



BOROUGH OF SHREWSBURY

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April 20, 2022

VIA E-MAIL (opra+request-30203-df30bacf@requests.opramachine.com)

Scott Reed

Re: OPRA Request

Dear Mr. Reed:

The Borough of Shrewsbury ("Borough") records custodian received your Open Public Records Act ("OPRA") and common law right of access request on March 16, 2022. The Borough timely requested an extension of time in which to respond until April 20, 2022. This response is therefore being timely submitted in accordance with New Jersey law. See N.J.S.A. 47:1A-5.

Your request seeks the following: "ALL Internal affairs matters, complaints, lawsuits and disciplinary actions regarding Former Officer Buddy Fitzgerald."

To the extent this request seeks personnel records, it is denied under OPRA. N.J.S.A. 47:1A-10 provides that "the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for

receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.”

In addition, to the extent your request seeks “all” records, this request is overly broad. New Jersey Courts have consistently held that OPRA does not countenance open-ended searches of an agency's files. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); See New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div.), cert. denied, 190 N.J. 394 (2007). Consequently, a proper request under OPRA “must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.” See e.g., Spectraserv, Inc. v. Middlesex Cnty. Utilities Auth., 416 N.J. Super. 565, 576 (App. Div. 2010); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). OPRA is not intended to be used as a research tool used to force government officials to manually search, analyze, identify and siphon useful information. MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). OPRA requests may not be a broad generic description of documents that require the custodian to search the agency's files and “analyze, compile and collate” the requested information. See also Lagerkvist v. Office of Governor of State, 443 N.J. Super. 230, 237 (App. Div. 2015) (holding that OPRA does not convert a custodian into a researcher, which would have been the effect of the request); see also Burke v. Ocean Cty., 2013 WL 6169154 (App. Div. 2013) (holding that an OPRA request is not the equivalent of law suit discovery).

Requests such as these seeking all records of a certain type are held to be overly broad and unclear. Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 3 (App. Div. 2005) (holding that request for “any and all” records did not amount to a request for an identifiable government record); see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) (holding that request for “any and all documents and data used or considered...supporting, demonstrating, justifying or verifying” determinations relevant to COAH's determinations about fair-share housing was overly broad).

Notwithstanding said objections, enclosed please find a responsive lawsuit complaint identified as responsive to this request.

As it relates to your request for “internal affairs matters,” this request is denied under OPRA as internal affairs files are exempt under OPRA as personnel records. N.J.S.A. 47:1A-10.

Courts have recognized that the common law may permit the disclosure of redacted “internal affairs reports” in certain situations. Rivera v. Union Cty. Prosecutor's Off., 250 N.J. 124 (2022). As such, enclosed please find an internal affairs report deemed responsive to this request. Please note that the Rivera Supreme Court case only provides for limited disclosure of internal affairs *reports* and not internal affairs files as a whole, which remain confidential under the Attorney General's Internal Affairs Policy and Procedures manual (“[t]he progress of internal affairs investigations and all supporting materials are considered confidential information”). An additional internal affairs file has been withheld as the public interest in the disclosure, including the nature and seriousness of the misconduct and the nature of the discipline imposed, does not outweigh the interest in maintaining confidentiality. Rivera v. Union Cty. Prosecutor's Off., 250 N.J. 124 (2022).

Further, the enclosed responsive internal affairs report has been redacted in accordance with the Rivera Supreme Court case to remove the names of any complainants and witnesses. Rivera v. Union Cty. Prosecutor's Off., 250 N.J. 124 (2022).

Thank you for your attention to this matter.

Very truly yours,

Kerry Quinn, RMC, CMR
Municipal Clerk
Borough of Shrewsbury
732-741-4200 *108

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Attorney for Plaintiff, Danilo Santana DaSilva

U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY

DANILO SANTANA DASILVA;

Plaintiff(s)

vs.

LOUIS M. FITZGERALD; ROBERT G.
TURNER; SHREWSBURY POLICE
DEPARTMENT; BOROUGH OF
SHREWSBURY; COUNTY OF
MONMOUTH; COUNTY OF
MONMOUTH BOARD OF CHOSEN
FREEHOLDERS; MONMOUTH COUNTY
PROSECUTOR'S OFFICE; STATE OF
NEW JERSEY DEPARTMENT OF
CORRECTIONS; STATE OF NEW
JERSEY; JOHN DOES 1-20; ABC
CORPORATIONS/BUSINESS ENTITIES
1-20; ABC PUBLIC ENTITIES 1-20

Defendant(s)

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, Danilo Santana DaSilva, residing in Monmouth County, New Jersey, complaining against the defendants, alleges upon information and belief and at all relevant times as follows:

JURISDICTION

This action is brought pursuant to 42 U.S.C. § 1983, § 1985 and § 1988 and the Fourth, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution. The United States District Court has jurisdiction pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, 28 U.S.C. § 1342 and 28 U.S.C. § 1331.

