

TOMS RIVER POLICE DEPARTMENT

MEMORANDUM

2019 JUN 25 P 2:

RECEIVED
TOMS RIVER TWP.

To: Ken Fitzsimmons, Law Department

From: Chief Mitchell A. Little

Date: January 23, 2019

Subject: Summons in a Civil Case – Fillichio v. Toms River Police Department, ET AL.

Enclosed please find Summons received on January 18, 2019 from Robert R. Fuggi, Jr., Esq. /United States District Court regarding the subject matter.

Same is being forwarded for your review and further action.

If you need any additional information, please do not hesitate to contact me.



MITCHELL A. LITTLE
Chief of Police

MAL/dr

Enc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BEAU FILLICHIO,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOMS RIVER POLICE DEPARTMENT,
ET AL.,
Defendant

CASE
NUMBER: 3:19-CV-00575-FLW-DEA

TO: *(Name and address of Defendant):*

TOMS RIVER POLICE DEPARTMENT
255 OAK AVE.
TOMS RIVER, NJ 08753

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

s/ WILLIAM T. WALSH
CLERK



ISSUED ON 2019-01-16 16:34:37, Clerk
USDC NJD

RECEIVED

JAN 18 2019

CHIEF'S OFFICE

Handwritten note:
Copy
cases to
law dept.

RETURN OF SERVICE		
Service of the Summons and complaint was made by me(1)	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ Served personally upon the defendant. Place where served: _____ _____ ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. ☐ Name of person with whom the summons and complaint were left: _____ ☐ Returned unexecuted: _____ _____ ☐ Other (specify) : _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. Executed on _____ Date _____ <i>Signature of Server</i> _____ <i>Address of Server</i>		

Fuggi Law Firm, P.C.
Robert R. Fuggi, Jr., Esq.
Attorney Id # 037581992
47 Main Street
P.O. Box 1808
Toms River, New Jersey 08754
Office: (732) 240-9095
Fax: (732) 240-9072
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Beau Fillichio

Plaintiff

v.

TOMS RIVER POLICE DEPARTMENT;
OFFICER JAMES COLLINE IN BOTH
HIS INDIVIDUAL AND OFFICIAL
CAPACITY; OFFICER CHRISTOPHIS
D. INGLIS IN BOTH HIS
INDIVIDUAL AND OFFICIAL
CAPACITY; JOHN DOES (1-20)
FICTITIOUS INDIVIDUALS); A-2
OWNER CORPORATIONS (1-20)
FICTITIOUS CORPORATIOS

Defendants

Civil Action

Case No.:

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

PARTIES

1. Beau Fillichio (at times referred to as the Plaintiff) resides at 11431 NW 18th Street Plantation, FL. 33323.
2. Officer James Colline and Officer Christopher D. Inglis are individuals who at all relevant times were direct employees of the Toms River New Jersey Police Department.

3. The Toms River Police Department is located at 255 Oak Ave, Toms River, NJ 08753 and is the public entity entrusted with the protection and service to persons located within the municipality.

JURISDICTION AND VENUE

1. This action stems from violations of Section 42 U.S.C. §1983 which includes the violations by the Toms River, New Jersey Police Department, and other named government employees acting within the scope of their employment as Defendants, conferring exclusive jurisdiction upon the United States District Court pursuant to 28 U.S.C. §1331.
2. All Defendants are domiciled and/or conduct substantial business in the State of New Jersey. Moreover, the subject incident which gave rise to the violations occurred in the State of New Jersey, rendering the District of New Jersey an appropriate venue pursuant to 28 U.S.C. §1391.
3. Pursuant to 28 U.S.C. §2675, Plaintiff served a Notice of Tort Claim upon Defendant Toms River Police Department on October 11, 2017.
4. This action stems from an incident which took place on July 26, 2017, at 1833 New Hampshire Avenue, Toms River, NJ 08755.

