

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
CASE NO.: 5:10-CV-62**

CHARLES PAYNE,)
 Plaintiff,)
))
vs.))
))
THE CITY OF RALEIGH, RALEIGH)
POLICE DEPARTMENT, P.T.)
MORRISON, JOHN DOE I, (in their)
individual and official capacities as)
as employees of the City of Raleigh))
JOHN DOE, II, JOHN DOE, III and)
JUST OURS, LLC d/b/a)
THE POURCH/THE BASSMENT)
 Defendants.)

COMPLAINT

NOW COMES Plaintiff, Charles Payne, and alleges as follows:

PARTIES

1. Plaintiff is a citizen and resident of Wake County, North Carolina and suffers from cerebral palsy, a disease that affects the neurological system of the human body, which, in part, controls body movement and muscle coordination.
2. Defendant Raleigh Police Department is an agency of the city of Raleigh and employs and supervises P.T. Morrison and John Doe I.
3. Defendants P.T. Morrison and John Doe I are, upon information and belief, residents and citizens of Wake County. At all times pertinent to the allegations set forth in this Complaint, the officers were employed by the Raleigh Police Department. Defendants P.T. Morrison and John Doe I are sued in both their individual and official capacities as employees of the Raleigh Police Department.
4. Defendant Just Ours, LLC d/b/a The Pourch/The Bassment is a limited liability corporation in the State of North Carolina with its principal place of business located in Raleigh, North Carolina.
5. Defendant John Doe, II is, upon information and belief, a resident of Wake County, North Carolina and an employee of The Pourch.
6. Defendant John Doe, III is, upon information and belief, a resident of Wake

County, North Carolina and a part time employee of The Pouch.

7. At the time of the alleged incident complained of herein and at all times pertinent hereto, Defendants P.T. Morrison and John Doe I, acted under color of law, of a statute, ordinance, regulation, custom, or usage.

JURISDICTION

8. The jurisdiction of this Court is invoked under 28 U.S.C. § 1331 and 1343, 42 U.S.C. § 1983 and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the principles governing pendant jurisdiction.

FACTS

9. On or about Friday, August 8, 2008 at 11:45 p.m., the Plaintiff entered The Pouch/The Bassment, a nightclub located at 407 Glenwood Avenue in Raleigh, North Carolina to join up with a friend.
10. On or about 11:45p.m., John Doe II, a bouncer ("Bouncer") at The Pouch/The Bassment checked Plaintiff's identification to verify that he was at least twenty-one (21) years of age.
11. After the Bouncer verified Plaintiff's age, Plaintiff proceeded to the downstairs area of The Pouch/The Bassment known as "The Bassment" in an effort to find his friend.
12. After Plaintiff entered "The Bassment" and realized his friend was not there, he walked back up the stairs toward "The Pouch" area of the nightclub.
13. At the top of the stairs of The Pouch/The Bassment, Plaintiff encountered the Bouncer.
14. The Bouncer told the Plaintiff "You had your limit so you need to leave."
15. Plaintiff immediately stated to the Bouncer, "I have not been drinking. I have cerebral palsy."
16. Plaintiff then turned to an off-duty uniformed Raleigh Police Officer, John Doe III, ("Off-Duty Officer") working at The Pouch and asked, "Sir, did you hear what he said?"
17. The Off-Duty Officer responded by saying, "Sir, you need to leave because you are too drunk."

