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AUDRA S. CAPPS, and DOUGLAS
ROBERT GIBSON, JR.,

Plaintiffs,

Vs.

JOSEPH DIXON; BRYAN ORNDORF;
THE CITY OF MILLVILLE;
CHIEF OF POLICE JODY
FARABELLA; LT. MICHAEL COLON;
SGT. LAWRENCE MULFORD; SGT.
ROSS HOFFMAN; SGT. HAROLD
DUFFIELD, JR.; LT. EDWARD
ZADROGA; LT. KEVIN McLAUGHLIN;
SGT. CINDI ZADROGA; SGT. JOHN
REDDEN, III; LT. CARL HEGGER; SGT.
DAN AYARS; 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

Civil Action No.: 1:19-cv-12002--RMB-AMD

**AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiffs, Audra S. Capps and Douglas Robert Gibson, Jr. ("Plaintiffs"), by way of Amended Complaint against Defendants, Joseph Dixon; Bryan Orndorf; the City of Millville; Chief of Police Jody Farabella; Lt. Michael Colon; Sgt. Lawrence Mulford; Sgt. Ross Hoffman; Sgt. Harold Duffield, Jr.; Lt. Edward Zadroga; Lt. Kevin McLaughlin; Sgt. Cindi Zadroga; Sgt. John Redden, III; Lt. Carl Heger; Sgt. Dan Ayars; 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 has supplemental jurisdiction over Plaintiffs' 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 S. 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, Joseph Dixon, #172 ("Dixon"), during the time periods set forth in this Amended 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.
8. As described elsewhere herein, Dixon is no longer employed by the Millville Police Department.

9. Defendant, Bryan Orndorf, #183 ("Orndorf"), during the time periods set forth in this Amended 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.

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. 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 (sometimes herein, the "MPD"), 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.

12. Defendant, Lt. Michael Colon #52 ("Lt. Colon"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

13. Defendant, Sgt. Lawrence Mulford #74 ("Sgt. Mulford"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

14. Defendant, Sgt. Ross Hoffman #118 ("Sgt. Hoffman"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

15. Defendant, Sgt. Harold Duffield, Jr. #95 ("Sgt. Duffield"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

16. Defendant, Lt. Edward Zadroga #91 ("Lt. Zadroga"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

17. Defendant, Lt. Kevin McLaughlin #84 ("Lt. McLaughlin"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

18. Defendant, Sgt. Cindi Zadroga #153 ("Sgt. Zadroga"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

19. Defendant, Sgt. John Redden, III #102 ("Sgt. Redden"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

20. Defendant, Lt. Carl Heger #110 ("Lt. Heger"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

21. Defendant, Sgt. Dan Ayars #163 ("Sgt. Ayars"), was at all relevant times a duly appointed and employed police officer of the Millville Police Department, and upon information and belief, was an officer in charge, 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.

22. The Defendants named in paragraphs 11 through 21 of this Amended Complaint are collectively referred to herein as the "Supervisory Defendants."

23. 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) I.

24. 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) II.

25. 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.

26. 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.

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

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

29. 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 Amended Complaint.

30. Plaintiffs further reserve the right to name as additional supervisory officer Defendants those individuals who oversaw and/or participated in the Millville Police Department's Internal Affairs investigations, upon receipt and review of files produced by Defendant, City of Millville, in the discovery process.

Factual Allegations

A. The 2017 Barry Cottman Incident and Video.

31. In 2017, before Defendant Joseph Dixon's incidents with Plaintiff Audra S. Capps and Tanika Joyce on February 25, 2018 and March 24, 2018, respectively, as described elsewhere herein, a passerby filmed a Millville Police Officer -- ultimately identified as Dixon -- repeatedly punching a man in the head.

32. In that encounter, Dixon and another MPD Officer stopped Barry Cottman, allegedly for jaywalking.

33. Upon information and belief, and as reported by a news organization known as NJ.com, Dixon wrote that Cottman walked diagonally across the street, "failing to use 90-degree turns as required by state law."

34. When Cottman refused to give his name, Dixon tried to place him under arrest and said that Cottman repeatedly pushed him away.