FACTS COMMON TO ALL COUNTS

1. At the time of the incident, Beau Fillichio was a seventeen (17) year old high school senior at St. Thomas Aquinas High School in Fort Lauderdale, Florida.
2. Plaintiff Beau Fillichio had been selected by his coach to be the starting quarterback for the St. Thomas Raiders' upcoming 2017-2018 season.
3. The school's Raiders athletic teams have won over one hundred (100) state championships and have achieved a national profile. Graduates of St. Thomas Aquinas include numerous professional athletes, ten Olympians, prominent state politicians, and award-winning authors and actors.
4. The Raiders have won 106 FHSAA state championships and have graduated such famous and accomplished student-athletes as eighteen-time Grand Slam Champion Chris Evert, NFL Hall-of-Famer Michael Irvin, and four-time Olympic Gold Medalist Sanya Richards-Ross. The school has been awarded the Broward County all-sports trophy by the Sun-Sentinel for 35 consecutive years. The athletic department has also won the FHSAA Dodge Sunshine Cup every year since the award's inception in 1995. The Raiders have been ranked number one (1) in Florida High School Football and are often ranked in the top ten (10) in the entire country.

5. St. Thomas is not only known for their athletics, they are also known for their exceptional and vigorous academics. On May 29, 1996, President Bill Clinton presented St. Thomas with the Department of Education Blue Ribbon Award for excellence in education. This was the second time St. Thomas Aquinas received recognition by the U.S. Department of Education. During the 1984-1985 school year, the school was first recognized as a "School of Excellence."
6. St. Thomas Aquinas High School has been named to the Catholic High School Honor Roll at least five times. It is the only Catholic high school in the Archdiocese of Miami to have been listed as one of the Top 50 Catholic high schools in the United States for five years in a row.
7. Plaintiff, Beau Fillichio, was one of only two quarterbacks in the history of the St. Thomas Aquinas football program to start at the quarterback position as a sophomore. At 6'4 and 200 IBS, Plaintiff was receiving interest from multiple Division I College Football Programs, which included several Ivy League Universities; perhaps most notably Columbia University, which offered Plaintiff a scholarship his junior year of high school.
8. On July 26, 2017, Beau Fillichio was visiting New Jersey from Fort Lauderdale, Florida.

9. He was visiting Toms River with some friends. They were staying at the beach house of his friend's Aunt located at or near 1833 New Hampshire Avenue, Toms River, NJ 08755.
10. Sometime during the evening of July 26, 2017, a commotion began to develop outside of the beach home. No one inside the house where B.F was staying, including Beau Fillichio, was involved in the commotion. During the time of the commotion, Beau Fillichio was looking for car keys which he had misplaced on the outside property of the beach home.
11. However, at some point, the Police were called because of the commotion. When the Police arrived on scene, everyone involved in the commotion began to run. Unknown to B.F why the police were there, Beau Fillichio began running as well.
12. After a foot chase, Beau Fillichio was tackled by a Toms River Police Department officer. While Beau Fillichio was being handcuffed, the officer from the Toms River Police Department bent Beau Fillichio's right arm so far backwards, his shoulder became dislocated and he tore tendons, which required surgery. This officer from the Toms River Police Department also caused severe lacerations and bruising of Beau Fillichio's face, cheek, elbows, and knees, due to the officer's use of excessive force on this minor child.

13. Beau Fillichio was charged with violating N.J.S.A. 2C:29-1b, Fourth Degree Obstruction of Justice, and N.J.S.A. 2C:29-2a (1), Resisting Arrest/Disorderly Persons.
14. For the purposes of diagnosing his severe injuries, Beau Fillichio saw Dr. Erol Yoldas from Orthopedic Specialty Institute, PLLC. Plaintiff Beau Fillichio had multiplanar imaging of the right shoulder with limited comparison imaging of the left shoulder, which showed that there is joint effusion. Bone marrow edema was present at the superior posterior and lateral aspect of the humeral head, as well as bone marrow edema being present at the anterior inferior aspect of the glenoid. The findings indicated that there was a recent anterior dislocation with acute Hill-Sachs fracture and the Bankart's lesion. There is bone marrow edema involving the lesser tuberosity.
15. There was bone marrow edema at the anterior inferior capsule as well as along the anterior band of the inferior glenohumeral ligament. There was a tear of the anterior inferior labrum towards its capsular surface. There was no tear of the superior labrum. Glenohumeral articulation was congruent. There was focal osseous deficiency of the posterior inferior glenoid. No chondral defects of the glenohumeral articulation. There is irregularity of the fibers of the anterior inferior glenohumeral ligament

