

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

JAMES E. CICCO,

Plaintiff

CIVIL ACTION NO.:

Jury Trial Demanded

-vs-,

BOROUGH OF BEAVER,
PENNSYLVANIA, BEAVER CHIEF OF
POLICE DANIEL MADGAR, IN HIS
OFFICIAL CAPACITY, BOROUGH
MANAGER DANIEL MADGAR, IN HIS
OFFICIAL CAPACITY, BEAVER
POLICE OFFICER JEFFREY WIJNEN-
REIMS, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY, BEAVER
POLICE OFFICER HOWARD M. BLINN
II, A/K/A BO BLINN, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY,

Defendants.

COMPLAINT

COMES NOW, the above-named Plaintiff, by his undersigned counsel, and for
his cause of action, complains and says:

FACTS:

1. The Plaintiff, James E. Cicco, resides at 1169 Midland Beaver Road,
Industry, Beaver County, Pennsylvania 15052, within the Western District of
Pennsylvania.

2. The Defendant, Borough of Beaver, is a local governmental agency organized pursuant to the laws of the Commonwealth of Pennsylvania. Said Defendant, Borough of Beaver, has, under its jurisdiction and control, a police department known as the Police Department of the Borough of Beaver. The principal offices for both the Borough of Beaver and its police department are located at 469 Third Street, Beaver, Pennsylvania, within the Western District of Pennsylvania.

3. The Borough of Beaver is governed by an elected Borough Council and Mayor, which governing body sets the policies and passes laws and ordinances for said Borough. The Police Department of the Borough of Beaver is vested with the responsibility of enforcing the laws within the Borough OF Beaver and several surrounding municipalities including Industry Borough and effectuating the policies of the municipality. At all relevant times, Defendant, Jeffrey Wijnen-Reims, was employed as a police officer by Beaver Borough.

4. The Defendant, Daniel Madgar, is employed by Defendant, Borough of Beaver, as the Borough Manager and in such official capacity advises and carries out the policies and directives of the elected Borough Council.

5. The Defendant, Daniel Madgar, is also employed by Defendant, Borough of Beaver, as the Chief of Police and in such official capacity is responsible for the supervision, direction, and control of the Police Department of the Borough of Beaver.

6. The Defendant, Daniel Madgar, in his official capacity as Chief of Police, reports to the Mayor of Beaver and Beaver Council regarding the Borough of Beaver Police Department, its members, and activities.

7. The Defendant, Jeffrey Wijnen-Reims, is employed by the Defendant, Borough of Beaver, as a municipal police officer.

8. The Defendant, Howard M. Blinn II, a/k/a Bo Blinn, is employed by the Defendant, Borough of Beaver, as a municipal police officer.

9. This action arises under 42 U.S.C. §1983 and state law. This Honorable Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and §1343 and has jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a).

10. Prior to December 2001, the Borough of Beaver hired Defendant, Wijnen-Reims, as a municipal police officer and said Defendant has since that time continued to serve in that position for the Borough of Beaver. This suit is against Defendant, Wijnen-Reims, individually and in his official capacity as a police officer for the Borough of Beaver.

11. Prior to August 18, 2016, the Borough of Beaver hired Defendant, Bo Blinn, as a municipal police officer and said Defendant has since that time continued to

serve in that position for the Borough of Beaver. This suit is against Defendant, Blinn, individually and in his official capacity as a police officer for the Borough of Beaver.

12. Prior to May 19, 2010, the Defendant, Daniel Madgar, was employed by the Borough of Beaver as a municipal police officer and police chief of the Beaver Police Department.

13. Prior to August 18, 2016, the Defendant, Daniel Madgar, was employed by the Borough of Beaver as Borough Manager in addition to his position as police chief. This suit is against Defendant Madgar, individually, and in his official capacity as Borough Madgar and Chief of Police.

14. In 2001, Richard J. St. Esprit resided at 898 Spire Avenue, Monaca, Beaver County, Pennsylvania 15061.

15. On December 25, 2001, Richard St. Esprit was to meet his ex-wife Stacey Coakley at the New Brighton Police Department to exchange custody of their son. Jeffrey Wijnen-Reims, Coakley's husband, was also present. At that exchange, Officer Wijnen-Reims, without provocation, attacked St. Esprit pulling a sweater over St. Esprit's head and assaulting him. As the result of this incident, St. Esprit was knocked unconscious.

16. This incident was reported to and made known to the Beaver Borough Police Chief and Borough Council.

17. In March 2002, James K. Hooker Sr. resided at 129 Edgewood Drive, Beaver, Beaver County, Pennsylvania 15009.

18. In March 2002, James K. Hooker Sr. was employed as the Brighton Township Road Department Foreman.

19. On March 22, 2002, James K. Hooker, as the result of inclement weather, began working at approximately 9:30 p.m. to clear and salt the roads of Brighton Township. Hooker was salting Dutch Ridge Road in his capacity as an employee for Brighton Township.

20. Dutch Ridge Road runs in a general North and South direction in Brighton Township, Beaver County, Pennsylvania.

21. At the southern end of Dutch Ridge Road, said road travels into the Borough of Beaver.

22. In March, 2002, Brighton Township was required to salt and plow Dutch Ridge Road to Fifth Street in the Borough of Beaver.