PARTIES

1. Danilo Santana DaSilva is an individual resident of the State of New Jersey, residing in Long Branch, New Jersey.
2. Louis M. Fitzgerald is a Lieutenant with the Shrewsbury Police Department and the individual who unjustly punched and assaulted plaintiff multiple times while in the course of his employment with the Shrewsbury Police Department.
3. Robert G. Turner is a Lieutenant with the Shrewsbury Police Department and supervising officer of Lieutenant Louis M. Fitzgerald at the time of the incident.
4. The County of Monmouth is a County within the State of New Jersey.
5. The County of Monmouth Board of Chosen Freeholders is a public body that administers the affairs of the County of Monmouth, including exercising control over the administration of the Monmouth County Prosecutor's Office.
6. The Borough of Shrewsbury is a municipality of the State of New Jersey and owns, operates, manages, directs and/or controls the Shrewsbury Police Department, which employs defendants, Louis M. Fitzgerald, Robert G. Turner and John Does 1-20.
7. The Borough of Shrewsbury Police Department is a police department and the law enforcement agency of the Borough of Shrewsbury, New Jersey and is a duly authorized public authority authorized to perform all functions of a police department as per the applicable sections of the New Jersey State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipality, Borough of Shrewsbury.
8. The State of New Jersey is a public entity that administers the affairs of the State of New Jersey, including exercising control over the administration of the State of New Jersey Department of Corrections.
9. At all times relevant to this action, the individually named defendant police officers:

Louis M. Fitzgerald, Robert G. Turner and John Does 1-20 are and/or were police officers employed by the Shrewsbury Police Department and were involved in the arrest of plaintiff and/or training and/or supervision of said officers and acting under the color of state law. They are being sued both in their individual and official capacities.

10. At all times relevant hereto and in all their actions described herein, the defendants were acting under color of statutes, ordinances, regulations, policies, customs, and usages of the Shrewsbury Police Department and/or Monmouth County Prosecutor's Office pursuant to their authority as employees, servants, and agents of the Shrewsbury Police Department and/or Monmouth County Prosecutor's Office within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents, and/or police officers.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or State of New Jersey Department of Corrections.

FIRST COUNT

1. Plaintiff repeats and re-alleges all the allegations of all prior and subsequent counts and portions of this Complaint as if set forth at length herein.

2. On or about November 28, 2013, at approximately 12:34 a.m., the plaintiff, **DANILO SANTANA DASILVA** was arrested for motor vehicle violations related to driving while allegedly intoxicated by defendant, **LOUIS M. FITZGERALD** of the Shrewsbury Police Department in the Borough of Shrewsbury, County of Monmouth, State of New Jersey.

3. At the time and place aforesaid, the plaintiff, **DANILO SANTANA DASILVA** was arrested and transported to the Shrewsbury Police Department.

4. At the time and place aforesaid, while being detained at the Shrewsbury Police

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Department, the plaintiff, **DANILO SANTANA DASILVA** was assaulted and struck in the head multiple times by defendant, **LOUIS M. FITZGERALD**.

5. At the time and place aforesaid, the defendant, **LOUIS M. FITZGERALD** and/or John Doe, intentionally and/or negligently came into contact with plaintiff, **DANILO SANTANA DASILVA**.

6. At the time and place aforesaid, plaintiff, **DANILO SANTANA DASILVA**, was falsely charged with aggravated assault for allegations of attempting to cause bodily injury to defendant, **LOUIS M. FITZGERALD**.

7. At the time and place aforesaid, plaintiff, **DANILO SANTANA DASILVA**, was falsely charged with simple assault for allegations of committing criminal mischief by intentionally urinating on the floor and a false charge of attempting to bite defendant, **LOUIS M. FITZGERALD**.

8. At the time and place aforesaid, plaintiff, **DANILO SANTANA DASILVA**, was thereafter charged with aggravated assault and simple assault and transported to the Monmouth County jail.

9. Plaintiff, **DANILO SANTANA DASILVA**, was unlawfully prosecuted and imprisoned for approximately three months.

10. After being released, Plaintiff, **DANILO SANTANA DASILVA**, was interviewed by Internal Affairs. Internal Affairs was investigating the assault by defendant, **LOUIS M. FITZGERALD**, specifically, the allegations of defendant striking Plaintiff, **DANILO SANTANA DASILVA**, in the head multiple times.

