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<p>Plaintiff(s), CONCETTA NORCROSS and GERALDINE SINGLETARY and ROBERT SINGLETARY, h/w</p> <p>v.</p> <p>Defendant(s), TOWN OF HAMMONTON, PATROLMAN JAMES PINTO, PATROLMAN BAGLIVO and CORPORAL MAZZEO</p>	<p>UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY</p> <p>CIVIL ACTION NO. 04-cv-2536</p> <p>NOTICE OF MOTION FOR SUMMARY JUDGMENT</p>
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TO: Alan E. Denenberg, Esq.
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6 East Miami Avenue
Cherry Hill, NJ 08034-2083

PLEASE TAKE NOTICE that the undersigned will bring the above mentioned motion on and for hearing before the United States District Court for the District of New Jersey, 1 John F. Gerry Plaza, Camden, New Jersey 08101 on a date to be set by the Court, for an Order granting summary judgment on behalf of Defendants.

Reliance will be placed upon the attached Brief and Certification of Counsel.

POWELL, BIRCHMEIER & POWELL

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Date: September 29, 2006

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JAMES PINTO, PATROLMAN BAGLIVO
and CORPORAL MAZZEO

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 04-cv-2536

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS, TOWN OF HAMMONTON, PATROLMAN JAMES
PINTO, PATROLMAN BAGLIVO, AND CORPORAL MAZZEO

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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 04-cv-2536

DEFENDANTS' BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Introduction

This matter arises out of an incident that occurred on June 29, 2002, when defendant police officers responded to a fight that occurred in the parking lot of Wal-Mart in Hammonton, New Jersey. While in her vehicle, plaintiff Norcross had followed the vehicle owned by Harry Norcross and being driven by Deborah Keenan, to the Wal-Mart parking lot. Plaintiff Norcross blocked the path of the Keenan vehicle as soon as Keenan parked it. Plaintiff confronted Keenan about Keenan's relationship with plaintiff's husband, Harry Norcross. Plaintiff was yelling and screaming and directing profanities toward Keenan. At some point, plaintiff's sister, Geraldine Singletary joined this confrontation. As a result of the actions of both plaintiffs, Norcross and Singletary, defendant police officers arrested them for disorderly conduct and resisting arrest. Defendant police officers along with the Town of Hammonton stand accused of civil rights violations and common law state tort claims. The Complaint alleges that defendants Town of Hammonton, Corporal Mazzeo, and Patrolman Pinto and Patrolman Baglivo violated plaintiffs' constitutional rights pursuant to 42 U.S.C. §1983. Plaintiffs also bring pendant State claims for bystander liability, false arrest and false imprisonment, malicious prosecution, and assault and battery.

Defendants Town of Hammonton, Corporal Mazzeo, Patrolman Pinto, and Patrolman Baglivo,
now file this motion for summary judgment as to all claims made by plaintiffs.

Procedural History

On or about June 30, 2004, plaintiffs Concetta Norcross and Geraldine and Robert Singletary filed suit against defendants Town of Hammonton, Patrolman James Pinto, Patrolman Baglivo, and Corporal Mazzeo. On September 16, 2004, defendants filed an Answer. On January 17, 2006, defendants filed a notice of motion for partial summary judgment to dismiss the claims of plaintiff Robert Singletary. On July 13, 2006, Judge Kugler granted defendants' motion for summary judgment as to the claims of plaintiff Robert Singletary.

In addition, this case has had a painful history as to discovery. While numerous scheduling Orders were entered by the Court and ignored by plaintiffs' attorney, the Final Scheduling Order entered on March 14, 2006, extended pretrial factual discovery to May 1, 2006 (Document 27).

Claims Alleged in the Complaint

Plaintiffs filed a seven count Complaint against the defendants:

- Count I: 42 U.S.C. §1983 claim of excessive force against defendants Pinto and Baglivo.
- Count II: 42 U.S.C. §1983 claim against defendant Town of Hammonton.
- Count III: 42 U.S.C. §1983 claim of conspiracy against defendants Pinto, Baglivo, and Mazzeo.
- Count IV: Bystander liability against defendants Pinto, Baglivo, and Mazzeo.
- Count V: 42 U.S.C. §1983 claims of false arrest, false imprisonment, and malicious prosecution against defendants Pinto, Baglivo and Mazzeo.
- Count VI: Assault and battery claim against defendants Pinto, Baglivo, and Mazzeo.
- Count VII: Loss of consortium claim by plaintiff Robert Singletary (dismissed by the Court).

Statement of Undisputed Material Facts

Pursuant to District Court of New Jersey, Local Civil Rule 56.1, the defendants submit the following as undisputed facts material to this motion:

Deposition Testimony of Plaintiff Concetta Marie Norcross attached as Exhibit A:

1. On June 29, 2002, plaintiff Norcross spotted her husband's truck and followed that truck into the parking lot of Wal-Mart in Hammonton, New Jersey. Plaintiff followed her husband's black truck for a couple of miles before ending up in the Wal-Mart parking lot. (Exhibit A, pp.18-20)
2. Plaintiff stated that she was required to drive fast in order to follow the black truck. (Exhibit A, pp.22-23)
3. The driver of the black truck, later identified as Debbie Keenan, pulled into a designated parking space in the Wal-Mart parking lot, and plaintiff Norcross parked right behind her, blocking her in the parking spot. (Exhibit A, p.23)
4. Plaintiff confronted the driver of her husband's truck and stated, "This is my husband's fucking truck." (Exhibit A, pp.23-24)
5. Debbie Keenan's children were in the back seat of the truck. (Exhibit A, pp.24-25)
6. As plaintiff was following Debbie Keenan in her husband's truck, plaintiff called her sister, Geraldine Singletary, on the cell phone and told her what was happening. When plaintiff arrived at the Wal-Mart parking lot, she called her sister again and told her that she was in the parking lot and that her sister should come to the Wal-Mart parking lot. (Exhibit A, pp.22-26)
7. Plaintiff was upset to see a female driving her husband's truck. At the time, plaintiff was separated from her husband, Harry Norcross, because plaintiff stated that Harry was cheating on her. (Exhibit A, p 26)

