

and under section 4.1.5 of the Millville Police Department's own Rules and Regulations.

51. Instead, Defendant Officer Orndorf inflicted and/or compounded the injury sustained by Plaintiff Capps as a result of Defendant Dixon's use of excessive force.

52. The AG UFP further defines "physical force" as "contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property. AG UFP at 3(C)(1).

53. Examples of physical force include "wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation." AG UFP at 3(C)(2).

54. By contrast, "deadly force" is "force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm." AG UFP at 3(E)(1).

55. On the subject of restrictions on the use of deadly force, the AG UFP provides:

A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.

AG UFP at 5(C)(1).

*(2) Officer Dixon Violated Basic Police Academy
Training on The Use of Force.*

56. Police academy training which, upon information and belief, Defendant Officer Dixon should have received, further demonstrates that Defendant failed to use a degree of force a

reasonable police officer would use under the circumstances.

57. Effective in January 2009, and prior to Dixon becoming a Millville Police Officer, the New Jersey Police Training Commission put into effect a new Defensive Tactics Curriculum for police academy instructors teaching defensive tactics to student officers in the Basic Course for Police Officers (the "DTC").

58. In connection with the concept of "unarmed defense," the DTC differentiated between different types of resistance by a suspect, such as (1) "preventative resistance" which is defined as physical action that prevents an officer's control without attempting to harm the officer, such as a subject walking away or pulling away (resisting handcuffing). DTC pars. 3.4.1, 3.4.2, and (2) "active aggression," a physical assault/action on an officer using personal weapons of the body, other than deadly force, DTC 3.5.1.

59. As demonstrated by the MVR footage, Plaintiff Capps was not engaged in "active aggression" against an officer, but rather engaged in "preventative resistance" by attempting to move away from Officer Dixon, who was attempting to handcuff her.

60. The DTC material further recognized five "takedown techniques," including: (1) the straight arm takedown; (2) the wrist turnout takedown; (3) the bar hammer takedown; (4) a chest grab to the inside; and (5) a chest grab to the outside.

61. As demonstrated by the MVR footage, and in response to Plaintiff Capps's "preventative resistance" of attempting to avoid being handcuffed, Dixon did not engage in the standard DTC takedown maneuvers.

62. Section 4.10.1 ("Courtesy") of the Millville Police Department's own Rules and Regulations further requires officers to, among other things, "always remain calm regardless of

provocation.”

63. Instead of remaining calm in the face of Plaintiff Capps’s preventative resistance, Officer Dixon abandoned the standard DTC takedown maneuvers he should have learned during his police academy training, and instead applied a whirling headlock takedown maneuver on a much smaller suspect.

64. By his whirling headlock maneuver, Dixon knew or should have known that he was placing Capps in a situation that would create a substantial risk of causing her death and/or causing her serious bodily harm.

65. This is because the 2009 DTC material described numerous vulnerable parts of the human body, including the temples and the neck.

66. Dixon’s whirling headlock takedown maneuver, aside from putting pressure on Plaintiff’s temples about her head, could have broken her neck.

67. By lifting a subject off of the ground, with more room to fall before hitting a hard surface on the way down, Dixon’s whirling headlock takedown of Capps increased the likelihood of serious bodily injury.

68. Neither Defendant Officer Dixon nor Defendant Officer Orndorf acted as reasonable officers under the circumstances in connection with their use of force.

69. Separate and apart from, and/or as a result of the violations of the AG UFP, Millville Police Department Directives, and police academy training, Defendant Officers Dixon and Orndorf used excessive force against Capps 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.

70. Defendants' "irrevocable" decision to use excessive force against Plaintiff Capps resulted in very serious and permanent injuries, as described more fully below.

(3) Defendants Violated Additional Millville Police Department Policies.

71. Defendant Officer Dixon wrote in his investigation report regarding the February 25, 2018 incident that he asked Plaintiff Capps if she needed EMS to respond.

72. Yet Officer Dixon's report did not completely and accurately detail Plaintiff Capps's statements and requests for medical attention immediately after being slammed to the pavement at the Clark's Liquor Store parking lot:

Capps was picked up from the ground and walked into the back of my patrol vehicle. Capps stated that I had to call her husband as she could not breathe. Capps appeared to breathing [sic] fine at this time. Capps stated she needed to go to the hospital. Capps then stated she wanted to call her husband. Capps was advised she could call her husband once we were at the Police Department. [bracketed material added].

73. Noticeably absent from Dixon's report, and which could not have been more clearly stated on the MVR footage, was Plaintiff Capps's statement that her rib was broken.

