment right to be free from excessive, unreasonable force.

78. Defendants Weidemann and Brandon Meyer inflicted physical, emotional, special medical damages, and noneconomic damages upon plaintiff in excess of \$75,000.00, or such sum as a jury may award.

CLAIM II: COMMON LAW BATTERY

79. Plaintiff realleges and reasserts each and every claim and averment above.

80. Defendants Weidemann and Brandon Meyer, jointly and severally, made offensive contact against the person of Plaintiff Robert F. Howard, without consent or other lawful authority, in violation of his common law right to be free from offensive bodily contact or violation to dignity and security of his person.

81. Defendants Weidemann and Brandon Meyer, jointly and severally, inflicted physical, emotional, special medical damages, and noneconomic damages upon plaintiff in excess of \$75,000.00, or such sum as a jury may award.

**CLAIM III: UNREASONABLE SEIZURE (FALSE ARREST AND CONFINEMENT)
IN VIOLATION OF U.S. CONST. AMEND. IV AND XIV, PROTECTED
THROUGH 42 U.S.C. § 1983)**

82. Plaintiff realleges and reasserts each and every claim and averment above.

83. Defendants Weidemann and Brandon Meyer, jointly and severally, under color of law, unreasonably seized and caused the confinement of Plaintiff Robert F. Howard in the cramped, torturous position in the back of their squad car, without lawful authority, without warrant, without probable cause, and in direct violation of

Plaintiff's clearly established Fourth and Fourteenth Amendment right to be free from warrantless, unreasonable seizure.

84. Defendants Weidemann and Brandon Meyer, jointly and severally, inflicted physical, emotional, special medical damages, and noneconomic damages upon plaintiff in excess of \$75,000.00, or such sum as a jury may award.

CLAIM IV: COMMON LAW FALSE ARREST

85. Plaintiff realleges and reasserts each and every claim and averment above.

86. Defendants Weidemann and Brandon Meyer, jointly and severally, without consent or other lawful authority, falsely arrested Plaintiff Robert F. Howard in violation of his common law right to be free from false arrest.

87. Defendants Weidemann and Brandon Meyer, jointly and severally, inflicted upon Plaintiff physical, emotional, special medical damages, and noneconomic damages upon plaintiff in excess of \$75,000.00, or such sum as a jury may award.

WHEREFORE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

88. Judgment against the Defendants, jointly and severally;

89. Compensatory damages against the Defendants, jointly and severally, in excess of \$75,000, or such sum as the jury awards;

90. Special medical damages against the Defendants, jointly and severally, in excess of \$5,000 for medical bills, or such sum as the jury may award;

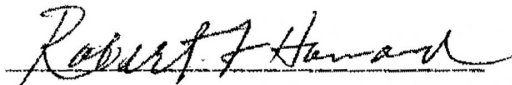
91. Special damages for Plaintiff's torn shirt and jeans;

92. Punitive damages against Defendants, jointly and severally, in excess of \$75,000, or such sum as the jury may award, for Plaintiffs Claims I and III;

- 93. Prejudgment interest against the Defendants, jointly and severally;
- 94. Preverdict interest against the Defendants, jointly and severally;
- 95. Costs and disbursements;
- 96. Reasonable attorney fees against Defendants Weidemann and Meyer for Plaintiff's Claims I and III, per 42 U.S.C. §1988; and
- 97. All legal and equitable relief appropriate under the circumstances.
- 98. PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS TRIABLE TO THE JURY.

In State of Minnesota, Becker County, in accordance with 28 U.S.C. §1746 and Minn. Stat. §358.116, I, Plaintiff Robert Francis Howard, under penalty of perjury, declare the above complaint to be true and correct, according to my present knowledge, with the exception of all statements made on information and belief, and all legal notations imparted to this Complaint by counsel.

Date: 4-21-20



Robert Francis Howard

Reviewed and signed in accordance with Fed. R. Civ. P. 11.

Date: 23 April 2020

Respectfully:

PETER J. NICKITAS LAW OFFICE

/s/ *Peter J. Nickitas* (electronically signed)

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