8. Plaintiff initially confronted Keenan while Keenan was still seating in the driver's seat of the truck. After plaintiff asked Keenan what she was doing with her husband's fucking truck, Keenan replied that plaintiff was divorced from Harry Norcross to which plaintiff said no we are not, and it went back and forth and back and forth. (Exhibit A, pp.26-27)

9. Keenan told her children that she was going into the Wal-Mart to pick up sodas, and Keenan shut the truck door. Plaintiff opened the truck door and hollered to the children that "I just want you to know that your mother is fucking my husband." (Exhibit A, p.27)

10. Up to this point, plaintiff's sister was not present in the parking lot, nor was anyone from the Hammonton Police Department present at that time. (Exhibit A, pp.27-28)

11. At that point, plaintiff indicated that Keenan assaulted her by grabbing her arm and yanking it away from her husband's truck. Plaintiff noticed that her arm was scratched, and she stated that the police would need to be called because plaintiff was going to press charges against Keenan for assault. (Exhibit A, pp.27-28)

12. At some point, police officers of the Town of Hammonton arrived at the scene. In addition, plaintiff's estranged husband, Harry Norcross, also arrived at the scene. (Exhibit A, p.29)

13. Plaintiff stated that Officer Pinto of the Hammonton Police Department arrived first on the scene. (Exhibit A, p.31)

14. When Officer Pinto arrived, plaintiff Norcross came up to him and told him that she was assaulted by her husband's girlfriend. Officer Pinto told plaintiff to stay by her vehicle, as he wanted to talk to Keenan. (Exhibit A, pp.34-35)

15. Plaintiff believed that she told Officer Pinto that she followed Keenan. Officer Pinto could see that plaintiff blocked Keenan in. Plaintiff did not remember telling Officer Pinto that she approached Keenan in the truck, opened the door, climbed in the truck and began to yell at Keenan and her children. (Exhibit A, pp.37-38)

16. After Officer Pinto instructed plaintiff to stay at her vehicle, plaintiff followed him and Officer Pinto kept telling her to stay back, that he wanted to go and talk with Keenan. Officer Pinto kept telling plaintiff to get back or he was going to arrest her. (Exhibit A, pp.38-39)

17. Plaintiff was able to tell Officer Pinto that Keenan assaulted her and that she was the one who called the police. (Exhibit A, pp.39-40)

18. Plaintiff was arrested by Officer Pinto. Officer Pinto placed the handcuffs on the plaintiff. (Exhibit A, p.40)

19. While Officer Pinto was attempting to place the handcuffs on the plaintiff, plaintiff had her cell phone in her right hand. Plaintiff did not want to be cuffed because she wanted to tell her story. (Exhibit A, p.40)

20. Officer Pinto wanted plaintiff to let go of her cell phone, but plaintiff did not want to because she did not want to be handcuffed. (Exhibit A, p.41)

21. Not letting go of her cell phone was the second command that Officer Pinto gave that plaintiff Norcross did not comply with. (Exhibit A, p.41)

22. At some point plaintiff released her cell phone when Officer Pinto pulled plaintiff's right index finger off the phone and it fell. (Exhibit A, pp.41-42)

23. Officer Pinto ordered that plaintiff get into the police car. Plaintiff did not want to get into the police car. Officer Pinto had to assist the plaintiff in getting into the back of his patrol car. (Exhibit A, p.42)

24. After plaintiff was placed in the patrol car, she complained of chest pains and Officer Pinto transported her to Kessler Memorial Hospital. (Exhibit A, pp.43-44)

25. At some point in time, Officer Mazzeo loosened the handcuffs on the plaintiff as the handcuffs were tight on plaintiff and she complained. (Exhibit A, pp.44-45)

26. Plaintiff never had any conversation with Officer Baglivo while in the Wal-Mart parking lot. Officer Baglivo never touched plaintiff in any manner. (Exhibit A, p.45)

Deposition Testimony of Plaintiff Geraldine Singletary attached as Exhibit B:

27. Plaintiff Singletary did not see any physical confrontation between her sister, Norcross, and Keenan. (Exhibit B, pp.12-13)

28. Norcross asked Singletary to call the police because Norcross stated Keenan had assaulted her. (Exhibit B, p.14)

29. When Officer Pinto arrived, he spoke to Norcross, and she was telling him that she had been assaulted by Keenan. (Exhibit B, p17)

30. When Officer Pinto told Norcross to get back, Norcross continued to talk to him, and she continued to follow him. (Exhibit B, p.18)

31. The next thing Singletary knew was that Officer Pinto had handcuffs on her sister. (Exhibit B, p.18)

32. Singletary saw Officer Pinto place the handcuffs on his sister. He put the handcuffs on her and told her to drop the cell phone that she was holding and get into his patrol car. (Exhibit B, p19)

33. When Officer Pinto told Norcross to drop the cell phone, Norcross did not do it. (Exhibit B, p.19)

34. When Officer Pinto placed Norcross into his vehicle, Singletary went over to Norcross and told him that he was arresting the wrong person. (Exhibit B, p.20)

35. Officer Pinto told Singletary to get back, and Singletary continued to say to Pinto that he was arresting the wrong person. (Exhibit B, pp.20-21)