74. The fact that Plaintiff Capps knew immediately that her rib was broken and promptly said something about it lends credence to her complaint about not being about to breathe.

75. But Dixon ignored Plaintiff's complaint that her rib was broken, and left it out of his report.

76. Defendant Dixon's ignoring of Plaintiff Capps's pleas that she needed to go to the hospital, that she could not breathe, and that her rib was broken, was in violation of the Millville Police Department's own Use of Force Policy, which, upon information and belief, provided that:

... Any person requesting and/or deemed in need of medical attention shall be transported to Regional Medical Center (Vineland) or nearest available emergency medical treatment center or hospital. Personnel shall contact EMS to request such

transportation assistance. [emphasis added].

77. Under the circumstances presented and the injury and breathing difficulty she reported, Plaintiff Capps's request for medical attention should have triggered a trip to the hospital under this policy directive.

78. Moreover, Millville's Use of Force Policy, upon information and belief, also contained additional reporting and investigatory requirements:

... The extent of the injury and the treatment offered/provided shall be documented in the body of the Investigation Report.

When necessary, especially in a deadly force incident, notify the appropriate support staff, e.g., Detective Bureau, Cumberland County Prosecutor's Office, and/or Cumberland County Sheriff's Office, who should respond to the scene and cause the appropriate level of investigative and support services, including, but not limited to: photographs, measurements, diagrams, statements, etc. When an injury or complaint of pain exists, supervisors should obtain photographic documentation to the extent possible (person upon which force was used and any affected officer).

Any employee [w]hose action(s) or use of force in an official capacity results in death or serious bodily injury to any person shall be removed from line-duty assignment pending a meaningful review.

The Chief of Police or designee and the Cumberland County Prosecutor's Office shall be immediately notified when the use of physical, mechanical, or deadly force results in death or serious bodily injury, or when an injury of any degree results from the use of a firearm by agency personnel. [emphasis added]

79. Upon information and belief, neither Dixon, Orndorf, Chief Farabella, nor the John/Jane Doe Defendants, abided by the various requirements of this departmental policy in connection with this incident.

80. Whether the force used could be characterized as "physical force" or "deadly force," this was clearly a case involving serious bodily injury – as can be seen from the actions taken by Dixon and Orndorf, and as can be heard in the statements and complaints made by Plaintiff Capps, all of

which were captured on MVR footage.

81. Finally, Defendants Dixon and Orndorf, in using excessive force, in failing to attend to Plaintiff Capps's expressed medical needs in light of the severity of her injury, and in not properly documenting the extent of her injury, violated Millville Police Department Rules and Regulations, including but not limited to 4.1.11 (Use of Force), 4.3.3 (Reports), 4.10.1 (Courtesy), and 4.12.6 (Truthfulness), among other Rules and Regulations and/or departmental directives which may be revealed in discovery.

C. The Aftermath of the Takedown and the Severity of the Injuries.

82. After Defendants refused to take her to the hospital or attend to her medical needs when requested, and after being processed at the Millville Police Department, Plaintiff Capps presented to the hospital on February 25, 2018 and again on February 26, 2018 with shortness of breath, pain located primarily at the left lateral chest wall, and, as Plaintiff Capps reported, a "rib sticking out."

83. Initial hospital diagnoses included a chest wall contusion (which Plaintiff knew immediately was not correct), and alternatively of one left side rib fracture.

84. Imaging studies later revealed healing fractures of the left *third through eighth* ribs, meaning that the force of Dixon slamming Capps to the pavement, and/or Orndorf applying his knee to her back, and/or the application of Dixon's and Orndorf's weight, resulted in Capps sustaining multiple broken ribs.

85. Plaintiff Capps treated regularly, but the injuries did not heal properly, resulting in a "nonunion" of certain of her ribs.

86. Plaintiff Capps, diagnosed at the time with intercostal neuropathy, underwent a left T5 through T8 intercostal block procedure on October 31, 2018, which resulted in no pain relief.

87. Plaintiff was required to have left chest wall reconstruction surgery on or about January 16, 2019.

88. Among other things, that surgery resulted in the removal of one of Plaintiff Capps's ribs, and nerve blocks being placed on multiple other ribs in an effort to relieve pain.

89. On or about March 22, 2019, Plaintiff received a steroid pain injection, which had little to no effect.

90. On April 17, 2019, Plaintiff underwent surgery again, for what was to be major chest wall reconstruction.

91. The April 17, 2019 surgery revealed the full extent of this gruesome injury.

92. Rather than Plaintiff's initial thought that she had another rib sticking out, the April 17, 2019 surgery revealed that cartilage had been ripped away from her bones, and nerves were tangled around the cartilage, causing severe pain to Plaintiff Capps.

