

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BENJAMIN ROMAN, Plaintiff	:	CASE NO.:
	:	
	:	
v.	:	
	:	
ROBBINSVILLE TOWNSHIP;	:	
ROBBINSVILLE TOWNSHIP POLICE	:	
DEPARTMENT; SERGEANT WILLIAM	:	
SWANHART, III; PATROLMAN THOMAS	:	
P. PAGLIONE; DETECTIVE PETER	:	
GALAZKA; ROBBINSVILLE	:	
TOWNSHIP POLICE CHIEF MARTY	:	
MASSERONI, and JOHN AND JANE DOES	:	
(1-99),	:	COMPLAINT
Defendants.	:	

Plaintiff Benjamin Roman, through his attorney Patrick J. Whalen, Esquire, by way of Complaint against Defendants, Robbinsville Township, the Robbinsville Township Police Department, Sergeant William Swanhart, III, Patrolman Thomas P. Paglione, Detective Peter Galazka, and Robbinsville Police Chief Marty Masseroni, alleges as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

1. This case involves claims based upon violations of the United States Constitution, the United States Civil Rights Act, including violations of 42 U.S.C. §1983, as well as violations of the New Jersey Constitution and the New Jersey Civil Rights Act, and common law causes of action.

2. Specifically, Plaintiff, Benjamin Roman, asserts that (a) Defendants unconstitutionally entered his home without a Warrant and without probable cause in

violation of the Fourth Amendment; (b) he was negligently and falsely arrested; (c) he was subjected to excessive and unreasonable force; and (d) he was falsely charged with and maliciously prosecuted for the following offenses: disorderly persons charges 2C:29-2A(1); 2C:33-2A(1); and 2C:29-1A.

II. JURISDICTION

3. Jurisdiction over Plaintiff's claims is conferred on this Court pursuant to Title 42 U.S.C. §1983 and Title 28 U.S.C. §§1339 and 1343(a). This Court has supplemental jurisdiction over the State law claims pursuant to Title 28 U.S.C. §1367(a).

III. VENUE

4. Venue in this District is proper, pursuant to 28 U.S.C.A. § 1391, because Plaintiff resides in Mercer County and certain unconstitutional acts, practices, and misconduct occurred within this District.

IV. RELIEF SOUGHT

5. This action seeks money damages, punitive and exemplary damages, attorney's fees, and costs.

V. PARTIES

6. Plaintiff Benjamin Roman is a resident of Robbinsville Township, New Jersey. He is 41 years old and the father of two children.

7. At all times relevant to this Complaint, Defendant Sergeant William Swanhart, III, was employed by the Robbinsville Township Police Department. He is being sued in his individual and official capacities.

8. At all times relevant to this Complaint, Defendant Patrolman Thomas P. Paglione was employed by the Robbinsville Township Police Department. He is being sued in his individual and official capacities.

9. At all times relevant to this Complaint, Defendant Detective Peter Galazka was employed by the Robbinsville Township Police Department. He is being sued in his individual and official capacities

10. At all times relevant to this Complaint, Defendant Chief Marty Masseroni was employed by the Robbinsville Township Police Department. He is being sued in his individual and official capacities.

11. Defendant Robbinsville Township Police Department ("RTPD") was at all times relevant herein a policymaking agency/department of the Township of Robbinsville, organized under the laws of the State of New Jersey. RTPD was responsible for enforcing all criminal laws of the State of New Jersey and criminal municipal ordinances of the Township of Robbinsville, as well as for the hiring, supervision, training and retention of Police Officers/Patrolman in the Township of Robbinsville and all other respective duties of a municipal law enforcement agency. At all times relevant herein, Defendant RTPD was the employer and principal of the Individual Defendants named herein. Defendant RTPD has the authority and ability, to afford Plaintiff Benjamin Roman prospective and final injunctive relief. For the purposes of all causes of action pleaded herein under N.J.S.A. 10:6-2 *et seq.*, Defendant RTPD is a person under law.

