

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

147. Plaintiff incorporates the preceding paragraphs of this Amended Complaint as if set forth at length herein, and specifically incorporates as deficient policies and/or customs those policies, procedures, and programs identified in the First and Second Counts of this Amended Complaint, in addition to those pleaded facts set forth in this Third Count.

148. 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).

149. In or about 2017 and 2018, 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.

150. 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.

151. 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.

152. 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.

153. 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.

154. 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.

155. 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 E. Profitt, who reported using force 36 times during the same period.

156. 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.

157. In response to NJ.com's reporting and investigation, and as described in Count II, Chief Jody Farabella nevertheless called Defendant Dixon "an example of a fine officer" who was never the subject of a sustained excessive force complaint.

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

159. 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."

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

161. However, Millville Police Officer Antonio Delfinado, when interviewed as part of OPIA's criminal probe of Dixon, undercut Chief Farabella's "worst areas" theory when he told

investigators that the MPD does not have assigned zones. Instead, an officer can be dispatched to any call in any section of the city at any given time.

162. NJ.com also has reported on irregularities with some of Dixon's use of force reports.

163. 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.

164. NJ.com also reported 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.

165. 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.

166. 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 Chief Farabella, nor any of the Supervisory Defendants, have imposed discipline on Dixon for previous instances of excessive force.

167. These facts are evidence of deliberate indifference on the part of 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 deficiencies which may be revealed in discovery and investigation.

168. Defendant, City of Millville and/or John/Jane Doe(s) IV, 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 Cottman and Capps cases.

169. Defendant, City of Millville and/or John/Jane Doe(s) IV, upon information and belief, also permitted the conduct of former Millville Police Officer Profitt to go unchecked. Ultimately, however, on January 10, 2020, Profitt 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.

170. Profitt, who was also required to resign from the Millville Police Department, likewise agreed to a lifetime ban on public employment. He received a sentence similar to the sentence handed down in Dixon's criminal case.

171. 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 a span of a few months.

172. Dixon joined the MPD in or about August of 2012. Preliminary Internal Affairs indexes demonstrate (without the files yet being produced) the following: (1) for the 2013 calendar year, not one of the approximately 23 internal affairs investigations was sustained against a Millville officer for excessive force; (2) in 2014, of the apparent seven excessive force investigations, only two were sustained and against the same officer, Edmund Ansara, who was

terminated for a variety of reasons; (3) in 2015, there appear to be six excessive force investigations, with none marked as sustained, but with a negative outcome relating to the arrest of Officer Jeffrey Proffitt; (4) in 2016, there apparently were no sustained excessive force investigations out of six cases; (5) the 2017 index reveals only one out of five sustained cases, giving Defendant City of Millville the benefit of the doubt that a case characterized as “simple assault” might have involved the use of force by an officer; (6) Millville’s 2018 index, which interestingly changed its linguistic terminology from “excessive force” to “use of force,” revealed only one out of six sustained police officer use of force investigations; and (7) the 2019 index appears to demonstrate zero out of four possible use of force cases sustained.

173. Thus, giving Defendant City of Millville the benefit of favorable inferences, it can be said that, according to its Internal Affairs indexes, in seven years (2013 through 2019), only four (4) out of a possible fifty-seven (57) excessive force investigations were sustained (about seven percent of the cases), with two of those four being attributed to one terminated former officer.

174. Defendant Millville’s indexes for these seven years reveal 10 internal affairs investigations against Defendant Dixon for what appear to be instances of excessive force, with not one investigation determined to be “sustained.” Dixon, however, had sustained findings as to other non-force-related violations during his tenure with the MPD.

175. Millville excessive force indexes for the years 2013 through 2019 demonstrate that the MPD’s Internal Affairs Unit often sustained minor or other types of regulatory violations against officers, but rarely made “sustained” findings in cases of excessive force, which would subject its officers and the City to civil liability and monetary damages.

176. According to Millville Police Department General Order dated September 1, 2014 regarding internal affairs procedures, the MPD's Professional Standards Unit "should investigate and review use of force incidents," and the supervisor of that unit "shall immediately notify the Chief of Police, verbally and in person if possible, of complaints against the agency and/or its employees with regards to ... excessive force." Yet according to the OPIA interviews recounted herein, prior to 2019 supervisors were reviewing the face of UOF reports for accuracy and completeness, but apparently taking few, if any, other investigatory steps to determine if excessive force was used.

177. The number and outcome of Internal Affairs investigations against Dixon for the use of force is not the only measurement of Defendants' failure to properly evaluate, train and supervise Dixon and other officers.

178. Indeed, not only did the Supervisory Defendants rely on a useless system of random MVR reviews for evaluation and training purposes, but the 80 UOF forms was cause enough for OPIA to investigate and to successfully prosecute Dixon to a criminal standard of beyond a reasonable doubt. But the frequency of these forms being generated were not enough for the Defendants named and unnamed to take action or to recognize that, in Defendant Officer Dixon, they had a problem waiting to happen.

179. Officer Bryan Orndorf, interviewed as part of the Dixon criminal probe, further told OPIA that the MPD reviews the Use of Force policy when officers go to the range -- presumably meaning, the gun range. He believed that this was done once a year, but said that the training is very repetitive and he did not recall the exact procedure.

180. Officer Chard further informed OPIA that supervisors have spoken to him about using force, but that this was a rare occurrence. He said that Defendant Sgt. Redden spoke to

him only once when he was a new officer about the use of force, and Redden told Chard that he should have used force sooner during the incident discussed so it would be more effective.

181. 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."

182. In a particularly noteworthy letter dated December 4, 2019, the Attorney General notified 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.

183. Defendants, the City of Millville and/or John Doe(s) IV, also failed to learn 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 and evaluate 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.

184. Defendants, the City of Millville and/or John Doe(s) IV, had a policy or custom of failing to adequately train and evaluate 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.

185. Defendants, the City of Millville and/or John Doe(s) 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.

186. Defendants, the City of Millville and/or John Doe(s) 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.

187. Defendants, the City of Millville and/or John Doe(s) 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.

188. Defendants, the City of Millville and/or John Doe(s) 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.

189. Defendants, the City of Millville and/or John Doe(s) 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.

190. Defendants' training and evaluation 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.

191. Defendants, the City of Millville and/or John Doe(s) IV, were deliberately indifferent to these deficiencies, and the deficiencies in training, evaluation, 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.

192. Defendants, the City of Millville and/or John Doe(s) IV, upon information and belief, knew and/or were aware of and/or should have known of the deficiencies set forth in this Third Count and in the First and Second Counts (which are specifically incorporated herein by reference), 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.

193 Defendants, the City of Millville and/or John Doe(s) 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.

194. 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.

195. 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.

196. Defendants, the City of Millville and/or John Doe(s) 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.

197. 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.

198. 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 and John Doe(s) 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.

FOURTH COUNT

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

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

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

201. As described herein, Defendants 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.

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 Amended Complaint.

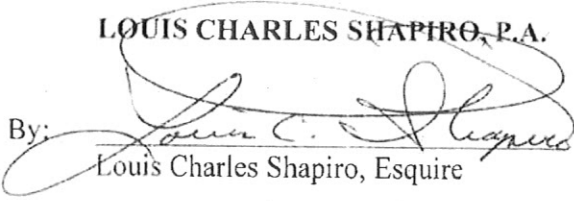
NOTICE OF DESIGNATION OF TRIAL COUNSEL

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: April 23, 2020