93. As part of the April 17, 2019 surgery, the surgeon had to cut the nerves completely, and cut cartilage as well.

94. As a result of the surgeries Plaintiff Capps endured, she has become the recipient of scarring about her back and torso, which add an unfortunate element of significant cosmetic injury.

95. Plaintiff Capps presently cannot lift anything over three pounds.

96. Plaintiff Capps has a follow-up appointment with her doctor on May 1, 2019.

97. As such, fourteen months following Defendants' assault on her on February 25, 2018, Plaintiff is still being treated for her injuries.

98. As a result of the excessive force inflicted upon her, Plaintiff Capps also has experienced emotional trauma, including but not limited to a fear of driving, fear whenever she sees a police

officer or emergency vehicle, and nightmares.

99. The numerous doctor visits, surgical procedures, and the damaged state of her physical health, which is believed to be permanent, likewise have caused stress and anxiety in the marriage of the Plaintiffs.

100. Plaintiff Capps has lost time from her employment, sustained a loss of wages, lost vacation and sick time for two years due to doctor visits, surgeries, hospital stays and recovery time, and incurred medical expenses unreimbursed by insurance.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Bryan Orndorf, and John/Jane Doe(s) I, II, 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

**Violation of 42 U.S.C. section 1983 and the Due Process
Clause of the Fourteenth Amendment to the United States Constitution**

101. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

102. At the time of her arrest, Plaintiff Capps was a pretrial detainee.

103. Plaintiff Capps did not merely notify arresting officers Dixon and/or Orndorf of a minor injury, but rather informed them immediately that her rib was broken, that she could not breathe, and that she needed to go to the hospital.

104. As such, the arresting officers had reason to know of the serious nature of the injury they inflicted upon Plaintiff Capps.

105. Nevertheless, and as described herein, Defendants Dixon, Orndorf, and various John/Jane Doe Defendants ignored and/or provided Plaintiff Capps with inadequate inattention to her medical needs.

106. Said Defendants' denial of Plaintiff Capps's reasonable requests for medical treatment exposed her to undue suffering and/or to the threat of tangible residual injury.

107. Defendants were deliberately indifferent to Plaintiff Capps's serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as enforced under 42 U.S.C. section 1983.

108. The rights of both convicted prisoners and of pretrial detainees who are apprehended by police to not suffer deliberate indifference to serious medical needs was clearly established law at the time of the events described herein. See e.g., Estelle v. Gamble, 429 U.S. 97 (1976); City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239 (1983); Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir. 1987), cert. denied, 485 U.S. 991 (1988).

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, John/Jane Doe(s) I, II, 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.

THIRD COUNT

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

109. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

110. 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).

A. Factual Allegations Relevant to Plaintiff's Monell Claim

111. 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.

112. The data compiled by NJ.com in its 16-month-long investigation led to a series of articles originally published in November and December of 2018 collectively referred to as The Force Report.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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.

118. Moreover, and according to 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.

119. Officer Proffit is currently under indictment on charges of official misconduct, assaulting suspects and falsifying records, according to NJ.com.

120. Furthermore, and 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.

121. In response to NJ.com's reporting and investigation, Defendant Chief Farabella nevertheless called Defendant Dixon "an example of a fine officer" who has never been the subject of a substantiated excessive force complaint.

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

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

124. Yet the incident involving Plaintiff Capps's traffic stop and the assault by Defendants' Dixon and Orndorf arguably was not in one of Millville's "worst areas."

125. The area of the incident involving Plaintiff Capps was in a liquor store parking lot along a well-traveled state highway, and across the street from a cemetery.

126. NJ.com further has reported irregularities with some of Officer Dixon's use of force reports.

127. For instance, NJ.com reported that in the case of Plaintiff Capps, the use of force report Dixon filled out stated that Plaintiff was not injured, and that he simply restrained her.

128. More generally, 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 substantiated.

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

130. If Dixon wins the award, there would be a chance that he would meet the President of the United States, upon information and belief.

131. 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.

132. 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.

133. Upon information and belief, Defendant Dixon remains employed with the City of Millville's Police Department.

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

135. 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 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.

B. Legal Averments as to Plaintiff's Monell Claim.

136. Defendants, the City of Millville and Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, 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 Capps.

137. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to and John Doe(s) II, 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