16. The impression was that there was evidence of a recent anterior dislocation of the shoulder, with acute Hill-Sachs lesion and the Bankart's lesion. Strain and/or tear of the anterior inferior capsule and the anterior inferior glenohumeral ligament. Focal osseous deficiency of the posterior inferior glenoid. Capsular surface tear of the anterior inferior labrum. Bone bruise of the lesser tuberosity without a fracture. No tendon tear. No MRI detectable full-thickness chondral defect. Probable ganglion versus a synovial cyst along the posterior cortex of the humeral neck.
17. On August 15, 2017, Dr. Yoldas conducted surgery on minor Plaintiff. His preoperative diagnosis was right shoulder instability with torn labrum and torn cuff. His arthroscopic findings showed glenohumeral articular surface intact. Tearing of the anterior labrum from the 3 o'clock to the 6 o'clock position, undersurface of the cuff, with partial-thickness tearing of the supraspinatus approximately 20% to 25% of the way through. Intact superior and posterior labrum.
18. Beau Fillichio is currently receiving physical therapy and still has significant pain and discomfort in his right shoulder. Beau Fillichio has no prior injuries.
19. Plaintiff had received a scholarship to attend Columbia University to compete for the starting quarterback position as a freshman, but unfortunately this offer was rescinded due to the

injuries he sustained as a result of the Toms River Police Department's Officers' use of excessive force.

20. Beau Fillichio currently attends Florida State University in which he earned a position on the perennial national powerhouse Seminoles Football team as a preferred walk on - without a scholarship offer. His involvement in practice has been limited due to the lingering effects from his injury, which has resulted in his inability to compete for a starting position.

COUNT ONE
NEGLIGENCE

1. Plaintiff repeats and reiterates all of the allegations contained in the previous counts and/or paragraphs as if set forth at length herein.
2. Defendant Toms River Police Department acted negligently in its interaction with Plaintiff Beau Fillichio.
3. Defendant Toms River Police Department owed a duty of reasonable care to Beau Fillichio to exercise reasonable care by providing proper services and conducting itself with proper procedure.
4. Defendant Toms River Police Department did not conduct itself as a reasonably careful person would under like circumstances and caused or allowed to be caused great harm to plaintiff. Defendant Toms River Police Department had a duty of care to

Beau Fillichio as a government agency whose purpose is to protect and serve.

5. Defendant Toms River Police Department breached their legal duty to Beau Fillichio and failed to exercise reasonable care, and acted with reckless, willful, and wanton disregard for his safety.
6. Defendants knew or should have known that their wanton or reckless conduct would result in a foreseeable injury to Beau Fillichio.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against all defendants for compensatory damages for Plaintiff's psychological and emotional distress and damages, loss of standing in his community, damage to his reputation, and his family's unreimbursed out of pocket expenses incurred in response to these circumstances; Punitive damages; Injunctive relief requiring Defendant University to take effective steps to prevent sex-based discrimination and harassment, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and/or sexual assault; appropriately respond to all conduct that may constitute sex-based harassment and/or sexual assault; and mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or

contribute to it; statutory interest; costs; and reasonable attorney fees.

COUNT TWO
GROSS NEGLIGENCE

7. Plaintiff repeats and reiterates all of the allegations contained in the previous counts and/or paragraphs as if set forth at length herein.
8. Defendant Toms River Police Department acted grossly negligent in its interaction with Plaintiff Beau Fillichio.
9. Defendant Toms River Police Department owed a duty to Beau Fillichio to exercise reasonable care by providing proper services and conducting itself with proper procedure.
10. Defendant Toms River Police Department acted carelessly, recklessly, negligently, and grossly negligent, and caused or allowed to be caused great harm to plaintiff. Defendant Toms River Police Department had a duty of care to Beau Fillichio as a government agency whose purpose is to protect and serve.
11. Defendant Toms River Police Department breached their legal duty to Beau Fillichio and failed to exercise reasonable care, and acted with reckless, willful, and wanton disregard for his safety.

12. Defendants knew or should have known that their wanton or reckless conduct would result in a foreseeable injury to Beau Fillichio.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against all defendants for compensatory damages for Plaintiff's psychological and emotional distress and damages, loss of standing in his community, damage to his reputation, and his family's unreimbursed out of pocket expenses incurred in response to these circumstances; Punitive damages; Injunctive relief requiring Defendant University to take effective steps to prevent sex-based discrimination and harassment, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and/or sexual assault; appropriately respond to all conduct that may constitute sex-based harassment and/or sexual assault; and mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or contribute to it; statutory interest; costs; and reasonable attorney fees.

