

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL MCMASTER
21 Iroquois Road
Levittown, PA 19057

vs.

CITY OF NORTH WILDWOOD
901 Atlantic Avenue
North Wildwood, NJ 08260

and

POLICE OFFICER BRYAN SKILL
BADGE NUMBER 259
Individually and in his official
capacity as a police officer for the
North Wildwood Police Department
c/o North Wildwood Police Department
901 Atlantic Avenue
North Wildwood, NJ 08260

and

POLICE OFFICER CLIFFORD MASSIE
BADGE NUMBER 241
Individually and in his official
capacity as a police officer for the
North Wildwood Police Department
c/o North Wildwood Police Department
901 Atlantic Avenue
North Wildwood, NJ 08260

and

POLICE OFFICER ERIC NEVIL
BADGE NUMBER 253
Individually and in his official
capacity as a police officer for the
North Wildwood Police Department
c/o North Wildwood Police Department
901 Atlantic Avenue
North Wildwood, NJ 08260

Civil Action No.
1:16-CV-05208-JHR-KMW

JURY TRIAL DEMANDED

COMPLAINT

Jurisdiction

1. This action is brought pursuant to 42 U.S.C. § 1983.

Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343 (1), (3), (4) and the aforementioned statutory provision. Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) to hear and adjudicate state law claims.

Parties

2. Plaintiff, Michael McMaster, is an adult individual who resides at 21 Iroquois Road, Levittown, Pennsylvania 19057 and at all times relevant to this action was present in North Wildwood, New Jersey.

3. Defendant, City of North Wildwood, is a municipality of the State of New Jersey and owns, operates, manages, directs and controls the North Wildwood Police Department which employs Defendants, Police Officer Bryan Skill, Police Officer Clifford Massie, and Police Officer Eric Nevil.

4. Defendant, City of North Wildwood, at all times relevant to this Complaint, was responsible for the training and actions of all of its police employees, and authorizes and supports their actions under color of state law, pursuant to either official policy, custom or practice of City of North Wildwood.

5. Defendant, Bryan Skill, Badge Number 259, is a police officer with the North Wildwood Police Department acting under color of state law. He is being sued in his individual and official capacity.

6. Defendant, Clifford Massie, Badge Number 241, is a police officer with the North Wildwood Police Department acting under color of state law. He is being sued in his individual and official capacity.

7. Defendant, Eric Nevil, Badge Number 253, is a police officer with the North Wildwood Police Department acting under color of state law. He is being sued in his individual and official capacity.

8. At all relevant times, all Defendants were acting in concert and conspiracy and their actions deprived Plaintiff, Michael McMaster, of his constitutional and statutory rights as hereinafter described.

Factual Background

9. On or about November 9, 2015 at approximately 5:30 a.m. Plaintiff was at his parents' home located at 219 West 11th Street, North Wildwood, New Jersey. He was at his home with his girlfriend, Dina Dougherty.

10. At approximately 5:30 a.m. Plaintiff's girlfriend decided to leave and Plaintiff exited with her. While out on the sidewalk in front of the home located at 219 West 11th Street, Plaintiff and his girlfriend began to argue.

11. At approximately 5:30 a.m. Defendant, Police Officers Nevil, Skill and Massie arrived on the scene.

12. After the above mentioned police officers arrived on the

scene, a discussion took place between the Defendant police officers, Plaintiff and Plaintiff's girlfriend, Dina Dougherty.

13. During the course of the discussion one or more of the Defendant police officers advised Plaintiff and his girlfriend that his girlfriend should go to her father's house and Plaintiff should return to his parents' house at 219 West 11th Street. Plaintiff began pleading with his girlfriend not to leave. As he was pleading with her not to leave, he reached for a bag she had been carrying. When he reached for the bag, he did not do so in a sudden or aggressive manner. In fact, Plaintiff never touched his girlfriend.