23. On March 22, 2002, while Hooker was salting Dutch Ridge Road near Fifth Street in the Borough of Beaver as part of his duties for Brighton Township, Officer Jeffrey Wijnen-Reims engaged in a verbal confrontation with him, using profanity. Hooker continued to salt Dutch Ridge Road, but was pulled over by Officer Wijnen-Reims. Officer Wijnen-Reims approached the vehicle that James Hooker was operating and sprayed him with mace. Wijnen-Reims dragged Hooker from the salt truck and threw Hooker against his Beaver Borough Police Vehicle several times. Officer Wijnen-Reims struck Hooker's head off the rear of the police car on several occasions. Officer Wijnen-Reims threw Hooker to the ground and struck Hooker's head on the pavement several times. As a result, Hooker was hospitalized. This incident was reported and made known to the police department of Beaver Borough, Borough Council, and was much publicized in the Beaver County Times.

24. On July 7, 2003, Christopher Eric Green was summoned to the Beaver Police Station at the oral request of the Beaver Police.

25. Once at the police station, Christopher Eric Green was taken to an interrogation room by Defendant Wijnen-Reims, who began to scream at him and accused Green of giving another Beaver Police Officer false information.

26. Green told Officer Wijnen-Reims that he did not give false information and did not know what Officer Wijnen-Reims was talking about. Officer Wijnen-Reims used profanity and grabbed Green by his jersey. Green was pushed into a railing and to the

floor where he was handcuffed and then picked up off the floor by Wijnen-Reims and thrown into a window in the police department. The window shattered as Green's upper body went into the window. Green was arrested and taken to the Juvenile Detention Center of Beaver County. Green sought medical treatment for his injuries.

27. The Borough of Beaver and the Beaver Police Department had actual notice of this incident.

28. Prior to September 28, 2004, Robert Capo, Sr., had run for Mayor in the Borough of Beaver against a long-time incumbent Mayor, Robert Linn, who had a close and long-standing relationship with the Police Chief and Police Department. After that election, Capo, Sr. and his family were harassed by Officers of the Beaver Police Department.

29. On September 28, 2004, Benjamin H. Capo, son of Robert Capo, Sr., was riding his bicycle in the Borough of Beaver, on Third Street, when he was stopped by Defendant Wijnen-Reims and issued a citation for failure to have a light on his bicycle. Benjamin Capo told officer Wijnen-Reims to mail him the citation after he (Capo) had provided Wijnen-Reims with his address and all necessary information to fill out said citation.

30. Benjamin Capo then parked his bicycle and walked into a local restaurant. Officer Wijnen-Reims followed Capo into the retail store, placed him in a choke hold,

and dragged him out of the store. Capo was thrown against the side of the police car by Officer Wijnen-Reims and arrested. Capo was taken to the Beaver Police Station and, upon entering the police station, was slammed into a glass door on several occasions. Officer Wijnen-Reims struck Benjamin Capo on the head with this clipboard and threatened to throw him down the steps.

31. Robert Capo, Sr. came upon the scene when his son was being arrested and followed Wijnen-Reims and his son to the police station.

32. Upon arrival, Robert Capo, Sr. was told to go to the front part of the police station. A short time later, Officer Wijnen-Reims instructed Robert Capo, Sr. to leave the station after he had requested to see his son. Robert Capo was placed in a choke hold around his neck and slammed against the wall by Officer Wijnen-Reims. Wijnen-Reims handcuffed Robert Capo, Sr. and made the cuffs so tight that Capo Sr.'s wrist sustained lacerations and abrasions.

33. Both Robert Capo and Benjamin Capo were charged criminally, but those charges were dismissed after a preliminary hearing held before Magisterial District Judge Douglas Loughner in Beaver County, Pennsylvania.

34. Both Robert Capo and Benjamin Capo sought medical treatment for their injuries. The Borough of Beaver and the Beaver Police Department had actual notice of this incident.

35. On October 21, 2004, Lorri Stiles and Richard Doychek stopped at the drive-through window of the McDonalds' Restaurant in the Borough of Beaver to purchase takeout food.

36. While Stiles was sitting in the drive-through lane waiting to order, she observed what she believed to be an assault on a female worker at the restaurant.

37. At that time, Richard Doychek exited Stiles' vehicle to intervene between Walter Buckenheimer and his daughter, who was the female employee. At that point, an argument and confrontation began between Doychek and Buckenheimer. The police were summoned by way of a call to the Beaver County 911 Center.

38. Defendant Jeffrey Wijnen-Reims responded to said incident and questioned Stiles.

39. Stiles attempted to explain to Officer Wijnen-Reims what she had observed and what had led to the confrontation. Officer Wijnen-Reims recognized Stiles as the person who wrote an editorial about the Beaver Police in the local newspaper the previous year and told Stiles to "shut-up" and insisted that she was drunk. Stiles was arrested and transported to The Medical Center of Beaver County where a blood test was performed. No alcohol was found in Stiles' blood. At that point, Stiles was transported to the Beaver Borough Police Department. While at the Police

Department, Officer Wijnen-Reims told Stiles that he had called her husband and explained to him that Stiles was having sex with Richard Doychek.