COUNT THREE

WILLFUL, WANTON, RECKLESS CONDUCT

13. Plaintiff repeats and reiterates all of the allegations contained in the previous counts and/or paragraphs as if set forth at length herein.

14. Defendant Toms River Police Department acted recklessly in its interaction with Plaintiff Beau Fillichio.
15. Defendant Toms River Police Department owed a duty to Beau Fillichio to exercise reasonable care by providing proper services and conducting itself with proper procedure.
16. Defendant Toms River Police Department acted carelessly, recklessly, negligently, and grossly negligent, and caused or allowed to be caused great harm to plaintiff. Defendant Toms River Police Department had a duty of care to Beau Fillichio as a government agency whose purpose is to protect and serve.
17. Defendant Toms River Police Department breached their legal duty to Beau Fillichio and failed to exercise reasonable care, and acted with reckless, willful, and wanton disregard for his safety.
18. Defendants knew or should have known that their wanton or reckless conduct would result in a foreseeable injury to Beau Fillichio.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against all defendants for compensatory damages for Plaintiff's psychological and emotional distress and damages, loss of standing in his community, damage to his reputation, and his family's unreimbursed out of pocket expenses incurred in response to these circumstances; Punitive damages; Injunctive relief requiring Defendant University to take effective steps to

prevent sex-based discrimination and harassment, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and/or sexual assault; appropriately respond to all conduct that may constitute sex-based harassment and/or sexual assault; and mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or contribute to it; statutory interest; costs; and reasonable attorney fees.

COUNT FOUR

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. Plaintiff repeats and reiterates all of the allegations contained in the previous counts and/or paragraphs as if set forth at length herein.
20. Plaintiff Beau Fillichio alleges that, at all times herein mentioned, each of the defendant officers: James Colline and Christopher Inglis sued herein are agents and employees of Defendant Toms River Police Department of the remaining defendants and were at all times acting within the purpose and scope of such agency and employment.
21. Defendants at no time in their interaction with Plaintiff Beau Fillichio exercised due care and restraint, nor followed proper policing protocols.

22. Defendants' acts of assault upon Beau Fillichio were conducted intentionally and maliciously for the purposes of inflicting physical and emotional distress upon Plaintiff.
23. As a result of this conduct, Plaintiff Beau Fillichio has suffered humiliation, mental anguish, and emotional and physical distress and has been injured in mind and body.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against all defendants for compensatory damages for Plaintiff's psychological and emotional distress and damages, loss of standing in his community, damage to his reputation, and his family's unreimbursed out of pocket expenses incurred in response to these circumstances; Punitive damages; Injunctive relief requiring Defendant University to take effective steps to prevent sex-based discrimination and harassment, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and/or sexual assault; appropriately respond to all conduct that may constitute sex-based harassment and/or sexual assault; and mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or contribute to it; statutory interest; costs; and reasonable attorney fees.

COUNT FIVE
(FALSE ARREST UNDER 42 U.S.C. §1983)

1. Plaintiff repeats and re-alleges each and every allegation as if each were set forth fully at length herein.
2. Defendant officers James Colline and Christopher D. Inglis' actions constituted a false arrest under 42 U.S.C. §1983 of Plaintiff Beau Fillichio's Fourth Amendment Right, as they did not have probable cause to believe Beau Fillichio had committed a crime.
3. To prevail on a false arrest claim, a plaintiff needs to demonstrate at trial that law enforcement lacked probable cause to arrest him. "The proper inquiry in a section 1983 claim based on false arrest "is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense." Dowling v. City of Phila., 855 F.2d 136, 141 (3d Cir.1988). Generally, the existence of probable cause is a factual issue. Deary v. Three Un-Named Police Officers, 746 F.2d 185, 191 (3d Cir.1984). If a reasonable jury could find that the police did not have probable cause to arrest the defendant then summary judgment cannot be granted in favor of arresting officers. Groman v. Twp. of Manalapan, 47 F.3d 628, 634-35 (3d Cir. 1995).

