

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.) and the case of Barry Cottman v. Jody Farabella, Millville Chief of Police Jody Farabella, P.O. Joseph Dixon 172, P.O. Robert Runkle 160, and the City of Millville, Civil Action No. 1:19-cv-14122-NLH-AMD (D.N.J.).

66. Defendant, City of Millville, Chief Farabella and/or its policymakers, including John/Jane Doe(s) II, upon information and belief, also permitted the conduct of Millville Police Officer Jeffrey Proffit to go unchecked. Ultimately, however, on January 10, 2020, Proffit pleaded guilty in the Superior Court of New Jersey, Cumberland County, to a similar third-degree aggravated assault charge in connection with a police-citizen encounter.

67. Proffit, who is also required to resign from the Millville Police Department, likewise agreed to a lifetime ban on public employment. He is pending sentencing at this time.

68. Separate and apart from the use of force statistics identified by NJ.com in The Force Report, the City of Millville's Police Department has now had two police officers become convicted felons for committing aggravated assaults upon arrestees within the span of the past two months.

69. Neither the City of Millville, nor Defendant Chief Farabella or its Police Department and/or its policymakers, have learned from previous litigation and settlement payments made, and have failed to change: (1) a culture which tolerates the use of excessive force by its officers; (2) a culture in which outcome-determined internal affairs investigations are conducted; (3) a culture which fails to properly train police officers; and/or (4) a culture which improperly supervises, hires, and/or retains officers in employment who demonstrate propensities toward the use of excessive force.

70. On or about December 4, 2019, New Jersey's Attorney General announced sweeping statewide reforms regarding, among other things, the use of force by police officers, the conduct of internal affairs investigations, and the identification of at-risk police officers, known collectively as the "Excellence in Policing Initiative."

71. In a particularly noteworthy letter dated December 4, 2019, the Attorney General notified Defendant Chief Farabella and five other New Jersey Chiefs of Police that, among other things, he was "...writing to recognize your police departments as the six New Jersey law enforcement agencies that will participate" in a pilot program for the State of New Jersey's new Police Use-of-Force Portal for obtaining statewide use-of-force data.

72. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, had a policy or custom of failing to adequately train their officers and employees with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the use of excessive force, and were deliberately indifferent to the deficiency in training in the above regard and to the rights of persons with whom the police came in contact, which deficiencies in training proximately caused the injuries and damages complained of herein by Plaintiff Joyce.

73. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, had a policy and/or custom that tolerated the use of unconstitutional and unreasonable searches and seizures and/or the use of excessive force, which proximately caused the constitutional and personal injuries complained of herein by Plaintiff Joyce.

74. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, and through their agents and employees, promulgated

customs, policies, practices, ordinances, regulations and directives that caused and/or tolerated the use of excessive force against Plaintiff Joyce and others.

75. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, have been deliberately indifferent to the violent propensities of their police officers and/or of the violent propensities of the individually named Defendant police officer herein.

76. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, through the City's police department, established, knew of, and acquiesced in policies, procedures, and customs they knew or should have known would lead to violations of individuals' constitutional rights.

77. Defendants, the City of Millville and its policymakers, including but not limited to, Chief Farabella and John Doe(s) II and IV, through the City's police department, acted with deliberate indifference to the consequences by failing to develop appropriate policies and/or by failing to enforce the policies, procedures and directives described herein and/or which were already in place.

78. Defendants' training programs with regard to the use of force were inadequate, upon information and belief, including but not limited to the failure to train their officers with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the prevention of the use of excessive force.

79. Upon information and belief, Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, also should have known about and learned from previous litigation filed against them and/or against their police officers

alleging the use of excessive force and information about previous unconstitutional conduct engaged in by one or more Millville police officers.

80. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, were deliberately indifferent to these deficiencies, and the deficiencies in training, oversight, investigation, enforcement, and discipline caused the actions of the individual Defendant set forth herein, which proximately caused the injuries and damages complained of herein by Plaintiff Joyce.

81. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, upon information and belief, knew and/or were aware of and/or should have known of the deficiencies set forth in this Count, and knew and/or were aware of and/or should have known about alternatives for preventing the constitutional violations complained of herein, and/or acquiesced in a policy or custom of inaction or toleration in the above regard.

82. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, upon information and belief, additionally engaged in a custom or usage of not abiding by mandated internal affairs policies in connection with investigating officer misconduct, and were deliberately indifferent to the custom or usage of conducting deficient internal affairs investigations with a preordained goal of exonerating the officer(s) accused of excessive force, including but not limited to Defendant Dixon.

83. Said customs or usages, and Defendants' deliberate indifference thereto, resulted in deficient, biased investigations leading to findings exonerating Defendant Dixon, who was involved in assaulting Plaintiff Joyce and others, which had the result of keeping such an officer on patrol, on the street, and in a position to harm Plaintiff and others.

84. Defendants' customs or usages with regard to the investigation of complaints made against Millville police officers resulted in a sham process which permitted the police department's officers to violate the constitutional rights of individuals with impunity with the knowledge that they would not be punished for their misconduct and would be retained in their employment.

85. Defendants, the City of Millville and its policymakers, including but not limited to Chief Farabella and John Doe(s) II and IV, directly and proximately caused Plaintiff Joyce to be subjected to an unreasonable search and/or seizure and/or to the use of excessive force, thereby violating her rights under the Fourth and Fourteenth Amendments to the United States Constitution.

86. Defendants jointly, severally and in the alternative, deprived Plaintiff Joyce of her federal constitutional rights, as set forth herein, and deprived her of said rights while acting under color of state law, in violation of 42 U.S.C. §1983.