40. Stiles was kept at the Beaver Police Department for three hours and then transported to the Beaver County Jail where she remained for seven days.

41. Officer Wijnen-Reims did call Stiles' husband, Joel Koslicki, on October 21, 2004 and informed him that his wife was having sex with Doychek in the back seat of the police car and tested positive for Viagra. This information was completely untrue.

42. In 2004, Adam B. Colbert resided at 105 Sixth Avenue, Racine, Pennsylvania 15010.

43. On December 12, 2004, Adam Colbert went to Thursday's Bar and Restaurant in Bridgewater, Beaver County, Pennsylvania 15009.

44. Colbert arrived at approximately 10:00 p.m., and while present a fight started between several patrons of Thursday's Bar who were not with Colbert.

45. All patrons including Colbert were ordered/pushed outside the bar by Thursday's security officers, and the Bridgewater Police were summoned.

46. Defendant Wijnen-Reims responded in his capacity as a Beaver Police Officer to Thursday's in support of the Bridgewater Police Department.

47. The fight, which started in the bar, continued in the parking lot.

48. Adam Colbert was standing in the parking lot when he was grabbed by Wijnen-Reims around the neck and slammed onto the hood of a police car.

49. Colbert was maced by Wijnen-Reims, arrested, handcuffed, and taken to the Bridgewater Police Station.

50. At the Bridgewater Police Station, Wijnen-Reims threatened to mace Colbert again.

51. Colbert sought medical treatment for his injuries.

52. Green, Robert Capo Sr., Benjamin H. Capo, Stiles and Koslick filed a federal lawsuit alleging a violation of their civil rights and state law claims against the Borough of Beaver, The Police Department of the Borough of Beaver, and Jeffrey Wijnen-Reims in the United States District Court for the Western District of Pennsylvania at C.A. No: 05-0863.

53. Colbert filed suit, alleging a violation of his civil rights and state law claims, against the Borough of Beaver, the Police Department of the Borough of Beaver and Jeffrey Wijnen-Reims in the United States District Court for the Western District of Pennsylvania at C.A. No.: 05-1157.

54. In 2010, Robert Michael Doyle, resided at 449 Sharon Road, Beaver, Beaver County, Pennsylvania 15009.

55. On May 19, 2010, the Defendant, Officer Wijnen-Reims, while in his capacity as a Beaver Police Officer, received information from Franka Brendle that Robert Doyle had violated a Protection from Abuse (PFA) Order, which had been entered for the benefit of Doyle's daughter, Caitlin Doyle.

56. Franka Brendle alleged that Doyle had violated the PFA Order by having his grandmother, Mary Ann Grossi, contact Caitlin Doyle at the Brendle residence.

57. On May 19, 2010, Officer Wijnen-Reims telephoned Doyle's home. Wijnen-Reims spoke with Doyle's mother, Sydney Doyle. Sydney Doyle attempted to explain to Officer Wijnen-Reims that the PFA Order allowed Doyle to have supervised visitation and to contact Franka Brendle to arrange said visitation.

58. After speaking with Sydney Doyle, Officer Wijnen-Reims traveled to the Doyle household at approximately 10:30 p.m. Wijnen-Reims knocked on Doyle's door, at which time Sydney Doyle answered the door. Officer Wijnen-Reims stated that he wanted to speak with Robert Doyle. Mrs. Doyle attempted to explain the PFA Order to Officer Wijnen-Reims and why Doyle had not violated that Order. Wijnen-Reims mocked Mrs. Doyle by stating "blah, blah, blah." Officer Wijnen-Reims insisted on seeing Doyle. Doyle, who was resting, got up and came to the door. When Officer Wijnen-Reims saw Doyle, he pushed the door open and charged after him. Doyle back pedaled and fell onto the steps that lead to the upstairs of the residence. Wijnen-Reims deployed his taser and tased Doyle twice while Doyle was laying on the steps. Wijnen-Reims grabbed Doyle's shirt and began to strike him about the head with his handcuffs and then pulled him to his feet and handcuffed him.

59. As Defendant Wijnen-Reims pushed Doyle toward the front door, he slammed him down onto a coffee table. He picked him up and took him towards the same door from which Defendant Wijnen-Reims had entered the home. As he approached the door, Defendant Wijnen-Reims slammed Doyle's head into the side panel glass window of the door thereby breaking it with Doyle's head.

60. Defendant Wijnen-Reims placed Doyle in the police car and took him to the Beaver Police Department. While at the Beaver Police Department, emergency medical personnel were summoned to treat Doyle and he was taken to the hospital for

treatment that included numerous sutures to close lacerations to his face and head caused by Defendant Wijnen-Reims' actions and conduct.

61. Doyle filed a federal lawsuit alleging a violation of his civil rights and state law claims against the Borough of Beaver, the Police Department of the Borough of Beaver, and Jeffrey Wijnen-Reims in the United States District Court for the Western District of Pennsylvania at Case No.: 11-0016.

