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Attorney for Plaintiff, Tanika Joyce

TANIKA JOYCE,

Plaintiff,

vs.

JOSEPH DIXON; CITY OF
MILLVILLE; CHIEF JODY
FARABELLA; JOHN/JANE
DOE(S) I; JOHN/JANE DOE(S) II;
JOHN/JANE DOE(S) III; and
JOHN/JANE DOE(S) IV,

Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

CIVIL ACTION

Case No.:

COMPLAINT AND JURY DEMAND

Plaintiff, Tanika Joyce, by way of Complaint against Defendants, Joseph Dixon, the City of Millville, Chief Jody Farabella, and John/Jane Doe(s) I, II, III, and IV, alleges as follows:

FIRST COUNT

Violation of 42 U.S.C. section 1983 and the Fourth and Fourteenth Amendments to the United States Constitution

Cause of Action, Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. section 1983, based upon violations of the Fourth and Fourteenth Amendments to the United States Constitution.
2. Jurisdiction is conferred pursuant to 28 U.S.C. sections 1331 and 1343(a)(3). The Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. section 1367.

3. Venue is proper in this District, pursuant to 28 U.S.C. section 1391(b)(2), as the events and/or omissions giving rise to this action occurred in the District of New Jersey.

The Parties

4. Plaintiff, Tanika Joyce ("Plaintiff" or "Joyce") was at all relevant times a citizen of the United States and of the State of New Jersey.

5. Defendant, Joseph Dixon ("Dixon"), during the time periods set forth in this Complaint, was a duly appointed and employed police officer with the Millville Police Department, and as such was a person acting under color of law, statute, ordinance, regulation, custom, or usage of the City of Millville and of the State of New Jersey.

6. As described elsewhere herein, Dixon is no longer employed by the Millville Police Department.

7. Defendant, the City of Millville, is a municipal corporation located in Cumberland County, New Jersey. Among other things, the City of Millville maintains and operates a police department which, at all relevant times, employed the named and unknown Defendants herein.

8. Defendant, Chief of Police Jody Farabella ("Chief Farabella"), at all relevant times, was a duly appointed and employed police officer and Chief of Police of the Millville Police Department, was an officer in charge, a policymaker, and/or a supervisor, and as such was a person acting under color of law, statute, ordinance, regulation, custom, or usage of the City of Millville and of the State of New Jersey.

9. Upon information and belief, there are additional persons, duly appointed employees of the Millville Police Department, the City of Millville, other law enforcement agencies and/or others, whose true names are unknown to Plaintiff, who are responsible and liable as law enforcement officers who participated and/or acquiesced in the unconstitutional and/or tortious

actions and/or omissions complained of herein which proximately caused Plaintiff's injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) I.

10. Upon information and belief, there are additional persons, duly appointed employees of the Millville Police Department, the City of Millville, other law enforcement agencies and/or others, whose true names are unknown to Plaintiff, who are responsible and liable as officers in charge, policymakers, and/or supervisors, and who participated and/or acquiesced in the unconstitutional and/or tortious actions and/or omissions complained of herein which proximately caused Plaintiff's injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) II.

11. Upon information and belief, there are other individuals, whose true names are unknown to Plaintiff, who are responsible and liable and who participated and/or acquiesced in the unconstitutional and/or tortious actions and/or omissions complained of herein which caused Plaintiff's injuries and damages. These unnamed and unknown persons, at all relevant times, were acting under color of law, statute, ordinance, regulation, custom or usage of the City of Millville, the Millville Police Department, of the State of New Jersey, and/or other law enforcement agencies, and are referred to as John/Jane Doe(s) III.

12. Upon information and belief, there are other entities, the identities of which are unknown to Plaintiff, which are responsible and liable for, and which participated and/or

acquiesced in, the unconstitutional and/or tortious actions and/or omissions complained of herein which caused Plaintiff's injuries and damages. Such entities are referred to herein as John/Jane Doe(s) IV.

13. John/Jane Doe(s) I, II, III, and IV are referred to in this Complaint regardless as to actual gender.

14. Each individual Defendant named herein is sued in his and/or her individual capacity.

15. To the extent the full and/or true name of any Defendant is discovered, Plaintiff reserves the right to seek amendment to the caption and body of this Complaint.

16. Plaintiff further reserves the right to amend this Complaint to add details surrounding the assault described herein, as well as additional parties and claims, as may be revealed in discovery and investigation.

Factual Allegations

17. On March 24, 2018, Defendant Dixon responded to a Shop Rite store, located at 2130 North Second Street in Millville, Cumberland County, New Jersey, in response to an alleged shoplifting complaint.

18. Upon information and belief, upon Dixon's arrival at the Shop Rite in Millville, there was a juvenile in custody for allegedly opening food items inside the store and eating the items without paying.