18. The Plaintiff then stated to the Off-Duty Officer, "No I am not drunk. I have cerebral palsy."
19. The Off-Duty Officer told Plaintiff "Look you are too drunk. You need to leave."
20. Again the Plaintiff informed the Off-Duty Officer that he was not drunk but had cerebral palsy.
21. After the second attempt at explaining to the Off-Duty Officer that he was not drunk but had a disability, Plaintiff turned toward the stairs leading to "The Pouch" area of the nightclub.
22. The Off-Duty Officer immediately grabbed Plaintiff from behind and threw him to the ground.
23. While on the ground, the Off-Duty Officer and the Bouncer continued holding him down despite his lack of resistance.
24. The Off-Duty Officer then grabbed Plaintiff's arms attempting to secure handcuffs on him.
25. The Off-Duty Officer handcuffed Plaintiff's right wrist but due to Plaintiff's cerebral palsy, he was unable to handcuff the other wrist because of the limited mobility of that arm.
26. The Off-Duty Officer and the Bouncer then repeatedly kicked Plaintiff in an effort to secure the handcuffs on his wrist.
27. At some point during the altercation, P.T. Morrison and John Doe I, the two on-duty Raleigh police officers ("Officers" or "P.T. Morrison and John Doe I"), arrived at the scene and joined the Off-Duty Officer and/or the Bouncer in kicking and otherwise assaulting the Plaintiff.
28. One of the Officers pressed his knee into Plaintiff's chest with such a great amount of force that Plaintiff began to feel faint and was gasping for air.
29. Finally the Officers secured the handcuffs behind Plaintiff's back despite the fact that it was extremely damaging and painful to Plaintiff because of his cerebral palsy.
30. While Plaintiff was on the ground, a female witness was yelling "Please don't do this to him. Please don't; he's handicapped."

31. The Officers threw the Plaintiff into a police car and then tied the Plaintiff's legs together with rope.
32. On the way to the police station, the Officers scrolled through the Plaintiff's cellular phone and taunted the Plaintiff.
33. Upon arriving at the police station parking garage, the Officers again threw the Plaintiff to the ground and demanded that he "walk." Plaintiff responded that he could not stand up nor could he walk because his legs were tied together by the rope. One of the Officers said "if we had pepper spray he would get his ass up." The Plaintiff also heard one of the Officers say "we have to get our stories straight because he is a drunk autistic kid."
34. The Officers put the Plaintiff in a wheelchair and pushed him into the police station.
35. The Officers refused to allow the Plaintiff to make a telephone call and took him to a room at the police station where another individual read the Plaintiff his Miranda Rights and gave the Plaintiff a court date.
36. The Plaintiff was then taken to a rubberized room and placed on the floor where he remained handcuffed for approximately twenty (20) minutes.
37. The Plaintiff's father picked up the Plaintiff at the police station and then immediately took the Plaintiff to Duke Raleigh Hospital located in Raleigh on Wake Forest Road.
38. At the Hospital several pictures were taken of the Plaintiff's injuries and a Blood Test was administered to the Plaintiff. The result of the blood test registered the lowest possible reading indicating that there was no alcohol in the Plaintiff's system.

**COUNT I: DEPRIVATION OF CONSTITUTIONAL RIGHTS BY OFFICERS OF
RALEIGH POLICE DEPARTMENT
42 U.S.C. § 1983**

39. Plaintiff reasserts and incorporates by reference herein the allegations set forth in paragraphs 1 through 38.
40. At all time relevant to the acts complained of herein, P.T. Morrison and John Doe I, as law enforcement officers of the Raleigh Police Department, were acting within the scope and authority of their professional responsibilities and employment and therefore under the color of State law.

41. The above-described intentional beating of Plaintiff by P.T. Morrison and John Doe I, Officers of the Raleigh Police Department, violated the rights of Plaintiff as guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. The beating of the Plaintiff by P.T. Morrison and John Doe I caused the Plaintiff grievous bodily injury and emotional distress for which he is entitled to redress under 42 U.S.C. § 1983. The actions of P.T. Morrison and John Doe I were neither objectively reasonable or de minimus.