4. As discussed in the complaint, the officers chased Beau Fillichio off the property of the home where he was legally lodging and pursued him until he was tackled and restrained in handcuffs with unnecessary levels of force.
5. At no point during their pursuit of Beau Fillichio did they indicate to the boys at the scene for what purpose they were being arrested.
6. The officers' only knowledge prior to arriving at the scene was the complaints of a neighbor.
7. The officers made no attempt to discern what, if anything, was occurring on or near the premises where Beau Fillichio was staying. Instead they chose to pursue and unnecessarily injure the young plaintiff.
8. Officers Colline and Inglis therefore falsely arrested Beau Fillichio as they acted without probable cause due to the fact they took no time to ascertain the situation. Therefore, Beau Fillichio did not have the prerequisite state of mind to be charged with the crimes with which he was indicted.

COUNT SIX

(UNREASONABLE EXCESSIVE FORCE UNDER 42 U.S.C. §1983)

1. Plaintiff repeats and re-alleges each and every allegation as if each were set forth fully at length herein.

2. Officers Colline's and Inglis' actions constituted the use of unreasonable excessive force under 42 U.S.C. §1983, in violation of the Fourth Amendment against minor Plaintiff Beau Fillichio.
3. A section 1983 claim is one which alleges that a defendant, "under color of law," violated any of the plaintiff's constitutional rights. The use of excessive force constitutes a valid claim under section 1983 because it violates the Fourth Amendment prohibition against "unreasonable seizures." The Supreme Court held in Graham v. Connor that a free citizen's right to be free from excessive force "in the course of making an arrest, investigatory stop, or other 'seizure' of his person... [is] properly analyzed under the [4]th Amendment's 'objective reasonableness' standard, rather than under a substantive due process standard [of Glick]." Graham v. Connor, 490 U.S. 386, 393 (1989). The subjective motivations of the officers, whether ill-intended or benevolent, are never a factor in the 4th Amendment's use-of-force analysis. Id. at 397. The standard invokes a balancing test, comparing the government's objectives with the citizen's rights. Id. at 396. The reasonableness analysis requires the court to evaluate the totality of the circumstances, "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest

or attempting to evade arrest by flight." These factors are commonly referred to as the "Graham Factors." Id.

4. According to Beau Fillichio on July 26, 2017, he was restrained with handcuffs placed on his wrists extremely tight, perhaps with intent to cause injury and pain. Subsequently officers Colline and Inglis of the Toms River Police Department bent Beau Fillichio's right arm so far backwards, his shoulder became dislocated and he tore tendons, which required surgery.
5. After the harassment incident which occurred during his arrest, Beau Fillichio began feeling a distinct pain in his shoulder and right arm.
6. Plaintiff Beau Fillichio had multiplanar imaging of the right shoulder with limited comparison imaging of the left shoulder, which showed that there is joint effusion. Bone marrow edema was present at the superior posterior and lateral aspect of the humeral head, as well as bone marrow edema being present at the anterior inferior aspect of the glenoid. The findings indicated that there was a recent anterior dislocation with acute Hill-Sachs fracture and the Bankart's lesion. There is bone marrow edema involving the lesser tuberosity.
7. There was bone marrow edema at the anterior inferior capsule as well as along the anterior band of the inferior glenohumeral ligament. There was a tear of the anterior inferior labrum towards its capsular surface. There was no tear of the superior

labrum. Glenohumeral articulation was congruent. There was focal osseous deficiency of the posterior inferior glenoid. No chondral defects of the glenohumeral articulation. There is irregularity of the fibers of the anterior inferior glenohumeral ligament

8. The impression was that there was evidence of a recent anterior dislocation of the shoulder, with acute Hill-Sachs lesion and the Bankart's lesion. Strain and/or tear of the anterior inferior capsule and the anterior inferior glenohumeral ligament. Focal osseous deficiency of the posterior inferior glenoid. Capsular surface tear of the anterior inferior labrum. Bone bruise of the lesser tuberosity without a fracture. No tendon tear. No MRI detectable full-thickness chondral defect. Probable ganglion versus a synovial cyst along the posterior cortex of the humeral neck.