11. Plaintiff, **DANILO SANTANA DASILVA**, was informed that defendant, **LOUIS M. FITZGERALD** had resigned as a result of the Internal Affairs investigation.

12. On or about August 6, 2014, plaintiff, **DANILO SANTANA DASILVA**, was

advised that all the motor vehicle summonses he received in connection with the November 28, 2013 DWI arrest had been dismissed by the Honorable Francis P. Veronia, P.J.Cr., on August 4, 2014. At that time, plaintiff, Danilo Santana DaSilva pled guilty to an amended lesser charge of disorderly conduct.

13. At no time, including at the time he was arrested and detained, did any defendants have any reason to believe Danilo Santana DaSilva had committed any violent offense.

14. At no time, including at the time he was arrested and detained, did any defendants have any reason to believe Danilo Santana DaSilva was armed with any weapon.

15. At no time, including at the time he was arrested and detained, did any defendant have any reason to believe Danilo Santana DaSilva had any history of violent criminal activity.

16. The charges of driving under the influence does not constitute a violent crime. It is a motor vehicle violation and not a criminal act.

17. The charges of driving under the influence does not constitute a dangerous crime. It is a motor vehicle violation and not a criminal act.

18. Law enforcement officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.

19. Defendants, or any one of them, failed to follow this principle in connection with the arrest of Danilo Santana DaSilva.

20. Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers.

21. It is a decision which can be irrevocable.

22. Defendants, Louis M. Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public

Entities 1-10, or any one of them, proceeded without cause, provocation, or warning, punching plaintiff multiple times in the head and unlawfully imprisoning him for approximately three months, physically, emotionally and mentally abused, and used physical and excessive force against plaintiff, Danilo Santana DaSilva.

23. Defendants, Louis M. Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public Entities 1-10, or any one of them, failed to intercede to protect Plaintiff DaSilva from the wrongful actions of each other or any one of them.

24. Defendants, Louis M. Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public Entities 1-10, or any one of them, acted with the malicious, wanton and wilful intent to harass, intimidate, frighten, and physically injure Danilo Santana DaSilva, and to deprive Danilo Santana DaSilva of constitutional freedoms, rights, and protections.

25. Defendants, Louis M. Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public Entities 1-10, or any one of them, acted with malice, and wanton and wilful disregard for the well-being and rights of plaintiff, Danilo Santana DaSilva.

26. As a proximate result of the aforesaid wrongful conduct of Defendants, Louis M.

Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public Entities 1-10, or any one of them, plaintiff, Danilo Santana DaSilva suffered severe physical injuries, emotional anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, medical bills, and other damages.

27. As a proximate result of the wrongful conduct of Defendants, Louis M. Fitzgerald; Robert G. Turner; County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey; State of New Jersey Department of Corrections; John Does 1-20; ABC Corporations/Business Entities 1-20 and/or ABC Public Entities 1-10, or any one of them, plaintiff, Danilo Santana DaSilva was deprived of his right to be free from unreasonable searches, to be secure in his person and body, to be free from unreasonable seizures, and the use of excessive force, in violation of his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983, as well as was deprived of the right not to be deprived of liberty without due process of law; to be free from unreasonable search and seizure under the Fourth and Fourteenth Amendments to the United States Constitution; to be protected against violations of his civil and constitutional rights; to be provided necessary medical treatment while in police custody; to be free from intentional assault, battery, and infliction of emotional distress; to be free from false imprisonment; not to have cruel and unusual punishment imposed upon him; and to receive equal and fair protection under the law.

28. Plaintiff is entitled to the recovery of attorneys fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

SECOND COUNT

1. Plaintiff repeats and re-alleges all the allegations of all prior and subsequent counts and portions of this Complaint as if set forth at length herein.

2. As a result of the of the aforesaid acts, defendants, or any one of them, have committed assault and battery against the plaintiff and is liable to plaintiff.

3. At the time and place aforesaid defendants acts were willful, wanton, reckless, intentional, negligent and/or malicious.

4. As a direct and proximate result of the conduct of the defendants, Plaintiff was caused to suffer anguish and severe emotional distress, and lost and will continue to lose time and/or quality of education and/or employment.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

THIRD COUNT

1. Plaintiff repeats and re-alleges all the allegations of all prior and subsequent counts and portions of this Complaint as if set forth at length herein.