36. At that point, Singletary was placed under arrest. (Exhibit B, p.21)

37. Singletary did not know which officer handcuffed her. (Exhibit B, p.21)

38. When Officer Pinto placed Singletary under arrest, Singletary responded: "Oh, yeah, you're a big, bad - - you're a big, bad cop." (Exhibit B, p.22)

39. Plaintiff Singletary was arrested for disorderly conduct and resisting arrest. (Exhibit B, pp.24-25)

Deposition Testimony of Deborah Keenan-Norcross attached as Exhibit C:

40. Keenan noticed that Norcross was following her as she was driving down the White Horse Pike. (Exhibit C, p.15)

41. Keenan called Harry Norcross and Harry instructed her to go the Wal-Mart parking lot. (Exhibit C, p.18)

42. Keenan had her two younger girls in the vehicle with her. One child was 12 years old and the other child was 9 years old. (Exhibit C, pp.14, 19)

43. The children were starting to panic as Norcross was following the vehicle. (Exhibit C, pp.19-20)

44. Norcross followed Keenan right into the Wal-Mart parking lot and Norcross pulled her vehicle directly behind Keenan so that Keenan was blocked in and could not back her vehicle out of the parking space. (Exhibit C, pp.20-21)

45. Keenan was going to go with the girls into Wal-Mart. Before Keenan could even get out of the car, Norcross was out of her car and was up in Keenan's face. Keenan's children were hysterical at this point. (Exhibit C, p.21)

46. Keenan got out of the car and attempted to take Norcross to the back of the car to talk with her. Norcross jumped in the car, started screaming and cursing at Keenan's children. Norcross stated do you know your mother is fucking my husband. At that point, Keenan got Norcross and told her that she needed to get out of the car and come outside and talk because she was upsetting Keenan's children. (Exhibit C, pp.21-22)

47. Keenan was in the process of opening her door to get out when she parked her vehicle at Wal-Mart. Norcross yanked the door open. Keenan went to get out of the vehicle and take Norcross to the back of the vehicle, and that was when Norcross jumped in the truck. Norcross physically yanked Keenan out of her vehicle. (Exhibit C, pp.22-23)

48. As Norcross was on a rampage inside Keenan's vehicle with Keenan's children, Keenan was outside the vehicle trying to get Norcross to come out of the vehicle. Because Norcross was upsetting Keenan's children, Keenan finally took Norcross by the arm to attempt to get her out of the vehicle. (Exhibit C, pp.23-24)

49. Once Keenan and Norcross went to the back of Keenan's vehicle, Keenan noticed that Geraldine Singletary was on the scene. Keenan did not know who Singletary was at the time. (Exhibit C, p.25)

50. Singletary was yelling, but Keenan did not pay any attention to her. (Exhibit C, pp.24-25)

51. Norcross was yelling at Keenan asking Keenan if she knew that she was having an affair with a married man. (Exhibit C, p.26)

52. Singletary was trying to get involved in the conversation between Norcross and Keenan. Keenan ignored Singletary because Keenan did not know who she was. (Exhibit C, p.29)

53. When the first police officer arrived, Norcross ran up to him and started yelling and screaming. Norcross wanted Keenan arrested. At that point, Keenan went back to her vehicle to see how her children were doing and to attempt to keep them calm. (Exhibit C, pp.33-34)

54. Norcross was pretty much yelling and cursing at everybody at the scene. (Exhibit C, p.34)

55. Norcross was getting angry with Officer Pinto because he was not arresting Keenan. Keenan heard the officer say to Norcross why do you want to arrest her. You're the one who blocked her in and chased her down. (Exhibit C, p.37)

56. Norcross kept trying to come over to where Keenan was. Officer Pinto kept telling Norcross to get away, to get in your car, basically to keep away from Keenan. Officer Pinto said to Norcross to come sit in the police car so that he could settle the situation. Norcross wouldn't do it. Norcross kept pulling away. (Exhibit C, p.37)

57. Norcross' behavior was hysterical. She was loud. She used profanity. The profanity was directed both to Keenan and to her children. Keenan was more upset about her children being in that situation. Norcross was out of control and the situation was getting heated. (Exhibit C, pp.47-48)

58. Officer Pinto showed up and was trying to figure out what was happening. Keenan was trying to talk to Officer Pinto and Norcross was yelling and carrying on and interrupting her. Officer Pinto kept telling Norcross to stay back there, to get over there. He was trying to get her to calm down. When Officer Pinto was giving Norcross these commands to get back, Norcross kept trying to get into Keenan's space. Officer Pinto repeatedly told Norcross to get back and away from Keenan's children. (Exhibit C, pp.48-50)

59. Officer Pinto was trying to physically block Norcross from getting to Keenan. Norcross was trying to get around Officer Pinto. (Exhibit C, pp.51-52)

Deposition Testimony of Harry Norcross attached as Exhibit D:

60. When Officer Pinto got out of his vehicle at the Wal-Mart parking lot, Tina Norcross went over to him and said that she wanted this fucking whore arrested. Officer Pinto told her 2, 3 or 4 times to knock it off with the language and to calm down. (Exhibit D, p.38)

61. Officer Pinto asked Tina Norcross if she had followed Keenan here and blocked her in this spot. Norcross said yes. Officer Pinto said that makes you the aggressor. He also stated he wanted the car moved immediately, or he would move it. (Exhibit D, p.39)

62. Tina Norcross kept insisting to Officer Pinto to lock up Keenan. (Exhibit D, p.40)

63. Tina Norcross was a maniac that day. She was screaming and hollering and cursing. (Exhibit D, p.41)

64. When Tina Norcross was placed under arrest, she was resisting. Officer Pinto was trying to get her under control and into custody. Tina would not cooperate. She would not put her hand down. (Exhibit D, pp.43-44)