12. Defendant the Township of Robbinsville was at all times relevant herein a municipal corporation organized under the laws of the State of New Jersey and was the jural

entity responsible for all actions arising of Defendant RTPD. At all relevant times herein, Defendant Robbinsville Township was the principal for Defendant RTPD and the Individual Defendants. For the purposes of all causes of action pleaded herein under N.J.S.A. 10:6-2 et seq., Defendant Robbinsville Township is a person under law.

13. John and Jane Does 1-99 were past and present supervisors, policy makers, employees and/or agents of the RTPD who acted individually and under color of state law, including the statutes, regulations, policies, customs and usages of the Township of Robbinsville and State of New Jersey at all times relevant herein.

14. At all times mentioned herein, Defendants Swanhart, Paglione, Galazka, Masseroni, and John and Jane Does (1-99) were acting within the scope of their duties and employment, under color of state law, as Police Officers of the Robbinsville Township Police Department, the Township of Robbinsville, in the County of Mercer, State of New Jersey.

GENERAL BACKGROUND

15. On May 25, 2012, Defendants unlawfully and without a Warrant or probable cause, entered Plaintiff's home; searched his home and person; and seized his person.

16. During the course of Defendants' illegal search and subsequent unlawful arrest/seizure, Defendants used unreasonable and excessive force against Plaintiff Benjamin Roman.

17. During the evening of May 25, 2012, Plaintiff was on the balcony of his home, located at 226 Walden Circle, Robbinsville, New Jersey, listening to music. At the time, his one and half year old son was in the home sleeping, as was his girlfriend, Beatrice Garcia.

18. At approximately 11:30 P.M., Defendant Swanhart entered Plaintiff's backyard and shined his flashlight up on Mr. Roman. Mr. Roman then turned the music down.

19. Defendant Swanhart told Plaintiff to "go open the front door". Plaintiff opened the sliding door to enter his home so that he could open the front door. However, when he entered the home, Defendant Thomas Paglione was already banging and pounding at the front door.

20. Defendant Paglione's aggressive and unjustifiable behavior caused Plaintiff to hesitate. Plaintiff went back on to the balcony and explained to Defendant Swanhart that he was now not going to open the front door and asked him to just put the Summons for having the music too loud into his mail-slot.

21. Unfortunately, Defendants would not accept this solution.

22. Defendant Paglione continued to viciously bang at Plaintiff's front door. Mr. Roman's son and girlfriend were awoken by the loud banging. It sounded as if Defendants were going to knock the door down. Therefore, Plaintiff felt he had no choice and he opened the front door.

23. Defendant Paglione angrily told Plaintiff to step outside and ordered Mr. Roman to provide his identification.

24. When, in an effort to comply with the request for his identification, Plaintiff turned around to retrieve his driver's license, both Defendant Officers illegally entered his home. This act were blatantly unconstitutional.

25. Mr. Roman told both Defendant Officers that they were not invited, not allowed, and not welcome into his home. However, Defendants ignored Plaintiff and unlawfully entered the Roman home.

26. Defendant Paglione then grabbed Plaintiff by his throat and told Mr. Roman that he "can come in any time he fucking wants".

27. Eventually, Defendant Paglione released Plaintiff's neck, at which point Mr. Roman went into his kitchen to get his driver's license - - again, trying to comply with Defendants' request for identification.

28. Defendant Paglione then grabbed Plaintiff's arms from behind and forcibly threw him into the dining room.

29. It was at that point that Defendant Paglione unjustifiably arrested Plaintiff and took him into custody. Defendants did not even allow Mr. Roman to put a shirt or his shoes on.

30. At the Police Station, Plaintiff was handcuffed to a bench for approximately two hours and then later released.

31. Defendants thereafter filed false and frivolous charges against Plaintiff.

32. Upon information and belief, Defendant Officers' reporting and proposed charges were reviewed by and approved by Defendant Galazka.