19. Upon information and belief, the juvenile's mother, Plaintiff Joyce, allegedly refused to provide identification to another Millville officer.

20. The second Millville officer, upon further information and belief, did not wish to charge the juvenile, but claimed that he needed Joyce's identification in order to release the juvenile to her.

21. Upon information and belief, Plaintiff Joyce allegedly refused to provide identification to the other Millville officer.

22. Upon information and belief, Joyce allegedly began arguing with Dixon and the other officer, and Dixon advised her that she would be arrested for disorderly conduct.

23. Dixon attempted to place Joyce under arrest.

24. In the course of this arrest, Dixon employed excessive force by throwing Joyce to the ground, and by spraying her with oleoresin capsicum spray.

25. Plaintiff Joyce complained that she could not breathe, and that her hip was injured.

26. After this incident, Plaintiff Joyce received treatment at Inspira Hospital in Vineland, New Jersey.

27. On September 5, 2019, the New Jersey Division of Criminal Justice, Office of Public Integrity and Accountability ("OPIA"), sent a letter to Dixon, notifying him that he was a target of a State Grand Jury investigation into allegations of official misconduct, assault, and falsifying or tampering with public records relating to his conduct in the course of his employment as a Millville Police Officer.

28. On November 20, 2019, Dixon entered guilty pleas on a pre-indictment Accusation in Superior Court, Cumberland County, to two counts of third-degree aggravated assault based on the conduct committed against Joyce on March 24, 2018 and against Audra Capps on February 25, 2018.

29. Capps, along with her husband, have a separate lawsuit pending in this Court captioned as Audra Capps and Douglas Robert Gibson, Jr. v. Joseph Dixon, Bryan Orndorf, Jody Farabella, City of Millville, et al., Civil Action No. 1:19-cv-12002-RMB-AMD (D.N.J.).

30. At his plea hearing on November 20, 2019, Dixon admitted under oath, among other things, that he used excessive force against Joyce and Capps, and that his actions were reckless.

31. As part of his guilty pleas, Dixon was required to agree to a lifetime ban on public employment, and he will never be able to serve as a police officer in the State of New Jersey in the future.

32. Dixon's pleas of guilty for his assaultive conduct as to Joyce and Capps came with a recommended and negotiated sentence of probation, conditioned upon serving 364 days in the Cumberland County Jail.

33. At sentencing on January 17, 2020, the Superior Court enforced the negotiated plea agreement entered by Dixon and the OPIA, placed Dixon on two years of probation, but suspended Dixon's county jail sentence.

34. In this action, Plaintiff Joyce does not challenge whether there was probable cause for her arrest.

35. However, and in addition to his violations of federal and state constitutional protections against unreasonable searches and seizures described herein, Defendant Dixon violated state and local guidelines governing the use of force by police officers.

36. The New Jersey Attorney General's Use of Force Policy (revised June 2000) (the "AG UFP") provides that, among other things:

... In situations where law enforcement officers are justified in using force, **the utmost restraint should be exercised. The use of force should never be considered routine.** In determining to use force, the law enforcement officer shall be guided by the principle that **the degree of force employed in any**

situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

AG UFP at 1, par. 3 (bold added). The AG UFP also provides:

Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. **It is a decision which can be irrevocable.** It is a decision which must be made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions.

AG UFP at 2, par. 1 (bold added).

37. The AG UFP policy also imposes a duty upon other officers with respect to the use of excessive force. The policy:

... reinforces the responsibility of law enforcement officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of the law.

AG UFP at 1-2, par. 4.

38. Plaintiff Joyce reserves the right to further demonstrate that other officers of the Millville Police Department failed to abide by their responsibilities to intervene to prevent and to report the excessive force used by Defendant Dixon on March 24, 2018 under the AG UFP and under the Millville Police Department's own Rules and Regulations.

39. Joyce reserves the right to assert other violations of state and local guidelines and directives, as may be revealed in discovery and investigation.

40. Joyce further reserves the right to move to consolidate this action with the Cappi litigation pursuant to Federal Rule of Civil Procedure 42(a).

41. Separate and apart from, and/or as a result of the violations of, the AG UFP, Millville Police Department Directives, and any police academy training he received, Defendant Dixon used excessive force against Plaintiff in effecting her arrest, resulting in a violation of her rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable searches and seizures.

42. In fact, Defendant Dixon pleaded guilty to assaulting Joyce and to using excessive force against her.

WHEREFORE, Plaintiff Tanika Joyce respectfully requests that this Honorable Court enter judgment in her favor and against Defendants Joseph Dixon and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

SECOND COUNT
Monell Claim in Violation of 42 U.S.C. sec. 1983

43. Plaintiff incorporates the preceding paragraphs of this Complaint as if set forth at length herein.

44. This cause of action is brought pursuant to 42 U.S.C. §1983, the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in accordance with Monell v. Department of Soc. Serv. of the City of New York, 436 U.S. 658 (1978).