2. The acts and/or omissions of Defendants, or any one of them, as set forth herein constitutes extreme and outrageous conduct which has resulted in severe and permanent injury to plaintiffs including but not limited to, severe emotional distress. The acts and/or omissions of defendants, or any one of them, is shocking. The conduct transcends all bounds of decency tolerated by civilized society. Defendant(s) conduct in punching plaintiff multiple times in the head and unlawfully imprisoning plaintiff for approximately three months for a non-violent allegation of

driving while intoxicated is outrageous, and/or for false allegations that plaintiff, Danilo Santana DaSilva, attempted to bite defendant, Louis M. Fitzgerald, as is permitting same to take place and taking no steps to prevent it. As such, defendants are liable to plaintiffs in the tort of outrage and infliction of emotional distress.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

FOURTH COUNT

1. Plaintiff repeats and re-alleges all the allegations of all prior and subsequent counts and portions of this Complaint as if set forth at length herein.

2. On November 28, 2013, Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, were on duty as officers of the Shrewsbury Police Department, Monmouth County Prosecutor's Office and/or were acting under color of the law, statutes, ordinances, regulations, policies, customs, and usages, of the State of New Jersey, Shrewsbury Police Department and/or Monmouth County Prosecutor's Office.

3. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, without cause, provocation, or any reasonable basis to believe they had the right or justification, employed against plaintiff, Danilo Santana DaSilva the use of deadly and/or excessive physical force and/or allowed same to take place and/or failed to see to it said individuals were properly trained.

4. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, improperly and unlawfully accosted, harassed, and injured plaintiff, Danilo Santana DaSilva, including by punching him in the head multiple times and/or failing to prevent same from happening.

5. Louis M. Fitzgerald ; Robert G. Turner and/or John Does 1-20, or any one of them, used excessive force against Danilo Santana DaSilva, by punching him in the head multiple times

and/or allowed same to happen without taking the necessary actions to prevent same and/or failed to see to it the individuals involved with same were properly trained.

6. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, failed to intercede to protect plaintiff, Danilo Santana DaSilva from the wrongful conduct of Defendants, or any one of them, and failed to prevent plaintiff, Danilo Santana DaSilva from being punched in the head multiple times and/or failed to provide the proper supervision, training and/or control necessary to prevent same.

7. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, acted with the malicious, wanton and wilful intent to harass, intimidate, frighten, and physically injure plaintiff, Danilo Santana DaSilva and to deprive plaintiff, Danilo Santana DaSilva of constitutional freedoms, rights, and protections and/or failed to provide the proper training necessary to prevent same.

8. As a proximate result of the aforesaid wrongful conduct of Defendants, or any one of them, plaintiff, Danilo Santana DaSilva was punched in the head multiple times and unlawfully and falsely imprisoned for approximately three months, suffered severe physical injuries, emotional anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, medical bills, and other damages,

9. As a proximate result of the wrongful conduct of Defendants, or any one of them, plaintiff, Danilo Santana DaSilva was deprived of his right to be free from unreasonable searches, to be secure in his person and home, to be free from unreasonable seizures and the use of excessive and/or deadly force, in violation of his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983, § 1985 and applicable New Jersey state law.

10. Plaintiff is entitled to the recovery of attorneys fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

FIFTH COUNT

1. Plaintiff repeats and re-alleges all the allegations of all prior and subsequent counts and portions of this Complaint as if set forth at length herein.

2. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, acting in their individual capacities, having conspired together, reached a mutual agreement and undertook a course of conduct intended to harass, intimidate, threaten, confront, injure and/or deprive plaintiff, Danilo Santana DaSilva of his constitutional rights.

3. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, acted with one another to use force that was excessive, and intimidated and terrorized plaintiff, Danilo Santana DaSilva, specifically, among other things, by punching plaintiff, Danilo Santana DaSilva.

4. Upon information and belief, Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, intentionally altered the crime scene, made false allegations, manipulated evidence, spoliated and/or destroyed evidence, fraudulently concealed evidence and/or otherwise took steps to cover up and prevent dissemination of the true story of what occurred in connection with plaintiff, Danilo Santana DaSilva being punched in the head multiple times.

5. Upon information and belief, defendants have intentionally and/or negligently "lost," destroyed, discarded and/or otherwise spoliated evidence relevant to the incident at issue.

6. Defendants had a legal obligation, and in fact undertook this obligation, to preserve this evidence, this evidence is material to this case, plaintiff could not have gotten it from any other

source, defendant intentionally withheld, altered and or destroyed said evidence with the purpose of thwarting plaintiff's ability to recover from defendants for the acts and omissions complained of herein. Defendants are therefore liable for fraudulent concealment of evidence or otherwise.

7. Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, intentionally prepared and submitted false police and/or investigation reports to support and corroborate the fabricated version of what had occurred in connection with Danilo Santana DaSilva being punched in the head multiple times and being unlawfully imprisoned for approximately three months.

8. As a proximate result of the aforesaid wrongful conduct of Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, plaintiff, Danilo Santana DaSilva suffered severe physical injuries, emotional anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, death, medical bills, and other damages.