14. However, as Plaintiff began to reach for his girlfriend's bag, suddenly and without any warning, Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, grabbed the Plaintiff and violently threw him to the ground. After Plaintiff was on the ground, Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, violently and maliciously jumped on Plaintiff's back with their knees. One of the Defendants of the above mentioned Defendant police officers jumped on Plaintiff's back with their knees with such force that it caused Plaintiff's spleen to rupture.

15. Plaintiff was then handcuffed and taken to the North Wildwood Police Station.

16. While at the police station, the Plaintiff began to exhibit obvious signs of illness and injury. In fact, he became so ill from the ruptured spleen that it was necessary to call an ambulance and have him immediately transported to Cape May Regional Hospital. However, when he arrived at Cape May Regional Hospital, his injuries and illness were so severe and critical that a helicopter had to be called to immediately transport him to Atlantic City Trauma Center.

17. Due to the injuries caused by the excessive force employed by the Defendant police officers, Plaintiff required inpatient medical care from November 9 through November 18, 2015.

18. At no relevant time hereto, during his interaction with Defendant police officers, did Plaintiff engage in any behavior which could have been considered threatening to any of the Defendant police officers or to anyone else.

19. At no time did Plaintiff engage in any behavior to resist his arrest by the Defendant police officers.

20. As a result of Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie's assault and battery on Plaintiff, Plaintiff, Michael McMaster, in addition to the ruptured spleen, sustained fractures of the posterior and lateral left tenth through twelfth ribs, displaced fracture eleventh rib, acute fracture of the anterolateral right fifth rib, left pleural effusion and bi inguinal hernia.

21. The outrageous conduct and use of excessive force by Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, is an example of the Defendants' pattern, practice and custom of subjecting citizens such as Plaintiff, Michael McMaster, to excessive force.

22. Based on the aforementioned outrageous acts and conduct, it is upon information and belief that Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, acted willfully, deliberately, maliciously, and with reckless disregard for the constitutional and statutory rights of Plaintiff, Michael McMaster, by subjecting Plaintiff to excessive force.

23. It is upon information and belief that Defendant, City of North Wildwood, as a matter of policy, practice, and/or custom, has with deliberate indifference failed to adequately discipline, train, supervise, or otherwise direct police officers, including Defendants, Officer Nevil, Officer Skill and Officer Massie, on the proper use of force, and including but not limited to the use of physical force, thereby causing the Defendant police officers to subject Plaintiff, Michael McMaster, and to engage in the unlawful, excessive, and reckless use of force described above.

24. It is upon information and belief that Defendant, City of North Wildwood, as a matter of policy, practice, and/or

custom, has with deliberate indifference failed to conduct proper, adequate, and meaningful investigations into complaints about the use of excessive force including but not limited to the use of physical force by police officers, thereby causing and encouraging police officers, including Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, to engage in the unlawful and outrageous conduct described above.

25. The failure of the City of North Wildwood, with deliberate indifference, to provide adequate training, supervision, and discipline, including but not limited to the use of physical force was a proximate cause and substantial factor in Plaintiff, Michael McMaster, being subjected to excessive force and outrageous conduct by Defendant, Officer Nevil, and/or Defendant, Officer Skill, and/or Defendant, Officer Massie, which is described in the above paragraphs.

26. In the alternative, the failure of the Defendant, City of North Wildwood, with deliberate indifference, to provide adequate training, supervision, and discipline regarding the proper policy for intervention by officers when another officer uses unnecessary and excessive force, was a proximate cause and substantial factor in the violation of Plaintiff, Michael McMaster's constitutional rights described above.

27. As a direct and proximate result of the aforementioned

acts and conduct of the Defendants, Plaintiff, Michael McMaster, sustained physical injuries, psychological harm, loss of liberty, and possibly other injuries causing him pain and suffering.

**FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS**

28. Plaintiff incorporates by reference paragraphs 1 through 27 of the instant Complaint.

29. As a direct and proximate result of all of the Defendants' conduct, committed under color of state law, Plaintiff, Michael McMaster, was deprived of his right to be free from an unreasonable and unnecessary use of excessive force and to be secure in his person and property.