33. Defendants falsely charged Plaintiff with the following:

- a) Resisting Arrest and/or Preventing Unlawful Arrest in violation of N.J.S.A. 2C:29-2A;
- b) Improper Behavior by Engaging in Tumultuous and Threatening Behavior in violation of N.J.S.A. 2C:33-2A;
- c) Obstructing the Administration of Law in violation of N.J.S.A. 2C:29-1A; and

d) A Loud Music Noise Ordinance violation (Robbinsville Ordinance #166-4(b)).

34. On January 24, 2013, all three criminal charges were dismissed by the State. Plaintiff pled to the noise ordinance complaint.

35. Violation of a noise ordinance does not justify Defendants' multiple violations of our Federal and State Constitutions.

COUNT ONE
WARRENTLESS ENTRY INTO HOME
IN VIOLATION OF THE FOURTH AMENDMENT

36. Plaintiff repeats and reallege the foregoing Paragraphs of this Complaint as though fully set forth at length herein.

37. On or about May 25, 2012, Defendants Swanhart and Paglione unlawfully and without a Warrant or probable cause, illegally entered Plaintiff's home.

38. Again, Plaintiff specifically told both Defendant Officers that they were not invited, not allowed, and not welcome into his home.

39. Defendants' unlawful entry into Plaintiff Benjamin Roman's home was unconstitutional.

40. Defendants Swanhart and Paglione illegally entered Plaintiff's home without a Warrant and without any legal justification, in violation of the Fourth Amendment.

41. By reason of the unlawful and unconstitutional use of unreasonable and excessive force against Plaintiff, as well as the other unconstitutional conduct described above, engaged in by the aforementioned Defendants, Plaintiff was required to and did employ legal counsel to (a) ensure protection and redress for the deprivation of his civil

rights; and (b) defend against the aforementioned baseless charges.

42. As a direct and proximate result of the actions of said Defendants, Plaintiff Benjamin Roman has, and will continue, to suffer damages, pain and suffering, and mental anguish.

COUNT TWO
FALSE ARREST

**(United States Constitution, United States Civil Rights Act 42 U.S.C. §1983,
New Jersey Constitution and New Jersey Civil Rights Act:
Unreasonable and Excessive Force - Unreasonable Seizure - False Arrest &
Imprisonment)**

43. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if set forth at length herein.

44. The above-described conduct of the Defendants constitutes unreasonable and/or excessive force in violation of the United States Constitution, the New Jersey Constitution, the United States Civil Rights Act 42 U.S.C. §1983, and the New Jersey Civil Rights Act, N.J.S.A 10:6-1, *et. seq.*

45. The use of such unreasonable and/or excessive force by the Defendants, acting under color of state law, deprived Plaintiff of his right to be secure in his person against unreasonable seizure of his person in violation of the United States Constitution, the New Jersey Constitution, the United States Civil Rights Act 42 U.S.C. §1983, and the New Jersey Civil Rights Act, N.J.S.A 10:6-1, *et. seq.*

46. In particular, the Defendants' actions violated the Fourth Amendment to the United States Constitution, as well as his procedural and substantive due process rights.

47. The actions of the Defendants, acting under color of state law, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the State of New Jersey, in particular, Article I, Paragraph 7, which provides that:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable...seizures, shall not be violated. . .”

48. The actions of the Defendants, acting under color of state law, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the State of New Jersey, in particular Article I, Paragraph 1, which provides that:

“All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

49. As a direct and proximate result of the Defendants' actions, Plaintiff was detained and held in custody without just and probable cause.

50. The Defendants lacked probable cause to arrest, seize and/or imprison Plaintiff.

51. At no time during the entire encounter did Plaintiff Benjamin Roman commit any offense against the laws of the State of New Jersey for which an arrest may lawfully be made.

52. There was no legal justification for his seizure, arrest or incarceration.

53. By reason of the unlawful and unconstitutional use of unreasonable and excessive force against Plaintiff Benjamin Roman, as well as the other unconstitutional conduct described above, engaged in by the aforementioned Defendants, Plaintiff was required to and did employ legal counsel to (a) ensure protection and redress for the

deprivation of his civil rights; and (b) defend against the aforementioned baseless charges.