9. As a proximate result of the wrongful conduct of Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, plaintiff, Danilo Santana DaSilva was deprived of his right to be free from unreasonable searches, to be secure in his person and body, to be free from unreasonable seizures and the use of excessive force, free from malicious prosecution and false imprisonment, to equal protection of the laws, and to due process rights to be free from arbitrary and unreasonable action, in violation of his rights under the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983.

10. As a proximate result of the aforesaid conduct, plaintiff, Danilo Santana DaSilva was deprived of his right to be free from unreasonable searches, to be secure in his person and liberty, to be free from harassment, intimidation, and excessive force, free from malicious prosecution and false imprisonment, in violation of his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. § 1983.

11. Plaintiffs are entitled to the recovery of attorneys fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

SIXTH COUNT

1. Plaintiffs repeat and restate all of the foregoing allegations as if set forth at length herein.

2. The County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections failed to instruct, train, supervise, control, and/or discipline, on a continuing basis, the defendant officers and/or individuals named herein.

3. The County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections failed to implement adequate procedures to prevent the use of excessive force by the defendant officers.

4. The County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections had the power to prevent the commission of the wrongful acts set forth hereinabove, could have done so, and intentionally, knowingly, or with deliberate indifference to the rights of the plaintiffs failed or refused to do so.

5. The County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections, directly or indirectly, under color

of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wilful and wanton conduct of the defendant officers and/or individuals named hereinabove.

6. As a proximate result, the plaintiffs suffered the injuries and damages, and deprivation of constitutional and statutory rights and freedoms set forth herein.

7. Plaintiffs are entitled to the recovery of attorneys fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

SEVENTH COUNT

1. All of the allegations in each of the foregoing paragraphs are incorporated by reference as if fully set forth herein.

2. At all times relevant to this complaint, the individual named officer defendants were acting under the direction and control of the County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections

3. Defendants, The County of Monmouth; County of Monmouth Board of Chosen Freeholders; Monmouth County Prosecutor's Office; Borough of Shrewsbury; Shrewsbury Police Department; State of New Jersey and/or New Jersey Department of Corrections have a policy, custom, or practice of tolerating a police culture, commonly referred to as the "code of silence", which discouraged police officers from reporting acts of misconduct and civil rights violations by fellow police officers.

4. Upon information and belief, Monmouth County Prosecutor's Office; Borough of Shrewsbury and/or Shrewsbury Police Department has not sustained one civilian complaint that has ever been filed against a police officer. Upon information and belief, Lieutenant, Louis M. Fitzgerald had a history of complaints filed against him. Defendants had contemporaneous knowledge of the incident and/or a prior pattern of similar incidents by Louis M. Fitzgerald.

5. As a result of the Monmouth County Prosecutor's Office; Borough of Shrewsbury and/or Shrewsbury Police Department's deliberate indifference to civilian complaints, police officers feel reasonably immune from any serious threat of supervisory disciplinary action.

6. Defendants, or any one of them, were acting pursuant to that official policy, practice and/or custom when DaSilva's constitutional violations were committed by defendants.

7. Defendants, Monmouth County Prosecutor's Office; Borough of Shrewsbury and/or Shrewsbury Police Department knew or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have known that there was a history of misconduct of police abuse and/or the particular misconduct was the result of a difficult choice which training or supervision would have prevented and which would frequently result in a constitutional violation in the absence of such training and supervision.

8. As a direct and proximate cause of the aforementioned, Plaintiff was deprived of his constitutional rights secured under Fourth and Fourteenth Amendments to the United States Constitution.

9. As a direct and proximate cause of the aforementioned, Plaintiff was deprived of his civil liberties, including freedom from unreasonable search and seizure and freedom against unlawful imprisonment, abuse of process and freedom from malicious prosecution and false imprisonment.

All of these rights are secured under the Fourth and Fourteenth Amendments to the United States Constitution. As a result of the foregoing,

Plaintiff has suffered and continues to suffer damages in an amount to be determined by a jury.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

EIGHTH COUNT

1. Plaintiffs repeat and restate all of the foregoing allegations as if set forth at length herein.

2. On November 28, 2013, at the Borough of Shrewsbury in the County of Monmouth, the defendant, Louis M. Fitzgerald, made a complaint of aggravated assault and criminal mischief to the municipal court of the Borough of Shrewsbury, in the County of Monmouth, thereby charging the plaintiff, Danilo Santana DaSilva with attempting to bite defendant, Louis M. Fitzgerald and urinating on the floor.

3. The municipal court at the request of the defendant, Louis M. Fitzgerald, issued a warrant upon said complaint.

4. On November 28, 2013, plaintiff was arrested upon said warrant, and brought before the said municipal court of the Borough of Shrewsbury.