87. As a proximate cause of the actions and omissions described herein, Plaintiff Joyce suffered emotional and physical pain, as well as other damages and injuries.

WHEREFORE, Plaintiff Tanika Joyce respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief Jody Farabella, and John Doe(s) II and IV, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with 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.

THIRD COUNT

Violation of Article I, Paragraph 7 of the New Jersey Constitution

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

89. Plaintiff Joyce brings this Count pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (c), (e), and (f).

90. As described herein, Defendant Dixon and/or John/Jane Doe(s) I and III violated Plaintiff Joyce's right under Article I, Paragraph 7 of the New Jersey Constitution to be free from unreasonable searches and seizures.

WHEREFORE, Plaintiff Tanika Joyce respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Joseph Dixon and/or 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, reasonable attorney's fees, costs of suit, and such other relief as the Court deems just.

FOURTH COUNT

Supervisory Liability Under 42 U.S.C. sec. 1983

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

92. As may be applicable and appropriate to Counts I, II, and/or III above, and based on the facts recited therein, Defendants, Chief Farabella and/or John/Jane Doe(s) II, are liable as supervisors under 42 U.S.C. sec. 1983 for the unconstitutional acts of their subordinates. See A.M. v. Luzerne Cty. Juvenile Detention Ctr., 372 F.3d 572, 585-586 (3d Cir. 2004) (citations omitted); Barkes v. First Correctional Medical, Inc., 766 F.3d 307, 317-320 (3d Cir. 2014), rev'd

on other grounds, Taylor v. Barks, 135 S.Ct. 2042 (2015), as cited in Raheem Jacobs v. Cumberland Cty., et al., Civil Action No. 1:16-cv-01523-JHR-AMD (D.N.J.).

93. Defendants, Chief Farabella and/or John/Jane Doe(s) II, in their roles as policymakers of the Defendant, City of Millville, and with deliberate indifference to the consequences, established and maintained policies, practices or customs identified elsewhere herein, and as may be further revealed in discovery and investigation, which directly caused the constitutional harm which resulted to Plaintiff Joyce and which resulted to other known Plaintiffs who have cases against Defendants.

94. Defendants, Chief Farabella and/or John/Jane Doe(s) II, failed to employ those practices and policies identified in Count II, and such practices and policies which further may be revealed in discovery and investigation.

95. Such policies or procedures in effect at the time of the injuries alleged herein created an unreasonable risk of a constitutional violation.

96. Defendants, Chief Farabella and/or John/Jane Doe(s) II, were aware that the policies or practices created an unreasonable risk of a constitutional violation.

97. Defendants, Chief Farabella and/or John/Jane Doe(s) II, were indifferent to the risk.

98. The constitutional injury alleged herein and as alleged in other litigation was caused by these Defendants' failure to implement supervisory practices or procedures.

99. In the alternative, Defendants, Chief Farabella and/or John/Jane Doe(s) II, may be held personally liable under 42 U.S.C. sec. 1983, as persons in charge, by acquiescing in their subordinates' violations, and in such other ways as may be revealed in discovery and investigation.

100. As evidence of this acquiescence, and by way of example, Defendant Chief Farabella, instead of simply declining to comment in the face of NJ.com's reporting, went out of his way to defend Dixon by calling him "an example of a fine officer," and by making other reported comments to excuse or justify Dixon's conduct.

101. In addition to the pleaded facts set forth in Counts I and II of this Complaint, which are hereby incorporated by reference, and as additionally may be revealed in discovery and investigation, Defendants, Chief Farabella and/or John/Jane Doe(s) II, upon information and belief, implemented and/or allowed improper policies or procedures to exist and/or acquiesced in the violations of their subordinates, in that they:

- (1) knew or should have known about the frequency of their own departmental use of force reports which were filled out by their officers, including but not limited to Defendant Dixon;
- (2) knew or should have known that their training programs were ineffective in stemming the tide of unconstitutional uses of excessive force by their officers;
- (3) knew or should have known that state and departmental guidelines regarding the use of force were not being adhered to;
- (4) knew or should have known that appropriate procedures regarding the conduct of internal affairs investigations and officer discipline for the use of excessive force were not being followed and/or misused to create biased outcomes, with the ultimate result that dangerous officers were being permitted to remain employed, undisciplined and unpunished, to the detriment of the public and Plaintiffs in this case and in other cases;

- (5) knew or should have known that the high frequency of certain officers' (including but not limited to Dixon) use of force reports was evidence of a larger problem which was not being addressed and/or which was being overlooked in an effort to support the officers of the Millville Police Department; and/or
- (6) knew or should have known, based on previous instances of Dixon's use of force, and at least as early as the June 27, 2017 incident in the Cottman case and the February 25, 2018 incident in the Capps case, that Dixon exhibited the propensity to use excessive force, such that he should not have been permitted to remain on duty prior to the March 24, 2018 incident involving Plaintiff Joyce.

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

DEMAND FOR TRIAL BY JURY

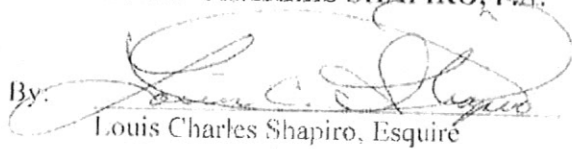
Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on the causes of action pleaded in this Complaint.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Louis Charles Shapiro, Esquire, of the law firm of Louis Charles Shapiro, P.A., is hereby designated as trial counsel on behalf of Plaintiff, Tanika Joyce.

Respectfully submitted,

LOUIS CHARLES SHAPIRO, P.A.

By: 

Louis Charles Shapiro, Esquire

Attorney for Plaintiff, Tanika Joyce

DATED: January 31, 2020