62. Defendant Wijnen-Reims currently and for some time prior to August 18, 2016, has served in the role of K-9 officer for the Borough of Beaver with the full support and permission of the Chief of Police and Borough Manager, Daniel Madgar, and Council for the Borough of Beaver.

63. In the capacity as a K-9 officer, Wijnen-Reims oversees possession and control of the Beaver Borough K-9, named Czar, with the express permission and support of the Chief of Police and Borough Manager, Daniel Madgar, and Council for the Borough of Beaver.

64. On August 18, 2016, at approximately 10:00 p.m., James E. Cicco, was operating his 1997 Ford Explorer SUV westwardly on Route 68 in the Borough of Beaver. Defendants, Blinn and Wijnen-Reims, began to follow Plaintiff on Route 68 in the Borough of Beaver. Defendants, Blinn and Wijnen-Reims, were operating separate Beaver Police vehicles.

65. Defendants, Blinn and Wijnen-Reims, followed Plaintiff into Industry Borough without attempting to pull the Plaintiff over and without activating lights or sirens.

66. Defendant Blinn was traveling so close to Plaintiff that he created a dangerous and hazardous condition jeopardizing the safety of Cicco and Blinn.

67. Defendant Blinn activated his emergency lights while directly behind Plaintiff in Industry Borough to respond to a disturbance call in Midland Borough. Plaintiff pulled off to the side of the road and Defendant Blinn passed the Plaintiff.

68. Defendant Wijnen-Reims continued to follow the Plaintiff.

69. At that time, Defendant Wijnen-Reims, without probable cause, decided to perform a traffic stop. Plaintiff exercised his right to seek a safe location to pull over and drove a short distance to his home where he stopped.

70. Defendant Wijnen-Reims exited his vehicle and yanked open the Plaintiff's driver's side door grabbing the Plaintiff.

71. Defendant Wijnen-Reims grabbed and pulled Plaintiff in an attempt to drag the Plaintiff from the car. Defendant Wijnen-Reims was unable to drag the Plaintiff from the car as the Plaintiff was entangled in his seat belt.

72. Defendant Wijnen-Reims himself pulled the seat belt loose, let go of the Plaintiff and returned to his unit where he obtained Beaver K-9 Czar.

73. As soon as Defendant Wijnen-Reims let go of the Plaintiff and returned to his patrol vehicle, Plaintiff, free from his seat belt, immediately turned with both hands extended up surrendering to the Defendant.

74. Despite Plaintiff's obvious sign of surrender, Defendant Wijnen-Reims released his K-9, Czar, and returned to the Plaintiff's car, where Plaintiff retreated by closing the door to protect himself from the approaching K-9.

75. With deliberate indifference to Plaintiffs constitutional protections, Defendant Wijnen-Reims opened the car door and deployed the K-9 which attacked Plaintiff at the Defendant's command. Plaintiff was seriously injured by the K-9 in this attack.

76. The K-9 and Defendant Wijnen-Reims jointly pulled the Plaintiff from the car and onto the ground where Wijnen-Reims allowed the K-9 to maul the Plaintiff while Wijnen-Reims held onto Plaintiff's arm. Wijnen-Reims then had to physically remove the K-9 from engagement with the Plaintiff when the K-9 refused to obey commands to release.

77. After physically removing the K-9 from engagement with Plaintiff, the Defendant, Wijnen-Reims, secured the Plaintiff with handcuffs after driving his knee into Plaintiff's back as he lay face down on the ground.

78. At this time, K-9 Czar re-engaged and began to attack the Plaintiff a second time inflicting serious injuries upon the Plaintiff.

79. Defendant, Wijnen-Reims, was again unable to control his K-9 and was required to forcibly remove the K-9 from the Plaintiff.

80. Defendant, Blinn, returned to the scene to assist Defendant, Wijnen-Reims, and helped to pick the Plaintiff up off the ground.

81. Upon getting the Plaintiff to a standing position Defendant, Blinn, slammed the Plaintiff's head and upper body off the hood of the Plaintiff's vehicle causing additional personal injuries.

82. In an apparent effort to justify his acts of brutality and excess force, Defendant Wijnen-Reims with the consent and support of the co-defendants, filed a criminal complaint with false and inaccurate allegations totaling 59 separate counts. Included were one count of aggravated assault, fifty counts of possession of a controlled substance, one count of resisting arrest, one count of fleeing or eluding, two counts of driving under the influence, one count of driving while operating privilege is

suspended, one count of careless driving, one count of taunting a police animal and one count of possession of drug paraphernalia.

83. At the Preliminary Hearing the aggravated assault count and all fifty (50) counts for possession of a controlled substance were dismissed. One count of driving under the influence was withdrawn leaving only seven counts held for Court. A second Complaint was filed with one count of possessions of a controlled substance after the Preliminary Hearing.

84. Included in the Complaint was charge of taunting a police animal, alleging that Plaintiff kicked at K-9 Czar, causing the dog to engage. In response to Plaintiff's motion for *Habeas Corpus*, and hearing at which the video of the entire stop was introduced, the Honorable Dale Fouse of the Court of Common Pleas of Beaver County found that even if it is assumed that the Plaintiff made contact with the K-9, it was in direct response to Defendant Wijnen-Reims driving his knee into Plaintiff's back and thus no evidence of the required mens rea. Therefore, the count was dismissed.