9. On August 15, 2017, Dr. Yoldas conducted surgery on minor Plaintiff. His preoperative diagnosis was right shoulder instability with torn labrum and torn cuff. His arthroscopic findings showed glenohumeral articular surface intact. Tearing of the anterior labrum from the 3 o'clock to the 6 o'clock position, undersurface of the cuff, with partial-thickness tearing of the supraspinatus approximately 20% to 25% of the way through. Intact superior and posterior labrum.

10. Beau Fillichio is currently receiving physical therapy and still has significant pain and discomfort in his right shoulder. Beau Fillichio has no prior injuries.
11. This injury to minor plaintiff Beau Fillichio's right throwing shoulder greatly affected his recruitment to college and therefore his potential lifelong career opportunities in the game of football.

COUNT SEVEN

(MALICIOUS PROSECUTION CLAIM UNDER 42 U.S.C. §1983)

1. Plaintiff repeats and re-alleges each and every allegation as if each were set forth fully at length herein.
2. Defendant Officers Colline and Inglis' actions constituted a Fourth Amendment Malicious Prosecution Claim under 42 U.S.C. §1983 of minor plaintiff Beau Fillichio
3. Officer Colline and Inglis is guilty of maliciously prosecuting Plaintiff Beau Fillichio under Ocean County Prosecutor Case Number JV-2017-09-0492 or Docket Number FJ-15-275-18. Plaintiff Beau Fillichio was formally charged with obstructing justice (2C:29-1) as well as resisting arrest (2C:29-2a[1]), a disorderly persons offense.
4. An individual is liable for malicious prosecution only if he provides knowingly false statements to an official to initiate charges or directs or pressures an official to initiate charges, thereby making the officer's intelligent use of discretion

impossible. Here the officers, as evidenced by their police reports, provided false information in the police report such as their failure to ascertain any crime which was being committed.

3. The standard set forth for a Plaintiff to allege a successful malicious prosecution claim has been established in the case Estate of Smith v. Marasco which requires that:

- (1) the defendant is a state actor,
- (2) the defendants initiated a criminal proceeding;
- (3) the criminal proceeding ended in plaintiff's favor;
- (4) the proceeding was initiated without probable cause;
- (5) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and
- (6) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir.2003).

4. A malicious prosecution claim asserts that an officer wrongly deprived a victim of the Fourteenth Amendment right to liberty.

5. Here, Beau Fillichio easily meets the first prong of Marasco as Officers Colline and Inglis, two of the defendants in this case, are employees of the Toms River Police Department.

6. The second prong is also satisfied because Officers Colline and Inglis were the individuals who initiated the criminal proceeding against Beau Fillichio as evidenced by their own police reports. The indictment was signed by Officer Colline

personally. Beau Fillichio was charged with obstruction, criminal mischief, and harassment. (See Exhibit B)

7. The third factor of the Marasco test that any plaintiff alleging a Section 1983 malicious prosecution claim must meet is that the criminal proceeding has concluded in the plaintiff's favor. Beau Fillichio could not have been acquitted of the charges as he elected to take a plea agreement. Therefore, the Plaintiff turns to case law to support the claim that his criminal proceeding ended in his favor.

"When a termination is indecisive because it does not address the merits of the charge, the facts surrounding the termination must be examined to determine, whether the failure to proceed implies a lack of reasonable grounds for the prosecution." Janetka v. Dabe, 892 F.2d 187, 189-90 (2d Cir. 1989) citing Conway, 750 F.2d at 215.

8. Employing this analysis, terminations less favorable than an acquittal have been found to be favorable for purposes of a malicious prosecution claim. Janetka v. Dabe, 892 F.2d 187, 189-90 (2d Cir. 1989). The purpose of the favorable termination requirement is to avoid "the possibility of the claimant [sic] succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction."

9. Here, Beau Fillichio meets that burden of proving his criminal proceeding ended in his favor because pursuant to the terms of

his plea deal, the charge of obstruction of justice (2C:29-1B) was dismissed in exchange for Beau Fillichio's pleading guilty to 2C:29-2(a)(1), a disorderly persons offense, as opposed to a crime in the fourth-degree. As a result of this plea, Beau Fillichio was sentenced to twelve (12) months of probation. as amended to a resisting offense of obstruction and was ordered to pay fines and fees. Count 1, third degree tampering with witness(s) and Count 2 Fourth Degree False Swearing along with both motor vehicle summons were dismissed as a part of the plea arrangement. (See Exhibit E, Transcript of Plea Sentence Pg 20 lines 7-14). With the charges that Beau Fillichio was facing, certainly the deal reached by way of the plea arrangement ended favorably for the plaintiff Beau Fellichio.