65. Harry Norcross heard Officer Pinto say to Tina Norcross that if she did not calm down she was going to be arrested. (Exhibit D, p.44)

66. Tina Norcross was resisting the officer. He was trying to put her into custody. She was resisting him. That is unlawful. (Exhibit D, p.45)

67. Before Officer Pinto attempted to put Tina Norcross under arrest, Tina would not calm down. She was using abusive language. Children were present. There were people in the parking lot. The situation was not coming under control. It should have been coming under control, and it was not. (Exhibit D, p.45)

68. As Officer Pinto was trying to get her arm to place her under arrest, Tina Norcross kept pulling her arm up and away from him. (Exhibit D, p.46)

69. At that point, Gerry Singletary was yelling at Harry Norcross to do something. Harry told her he could not do anything. (Exhibit D, p.46)

70. As Tina Norcross was in the process of being arrested, Singletary was screaming and yelling to leave her sister alone and don't arrest her sister. (Exhibit D, p.50)

71. Officer Pinto called over to another officer to lock Singletary up or take her in. (Exhibit D, p.51)

72. Harry Norcross was adamant in that he did not display his Camden County Prosecutor's badge at any time while he was in the Wal-Mart parking lot. (Exhibit D, p.55)

Deposition Testimony of Defendant Officer James Pinto attached as Exhibit E:

73. Officer Pinto received a radio call from dispatch of a fight at the Wal-Mart parking lot. (Exhibit E, p.51)

74. Officer Pinto was the first Hammonton police officer to arrive on the scene. (Exhibit E, p.56)

75. Officer Pinto recalled seeing a beige Ford Explorer that was parking behind and blocking another vehicle. The Wal-Mart parking lot was crowded. (Exhibit E, p.57)

76. When Officer Pinto exited his vehicle, Tina Norcross approached him and identified herself, and also identified her husband Harry. She was excited. Tina stated her husband works for the Camden County Prosecutor's Office and she stated that she called the police. (Exhibit E, p.62)

77. Tina Norcross told Officer Pinto that she had followed a black pick up truck into the Wal-Mart parking lot. She parked behind the pick up truck. She entered the pick up truck on the passenger's side. She began to get into an argument with the pick up truck driver, Debbie Keenan. (Exhibit E, pp.63-64)

78. Tina Norcross did not tell Officer Pinto that Keenan had assaulted her physically inside the truck. (Exhibit E, p.64)

79. Officer Pinto advised Tina Norcross several times to calm down, as he was going over to talk to Keenan and get her side of the story. Norcross was very abusive, started cussing using foul language. (Exhibit E, pp.65-66)

80. Officer Pinto would turn back and head towards Keenan. He would hear Norcross come up from behind him again, cussing and swearing that Keenan was not going to tell Officer Pinto the truth, and that Keenan was screwing around with a married man. Officer Pinto would turn around again and tell Norcross to step back as he had to speak to Keenan. (Exhibit E, pp.65-66)

81. Officer Pinto told Norcross to step back or he would arrest her. Norcross stated that he could not arrest her because she called 911 first. Officer Pinto told Norcross that she was being disrespectful, combative, disorderly, and that he could arrest her. (Exhibit E, p.66)

82. Norcross attempted to get to Keenan. Norcross never got in front of Officer Pinto as each time Officer Pinto wanted to go to Keenan, she heard Norcross' voice behind him. (Exhibit E, p.67)

83. Officer Pinto told Norcross that she would be arrested if she did not obey his command to back up. Officer Pinto told her that she could be arrested for disorderly conduct. (Exhibit E, p.68-69)

84. Tina Norcross was disorderly in the Wal-Mart parking lot as she was screaming and yelling. She was very combative. She was causing a scene and a public display in the parking lot at Wal-Mart. (Exhibit E, p.69)

85. When Officer Pinto told Norcross that she was under arrest, Officer Pinto attempted to handcuff Norcross. Norcross resisted arrested by bending her elbow so as not to be handcuffed. Norcross also began to pull away from Officer Pinto and twist so that Officer Pinto could not handcuff her. (Exhibit E, pp.70-74)

86. During this time, Tina Norcross was continuing to scream for Harry Norcross to do something. She also was holding a cell phone in her right hand. Officer Pinto gave her several commands to put the phone down, but Norcross would not comply. (Exhibit E, p.75)

87. Officer Pinto attempted to remove the cell phone from her hand by prying her finger back to release the cell phone. Officer Pinto was successful in doing so. (Exhibit E, pp.75-76)

88. Once Norcross was handcuffed, she complained that the handcuffs were too tight. Corporal Mazzeo indicated to Officer Pinto that due to Norcross' complaints, he took Norcross out of the patrol car and loosened the handcuffs and put her back in the vehicle. (Exhibit E, pp.78-79)

89. Norcross was placed under arrest because her conduct was disorderly. (Exhibit E, p.80)

90. When arresting Tina Norcross, Singletary came over towards Officer Pinto. She asked Pinto why he was doing this. They called the police first. Harry was the one fucking around. You cops are all alike. Officer Pinto told her to please step back or she would be arrested also. (Exhibit E, p.83)

91. Singletary also stated that ooooooh, big bad cop, something to that effect. Singletary said this before she was arrested. (Exhibit E, pp.83-84)

92. Pinto told Singletary that she was being arrested for disorderly conduct also. She was yelling, screaming, combative, causing a scene in public. (Exhibit E, p.84)

93. When Officer Pinto told Singletary that if she did not step back she was going to be arrested, Singletary continued to progress forward, making those comments and trying to aid in her sister's defense. (Exhibit E, p.86)

94. When Tina Norcross was handcuffed, she did not want to get into Officer Pinto's vehicle. She became rigid. She stiffened up her body as she did not want to sit down. She was verbally commanded to sit down several times and refused to do so. (Exhibit E, p.89-90)