COUNT II: ASSAULT AND BATTERY

42. Plaintiff reasserts and incorporates herein by reference the allegations set forth in paragraphs 1 through 41.
43. The conduct of John Doe II and John Doe III, in grabbing the Plaintiff, throwing him on the ground, and kicking and otherwise beating the Plaintiff constituted assault and battery for which John Doe II and John Doe III are individually liable.
44. The conduct of P.T. Morrison and John Doe I, in their arrest of the Plaintiff, the gratuitous use of force and violence when the Plaintiff was handicapped, unarmed and did not pose any type of threat to Defendants or others, was totally unjustified, and constitutes assault and battery for which the Defendants P.T. Morrison and John Doe I are individually liable.
45. As a proximate result of the assault and battery committed by the Officers and John Doe II and John Doe III, the Plaintiff has sustained potentially permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause the Plaintiff great pain and suffering, both mental and physical.
46. The intentional beatings and verbal abuse of Plaintiff by the Officers and John Doe II and John Doe III when the Plaintiff was handicapped, unarmed and did not pose any threat or grievous bodily injury to the Officers and John Doe II and John Doe III or others and when the Officers and John Doe II and John Doe III did not have lawful authority to use deadly or non-deadly force against him was done with actual malice toward the Plaintiff and with willful and wanton indifference to and deliberate disregard for human life and the rights of the Plaintiff. The Plaintiff is thus entitled to punitive damages.

COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

47. Plaintiff reasserts and incorporates herein by reference the allegations set forth in paragraphs 1 through 46.

48. The Officers and John Doe II and John Doe III conduct in kicking, beating and tying the legs of the Plaintiff outside of The Pouch/The Bassment, in the presence of others, after he had repeatedly attempted to explain that he was not intoxicated but instead suffered from cerebral palsy, forcing him to attempt to walk with his legs tied at the police station, and placing him on the floor in a rubberized room where his feet remained tied and his arms were handcuffed was extreme, outrageous and unjustified, and caused the Plaintiff to suffer physical and emotional distress for which the Officers and John Doe II and John Doe III are individually liable.
49. As a result of the conduct of the Officers and John Doe II and John Doe III, the Plaintiff suffered emotional distress as well as permanent physical and emotional injuries that have caused and will continue to cause Plaintiff great pain and suffering, both mental and physical.
50. The intentional beatings and verbal abuse of the Plaintiff by the Officers and John Doe II and John Doe III was unjustified and done with actual malice and wanton indifference to and deliberate disregard for human life and the rights of the Plaintiff. The Plaintiff is thus entitled to punitive damages.

COUNT IV: RESPONDEAT SUPERIOR LIABILITY

51. Plaintiff reasserts and incorporates herein by reference the allegations set forth in paragraphs 1 through 50.
52. At all times pertinent hereto, P.T. Morrison and John Doe I were acting within the scope of their employment as Police Officers of the Raleigh Police Department.
53. The City of Raleigh is liable for compensatory damages under the doctrine of respondeat superior for the intentional torts of the P.T. Morrison and John Doe I committed within the scope of their employment.

COUNT V: NEGLIGENCE

54. Plaintiff reasserts and incorporates herein by reference the allegations set forth in paragraphs 1 through 53.
55. The Officers, while acting as agents and employees of the Raleigh Police Department in their capacity as Police Officers employed by the Raleigh Police Department, owed a duty to Plaintiff to perform their law enforcement duties without the use of unjustified or excessive force. The Officers' use of force upon Plaintiff, when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to the Officers or others constitutes negligence for which

the Officers are individually liable.

56. The use of force upon Plaintiff when the Officers had no lawful authority to use force against him constitutes negligence for which the Defendants are individually liable.
57. As a proximate result of the Officers' negligent use of excessive force, Plaintiff has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause Plaintiff pain and suffering, both mental and physical.
58. The negligent beatings of Plaintiff by the Officers when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to the Officers or others, and when the Officers had no lawful authority to use deadly or non-deadly force against him, was done with willful and wanton indifference to and deliberate disregard for human life and the rights of Plaintiff. Plaintiff is thus entitled to punitive damages.
59. At all times of the alleged incident, the Officers were acting within the scope of their employment as Police Officers employed by the Raleigh Police Department.
60. The Raleigh Police Department is liable for compensatory damages under the doctrine of respondeat superior for the negligence of the Defendants committed within the scope of their employment.
61. The Raleigh Police Department owed a duty to Plaintiff to train and supervise and otherwise control its Officers in the use of deadly and non-deadly force and other matters incidental to the exercise of law enforcement functions. The Raleigh Police Department failed to provide adequate training, supervision, and control of the Officers, which failure constitutes negligence.
62. As a proximate result of the negligent failure of the Raleigh Police Department to provide adequate training, supervision, and control of the Officers, Plaintiff has sustained permanent injuries and has incurred and will continue to incur medical bills and other expenses. These injuries have caused and will continue to cause Plaintiff pain and suffering, both mental and physical.
63. The failure of the Raleigh Police Department to provide adequate training and supervision of its Officers constitutes a willful and wanton indifference and deliberate disregard for human life and the rights of private citizens, including Plaintiff. Plaintiff is thus entitled to punitive damages.
64. Further, the assault and battery by the Officers placed the Plaintiff in peril and

