

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA**

**ROSA LEE BUTCHER,**

**Plaintiff**

**v.**

**CIVIL ACTION NO. 15-C-387-3  
(The Honorable James A. Matish)**

**SCOTT VINSON, individually and in his  
official capacity as a police officer with the  
Clarksburg City Police Department; and other  
JOHN DOES(S),**

**Defendants**

**TRIAL ORDER**

On the 5<sup>th</sup> day of June, 2011 through the 9<sup>th</sup> day of June, 2017 came the Plaintiff Rosa Lee Butcher, by Counsel Timothy V. Gentilozzi and Eric Hensil and came the Defendants Scott Vinson, The City of Clarksburg and John Does, by Counsels Debra H. Scudiere and Matthew Elshiaty pursuant to a prior order of the Court setting this matter for a jury trial.

Thereupon the Court conducted jury selection in the matter in which the members of the Venire were voir dired by the Court and by counsel for the parties, and the Court empaneled a jury. Lastly the Court noted that the jury selected was found to be competent and were sworn to well and truly try the case.

Thereupon the counsel for the parties stipulated as to the exhibits that they were to jointly enter in the trial. The parties had agreed to the contents of the exhibits that were to be entered at trial.

Thereupon on June 5, 2017 at approximately 1:15 p.m., the Plaintiff began her case in chief and called and examined her witnesses who were then subject to cross examination by the Defendants. On the third day of trial and in response to Defendants'

position that John Doe Defendant(s) were improper parties, the Plaintiff moved to amend her Complaint to name three individuals to the style of the case in addition to "John Doe" defendants named in the suit. This motion was denied. The Plaintiff concluded her case in chief on June 7, 2017.

Upon the Plaintiff resting her case-in-chief, the Defendants made an oral motion, outside the presence of the jury, for judgment as a matter of law for the claims made against Scott Vinson, the City of Clarksburg, and unidentified "John Does" pursuant to Rule 50 of the West Virginia Rules of Civil Procedure on the grounds stated in the record, which motion was denied.

Thereupon the Defendants began their case in chief and called and examined their witnesses who were then subject to cross examination by the Plaintiff, and then rested. The Court then released the jury for the evening on June 7, 2017, and required that they return at 9:00 A.M. the following morning. Upon the Defendants resting their case-in-chief, the Defendants made a renewed motion, outside the presence of the jury, for judgment as a matter of law for the claims made against Scott Vinson, the City of Clarksburg, and unidentified "John Does" pursuant to Rule 50 of the West Virginia Rules of Civil Procedure on grounds stated in the record. The Defendants' Motion was later granted in part and denied in part. The Court granted the Defendants' motion as it related to the Defendant City of Clarksburg, dismissing the City from the case. The Court denied the Defendants' Motion as it related to the Defendant Scott Vinson and unidentified "John Does."

Thereafter, the Court met with counsel for both parties to review proposed jury instructions and proposed verdict forms previously submitted by the parties. Agreements

were made regarding most jury instructions applicable to the remaining claims of the parties.

On June 8, 2017, the Court presented the parties with the final jury instructions. No objections were made to the instructions by either party. The Court submitted its verdict form to both parties. Both parties' objections to portions of the form for grounds stated in the record were preserved. Thereupon the Court instructed the Jury as to the law, and thereafter, Counsel for each respective party made closing arguments, and the case was submitted to the jury on June 8, 2017, before lunch. The jury returned a question at about 1:30 p.m. regarding being deadlocked. The Court responded giving the jury a lunch break, and asked them to return to deliberations around 2:15 p.m. The jury returned from the lunch break and began deliberations which concluded with a second question from the jury, indicating that the jury was still deadlocked at approximately 4:45 p.m. The jury was sent home for the night and asked to return to deliberate at 9 a.m. on June 9, 2017. Prior to releasing the jury for the evening, the Court instructed the jury as the Court did throughout the week long proceeding to refrain from reading the newspaper, watching television including any local news, and from using the internet including no use of services such as twitter and facebook.