95. When Singletary kept approaching Officer Pinto despite his commands to stay back, Officer Pinto instructed Officer Baglivo to place Singletary under arrest for disorderly conduct. (Exhibit E, p.91)

96. Officer Pinto observed Officer Baglivo attempt to handcuff Singletary. Officer Baglivo placed a handcuff on Singletary. As he attempted to place the other handcuff on her, Singletary pulled her arm tight to her body and began to walk around in a circle, resisting arrest. (Exhibit E, p.92)

97. Officer Pinto went over to assist Officer Baglivo in handcuffing Singletary. Officer Pinto stopped Singletary from spinning around. He assisted in getting Singletary's right arm and placing it behind her back for handcuffing. (Exhibit E, p.93)

98. Norcross was complaining of chest pains as she sat in Officer Pinto's vehicle. Corporal Mazzeo put down the patrol car's back windows. Officer Pinto immediately took Norcross to Kessler Memorial Hospital. (Exhibit E, pp.95-96)

99. It was Officer Pinto's intention to charge both Norcross and Singletary for disorderly conduct and resisting arrest. (Exhibit E, p.99)

Deposition Testimony of Defendant Officer Jared Baglivo attached as Exhibit F:

100. Upon Officer Baglivo's arrival at the Wal-Mart parking lot, he observed a car on an angle blocking another vehicle. He could also hear women screaming. (Exhibit F, p.14).

101. As he approached Officer Pinto, Officer Baglivo witnessed Tina Norcross screaming profanities, flaring her arms, being absolutely disruptive in the Wal-Mart parking lot, just making an absolute spectacle of herself. (Exhibit F, p.15)

102. Officer Baglivo heard Tina Norcross say certain things such as how all cops are fucking dirty, all cops cheat on their wives. She stated that she could not be locked up because her husband is a Camden County Prosecutor. There was nothing these officers could fucking do to her. She was directing these comments to Officer Pinto. (Exhibit F, p.15)

103. Officer Pinto responded to Norcross on numerous occasions to calm down and just relax. (Exhibit F, p.15)

104. Tina Norcross continued to scream, continued her verbal barrage. She attempted to walk toward Keenan's vehicle. Plaintiff Singletary was also screaming. Officer Baglivo walked closer towards Singletary to attempt to keep her calm and walk her away from the situation. Singletary was saying things such as Norcross fucking called you. Why are you bothering her. Why don't you deal with the whore in the car. (Exhibit F, p.16)

105. Singletary would not stop screaming. At this time, in a Wal-Mart parking lot in July, people began to come over to check out what was going on. It placed the police officers' safety in jeopardy, and traffic could not flow because Tina Norcross' vehicle was parked in the middle of the lane of travel in the parking lot. (Exhibit F, p.17)

106. Officer Baglivo told Singletary to calm down approximately 8-10 times. She did not comply. Officer Baglivo did not have any communications with Tina Norcross. (Exhibit F, pp.17-18)

107. Officer Pinto advised Officer Baglivo to place Singletary into custody and place her into the vehicle. Officer Baglivo placed handcuffs on Singletary and placed her in the patrol car. (Exhibit F, p.18)

108. As Officer Baglivo was trying to quell Singletary, he could hear Officer Pinto advise Norcross to please calm down, you are already disorderly. It doesn't have to come down to this. Just relax. I'm going to have to lock you up. He also recalled hearing Officer Pinto say to put the phone down, put the phone down. (Exhibit F, p.19)

109. Officer Baglivo believed he advised Singletary that she was under arrest before handcuffing her. (Exhibit F, p.20)

110. Officer Baglivo remembered the comment like, "ooh, big bad cop" or "big bad police officer", but he did not know who said it. (Exhibit F, pp.20-21)

111. Officer Baglivo transported Singletary to the police station. (Exhibit F, p.21)

112. Officer Baglivo did not have any involvement in charging Singletary. (Exhibit F, p.23)

113. Officer Pinto filed the charges against both Norcross and Singletary. (Exhibit F, p.24)

Deposition testimony of Defendant Corporal Joseph Mazzeo attached as Exhibit G:

114. Corporal Mazzeo received a radio call to respond to the Wal-Mart parking lot. (Exhibit G, p.36)

115. When he arrived at the scene, he saw Tina Norcross who was very upset. She was stating that her husband was cheating on her. She was attempting to assault this woman that was in a pick up truck. (Exhibit G, p.36)

116. When Corporal Mazzeo arrived, Tina Norcross was being placed in the police vehicle. Norcross kept saying that her husband was cheating on her with Keenan. (Exhibit, G, p.42)

117. Corporal Mazzeo did not have any participation with respect to Norcross being placed in handcuffs. He did not assist in placing Norcross inside the patrol car. (Exhibit G, p.43)

118. Corporal Mazzeo observed Officer Pinto tell Norcross to get into the patrol car. Norcross did not want to get in but she eventually complied. (Exhibit G, p.43)

119. Corporal Mazzeo stated someone was calling Officer Pinto a pig and that all cops stick together. He did not know who was saying this. (Exhibit G, p.44)

120. Officer Pinto was giving Norcross verbal orders to get into the back of the patrol car. Norcross was not complying. She was getting upset and her sister, Singletary, was getting upset. (Exhibit G, pp.46-47)

121. When Norcross indicated she was having chest pains, Corporal Mazzeo called for an ambulance to come to the scene. (Exhibit G, p.47)

122. Singletary was very upset and she was very boisterous about the situation. Corporal Mazzeo heard someone say that we're all a bunch of pigs and we all stick together, and if she was fucking your husband, you would be acting the same way. (Exhibit G, p.51)