54. The acts and omissions of the Defendants, as set forth above, were intentional, wanton, malicious, and oppressive, thus entitling Plaintiff to an award of punitive damages.

COUNT THREE
MALICIOUS PROSECUTION

55. Plaintiff repeats each and every allegation contained in the preceding paragraphs as if set forth at length herein.

56. Defendants Swanhart and Paglione falsely charged Plaintiff with Resisting Arrest, Improper Behavior, and Obstructing the Administration of Law.

57. The institution of said charges by said Defendant Police Officers was done with malice, with the primary purpose being other than that of bringing an offender to justice.

58. The aforementioned criminal charges were improperly issued by the Defendants. Specifically, the Defendants lacked reasonable or probable cause for these charges.

59. Approximately 8 months later, on January 24, 2013, the baseless charges against Plaintiff were dismissed by the State.

60. Upon information and belief, the Defendants issued charges against Plaintiff in a misguided effort to: (a) retaliate against the Plaintiff for his exercise of his Constitutional rights; and (b) justify the combined Defendants' unreasonable and unconstitutional misconduct against Mr. Roman and the mishandling of the entire encounter.

61. The actions of Defendants, acting under color of state law, deprived Plaintiff of his due process rights to be free from prosecution except upon a determination of probable

cause under the laws and the Constitution of the United States, in violation of 42 U.S.C. §1983, §1985 and §1986.

62. In particular, Defendants' actions violated the rights, privileges and immunities guaranteed to the Plaintiff by the Fourteenth Amendment, which, in pertinent part, provides that:

“No state . . . shall . . . deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction equal protection under the laws...”

63. The acts and omissions of Defendants, as set forth above, were intentional, wanton, malicious, and oppressive, thus entitling Plaintiff to an award of punitive damages

64. As a proximate result of the aforementioned acts, Plaintiff has been damaged, including violation of his civil rights, and has suffered mental distress and anguish and other proximately caused damages.

COUNT FOUR
Policymaker and/or Supervisory Liability
Under the Federal Civil Rights Act 42 U.S.C. §1983,
The New Jersey Constitution and New Jersey Civil Rights Act)

65. Plaintiff repeats each and every allegation contained in the preceding paragraphs as if set forth at length herein.

66. The allegations of this Count are directed primarily at Defendants Chief Masseroni, Peter Galazka, and John Does 1-99.

67. Because of the surrounding circumstances, the Defendants, in particular, Defendants Chief Masseroni and Peter Galazka were obligated to instruct, supervise, control and discipline Defendants Swanhart and Paglione and John/Jane Does (1-99) and should have had the knowledge that the wrongs done were about to be committed.

68. Acting under color of law and pursuant to official policy, practice, or custom, the Defendants intentionally, knowingly, and recklessly failed to instruct, supervise, control, and discipline, on a continuing basis, Defendants Swanhart and Paglione and John/Jane Does (1-99) as to correct procedures and to refrain in their duties from unconstitutional, warrantless entries into private homes, the unlawful use of excessive/unreasonable force, from violating citizens' Fourth and Fourteenth Amendment rights, and from the misuse of police authority. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

69. Acting under color of law and pursuant to official policy, practice, or custom, the Defendants had knowledge or, had they diligently exercised their duties to instruct, train, supervise, control and discipline Defendants Swanhart and Paglione should have known that the above-described wrongs were about to be committed. They had the power to prevent or aid in the prevention of said wrongs and could have done so with reasonable diligence and intentionally, knowingly or recklessly failed or refused to do so.

70. The Defendants, as a matter of policy, practice, or custom, have with deliberate indifference failed to adequately discipline, train or otherwise direct RTPD Police Officers concerning the rights of citizens, thereby causing Defendants Swanhart and Paglione to engage in the unlawful conduct described above.

71. The Defendants have allowed and continue to allow incidents such as this to occur unchecked.

72. The Defendants, with respect to discipline, created, encouraged and condoned an atmosphere of the use of unreasonable force, unreasonable seizure and general misconduct. This constituted a deliberate indifference or tacit authorization of such conduct.