85. Similarly Defendant Wijnen-Reims in an apparent attempt to justify the excessive use of force, charged Plaintiff with resisting arrest. Again, Judge Fouse found, after reviewing the video of the incident, that there was no evidence of Plaintiff resisting arrest and dismissed the charge.

86. Likewise, Defendant Wijnen-Reims charged Plaintiff with driving under the influence. Again judge Fouse, finding the Commonwealth's evidence insufficient to support a prima facie case dismissed the charge.

87. Defendant Wijnen-Reims, in an apparent attempt to justify his stop of the Plaintiff, charged Plaintiff with careless driving. At trial, the Honorable Harry Knafelc of the Court of Common Pleas of Beaver County found the Plaintiff not guilty of careless driving.

88. In an apparent attempt to obstruct justice, Defendants during discovery in the underlying criminal case provided Plaintiff with the dashboard camera footage without audio.

89. Defendant Wijnen-Reims as well as Corporal Kenneth McCoy of the Beaver Police Department testified under oath that there was no audio contained on the dashboard video.

90. Only after the criminal trial concluded and an unedited copy of the video was released to the public pursuant to a right-to-know request, was it discovered that there was in fact audio that was withheld from Plaintiff.

91. Despite all of the foregoing, there is no evidence that Defendant Wijnen-Reims has ever been disciplined by the Borough of Beaver, its police department, or Defendant Daniel Madgar, Chief of Police.

92. Based upon the foregoing, there existed in the Borough of Beaver, a custom, practice and/or policy of deliberate indifference to instances of vicious and unprovoked attacks upon, unreasonable treatment of, and the use of excessive force upon members of the community and criminal/civil defendants by Defendant Jeffrey Wijnen-Reims and Bo Blinn.

93. This settled custom, practice and/or policy was established and maintained by the Borough of Beaver, including its Council, Mayor, Chief of Police, Daniel Madgar, and Police Department through its/their knowing acquiescence and tolerance of such activities and behavior and failure to act to prevent the same.

94. This custom, practice and/or policy existed for a significant time prior to the attack upon the plaintiff.

95. The customs, practices and/or policies of the Borough of Beaver and its Police Department consisted of the following:

- (a) Deliberate indifference to the constitutional rights of the citizens of the Borough of Beaver, the Borough of Industry, and the County of Beaver;
- (b) Deliberate indifference to the need to protect the citizens of the Borough of Beaver, the Borough of Industry, and the County of Beaver from attacks by Defendants, Wijnen-Reims and Blinn;
- (c) Deliberate indifference to the obvious need for training and supervision of Defendant Jeffrey Wijnen-Reims, especially in the face of repeated complaints, and lawsuits alleging police brutality and use of excessive force;
- (d) Failing to properly investigate the complaints by citizens about the activities of Wijnen-Reims on all dates in question;
- (e) Failing to properly prevent attacks and the use of excessive force by Defendants, Wijnen-Reims and Blinn, upon people they were investigating by removing them from the police force;
- (f) Failing to properly supervise Defendants, Wijnen-Reims and Blinn when they were making arrests or investigating potential criminal activity;
- (g) Failure to terminate Defendant Wijnen-Reims after learning of his vicious and violent tendencies and repeated use of excessive force;
- (h) Failure to terminate Defendant Wijnen-Reims after 3 separate federal civil rights lawsuits were filed against Defendant, Wijnen-Reims and Defendant, Borough of Beaver alleging violation of citizens' federal civil rights.
- (i) In that Defendant, the Borough of Beaver failed to properly train, educate and instruct the members of its police department on the proper procedures for determining the appropriate use of force;
- (j) In failing to adopt and enforce an adequate use of force policy;

- (k) In failing to properly, train, educate, and instruct the members of its police department and Defendant, Wijnen-Reims in the proper use of its K-9;
- (l) In failing to adopt and enforce an adequate policy on the use of K-9's;
- (m) In failing to properly train its K-9 Czar;
- (n) In failing to take its K-9 Czar out of service when it was known that the K-9 was unsuitable for police work;

96. The prior filed federal civil rights lawsuits are further evidence of Beaver Borough's knowledge of Wijnen-Reims' violent propensities and deliberate indifference to the same. Beaver Borough continued to employ Jeffrey Wijnen-Reims despite knowledge of the information set forth herein.

97. This conduct by Wijnen-Reims and Blinn, and the failure of Defendants, Borough of Beaver and Madgar, to prevent the same, is outrageous and shocks one's conscience.

98. At all material times, the members of the Beaver Borough Council, Borough Manager, the Mayor of Beaver, Defendant Wijnen-Reims and Defendant Blinn acted under color of state law.

COUNT I – CIVIL RIGHTS

JAMES CICCICO VS. DEFENDANTS

99. Plaintiff, James Cicco, incorporates by reference Paragraphs 1-98 as if fully set forth herein.

100. At all times relevant, each defendant was a state actor, active under color of state law for purposes of section 1983.