123. Corporal Mazzeo believed that Officer Pinto gave Singletary commands that if she continued she was going to get locked up too. (Exhibit G, p.52)

124. Officer Pinto indicated that he was going to charge Singletary with disorderly because she was acting in such a manner. (Exhibit G, p.53)

125. Corporal Mazzeo did not have any participation in handcuffing Singletary. (Exhibit G, p.55)

126. Officer Pinto was trying to gain control of the situation. (Exhibit G, p.55)

127. Singletary was acting in a disorderly manner, and that threatened the safety of everyone, because it could escalate. Tempers were flaring. The situation could have become physical. (Exhibit G, p.56)

Arrest Report dated August 30, 2002 attached as Exhibit H:

128. Concetta Norcross and Geraldine Singletary were arrested for disorderly conduct, and resisting arrest.

Complaints filed by Officer James Pinto in the matters of State v. Norcross and State v. Singletary attached as Exhibit I:

129. The Complaint charged Concetta Norcross with purposely causing the risk of public inconvenience, annoyance or alarm by engaging in violent tumultuous behavior specifically by going to Wal-Mart and attempting to start a fight with Debbie Keenan, and then becoming combative with Patrolman James Pinto specifically by yelling, and using abusive language towards the officer in violation of N.J.S. 2C:33-2(a).

130. The Complaint also charged Concetta Norcross with purposely preventing a law enforcement officer from effecting a lawful arrest, especially by while being placed under arrest and handcuffed the accused began to twist her body so the handcuffs could not be applied, and also holding onto a cellular phone with her hand in such a manner as if she would not release the phone to be handcuffed in violation of N.J.S. 2C:29-2(a).

131. The Complaint charged Geraldine Singletary with purposely causing the risk of public inconvenience, annoyance or alarm by engaging in violent tumultuous behavior specifically by yelling at Officer James Pinto that you can't arrest my sister, and that all you cops are pigs and run around on your wives, while in the parking lot of Wal-Mart on June 29, 2002 in violation of N.J.S. 2C:33-2(a).

132. The Complaint also charged Singletary with purposely preventing a law enforcement officer from effecting a lawful arrest, specifically by pulling her arm away from Officer Pinto's grasp and swinging her arm in such a manner as for not to be arrested, along with twisting her body and spinning in a circle as not to be handcuffed in violation of N.J.S. 2C:29-2(a).

133. As a result of the complaining witness and independent witnesses not wishing to pursue the criminal charges, the State made a motion to dismiss the charges against the plaintiffs. The Municipal Court Judge entered pleas of not guilty and found the plaintiffs not guilty of the charges.

Standard Of Review For Summary Judgment Motions

Under Federal Rule of Civil Procedure 56 (c), a court must enter summary judgment “if the pleadings, depositions, or answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FRCP 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); See also, Hersh v. Allen Products Co., 789 F.2d 230, 232 (3d Cir. 1986). A fact is “material” if a dispute over that fact “might affect the outcome of the suit under the governing law...” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is “genuine” only if there is sufficient reason for “a reasonable jury [to] return a verdict for the non-moving party.” Anderson, supra. at 248. When determining whether a genuine issue of material fact exists, a court must view all facts and make all reasonable inferences in the light most favorable to the non-moving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Procedurally, the movant has the initial burden of identifying evidence that it believes shows an absence of genuine issue of material fact. Id. When the movant will bear the burden of proof at trial, the movant’s burden can be discharged by showing that there is an absence of evidence to support the non-movant’s case. Id. at 325. If the movant establishes the absence of a genuine issue of material fact, the burden shifts to the non-movant to do more than “simply show that there is some metaphysical doubt as to material facts.” Matsushita Elec. Indus. Co, Ltd., supra. at 586. The non-moving party must present evidence that establishes that a genuine issue of material fact exists, making it necessary to resolve the difference at trial. Celotex Corp., supra. at 324; Jersey Cent. Power & Light, Co. v. Lacey Township, 772 F.2d 1103, 1109 (3d Cir. 1985). A non-moving party may not rely on mere allegations; actual evidence that raises a genuine issue of material fact must be presented. Anderson, supra. at 249. “Rule 56[c] mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial.” Celotex, supra. at 322.

The role of the judge at the summary judgment stage is not to weigh the evidence, but to determine whether there is a genuine issue for trial. Anderson, supra. at 249. "By its very terms, the standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Id. at 247-248. Material facts are only those facts that might affect the outcome of the action under governing law. Id. at 248. "[T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, supra. at 249-50.

Standard Of Review For 42 U.S.C. Section 1983 Actions

To prevail in a Section 1983 action, a plaintiff must establish (1) that the conduct constituted state action or action committed while acting under color of law and (2) that the conduct deprived an individual of rights, privileges, or immunities secured by the constitution or laws of the United States. Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996); Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1264 (3d Cir. 1994); Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1142 (3d Cir. 1990). See also Parratt v. Taylor, 451 U.S. 527, 535, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981) (citing same two elements as "essential elements to a §1983 action"), overruled on other grounds, Daniels v. Williams, 474 U.S. 327, 88 L. Ed. 2d 662, 106 S. Ct. 662 (1986); Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 56 L. Ed. 2d 185, 98 S. Ct. 1729 (1978); Jackson v. Temple Univ. of Commonwealth Sys. of Higher Educ., 721 F.2d 931, 933 (3d Cir. 1983); McArdle v. Tronetti, 769 F. Supp. 188, 190 (W.D.Pa. 1991) aff'd, 961 F.2d 1083 (1992). Section 1983 does not create substantive rights. Rather, Section 1983 provides an avenue of recovery for the deprivation of established constitution or statutory rights. Kneipp, 95 F.3d at 1204; Groman v. Twp. of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

Legal Argument

Point I

PLAINTIFFS' CIVIL RIGHTS CLAIMS AGAINST THE TOWN OF HAMMONTON SHOULD BE DISMISSED AS A MATTER OF LAW BECAUSE PLAINTIFFS CANNOT DEMONSTRATE THE EXISTENCE OF A POLICY OR CUSTOM OF THE TOWN OF HAMMONTON TO DEPRIVE THEM OF THEIR CIVIL RIGHTS.