created a duty on the Officers to get the Plaintiff medical treatment upon his arrest and detention. The Officers and John Doe II and John Doe III deliberately and intentionally failed to promptly provide Plaintiff with such medical treatment. As a proximate result of this denial of medical treatment, Plaintiff suffered damages as aforesaid.

PRAYER FOR RELIEF

WHEREFORE, having fully stated its Complaint against the Defendants, Plaintiff prays that::

- a. he be awarded a judgment against the Defendants in an amount in excess of \$75,000.00 for compensatory damages; and
- b. he be awarded punitive damages in an amount to be determined at trial; and
- c. he be awarded costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- d. He have such other just and equitable relief as this Honorable Court deems appropriate.

This the 23rd day of February, 2010.

THE EDMISTEN & WEBB LAW FIRM

GUIRGUIS LAW

/s/ William Woodward Webb

William Woodward Webb
N.C. State Bar No. 4624

/s/ Nardine Guirguis

Nardine Guirguis
N.C. State Bar No. 35319

/s/ William Woodward Webb, Jr.

William Woodward Webb, Jr.
N.C. State Bar No. 26814

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VERIFICATION

STATE OF NORTH CAROLINA

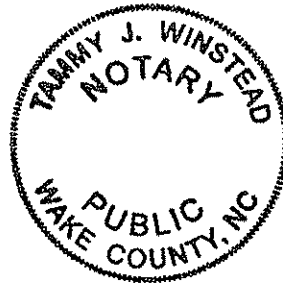
COUNTY OF WAKE

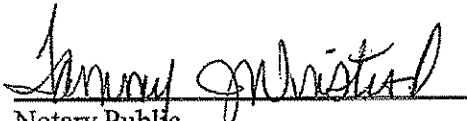
The undersigned, **CHARLES PAYNE**, being first duly sworn, deposes and says that he has read the foregoing *Complaint*, knows the contents thereof; that the same is true of his knowledge, except as to those matters stated on information and belief, and as to those matters, he believes them to be true.



CHARLES PAYNE

Sworn to and subscribed before me
this 22nd day of February, 2010.





Notary Public

My commission expires: _____ My Commission Expires 2-5-2011.

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FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No. 5:10-CV-62**

Charles Payne)
Plaintiff(s),)
vs)
The City of Raleigh, et al)
Defendant(s).)

**DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A
DIRECT FINANCIAL INTEREST IN LITIGATION**

Pursuant to Fed.R.Civ.P. 7.1 and Local Civil Rule 7.3, or Fed.R.Crim.P. 12.4 and Local Criminal Rule 12.3,

Charles Payne _____ who is Plaintiff _____,
(name of party) (plaintiff/defendant/other: _____)

makes the following disclosure:

1. Is party a publicly held corporation or other publicly held entity?

YES NO

2. Does party have any parent corporations?

YES NO

If yes, identify all parent corporation, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party owned by a publicly held corporation or other publicly held entity?

YES NO

If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Civil Rule 7.3 or Local Criminal Rule 12.3)?

YES

NO

If yes, identify entity and nature of interest:

5. Is party a trade association?

YES

NO

If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:

6. If case arises out of a bankruptcy proceeding, identify any trustee and the members of any creditors's committee:

Signature: /s/ William Woodward Webb

Date: 02/23/2010