5. The charge was false.

6. Defendants made the charge from motives of malice.

7. There was no reasonable or probable cause for the prosecution.

8. As a proximate result of the aforesaid wrongful conduct of Louis M. Fitzgerald; Robert G. Turner and/or John Does 1-20, or any one of them, including the false prosecution and injury to reputation, plaintiff, Danilo Santana DaSilva suffered severe physical injuries, emotional

anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, death, medical bills, and other damages.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

NINTH COUNT

1. Plaintiffs repeat and restate all of the foregoing allegations as if set forth at length herein.

2. On November 28, 2013, the defendants did accuse the plaintiff, Danilo Santana DaSilva of attempting to assault an officer by attempting to bite defendant, Louis M. Fitzgerald and criminal mischief for urinating on the floor. The charge was made to the municipal court of the Borough of Shrewsbury, and by reason thereof, the defendants did induce the said municipal court, to issue a complaint and warrant directing the arrest and taking into custody of the plaintiff, Danilo Santana DaSilva.

3. The charge was false.

4. The defendants, at the aforementioned place and time, illegally and by their malice did imprison the plaintiff, Danilo Santana DaSilva for approximately three months.

5. Upon the hearing before the Superior Court, the plaintiff, Danilo Santana DaSilva pled to an amended lesser charge and was released.

6. As a proximate result of the aforesaid wrongful conduct of Louis M. Fitzgerald; Robert G. Turner and/or John Docs. 1-20, or any one of them, including the false prosecution and injury to reputation, plaintiff, Danilo Santana DaSilva suffered severe physical injuries, emotional anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, death, medical bills, and other damages.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

TENTH COUNT

1. Plaintiffs repeat and restate all of the foregoing allegations as if set forth at length herein.

2. On November 28, 2013, and at various other times prior thereto, at the Borough of Shrewsbury, in the County of Monmouth, the defendants did say of and concerning the plaintiff, Danilo Santana DaSilva, "Attempting to bite the officer's right hand" and "urinating on the floor."

3. Such words were false and malicious.

4. As a proximate result of the aforesaid wrongful conduct of defendants, or any one of them, including the false prosecution and injury to reputation, plaintiff, Danilo Santana DaSilva suffered severe physical injuries, emotional anguish, pain and suffering, intimidation, fear, loss of enjoyment of life, death, medical bills, and other damages.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

ELEVENTH COUNT

1. Plaintiffs repeat and restate all of the foregoing allegations as if set forth at length herein.

2. John Does 1-20; ABC Corporations/Business Entities 1-20; ABC Public Entities 1-10 are unidentified individuals, companies, corporations, government agencies, or other entities whose wrongful conduct caused injuries and damages to the plaintiff whose wrongful conduct caused injuries and damages to the plaintiffs. Their true identities are not yet know and

thus are named as fictitious parties to the same force and extent as the specifically identified parties.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

TWELFTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in the prior and subsequent counts of the Complaint as if set forth at length.

2. Some defendant(s) may be deemed to have no legal liability, and if so it is alleged these defendants are in the exclusive possession of documents, information and/or other evidence relevant to facts at issue in this case and seek to remain as a defendant in this alternative capacity for purposes of discovery of the aforesaid information and evidence. If any of the defendants are not found to be liable for this incident and the complained of damages, they are to remain as a defendant in an alternative capacity for purposes of discovery of the documents, information and/or other evidence relevant to facts at issue in this case that is in their exclusive possession, custody or control.

WHEREFORE, plaintiff demands judgment of compensatory damages, punitive damages, attorneys fees, costs, interest, and such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demands a trial by jury on all issues.

TRIAL ATTORNEY DESIGNATION

Gerald H. Clark, Esq., and William S. Peck, Esq., are designated as co-trial counsel for the Plaintiff.

DEMAND FOR INSURANCE COVERAGE

Plaintiffs demand that the defendants disclose the full extent of all applicable insurance coverage as well as copies of all declaration pages thereof within thirty (30) days of service of this complaint.

DEMAND FOR DOCUMENTS, THINGS, AND INVENTORY

Plaintiffs demand that each of the defendants produce (1) originals or true copies of all documents, photographs, videotapes, computer information, and files with regard to Danilo Santana DaSilva, and the events described in this Complaint, and (2) all original evidence, along with an inventory of all original evidence, and an inventory of all evidence lost or destroyed by any of the defendants.