Plaintiffs are alleging that defendant Town of Hammonton violated their civil rights by adopting and maintaining a recognized and accepted policy, custom and/or practice of condoning and/or acquiescing the illegal and unconstitutional arrest of citizens and the use of unreasonable force during the course of arrests. Plaintiffs are further alleging that the Town of Hammonton as a matter of policy, custom and practice failed to properly train, supervise and/or discipline members of the Town of Hammonton Police Force with respect to constitutional restraints on the use of force and unlawful arrests. (See plaintiffs' Complaint attached as Exhibit "I") In short, plaintiffs are claiming that the Town of Hammonton's training, supervision, discipline and hiring policies violated their constitutional rights. However, the Town of Hammonton cannot be held liable for any illegal actions of individual law enforcement officers under the facts and circumstances of this case.

Under 42 U.S.C. §1983, a municipality cannot be held vicariously liable. Plaintiff has a higher burden in holding a municipality liable than an individual government official. Fagan v. City of Vineland, 22 F.3d 1283, 1292 (3d Cir. 1994). In Board of County Com'rs of Bryan Cty. Okl. v. Brown, 520 U.S. 397 (1997), the Court held that Congress did not intend to impose liability on a municipality unless deliberate action attributable to the municipality itself is the "moving force" behind the plaintiff's deprivation of federal rights. Id. Citing Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 694 (1978). In addition, proof that the legislative body or authorized decision maker has intentionally deprived a plaintiff of a federally protected right necessarily establishes that the municipality acted culpably. Board of County Com'rs of Bryan Cty. Okl., 520 U.S. at 397. Similarly, the conclusion that action taken or directed by the municipality or its authorized decision maker itself

violates federal law will also determine that the municipal action was the moving force behind the injury of which the plaintiffs complaint. Id. Accordingly, a plaintiff's burden is high in a §1983 action.

The Town of Hammonton may not be held liable under §1983 solely on the theory of *respondeat superior* because it allegedly employed someone who violated the constitutionally protected rights of another. Monell, 436 U.S. at 658. Rather, a municipality can be held liable under §1983 only if the execution of its policy or custom, whether made by its lawmakers or those whose edicts or acts may fairly be said to represent official policy, inflicts the injury. Id. at 694. Furthermore, there must be a "causal line" between the policy and the constitutional deprivation, City of Canton, Ohio v. Harris, 489 U.S. 378 (1989). Therefore, only deprivation stemming from governmental "custom" or "policy" may lead to the imposition of government liability. Monell, 436 U.S. at 694.

Thus, a plaintiff must satisfy several burdens before municipal liability under §1983 can be established. First, the plaintiff must provide a constitutional violation. Second, it must prove that a municipal policy and/or custom caused the violation. Third, the plaintiff must provide that the municipal defendant acted with deliberate indifference with regard to the policy or custom. Canton, 489 U.S. at 385.

There has been extensive discovery conducted in this case. Discovery has not revealed any official policy or custom of the Town of Hammonton that contributed to any alleged constitutional deprivation of plaintiffs. Plaintiffs cannot produce evidence that there was a policy or custom on the part of the Town of Hammonton to deprive them of their civil rights. There is no evidence of a policy or custom which led to the alleged false arrest, false imprisonment, and malicious prosecution of plaintiffs. Further, it is clear that defendant officers did not illegally arrest and use excessive force upon the plaintiffs in completing the arrests. Plaintiffs were continually belligerent and disorderly throughout this whole ordeal. They would not listen to the commands of the police officers, specifically Officer Pinto, to cease and desist their disorderly actions. Despite several warnings to both of them to cease and desist, plaintiffs continued to act in a disorderly manner and subsequently, they were legally arrested. During the course of the arrest, both plaintiffs resisted handcuffing, and therefore were legally charged with

resisting arrest as well as disorderly conduct. Finally the plaintiffs have not submitted any type of liability expert report as to the Town of Hammonton or the individual officers for that matter.

As set forth above, the Town of Hammonton cannot be held liable for any alleged wrongdoing on the part of an individual law enforcement officer, in this case, Pinto, Baglivo, and Mazzeo. Accordingly, defendant Town of Hammonton is entitled to summary judgment as a matter of law as to Count II of the Complaint.

Point II

**PLAINTIFFS' CLAIMS AGAINST THE TOWN OF HAMMONTON
SHOULD BE DISMISSED AS A MATTER OF LAW BECAUSE
PLAINTIFFS CANNOT DEMONSTRATE THE EXISTENCE OF A
POLICY OR CUSTOM OF THE TOWN OF HAMMONTON TO FAIL TO
TRAIN ITS POLICE OFFICERS.**

Plaintiffs alleged that the Town of Hammonton, as a matter of policy and practice failed to properly train its police officers with respect to the constitutional, departmental and statutory limits of their authority. A municipality can only be liable for inadequate training when the failure to train amounts to "deliberate indifference to the rights of persons with whom the policy come into contact." Canton, 489 U.S. at 388. Proof of a single incident of inadequate training will not support a claim for a constitutional violation against a municipality. City of Oklahoma v. Tuttle, 471 U.S. 808, 813 (1985). The Third Circuit has provided a three prong test for determining whether or not a plaintiff has a claim for inadequate training under §1983. The plaintiff must show:

1. That the training program was inadequate;
2. That the municipality was deliberately indifferent to the deficiency; and
3. That the deficiency in training caused the constitutional violation.