30. As a result, Plaintiff, Michael McMaster, suffered and continues to suffer harm, losses, damages, and injury in violation of his rights under the laws of the Constitution of the United States, in particular the Fourth Amendment thereof, and 42 U.S.C. § 1983.

31. As a direct and proximate result of the outrageous acts of all Defendants, Plaintiff, Michael McMaster, sustained economic damages, physical injuries, emotional distress, psychological harm, pain, suffering, and loss of liberty; all to his detriment and harm.

32. Defendant, City of North Wildwood, has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the need for

more or different training, supervision, investigation or discipline in the areas of:

- a. The use of unreasonable force, specifically the unlawful use physical force;
- b. The proper exercise of police powers, including but not limited to the unreasonable use of force, the excessive use of force, and violations of citizens' free speech rights, particularly in connection with perceived challenges to police authority;
- c. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
- d. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct;
- e. Police officers' use of their status as police officers to employ the use of unreasonable force and excessive force to achieve ends not reasonably related to the police duties;
- f. Police officers' use of the authority and power of their office for personal ends and to intimidate,

coerce, and threaten citizens; and

- g. The failure of police officers to follow established policies, procedures, directives, and instructions regarding the use of force under such circumstances as presented herein.

33. The City of North Wildwood failed to properly sanction or discipline officers, who were aware of, conceal, and/or aid violations of constitutional rights of citizens by other North Wildwood police officers, thereby causing and encouraging North Wildwood police officers, including the Defendant officers in this case, to violate the rights of citizens such as Plaintiff, Michael McMaster.

34. Defendants have by the above described actions deprived Plaintiff, Michael McMaster, of rights secured by the Fourth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

WHEREFORE, Plaintiff requests the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Reasonable attorney's fees and costs;
- d. Such other and further relief as appears reasonable and just; and
- e. A jury trial as to each Defendant and as to each count.

SECOND CAUSE OF ACTION
STATE CIVIL RIGHTS CLAIMS

35. Plaintiff incorporates by reference paragraphs 1 through 34 of the instant Complaint.

36. As a direct and proximate result of Defendants' conduct, committed under color of state law, Plaintiff was deprived of his right to be free from unreasonable force, excessive force, and to be secure in his person and property.

37. As a direct and proximate result of Defendants' conduct, committed under color of state law, Plaintiff endured physical injuries, emotional harm, loss of liberty, all to Plaintiff's detriment and loss.

38. The aforementioned actions by all the Defendants deprived Plaintiff, Michael McMaster, of rights secured by the Fourth Amendment to the United States Constitution and rights and privileges secured under Article 1 of the New Jersey State Constitution. The Defendants deprived Plaintiff, Michael McMaster, of the aforementioned Federal and State constitutional rights in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

WHEREFORE, Plaintiff requests the following relief under N.J.S.A. 10:6-2(e) and (f):

- a. Compensatory damages;
- b. Punitive damages;
- c. Reasonable attorney's fees and costs;

- d. Such other and further relief as appears reasonable and just; and
- e. A jury trial as to each Defendant and as to each count.

**THIRD CAUSE OF ACTION
SUPPLEMENTAL STATE CLAIMS**

39. Plaintiff incorporates by reference paragraphs 1 through 38 of the instant Complaint.

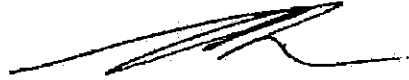
40. The acts of the Defendant, Officer Nevil, and/or Defendant, Officer Skill and/or Defendant, Officer Massie, in this cause of action constitute assault, battery, and intentional infliction of emotional distress under the laws of the State of New Jersey and this Court has supplemental jurisdiction to hear and adjudicate these claims.

WHEREFORE, Plaintiff requests the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Reasonable attorney's fees and costs;
- d. Such other and further relief as appears reasonable and just; and
- e. A jury trial as to each Defendant and as to each count.

Respectfully submitted,

The O'Hanlon Law Firm, P.C.