10. There is no possibility of Beau Fillichio succeeding in the tort action after having been convicted in the underlying criminal prosecution, because he was not convicted of any of the charges he was indicted for. Beau Fillichio pled to amended lesser charge so therefore there are not two conflicting resolutions out of the same identical transaction in granting the plaintiff's claim in this action.

11. In order for a plaintiff to be successful in a malicious prosecution suit, they must prove that the proceeding was initiated without probable cause. In this matter it is likely both officers initiated the proceeding against Beau Fillichio

without probable cause. When analyzing whether there is probable cause to initiate criminal proceedings, a court must examine whether there is "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation" to believe that a party has committed an offense. Strickland v. Univ. of Scranton, 700 A.2d 979, 984 (Pa. Super. 1997). See also Wright v. City of Philadelphia, 409 F.3d 595, 602 (3rd.Cir. 2005); "Probable cause to arrest exists when the facts and circumstances within the... officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.".

12. "The proper inquiry in a Section 1983 claim based upon false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense, but whether the arresting officer had probable cause to believe that the person arrested had committed the offense."

13. Here, the facts suggest that neither Officer Colline nor Officer Inglis had probable cause when initiating the criminal proceedings against Beau Fillichio because he didn't attempt to ascertain anything of the situation before violently chasing and arresting Beau Fillichio. Furthermore, Officer Colline's police report lacks any indication that he had probable cause from his

conversation with Albert Chwedczuk, who initiated the call to the police. According to Officer Colline's police report, Mr. Chwedczuk stated "a group of males from 1833 New Hampshire Avenue were harassing he and other neighbors for the past two (2) nights, specifically, by throwing rocks at their windows, trespassing, and knocking over mailboxes." However, nowhere in Officer Colline's police report does it make note that he observed any of the property damage alleged by Mr. Chwedczuk, such as broken windows or mailboxes.

14. Officer Colline also failed to indicate in his police report whether he sought a more detailed description from Mr. Chwedczuk regarding those individuals harassing himself and his neighbors. Officer Colline never indicated that he asked about the suspects' height, body-build, race etc. With the extremely limited information he had available, Officer Colline proceeded to the residence the Plaintiff was visiting and failed to identify himself as a Police Officer. According to Officer Colline's Police Report, when he and Officer Worth arrived at the residence, the individuals there proceeded to run away. Officers Colline and Inglis ended up tackling the Plaintiff and violently placed him under arrest absent any probable cause that he committed the offenses alleged by the neighbors, or any other crime.

15. The fifth element of a malicious prosecution claim is the showing that the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice. The Plaintiff in this matter satisfies this burden as well. The Officers that were included as Defendants in this matter exhibited their malice by virtue of the inhumane nature in which they handled the Plaintiff. As noted above, the arresting officers used such force when detaining the Plaintiff that he dislocated his shoulder and tore tendons, which required surgery to repair.
16. The sixth and final element that must be shown to prove a malicious prosecution claim is that a plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. For Fourth Amendment purposes, as a consequence of a legal processing, a plaintiff needs to demonstrate a significant deprivation of pretrial liberty by showing that his court appearance was secured by means of bail, the issuance of an arrest warrant, incarceration, or restrictions on his travel. DiBella v. Borough of Beachwood, 407 F.3d 599, 603 (3d Cir. 2005).
20. Here, the deprivation of liberty consistent with the concept of seizure was the arrest and detention of Plaintiff Beau Fillichio. As noted throughout this Complaint, officers Colline and Inglis tackled Beau Fillichio to the ground and subsequently placed his hands behind his back with such force that they

separated his shoulder and tore several tendons, requiring surgery that took months for the Plaintiff to recover from.

21. In addition, after being arrested, Plaintiff was placed in a patrol car and transported to "District One," where he was detained until officer Colline completed processing him and formally charging him with obstruction of justice and resisting arrest.

22. This unlawful seizure and deprivation of the Plaintiff's liberties are the precise circumstances that entitle a Plaintiff to recover damages for malicious prosecution under 42 U.S.C. §1983.