73. The Defendants, as a matter of policy, practice, or custom, have with deliberate indifference failed to properly sanction or discipline Defendants Swanhart and Paglione for violations of the constitutional rights of citizens, thereby condoning and acquiescing in his unconstitutional and unlawful conduct.

74. The Defendants have, in the alternative, created a "danger" to the citizens of the Robbinsville Township, by not disciplining and effectively supervising Defendants Swanhart and Paglione (the State Created Danger doctrine).

75. The Defendants, as a matter of policy, practice, or custom, have with deliberate indifference failed to sanction or discipline the individual Defendants, thereby causing and encouraging the individual Defendants and other Police Officers, including the individual John/Jane Doe Defendants 1-99, to engage in unlawful conduct.

76. The Defendants, directly or indirectly, under color of law, approved and/or acquiesced in the unlawful, deliberate, malicious, reckless, wanton conduct of the individual Defendants heretofore described.

77. If the Defendants had undertaken such instructive, disciplinary or corrective action as to the individual Defendants, the unconstitutional conduct would not have occurred.

78. All of the unconstitutional acts described above are also actionable under the New Jersey Civil Rights Act and the New Jersey Constitution.

79. As a result, Plaintiff sustained personal injuries and damages.

COUNT FIVE
**NEGLIGENT SCREENING, HIRING, TRAINING, SUPERVISING
DISCIPLINING AND RETENTION OF POLICE OFFICERS UNWILLING
TO RESPECT AND ENFORCE THE CONSTITUTION**

80. Plaintiff repeats each and every allegation contained in the preceding paragraphs as if set forth at length herein.

81. Defendants Chief Marty Masseroni, the Robbinsville Township Police Department and the Township of Robbinsville in their official capacities, were negligent in screening, hiring, training, supervising, disciplining and retaining Defendants Swanhart, Paglione, and John/Jane Does 1-99, who they knew or should have known was a Police Officer unable or unwilling to respect and enforce the Constitutional rights of the City's citizens

82. Defendants the, Chief Marty Masseroni, the Robbinsville Township Police Department and the Township of Robbinsville are liable for the aforesaid acts both under the doctrine of respondeat superior and because they permitted conditions to exist which facilitated and/or permitted such conduct to occur.

83. As a proximate result of the above mentioned acts, Plaintiff Benjamin Roman has been damaged and has had his Constitutional rights interfered with.

RELIEF

WHEREFORE, Plaintiff seeks relief against the Defendants, including, but not limited to:

A) An award of compensatory damages, punitive damages, and/or in the alternative, nominal damages, which are allowed by statutes pleaded herein or as permitted by

common law, as well as any interest and costs of suit;

B) An award of reasonable attorneys' fees and costs of Court which are allowed by statutes pleaded herein or as permitted by common law, and interest thereon;

C) Any other award and equitable relief allowed by statute, pursuant to the ethical and just power of the Court, to which Plaintiff is entitled.

PATRICK J. WHALEN, ESQUIRE

By: *s/Patrick J. Whalen (PW3066)*
Attorney for Benjamin Roman

Dated: September 9, 2013

JURY DEMAND

Pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury as to all issues herein presented

PATRICK J. WHALEN, ESQUIRE

By: *s/Patrick J. Whalen (PW3066)*
Attorney for Benjamin Roman

Dated: September 9, 2013

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Patrick J. Whalen, Esquire as trial counsel in the above-referenced matter.

PATRICK J. WHALEN, ESQUIRE

By: *s/Patrick J. Whalen (PW3066)*
Attorney for Benjamin Roman

Dated: September 9, 2013

CERTIFICATION

I hereby certify that the matter in controversy in the within Complaint is not the subject of any other action pending in any other Court or of any arbitration proceeding. No other action or arbitration proceeding regarding this matter is contemplated by Plaintiff. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PATRICK J. WHALEN, ESQUIRE

By: *s/Patrick J. Whalen (PW3066)*
Attorney for Benjamin Roman

Dated: September 9, 2013