On the morning of June 9, 2017, the Court was informed by Plaintiff's counsel about alleged juror misconduct including proof that a juror, who was acting as jury foreperson, had failed to disclose a social media friendship with a witness and for posting on facebook during the week including a posting on June 8, 2017 that could be interpreted to be about the trial. The Court inquired with both counsel for Defendants and Plaintiff about what steps to take regarding the juror and it was agreed to inquire

from each juror whether that juror had biased them or prejudiced them to where they couldn't continue as a juror in this matter. The Court first inquired from the alleged juror who committed the alleged misconduct and he admitted to being on facebook and making posts but claimed to not understand the Court's prior instructions to mean no facebook at all while the trial was proceeding. Additionally, the juror admitted to being social media friends with the witness but claimed he had knowledge that friendship existed due to him having so many social networking friends. The Court then decided the juror would be removed and replaced with an alternate after each juror was questioned and testified they could continue deliberations with no prejudices. The Plaintiff moved for a mistrial which was denied by the Court.

The alternate juror was brought in and asked if she could begin deliberations without any additional instruction from the Court. The alternate juror testified that she could begin deliberations with no additional instruction from the Court and began deliberations with the rest of the jurors after the lunch time break. After about two and a half hours of deliberations, the jury indicated that it had reached a verdict.

Thereupon the jury returned with the following verdict:

1. That the Plaintiff had proved by a preponderance of the evidence that excessive force was used on her.
2. That the individuals responsible for this excessive force were the John Doe(s) named on the Verdict Form.
3. That she be awarded a total of \$5,000.00 for her damages and that no punitive damages be awarded.

Thereupon there being nothing further, the jury was thanked and discharged. Upon consideration of all of which, the Court does hereby **ORDER** that the Plaintiff did prevail in this matter. Accordingly it is **ORDERED** that judgment shall be for the Plaintiff, Rosa Lee Butcher, and that the Plaintiff shall be awarded the sum of \$5,000.00, and counsel for the Plaintiff may submit a claim for an award of attorney fees and costs in this matter pursuant to their claim under Title 42 U.S.C. § 1983.

It is further **ORDERED** that all objections and exceptions to the foregoing proceedings are to be saved and preserved and that any and all post-trial motions be served and filed within ten days of the entry of this Order. That Plaintiff's attorney prepare a bill along with an affidavit detailing all time spent, hourly rate and out of pocket costs expended in this action to the Court for consideration.

It is further **ORDERED** that the Clerk forward certified copies of this order upon entry to Debra H. Scudiere and Matthew Elshiaty of Kay, Casto, and Chaney, PLLC, 1085 Van Voorhis Road, Suite 100, Morgantown, WV 26505, and to Timothy V. Gentilozzi , 547 West Pike Street, Clarksburg, WV 26301.

07/24/2017  
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ENTER

  
\_\_\_\_\_  
JUDGE

STATE OF WEST VIRGINIA

COUNTY OF HARRISON, TO-WIT

I, Albert F. Marano, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup> Family Court Circuit of Harrison County, West Virginia, hereby certify the foregoing to be a true copy of the ORDER entered in the above styled action on the 24 day of July, 2017.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the

Seal of the Court this 24 day of July, 2017.

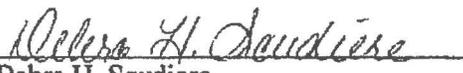
*Albert F Marano*  
Fifteenth Judicial Circuit & 18<sup>th</sup>  
Family Court Circuit Clerk  
Harrison County, West Virginia

Prepared By:

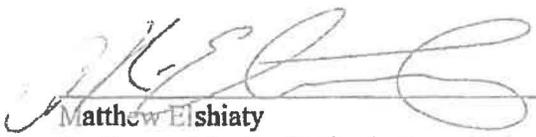


~~Timothy V. Gentilozzi~~  
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Approved as to form by:



~~Debra H. Scudiere~~  
Debra H. Scudiere  
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~~Matthew Elshiaty~~  
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