Clark Law Firm, PC

Attorneys for Plaintiff, Danilo Santana DaSilva

By: 

WILLIAM S. PECK

Dated: November 25, 2015

Complaint - DaSilva.wpd

Shrewsbury Borough Police Department

Internal Affairs Investigation Report

Internal Affairs Case No. **2014-001**

Complainant Information			
MC Prosecutor's Office			
Name of Complainant	Home Address	Home Phone	
Business Address		Business Phone	
Date of Birth	Race	Other Information	Cell Phone
Subject Officer(s)			
Lt. Louis Fitzgerald #21			
Rank, Name and Badge Number		Rank, Name and Badge Number	
Rank, Name and Badge Number		Rank, Name and Badge Number	
Allegation(s)			
On 3/21/14, I was directed by the Monmouth County Prosecutor's Office to initiate an internal affairs investigation against Lt. Fitzgerald. [REDACTED] and [REDACTED] from MCPO stated they received an anonymous complaint, which included a anonymous letter and a video of Lt. Fitzgerald assaulting an immigrant after a DWI arrest on November 28, 2013. [REDACTED] and [REDACTED] had a grand jury subpoena for all reports and videos of the incident (Attachment #1) All reports for this incident (Case#2013-11090) were all provided to them. (Attachment #2). I could not locate the original video burned for discovery, so I had [REDACTED] assist me in burning a new copy. In the presence of [REDACTED] I viewed the video from 11/28/2013. In the video, I observed Mr. Dasilva brought into hq and handcuffed to the detention bench for processing. It appeared, during processing, Mr. Dasilva urinated himself while sitting at the bench. After processing is completed, Mr. Dasilva attempts to make a call on his cell phone when Lt. Fitzgerald walks over. As Lt. Fitzgerald leans forward to the cell phone, Mr. Dasilva moves forward slowly, toward Lt. Fitzgerald, with his mouth open. Lt. Fitzgerald quickly smacks Mr. Dasilva twice with an open fist of each hand in the face of Mr. Dasilva. The video then shows Lt. Fitzgerald standing in front of Mr. Dasilva, looking as though he was yelling, and then strike Mr. Dasilva with his right hand (hard to determine if the hand was open or closed) to Mr. Dasilva's face with enough force that Mr. Dasilva's head appeared to hit the back wall. As Lt. Fitzgerald struck Mr. Dasilva, [REDACTED] is in view of the camera. [REDACTED] is in camera view right after the strike. As Mr. Dasilva is prepared for transported to the Monmouth County Correctional Facility (MCCI), Lt. Fitzgerald grabs Mr. Dasilva and throws him onto the table next to the detention bench on his stomach. Lt. Fitzgerald then takes Mr. Dasilva's shoes off, one at a time, and smacks Mr. Dasilva on the back with each shoe before he throws the shoe to the side. ([REDACTED] and [REDACTED] were in the processing room when this occurred). Mr. Dasilva is taken out of view, soon after for transport, with no further incident.			
Investigating Officer Rank/Name/Badge Number			5/28/2014
			Date

Shrewsbury Borough Police Department

Internal Affairs Investigation Report

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Narrative

Allegation Assault

The allegation is that Lt. Fitzgerald #21 assaulted Mr. Dasilva while processing him for a DWI arrest.

On 3/25/14, I assisted [REDACTED] in the interview of witness [REDACTED] at the MCPO office. In the interview, [REDACTED] states he was in HQ when Lt. Fitzgerald was processing DWI arrestee, Danilo Dasilva. [REDACTED] states, while in his office, he heard a commotion in the processing room, which he believed was Lt. Fitzgerald yelling. [REDACTED] states he went into the processing room to see what was happening. [REDACTED] states that Lt. Fitzgerald informed that Mr. Dasilva attempted to bite him and wanted one of the patrolman to start typing an aggravated assault complaint. [REDACTED] states Lt. Fitzgerald then struck Mr. Dasilva in the face with the flat side of his hand. [REDACTED] states that later, when they were preparing Mr. Dasilva for transport to MCCI, Lt. Fitzgerald put Mr. Dasilva in a grab hold and threw him on on the table. [REDACTED] described his actions for handcuffing Mr. Dasilva as excessive. The formal statement taken after this interview is attached. (Attachment #3).