45. In or about 2017 and 2018, the Newark *Star Ledger* and/or NJ Advance Media for NJ.com (collectively, "NJ.com") began to compile data based on New Jersey police use of force

reports received through public records requests. Its 16-month-long investigation led to a series of articles originally published in November and December of 2018, which were collectively referred to as The Force Report.

46. As part of its investigation, and based on the records obtained and analyzed, NJ.com determined that during his first three-plus years as a police officer for the City of Millville, Defendant Dixon reported using force more than any other police officer in the State of New Jersey.

47. NJ.com also reported that, over the studied five-year period of 2012 through 2016, Dixon's 58 instances in which he reported using force ranked him third statewide behind two other officers from different police departments who had 62 and 59 such instances of reported use of force, respectively.

48. NJ.com reported that Defendant Dixon's 58 use of force incidents in his first four years after completing police academy training yielded an average of more than one incident per month.

49. By contrast, NJ.com reported that the more than 17,000 New Jersey officers who reported using force over a similar period averaged less than one incident per year.

50. According to NJ.com's reporting and investigation, Dixon himself accounted for a full one-tenth of the entire Millville Police Department's use of force incidents reported, and none of the other 70-plus officers came close to his share.

51. Moreover, as related by NJ.com's reporting and investigation, with 58 reported instances of the use force during the period studied, Dixon far eclipsed the second-place finisher in the Millville Police Department, Officer Jeffrey Proffit, who reported using force 36 times during the same period.

52. According to NJ.com's reporting and investigation, Defendant Dixon reported more injured subjects than all but one other officer in the state, despite the fact that he was on the police force for only four of the five years covered by The Force Report.

53. In response to NJ.com's reporting and investigation, Defendant Millville Police Chief Jody Farabella nevertheless called Defendant Dixon "an example of a fine officer" who was never the subject of a sustained excessive force complaint.

54. Defendant Chief Farabella, however, and according to NJ.com, declined to say how many excessive force complaints in total had been filed against Dixon.

55. Defendant Chief Farabella commented further to NJ.com by referring to Dixon's duty assignment: "He's in the worst areas ... so he's gonna see more than a regular patrolman."

56. Upon information and belief, the incident involving Plaintiff Joyce occurred at a Shop Rite store.

57. NJ.com also has reported on irregularities with some of Dixon's use of force reports. Upon further information and belief, and as reported by NJ.com, Dixon over the past few years had posted thoughts and memes to his public Facebook account to defend how officers have used force, and to disparage critics of police tactics. NJ.com further reported that Dixon's account's privacy settings were changed about three weeks after NJ.com reached out to him about his posts, and they are no longer visible.

58. In addition, NJ.com has reported that, of the 39 excessive force complaints filed against police officers in the City of Millville from 2012 through 2016, not one complaint was sustained.

59. Furthermore, Defendant Chief Farabella, according to NJ.com, even nominated Dixon for a Public Safety Officer Medal of Valor.

60. If Dixon had won the award, he would have had a chance to meet the President of the United States, upon information and belief.

61. In addition, NJ.com has reported in The Force Report that from 2012 through 2016, Millville's Police Department recorded 665 total uses of force, for 46.7 incidents per 1,000 arrests, and concluded that the City of Millville's Police Department used force at a higher rate than 394 other police departments in the State of New Jersey.

62. NJ.com's analysis additionally revealed that 74 officers in the Millville Police Department used force over five years, an average of 9.0 incidents per officer who used force over that five-year period, which exceeded the statewide average of 4.1 incidents per officer.

63. Defendant Chief Farabella's statement that Dixon was not previously the subject of a sustained excessive force complaint suggests that neither Defendant City of Millville, nor Defendant Chief Farabella, nor any of the John Doe Defendants, have imposed discipline on Dixon for previous instances of excessive force.

64. These facts are evidence of deliberate indifference on the part of Chief Farabella and by the City of Millville and its policymakers to the pattern and use of excessive force by Dixon, to the frequent use of excessive force by officers of the Millville Police Department, and to the questionable process employed by the Millville Police Department of investigating internal affairs complaints and as to officer discipline, among other things which may be revealed in discovery and investigation.

65. Defendant, City of Millville, Chief Farabella and/or its policymakers, including John/Jane Doe(s) II, upon information and belief, allowed Defendant Dixon's behavior to go unchecked, and this is reflected in the fact that Dixon is the subject of two other known excessive force lawsuits now pending in the District of New Jersey, the aforementioned case of Audra