STEPHEN T. O'HANLON, ESQUIRE

DATE: August 26, 2016

The O'Hanlon Law Firm, P.C.
BY: Stephen T. O'Hanlon, Esquire
Attorney for Plaintiff
PA Bar ID # 208428
2 Penn Center, Suite 1850
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102
Tel: (267) 546-9066
Fax: (215) 567-1998
steve@ohanlonlawfirm.com

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, I hereby certify that the present Complaint involving Plaintiff and the issues at controversy are not present in any other Court or arbitration or administrative proceeding.

The O'Hanlon Law Firm, P.C.



STEPHEN T. O'HANLON, ESQUIRE

DATE: August 26, 2016

**The O'Hanlon Law Firm, P.C.
BY: Stephen T. O'Hanlon, Esquire
Attorney for Plaintiff
NJ Bar ID # 027612008
2 Penn Center, Suite 1850
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102
Tel: (267) 546-9066
Fax: (215) 567-1998
steve@ohanlonlawfirm.com**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS MICHAEL MCMASTER (b) County of Residence of First Listed Plaintiff <u>BUCKS, PA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> (c) Attorneys (Firm Name, Address, Email and Telephone Number) Stephen T. O'Hanlon, O'Hanlon Law Firm, P.C., 1500 JFK Blvd., Suite 1850, Phila., PA 19102. steve@ohanlonlawfirm.com (267) 546-9066	DEFENDANTS North Widwood, Bryan Skill, Cliford Massie, & Eric Nevl. County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
--	---

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) ☐ 1 U.S. Government Plaintiff ☐ 2 U.S. Government Defendant ☒ 3 Federal Question <i>(U.S. Government Not a Party)</i> ☐ 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;">(For Diversity Cases Only)</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;">☐ 1</td> <td style="text-align: center;">☐ 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">☐ 2</td> <td style="text-align: center;">☐ 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">☐ 3</td> <td style="text-align: center;">☐ 3</td> </tr> </table> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Incorporated or Principal Place of Business in This State</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> </tr> <tr> <td></td> <td style="text-align: center;">☐ 4</td> <td style="text-align: center;">☐ 4</td> </tr> <tr> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;">☐ 5</td> <td style="text-align: center;">☐ 5</td> </tr> <tr> <td>Foreign Nation</td> <td style="text-align: center;">☐ 6</td> <td style="text-align: center;">☐ 6</td> </tr> </table>	(For Diversity Cases Only)	PTF	DEF	Citizen of This State	☐ 1	☐ 1	Citizen of Another State	☐ 2	☐ 2	Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Incorporated or Principal Place of Business in This State	PTF	DEF		☐ 4	☐ 4	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5	Foreign Nation	☐ 6	☐ 6
(For Diversity Cases Only)	PTF	DEF																							
Citizen of This State	☐ 1	☐ 1																							
Citizen of Another State	☐ 2	☐ 2																							
Citizen or Subject of a Foreign Country	☐ 3	☐ 3																							
Incorporated or Principal Place of Business in This State	PTF	DEF																							
	☐ 4	☐ 4																							
Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5																							
Foreign Nation	☐ 6	☐ 6																							

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	TORTS PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	FORFEITURE/PENALTY ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	BANKRUPTCY ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (13950) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Others: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	OTHER STATUTES ☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(e)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)							
☐ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from Another District (specify)	☐ 6 Multidistrict Litigation - Transfer	☐ 8 Multidistrict Litigation - Direct File	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USC 1983.</u> Brief description of cause: <u>Excessive police force.</u>
----------------------------	--

VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ <u>500,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No
-------------------------------------	---	---------------------------------------	--

VIII. RELATED CASE(S) IF ANY <i>(See Instructions)</i>	JUDGE	DOCKET NUMBER
---	--------------	----------------------

DATE <u>08/26/2016</u>	SIGNATURE OF ATTORNEY OF RECORD
----------------------------------	--

FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
----------------------------	------------------	---------------	---------------------	--------------	-------------------