On 3/26/14, I assisted [REDACTED] in the interview of witness [REDACTED] at the MCPO office. [REDACTED] stated that Lt. Fitzgerald had an arrestee, Danilo Dasilva, in the holding area. [REDACTED] stated that he was in the dispatch room, which contains monitors, when he observed Lt. Fitzgerald's right hand strike Mr. Dasilva's face on the monitor. [REDACTED] went into the booking room and observed blood on or around Mr. Dasilva's head. [REDACTED] states Lt. Fitzgerald made mention of Mr. Dasilva trying to bite him, but he did not observe Mr. Dasilva provoke him on the video. [REDACTED] stated that when it was time for Mr. Dasilva to be transported to MCCI, Lt. Fitzgerald picked up Mr. Dasilva and place the arrestee on his stomach and, with each shoe he took off, hit Mr. Dasilva on the back. The formal statement taken after this interview is attached. (Attachment #4)

On 3/26/14, I also assisted [REDACTED] in the interview of witness [REDACTED] at the MCPO office. [REDACTED] states that he was in the patrol room when he heard a loud bang, like something hitting the wall, coming from the processing room. [REDACTED] states he then heard screaming and cursing coming from Lt. Fitzgerald. [REDACTED] states the dispatcher stated that somebody better get in there. [REDACTED] states that he stopped what he was doing and went into the processing room. [REDACTED] states, as he walked into the room, Lt. Fitzgerald hit Mr. Dasilva with his right hand. [REDACTED] states he observed Mr. Dasilva's earring roll across the floor. [REDACTED] states that Lt. Fitzgerald was yelling, something to the point of, "you tried to bite me, mother fucker". [REDACTED] states when it was time for Mr. Dasilva to go to the county jail, Lt. Fitzgerald picked him up by the rear of his pants and slammed him down on the table next to the detention bench. [REDACTED] states when Lt. Fitzgerald was searching Mr. Dasilva, he took off his shoes and smacked him on his lower back with both of his shoes and threw them on the floor. [REDACTED] states Lt. Fitzgerald stood up Dasilva in a puddle of his own urine. [REDACTED] states Mr. Dasilva was transported after with no further incident. The formal statement taken after this interview is attached. (Attachment #5).

[REDACTED]
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On 3/27/14, I assisted [REDACTED] in the interview of witness [REDACTED] at the MCPO office. In the interview, [REDACTED] states Lt. Fitzgerald had Mr. Dasilva in the booking room after being arrested for driving under the influence. [REDACTED] states that Mr. Dasilva had refused the test and it was noticed that he urinated on the floor at some point. [REDACTED] states that Lt. Fitzgerald was with Mr. Dasilva telling him to have someone pick him up. [REDACTED] states she heard a loud noise, through the speaker she had on in the dispatch room from the booking room. [REDACTED] stated she looked at the monitor of the booking room and heard Lt. Fitzgerald say something to the effect of "did you just try to bite me?" [REDACTED] states she then observed Lt. Fitzgerald strike Mr. Dasilva. [REDACTED] states that when all the officers went to the booking room to take Mr. Dasilva to MCCI, she observed Lt. Fitzgerald picked up Mr. Dasilva and put him belly down on the booking table. [REDACTED] states that Lt. Fitzgerald began to pat him down. [REDACTED] states that Lt. Fitzgerald went down his legs and took off his shoes and either slammed the shoe on Mr. Dasilva or next to him aggressively. [REDACTED] states that he was placed back on the bench and then taken to the county. The formal statement taken after this interview is attached. (Attachment #6).

On 3/28/14, I assisted [REDACTED] in the interviews of possible witnesses [REDACTED] and [REDACTED]. There were no formal statements taken since neither party was present during the incident. [REDACTED] in his interview, stated that he heard of the incident and felt it was a cover up. In fear the video would expire, he made six copies of the first minute of the incident, but did not want to speculate who mailed one of the copies to the AG's office. [REDACTED] provided his approximate timeline of events (Attachment #7). [REDACTED] in the interview, was asked about why the video was not sent in for discovery. [REDACTED] informed that she had sent everything contained in the folder to them.

5/15/14 - Lt. Fitzgerald retired from the Shrewsbury Police Department.

5/26/14- [REDACTED] informed me that while he was cleaning Lt. Fitzgerald's office, he located the original video downloaded from the incident. (Attachment #8)

5/28/14 - I spoke with [REDACTED] who informed me that Lt. Fitzgerald was charged with 3rd degree Aggravated Assault and that he plead to the downgraded charge of 4th degree Simple Assault.

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Conclusion Sustained

Based upon my viewing of the incident and the statements taken from the officers working the night in question, I find the allegation of assault against Lt. Fitzgerald sustained. Lt. Fitzgerald had separation from Mr. Dasilva, who was handcuffed to the bench, and assaulted him when he struck him in the face. Furthermore, Lt. Fitzgerald did not properly search Mr. Dasilva prior to his transport to MCCI and assaulted him when he struck him in the back with both of his shoes. Lt. Fitzgerald has retired from the Shrewsbury Police Department and criminal charges against Lt. Fitzgerald have been handled by the MCPO. For these reasons, I do not see a need for further disciplinary actions or training needs.

[REDACTED]

5/28/2014

Investigating Officer Rank/Name/Badge Number

Date