101. At all relevant times, it was the practice policy and/or custom of Defendant, Borough of Beaver, and/or its officers, including Wijnen-Reims, Blinn and Madgar, to use excessive force without provocation or justification, thereby depriving individuals, and in this case Plaintiff, of their rights.

102. As a direct and proximate result of the aforesaid customs, practices, and/or policies of the Borough of Beaver and Beaver Police Chief Madgar and the conduct of Defendants Wijnen-Reims and Blinn, James Cicco was deprived of his rights, interests, privileges, and immunities secured by the Constitution and Laws of the United States, specifically his interest in maintaining personal bodily integrity and freedom from attacks and abuse, unreasonable search and seizures, and the right to liberty as guaranteed under the Fourth, Eighth, and Fourteenth Amendment to the United States Constitution.

103. As a further proximate result of the customs, practices and/or policies of the Borough of Beaver, Beaver Police Chief/Borough Manager Madgar, and the conduct of Defendants Wijnen-Reims and Blinn, Plaintiff, James Cicco, has suffered and will continue to suffer in the future bruises, lacerations, permanent scarring, pain and suffering, severe mental anguish, embarrassment, humiliation, disfigurement, loss of the pleasures of life, and emotional and physical distress, as well as a permanent diminution of his earning capacity.

104. The conduct of Defendants was wanton, willful, and outrageous and constituted reckless indifference.

WHEREFORE, James Cicco respectfully requests compensatory damages against the Defendants, the Borough of Beaver, Daniel Madgar, Jeffrey Wijnen-Reims, and Bo Blinn, in an amount in excess of \$75,000 plus costs of suit, interest, and attorney's fees pursuant to Title 42 U.S.C. §1988. Plaintiff also requests punitive damages from Defendants Wijnen-Reims and Blinn.

A Jury Trial is demanded.

COUNT II – NEGLIGENCE

**JAMES CICCO VS. DEFENDANTS,
BOROUGH OF BEAVER, JEFFREY WIJNEN-REIMS, DANIEL MADGAR, BO BLINN**

105. Plaintiff, James Cicco, incorporates by reference Paragraphs 1-104 as if fully set forth herein.

106. The negligence of the Defendants, Jeffrey Wijnen-Reims, Bo Blinn, and Daniel Madgar is imputable to the Defendant, Borough of Beaver, in as much as the Defendants, Wijnen-Reims, Blinn and Madgar, were the agents, servants, workmen, and employees of the Defendant, Borough of Beaver, and at the time of Plaintiff's injury were acting in the course and scope of their employment and in the interests of the business of the Defendant, Borough of Beaver.

107. The injuries sustained by the Plaintiff as hereinafter more specifically set forth were caused by and were the direct and proximate result of the carelessness and negligence of the Defendants, Borough of Beaver, Wijnen-Reims, Blinn and Madgar in the following particulars:

- (a) In that Defendant, Wijnen-Reims, failed to secure Defendant's K-9 in Defendant's vehicle;
- (b) In that Defendant Wijnen-Reims failed to ensure that Defendant's K-9 could not escape the Defendant's K-9 vehicle;
- (c) In that Defendant Beaver failed to provide a suitable vehicle to prevent the escape of its K-9 Czar while on duty;

- (d) In that Defendant, Beaver, failed to properly train Defendant, Wijnen-Reims and Defendant Madgar in the safe restraint of the K-9 after an arrest had been effectuated;
- (e) In that Defendant, Madgar, failed to properly train Defendant Wijnen-Reims in the proper storage and restraint of Defendant Beaver's K-9;
- (f) In failing to have sufficient control of the K-9 Czar to prevent injuries to the Plaintiff after the Plaintiff was restrained in handcuffs;
- (g) In that the Defendants violated 3 P.S. §459-305 of the Pennsylvania Dog Law and are negligent per se.
- (h) In harboring a dangerous and vicious K-9 dog.

108. By reason of the aforesaid carelessness and negligence of the Defendants, the Plaintiff suffered injuries to his person, which injuries consist of the following:

- (a) bruises and contusions generally;
- (b) headaches;
- (c) 2" left shoulder laceration;
- (d) 4" x 4" large penetrating wound and avulsion of the anterior right axilla requiring sutures;
- (e) Permanent scarring of the right shoulder and axilla;
- (f) Stiffness and numbness of right arm and shoulder;
- (g) General shock to the nerves and entire nervous system;
- (h) Many of which injuries are of a permanent nature.

109. As a result of his personal injuries, the Plaintiff was required to receive medical care and treatment, x-rays, surgery, medicines, and other proper and necessary things in an effort to restore his health and he has been informed that he will by reason of said injuries, be required to undergo additional and similar medical care and treatment in the future.

110. As a result of his personal injuries, the Plaintiff suffered great physical pain, agony, inconvenience, and embarrassment and disfigurement and he has been informed and believes, that by reason of his injuries he will continue to suffer considerable pain, agony, inconvenience, and embarrassment and disfigurement in the future for the rest of his life; that his general health, strength, and vitality have been permanently impaired to his great loss and damage.

111. By reason of the bodily injuries sustained by the Plaintiff, he has been obligated and will be obligated in the future to incur certain medical expenses for care and treatment.

