

force, he did not agree with a lot of the use of force actions Dixon performed, and said that he believed that many were excessive.

205. Importantly, however, Defendant Chief Farabella also told OPIA that he spoke to Dixon a few times about his use of force and told Dixon that using the type of force he used was not the image of a police officer.

206. In a strongly worded rebuke to Detective/Sgt. Brian Starcher on October 1, 2015 regarding the seeking of outside legal opinions, Defendant Chief Farabella took complete responsibility for the management of the MPD and of the Internal Affairs Unit, saying: "Please understand that I am the Chief of Police and I run the day to day operations of this department, including the Internal Affairs Unit that you are currently assigned to. It is my responsibility to make sure this department is run correctly and if there is a problem with any employee, it should be brought to my attention without delay."

207. Despite having these responsibilities, Defendant Chief Farabella, upon information and belief, took no steps to discipline Dixon for his use of force and allowed Dixon to remain on the force. Defendant Chief Farabella allowed Dixon to remain employed until it became apparent that Dixon would be pleading guilty to criminal charges.

208. Despite Defendant Chief Farabella's acknowledgement of responsibility for the running of the MPD, and despite telling Dixon that the type of force he used was not the image of a police officer, Defendant Chief Farabella and the other Supervisory Defendants allowed Dixon to remain employed as a Millville police officer long enough to encounter and injure Plaintiff Capps and Tanika Joyee in February and March of 2018.

209. These Supervisory Defendants also knew or should have known from the 80 accumulating UOF forms they reviewed, and for other reasons detailed herein, about the violent

tendencies of Dixon and/or of other Millville officers, and in their roles as policymakers and/or supervisors for 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 proximately caused the constitutional harm which resulted to Plaintiff Capps and which resulted to other known plaintiffs.

210. The Supervisory Defendants failed to employ those practices and policies identified elsewhere herein, and such practices and policies which further may be revealed in discovery and investigation.

211. In the alternative, and as described in detail in this Count, the policies or procedures with regard to officer evaluation, training and oversight and/or with respect to internal affairs procedures as more fully described in the Third Count, in effect at the time of the injuries alleged herein, created an unreasonable risk of a constitutional violation.

212. Upon information and belief, the Supervisory Defendants were aware that the policies or practices created an unreasonable risk of a constitutional violation.

213. The Supervisory Defendants, having knowledge of the violent tendencies of Dixon and of other Millville police officers, were indifferent to the risk.

214. In addition, and in the alternative, the constitutional injury alleged herein and as alleged in other litigation was proximately caused by the Supervisory Defendants' failure to implement appropriate supervisory practices or procedures that were likely to catch and/or prevent the use of excessive force in Dixon and in other officers.

215. As may be applicable and appropriate to this Count, and based on the facts also recited in Counts I and III, which are incorporated herein by reference, these Defendants are liable as

supervisors under 42 U.S.C. sec. 1983. 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. Barkes, 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.); Major Tours, Inc. v. Colorel, 799 F. Supp.2d 396, 398-99 (D.N.J. 2011) (“[C]laims based on a showing that a supervisor knew and acquiesced to the discriminatory conduct of a subordinate are not foreclosed by Iqbal.”).

216. The Supervisory Defendants 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.

217. In addition to the Supervisory Defendants looking the other way on Dixon’s continued and routine use of excessive force as detailed herein, and as further evidence of acquiescence, Defendant Chief Farabella, instead of simply declining to comment in the face of NJ.com’s damning reporting about Dixon’s use of force numbers, 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 to justify Dixon’s conduct.

218. Accordingly, when Dixon resigned his employment from the City of Millville in an October 19, 2019 email, he told Defendant Chief Farabella: “... As we last spoke about my current in going [sic] the deal offered to me is much worse than I could have imagined. **I want to thank you for always having my back** and being a great Chief” (bold and underlining added).

219. In addition to the pleaded facts set forth in Counts I and III of this Amended Complaint, which are hereby incorporated by reference, and as additionally may be revealed in discovery and investigation, the Supervisory Defendants, 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 officer training and evaluation 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 Plaintiff in this case and in other cases, as more fully discussed in the Third Count;
- (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, that Dixon exhibited the propensity to use excessive force, such that he should not have been

permitted to remain on duty prior to the February 25, 2018 incident involving Plaintiff Capps and the March 24, 2018 incident involving Joyce.

WHEREFORE, Plaintiff Audra S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Chief Jody Parabella, Lt. Michael Colon, Sgt. Lawrence Mullford, 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/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.

THIRD COUNT

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

220. 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.

221. 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).

222. 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, collectively referred to as The Force Report.

223. 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.

224. 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.

225. 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.

226. 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.

227. 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.

228. 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. Proffitt, who reported using force 36 times during the same period.

229. 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.

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

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

232. 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."

233. Upon information and belief, however, the incident involving Plaintiff Capps occurred on a state highway across the street from a cemetery.

234. Moreover, 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.

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

236. 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.

237. 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.

238. 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.

239. 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.

240. 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.

241. 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 Joyce cases.

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

243. Proffitt's plea agreement also required him to resign from the Millville Police Department, and to agree to a lifetime ban on public employment. He received a sentence similar to the sentence handed down in Dixon's criminal case.

244. Thus, 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.

245. Dixon joined the MPD in or about August of 2012. Preliminary Internal Affairs indexes demonstrate 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.

246. 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.

247. 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 against him as to other non-force-related violations during his tenure with the MPD.

248. Millville internal affairs indexes for the years 2013 through 2019 further 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 could subject its officers and the City to civil liability and monetary damages.

249. According to a 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 a subordinate officer used excessive force.

250. The numbers and outcomes of Internal Affairs investigations against Dixon and others for the use of force are not the only measurements of Defendants' custom, usage or practice of taking a blind eye toward the use of excessive force by Millville police officers.

251. Indeed, the Supervisory Defendants relied on a useless system of random MVR reviews for evaluation and training purposes, which was effective at studiously avoiding the review of actual audio and video footage which might reveal its officers' use of excessive force.