WHEREFORE, Plaintiff, Beau Fillichio hereby demands judgment against Defendants officer James Colline in both his official and individual capacity; officer Christopher Inglis in both his official and individuals capacity; and the Toms River, NJ Police Department and their principals, administrators, agents, representatives, servants, and/or employees, jointly and severally, for compensatory damages, together with interest, costs of suit, and such other relief as the Court may deem just and equitable.

COUNT EIGHT
PUNITIVE DAMAGES

24. Plaintiff repeats and reiterates all of the allegations contained in the previous counts and/or paragraphs as if set forth at length herein.
25. The New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, punitive damages may be awarded to the plaintiff only if he or she proves, by clear and convincing evidence that the harm suffered was the result of the Defendants' acts of actual malice, which involved public policy and social concerns Defendants, all, individually and jointly, acted with malice, fraud, wantonness, oppression, and willful misconduct, with the specific intent to cause harm.
26. The Defendants' conduct had a very serious likelihood that serious harm would arise.
27. The Defendants had awareness, careless, negligent, or reckless disregard of the likelihood that such serious harm would arise from his conduct.
28. The harm suffered was the result of the Defendants' acts of actual malice, which involved public policy and social concerns, alleged herein exceeded all possible bounds of human decency and was outrageous and unacceptable in a civilized society.
29. The aforementioned conduct of Defendants is so outrageous in character, and so extreme in degree to go beyond all possible

bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community, thereby rising to the level of willful, wanton, knowing, and intentional misconduct under the Punitive Damages Act.

30. Defendant Toms River Police Department had no proper implementation of a functional protocol in evaluating a scene and conducting arrests which do not bring harm to people.
31. Even if Toms River Police Department did have a token policy in place, it is clear based on the events of the case that it was not enforced or taught properly and supported with adequate training courses which is equal to not having a policy at all.
32. The lack of a policy is evident by the long-term injuries suffered by Beau Fillichio.
33. As a direct and proximate result of the intentional, extreme and outrageous conduct of Defendants, plaintiff was caused to sustain serious, life-long, career altering, and permanent physical injuries.
34. As a direct and proximate result of the conduct described herein above, Plaintiff has and will continue to suffer physical injury; severe emotional distress and anguish; diminished enjoyment of life; difficulty and an inability to focus; difficulty and an inability to perform work-related tasks; anxiety; depression; humiliation; pain in mind and body; severe embarrassment; is having and has had difficulty living a normal

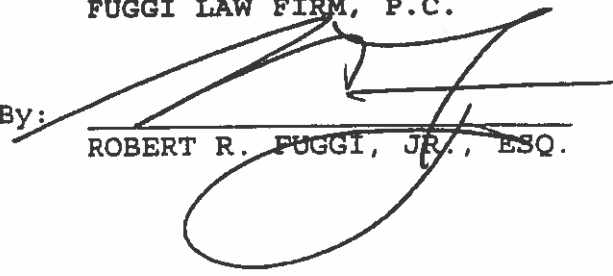
life; has not and will not engage in normal activities; will suffer from behavior patterns and will continue to do so in the future; will in the future be caused to endure severe pain in mind and body; has endured interference with and will continue to endure interference with engaging in her full normal daily activities. Plaintiff's self-esteem and ability to trust others has been substantially impaired, needing to obtain help and treatment from professionals and health care professionals in general and may incur medical, hospital and psychiatric expenses in amounts yet to be determined.

35. Defendant Toms River Police Department acted carelessly, recklessly, negligently, and grossly negligent, and caused or allowed to be caused great harm to plaintiff by retaining Stockton Employees who had learned of the dangerous propensities associated with the sexual assaults and failed to warn the plaintiff, and is therefore vicariously liable for assailants actions against the plaintiff.

WHEREFORE, Plaintiff, Beau Fillichio hereby demands judgment against Defendants officer James Colline in both his official and individual capacity; officer Christopher Inglis in both his official and individuals capacity; and the Toms River, NJ Police Department and their principals, administrators, agents, representatives, servants, and/or employees, jointly and severally, for punitive damages, together with interest, costs

of suit, and such other relief as the Court may deem just and equitable.

FUGGI LAW FIRM, P.C.

By: 

ROBERT R. FUGGI, JR., ESQ.

Dated: 1-16-19