Wherefore, James Cicco, respectfully requests compensatory damages against the Defendants, the Borough of Beaver, Daniel Madgar, and Jeffrey Wijnen-Reims, in an amount in excess of \$75,000.00 plus costs of suit, interest, and attorney's fees.

A Jury Trial is demanded.

COUNT III – BATTERY

**PLAINTIFF V. DEFENDANT WIJNEN-REIMS AND
DEFENDANT BO BLINN**

112. Plaintiff James Cicco, incorporates by reference Paragraphs 1-111 as if fully set forth herein.

113. In the course of Defendant's intentional and willful actions during the night of August 18, 2016, they physically contacted Plaintiff's person which was both harmful and highly offensive to Plaintiff.

114. The actions of Defendants Wijnen-Reims and Blinn constitutes a battery under the laws of the Commonwealth of Pennsylvania as follows:

- (a) In wantonly, knowingly and recklessly causing harmful and/or offensive contact with the Plaintiff;
- (b) In wantonly, knowingly and recklessly causing harmful bodily injury to the Plaintiff;
- (c) In wantonly, knowingly, and recklessly causing excessive force against Plaintiff, which caused Plaintiff to suffer physical harm previously set forth;
- (d) In wantonly, knowingly, and recklessly causing physical harm to Plaintiff without provocation or cause.

115. Defendants committed the aforementioned acts with the intent of causing harmful and/or offensive contact against Plaintiff.

116. As a direct and proximate result of the conduct of Defendant's Wijnen Reims and Blinn, Plaintiff suffered the injuries and damages previously set forth.

Wherefore, James Cicco, respectfully requests compensatory and punitive damages against the Defendants, Jeffrey Wijnen-Reims and Bo Blinn, in an amount in excess of \$75,000.00 plus costs of suit, interest, and attorney's fees.

A Jury Trial is demanded.

COUNT IV – INTENTIONAL INFLICTIONS OF EMOTIONAL DISTRESS

**PLAINTIFF V. DEFENDANT WIJNEN-REIMS AND
DEFENDANT BO BLINN**

117. Plaintiff, James Cicco incorporates by reference Paragraph 1-116 as if fully set forth herein.

118. As a result of being physically assaulted by Defendant Wijnen-Reims, Defendant Blinn and the K-9 Czar, Plaintiff has suffered severe emotional distress resulting in sleepiness, anxiety, and fear.

119. As a direct and proximate result of this willful wanton, and outrageous conduct, Plaintiff suffered the injuries and damages previously set forth.

Wherefore, James Cicco, respectfully requests compensatory and punitive damages against the Defendants, Jeffrey Wijnen-Reims and Bo Blinn, in an amount in excess of \$75,000.00 plus costs of suit, interest, and attorney's fees.

A Jury Trial is demanded

COUNT V – MALICIOUS PROSECUTION
PLAINTIFF V. DEFENDANT WIJNEN-REIMS, MADGAR AND
THE BOROUGH OF BEAVER

120. Plaintiff James Cicco incorporates by reference paragraphs 1-119 as if fully set forth herein.

121. The actions of the Defendants, as aforesaid, constitute malicious prosecution of criminal proceedings under the laws of the Commonwealth of Pennsylvania and the United States Constitution Fourth Amendment as follows:

- (a) Defendants engaged in the prosecution of criminal proceedings against Plaintiff with the filing of a criminal Complaint;
- (b) In filing a charge of resisting arrest when the evidence and video demonstrated that the charges were false and unwarranted;
- (c) In filing a charge of taunting a police animal when the evidence and video demonstrated that the charges were false and unwarranted;
- (d) In filing 50 counts of possession of a controlled substance when the evidence demonstrates that the charges were false and unwarranted.
- (e) In filing two counts of driving under the influence when the evidence demonstrates that the charges were false and unwarranted.

- (f) In filing a charge of careless driving when the evidence and video demonstrate that the charges were false and unwarranted;
- (g) In failing to drop the charges after the video was revealed;
- (h) In intentionally providing Plaintiff with a redacted video;
- (i) In providing false testimony under oath during the preliminary hearing and trial that the video did not contain audio when, in fact, the video does have audio;
- (j) In concealing, hiding, and misrepresenting the truth from the appropriate authorities so that the criminal charges would go forward;

122. That the actions of Defendants Wijnen-Reims and Blinn were done with the consent and approval of Defendant Madgar and the Borough of Beaver.

123. As a direct and proximate result of these violations of Plaintiff's Constitutional rights, Plaintiff suffered the injures and damages previous set forth.

Wherefore, James Cicco, respectfully requests compensatory damages against the Defendants, Jeffrey Wijnen-Reims and Bo Blinn, in an amount in excess of \$75,000.00 plus costs of suit, interest, and attorney's fees.

A Jury Trial is demanded.

COUNT VI – CIVIL RIGHTS

**PLAINTIFF V. DEFENDANT WIJNEN-REIMS AND
DEFENDANT BO BLINN, DEFENDANT DANIEL MADGAR, AND
BEAVER BOROUGH**

124. The Plaintiff incorporates paragraphs by reference paragraphs 1-123 as if fully set forth herein.

125. Defendants Wijnen-Reims, Blinn, Madgar and Beaver Borough at all times acted under color of state law.

126. Defendants Constitutional torts are not governed or limited in any way by 42 Pa.C.S.A. § 8521 et. seq. or 42 Pa.C.S.A. § 8553 et. seq.