35. "I then delivered two closed fist strikes to the face of Cottman in order to gain compliance," Dixon allegedly wrote in his report, as reported by NJ.com. Cottman's arm later hit Dixon's leg, according to Dixon's report, so Dixon struck twice more as Cottman kept his hands tucked under his body.

36. According to NJ.com's reporting, photos taken the next morning in an emergency room showed Cottman's right eye still swollen, and a line of stitches along his upper lip.

37. The video of the Cottman incident involving Dixon became public on or about June 28, 2017, well before the Capps and Joyce incidents in early 2018. That video is available on the NBC10 Philadelphia website as follows: <https://www.nbcphiladelphia.com/news/local/millville-police-punch-video-new-jersey-jaywalking/21024/>.

38. Upon information and belief, public officials within the City of Millville, and/or the named Supervisory Defendants identified in this Amended Complaint, viewed and/or had knowledge of the existence of the public video footage and of the Cottman incident, and allowed Dixon to remain employed by the Millville Police Department and to remain in a position to cause harm to persons such as Capps, Joyce and others. This incident and very public video footage should have placed the Supervisory Defendants named herein on notice of Dixon's use of excessive force – and all over an alleged jaywalking incident.

39. The Cottman encounter resulted in a separate federal civil rights lawsuit, which is pending in the Camden vicinage of the District of New Jersey and captioned as Barry Cottman v. Jody Farabella, Millville Chief of Police, P.O. Joseph Dixon 172, P.O. Robert Runkle 160, and the City of Millville, New Jersey, Civil Action No. 1:19-cv-14122-NLH-AMD (D.N.J.).

40. Furthermore, Defendant, the City of Millville, has faced other lawsuits in recent years, including but not limited to: (1) a case in which the City of Millville agreed to pay \$40,000 in 2015 to settle claims that a Millville officer pointed his gun at a 13-year-old boy after telling him not to ride a dirt bike in the woods; and (2) a case in which the City of Millville in 2010 agreed to pay \$100,000 to a woman who claimed she was beaten after being stopped while riding her bicycle on a sidewalk.

B. The 2018 Audra Capps Incident.

1. The Takedown.

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

42. Upon his arrival at the scene, Defendant Officer Dixon conducted a motor vehicle stop in front of Clark's Liquor Store, which has, upon information and belief, a parking lot paved with asphalt, or a similar hard surface.

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

44. Dixon would not let Capps call her husband.

45. Instead, Dixon ordered Capps out of the car.

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

47. A Millville Police Department patrol car's mobile video recorder ("MVR") captured audio and video footage of these field sobriety tests, relevant portions of which can be viewed publicly on a link to an NJ.com article as part of its series known as The Force Report:

<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>.

48. 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.

49. As such, she posed no physical threat to Defendant Dixon.

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

51. The MVR captured what happened next, and a portion of the following public video clip demonstrates what happened to Capps, in slow motion: <https://www.youtube.com/watch?v=v4vluoElfOU>.

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

53. After Dixon initially took control of Capps's hands, Capps took a step away.

54. Capps looked up at Dixon, who stood approximately a full head taller.

55. As Capps began to back up so as to not be handcuffed, Dixon grabbed hold of her.

56. The MVR revealed Dixon placing his left arm around Capps's head and/or neck in a headlock position.

57. While holding Plaintiff Capps in a headlock, Officer Dixon lifted her 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.

58. Dixon fell down on top of Capps with all of his weight.

59. The MVR 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, and assisting Dixon in securing Capps in handcuffs.

60. After being lifted up from the pavement, the officers placed Capps in the back seat of a patrol car.

61. The MVR also recorded Plaintiff Capps in the back of the patrol car.

62. During the time she was in the back of the patrol car, Capps made a number of clear requests and statements to the officers:

- * 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.

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

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

2. **The Violations of Policies and Directives.**

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

65. 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.

66. However, the force used on Capps was far out of proportion, and in addition to their violations of federal and state constitutional protections against unreasonable searches and seizures described herein, Defendants Dixon and Orndorf violated state and local guidelines governing the use of force by police officers.