

LOUIS CHARLES SHAPIRO, P.A.

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Attorney for Plaintiffs, Audra Capps and Douglas Robert Gibson, Jr.

AUDRA CAPPS; and DOUGLAS
ROBERT GIBSON, JR.

Plaintiffs

vs.

JOSEPH DIXON; BRYAN ORNDORF;
JODY FARABELLA; CITY OF
MILLVILLE; 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

Plaintiffs, Audra Capps and Douglas Robert Gibson, Jr., by way of Complaint against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief of Police Jody Farabella, the City of Millville, and John/Jane Doe(s) I, II, III, and IV, allege 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

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has supplemental jurisdiction over state law claims 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, Audra Capps ("Capps"), was at all relevant times a citizen of the United States and of the State of New Jersey, residing at 182 Davis Mill Road, Greenwich, New Jersey.

5. Plaintiff, Douglas Robert Gibson, Jr. ("Gibson"), was at all relevant times a citizen of the United States and of the State of New Jersey, residing at 182 Davis Mill Road, Greenwich, New Jersey.

6. Gibson is the husband of Plaintiff Capps.

7. Defendant, Officer Joseph Dixon, badge #172 ("Dixon"), at all relevant times, 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.

8. Defendant, Officer Bryan Orndorf, badge #183 ("Orndorf"), at all relevant times, 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.

9. 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.

10. 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.

11. 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 Plaintiffs, 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 Plaintiffs' 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) 1.

12. 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 Plaintiffs, 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 Plaintiffs' 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) 11.

13. Upon information and belief, there are other individuals, whose true names are unknown to Plaintiffs, 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 Plaintiffs' 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.

14. Upon information and belief, there are other entities, the identities of which are unknown to Plaintiffs, 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 Plaintiffs' injuries and damages. Such entities are referred to herein as John/Jane Doe(s) IV.

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

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

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

Factual Allegations

A. The Takedown.

18. On February 25, 2018, at approximately 8:22 p.m., Defendant Officer Dixon pulled over Plaintiff Capps, who was driving westbound on state highway 49 in the City of Millville, on suspicion of driving while intoxicated.

19. The location at which Dixon conducted this motor vehicle stop was in front of Clark's

Liquor Store, which has, upon information and belief, a parking lot paved with asphalt, or a similar hard surface.

20. During a sometimes heated exchange, Capps told Dixon, among other things, that she wanted to call her husband, Plaintiff Gibson.

21. Dixon would not let Capps call her husband.

22. Instead Dixon ordered Capps out of the car.

23. In the parking lot attached to or in the vicinity of Clark's Liquor, Dixon began to administer various field sobriety tests.

24. Audio and video footage of these field sobriety tests were captured on a Millville Police Department patrol car's mobile video recorder ("MVR" or "dash-cam"), relevant portions of which can be viewed publicly on a link to an NJ.com article as part of its "Force Report" series: <https://www.nj.com/news/2018/12/this-nj-cop-used-more-force-than-anyone-else-is-he-violent-or-just-good-at-his-job.html>.

25. Plaintiff Capps at the time of the motor vehicle stop was 50 years old, 5'4" tall and of a slight build, weighing approximately 100 pounds or less.

26. As such, she posed no physical threat to Officer Dixon.

27. After several minutes of Plaintiff Capps performing the field sobriety tests, Dixon determined that she failed them.

28. The MVR captured what happened next, and a portion of the first approximate one minute and fifty seconds of the following public video clip demonstrates what happened to Plaintiff Capps, in slow motion: <https://www.youtube.com/watch?v=dpl.yFMAs6rc>.

29. Dixon sought to arrest Plaintiff Capps by attempting to handcuff her behind her back.

30. After Dixon initially took control of Capps's hands, Capps took a step away.
 31. Capps looked up at Dixon, who stood approximately a full head taller.
 32. As Capps began to back up so as to not be handcuffed, Dixon grabbed hold of her.
 33. The MVR revealed Dixon placing his left arm around Capps's head and/or neck in a headlock position.
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34. While holding Plaintiff in a headlock, Officer Dixon lifted Capps off the ground, whirled her around in the headlock, swung Capps over his hip while she was still in a headlock, and violently slammed this much smaller female suspect to the hard pavement below.
 35. Dixon fell down on top of Capps with all of his weight.
 36. The dash-cam footage further showed Officer Orndorf headed towards Dixon's location, and thereafter on top of Capps, putting his knee and/or his weight on Capps's back, assisting Dixon in securing Capps in handcuffs.
 37. After being lifted up from the pavement, the Defendant officers placed Capps in the back seat of a patrol car.
 38. The MVR also recorded Plaintiff Capps in the back of the patrol car.
 39. During the time she was in the back of the patrol car, Capps made a number of clear requests and statements:
 - * Capps requested that officers call her husband.
 - * Capps told the officers that she could not breathe.
 - * Capps told the officers that they had slammed her face.
 - * Capps told the officers that her rib was broken.
 - * Capps told the officers that she needed to go to the hospital.

40. Yet Defendants either declined or ignored these requests -- in particular, Plaintiff Capps's immediate and legitimate need for medical treatment.

41. Instead, Dixon and/or Orndorf took Plaintiff Capps to the Millville Police Department, where police charged her with multiple offenses.

B. The Violations of Policies and Directives.

(1) Defendants Violated The New Jersey Attorney General's Policy On the Use of Force.

42. Plaintiff Capps does not challenge the basis for the motor vehicle stop on February 25, 2018, and does not challenge the probable cause for her arrest.

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

44. 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).

45. 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).

46. As described in the Third Count of the Complaint, the use of force by Defendant Dixon has become routine.

47. As demonstrated on the MVR footage, Defendant Dixon did not exercise the "utmost restraint" and did not employ only the level of force that was "reasonably necessary" in his encounter with Plaintiff Capps, a 50-year-old woman of slight build.

48. The MVR footage demonstrates that Defendant Dixon violated the AG UFP, as the amount and type of force used upon Plaintiff Capps was far out of proportion under the circumstances of the motor vehicle stop which occurred on February 25, 2018.

49. 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.

50. Defendant Officer Orndorf failed to abide by his responsibility to intervene to prevent and to report the excessive force used by Defendant Dixon on February 25, 2018 under the AG UFP