127. Defendants violated Plaintiff's Fourth Amendment right to be secure against unreasonable searches and seizures and unlawful arrest.

128. At all times material hereto Wijnen-Reims and Blinn lacked probable cause or reasonable suspicion that Plaintiff was or had been engaged in criminal activity to justify any stop, detainment, and/or seizure of Plaintiff.

129. At all times material, Defendants knew that Plaintiff's rights to be secure against unreasonable searches and seizures and free from unlawful arrest was a clearly established constitutional right.

130. At all times material hereto, Plaintiff posed no actual or imminent threat of death and/or serious bodily injury to pedestrians, other civilian motorist, Defendant Wijnen-Reims, Defendant Blinn, or any other police officer.

131. Nonetheless, Defendants Wijnen-Reims and Blinn unreasonably and unjustifiably restricted Plaintiff's ability to leave at his will by the excessive use of force.

132. As a direct and proximate result of Defendant Wijnen-Reims and Blinn's unreasonable, unjustifiable and unconstitutional conduct, Plaintiff was caused to suffer the injuries described herein.

WHEREFORE, Plaintiff demands judgment against Defendants, Wijnen-Reims, Blinn, Madgar, and Beaver Borough, and compensatory damages, jointly and severally, together with attorney fees and costs, and pre and post judgment interest.

A Jury Trial is demanded

COUNT VII – CIVIL RIGHTS

Plaintiff v. Defendants

133. The Plaintiff incorporates paragraphs by reference paragraphs 1-132 as if fully set forth herein.

134. The conduct set forth above and herein evinces the excessive and unreasonable use of force in violation of Plaintiff's Fourth Amendment rights.

135. The conduct as set forth above demonstrates that the Borough failed to properly train police officers in the use of force, the excessive use of force, the use of a K-9, the identification of an actual or imminent threat of death or serious bodily injury and probable cause and reasonable suspicion to stop, detain or seize a citizen, that deprived Plaintiff of his constitutional rights.

136. The conduct as set forth above demonstrates that the Borough failed to enforce the police Departments written and unwritten policies on the use of force and/or the use of K-9's.

137. The conduct as set forth about indicates that the Borough had inappropriate policies, procedures, customs, and practices with respect to the use of force and/or the use of K-9's.

WHEREFORE, Plaintiff demands judgment against Defendants, Wijnen-Riems, Blinn, Madgar, and Beaver Borough, and compensatory damages, jointly and severally, together with attorney fees and costs, and pre and post judgment interest.

A Jury Trial is demanded

COUNT VIII – CIVIL RIGHTS

Plaintiff v. Defendants

138. The Plaintiff incorporates paragraphs by reference paragraphs 1-137 as if fully set forth herein.

139. The Defendants violated Plaintiff Fourteenth Amendment right to bodily integrity and freedom from physical restraint.

140. The conducts as set forth above demonstrates that the harm caused to Plaintiff was foreseeable and a direct result of Defendant's conduct.

141. The conduct as set forth above demonstrates that Defendant's acted with deliberate indifference and conscious disregard of the great risk of serious harm to Plaintiff.

142. The conduct was so egregious as to shock the conscience.

143. The conduct demonstrates that Defendants unreasonably and unjustifiably targeted Plaintiff and placed him in a foreseeably dangerous position.

144. As a direct and proximate result of Defendant's deliberately indifference and conscious-disregard of the risk of harm, Plaintiff was caused to suffer the injuries described herein.

WHEREFORE, Plaintiff demands judgment against Defendants, Wijnen-Riems, Blinn, Madgar, and Beaver Borough, and compensatory damages, jointly and severally, together with attorney fees and costs, and pre and post judgment interest.

A Jury Trial is demanded

COUNT IX – CIVIL RIGHTS

Plaintiff vs. Beaver Borough

145. The Plaintiff incorporates paragraphs by reference paragraphs 1-144 as if fully set forth herein.

146. The conduct as set forth herein evinces a state-created danger in violation of Plaintiff's Fourteenth Amendment Rights.

145. The conduct demonstrates the Borough's failure to properly train police officer in the use of deadly force and/or K-9's.

147. The conduct indicates that the Borough failed to enforce written and unwritten policies regarding the use of force and/or the use of K-9's.

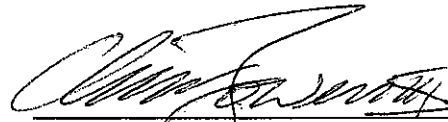
148. The conduct indicates that the borough had inappropriate policies, procedures, customs and practices with respect to the use of force and/or the use of K-9's.

WHEREFORE, Plaintiff demands judgment against Defendant, Beaver Borough, and compensatory damages, jointly and severally, together with attorney fees and costs, and pre and post judgment interest.

A Jury Trial is demanded

Respectfully submitted,

BOWERS & FAWCETT, LLC



Charles F. Bowers III, Esquire



Kenneth G. Fawcett, Esquire