Kneipp v. Tedder, 95 F.3d 1199, 1213 (3d Cir. 1996); Malignaggi v. County of Gloucester, 855 F.Supp. 74, 77 (D.N.J. 1994).

Plaintiffs have not established any evidence that the Town of Hammonton has a policy or custom of inadequately training its officers. Plaintiffs have not established that the Town of Hammonton was deliberately indifferent regarding its training procedures. To establish deliberate indifference, the plaintiffs must show more than a shortcoming with an individual officer. Canton, 489 U.S. at 390-91. Proving that an otherwise sound training program has been occasionally negligently administered, or showing, without more, that better training would have enabled an officer to avoid the injury causing conduct, does not provide sufficient evidence of deliberate indifference. Id. Likewise, proving that an otherwise sound training program has been occasionally negligently administered, or showing, without more, that better training would have enabled an officer to avoid the injury causing conduct, does not

provide sufficient evidence of deliberate indifference. *Id.*; citing *Malignaggi*, 855 F.Supp. at 78. Proof of a single violation will not support the inference that the municipality had knowledge of the training deficiency and its consequences. *Malignaggi, supra*, at 78.

Plaintiffs have failed to show that the Town of Hammonton's alleged inadequate training program amounted to deliberate indifference. Plaintiffs basically alleged that if the Town of Hammonton provided better or more training to its officers, then this incident might not have occurred. This is clearly insufficient to prove the high standard of "deliberate indifference." Plaintiffs cannot show any other incidents where a persons' constitutional rights were violated by the Town of Hammonton's alleged training deficiencies.

Even if the plaintiffs could demonstrate that the Town of Hammonton was indifferent in an inadequate training program, plaintiffs must still show that the inadequate program caused the ultimate constitutional injury. *Canton, supra* at 391; *Malignaggi, supra*, at 77. In other words, if the plaintiffs would have been injured regardless of the deficient training, plaintiffs do not have a §1983 cause of action. *Id.* Plaintiffs must show a sufficiently close causal link between the training deficiency and the specific violation. This requires that a specific deficiency rather than a general laxness or ineffectiveness in training be shown. It requires that the deficiency be such as to make the occurrence of the specific violation a reasonable probability rather than a mere possibility. That is, the specific violation must be "almost bound to happen sooner or later" rather than merely "likely to happen in the long run." *Id.*

In this case, certainly discovery has not revealed any evidence to meet this prong. The fact that a person may get hurt while being arrested bespeaks of a mere possibility. There is no evidence of a specific laxness in training which was bound to cause a constitutional deficiency. As such, there is no material dispute of fact and the Town of Hammonton is entitled to summary judgment as a matter of law.

Point III

PLAINTIFFS' CLAIMS AGAINST THE TOWN OF HAMMONTON SHOULD BE DISMISSED AS A MATTER OF LAW BECAUSE PLAINTIFFS CANNOT DEMONSTRATE THE EXISTENCE OF A POLICY OR CUSTOM OF THE TOWN OF HAMMONTON TO IMPROPERLY HIRE, FAIL TO SUPERVISE AND FAIL TO DISCIPLINE ITS OFFICERS.

Plaintiffs' Complaint alleged that the Town of Hammonton had a policy and/or custom of improperly hiring its officers, failing to supervise its officers and failing to discipline its officers. Plaintiffs claim that this led to civil rights violations. First, with respect to the claim of improper supervision, the deliberate indifferent standard also applies to claims of inadequate supervision. Groman v. Twp. of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995). A plaintiff is required to identify a specific supervisory practice, procedure, or omission that evidences deliberate indifference and has a close relationship to the violation of the plaintiff's federal rights. Sample v. Diecks, 885 F.2d 1099 (3d Cir. 1989).

Discovery has not revealed that the supervision in general, or on the day of the incident was unreasonable much less the result of deliberately indifferent policies and customs. Further, there is no evidence of prior constitutional violations caused by inadequate supervision. The allegation of a single constitutional violation will not support a finding that the Town of Hammonton's supervision of its officers constituted "deliberate indifference." Malignaggi, 855 F.Supp. at 78. Likewise, there is no proof that the Town of Hammonton's supervision, or lack thereof, caused the incident in dispute.

Plaintiffs allege that the Town of Hammonton's hiring and disciplinary policies have violated their constitutional rights. Plaintiffs have no factual basis to support these contentions. Plaintiffs cannot establish how the Town of Hammonton's hiring practices and disciplinary practices relate to this case and how they violated their constitutional rights. As such, a claim for improper hiring and discipline must fail. Accordingly, the Town of Hammonton is entitled to summary judgment as a matter of law.

Point IV

DEFENDANT TOWN OF HAMMONTON IS ENTITLED TO SUMMARY JUDGMENT AS TO ANY CLAIM OF EXCESS FORCE BECAUSE THERE IS NO EVIDENCE OF A POLICY OR CUSTOM AUTHORIZING THE USE OF EXCESSIVE FORCE.

In order for defendant Town of Hammonton to be held liable on a claim of excess force, plaintiffs must provide that, as a matter of law, the Town of Hammonton had a policy or custom of authorizing use of excessive force. Beck v. City of Pittsburgh, 89 F.2d 966 (3d Cir. 1996). A recitation of the number of excess force complaints filed is not sufficient to prove a policy or custom. Id. at 973. Policy and custom must be established by knowledge and acquiescence. Id.

In the case at issue, no evidence has been adduced through discovery of a policy or custom on the part of the Town of Hammonton of knowing about and acquiescing to the use of excessive force. There is no evidence that the policies of the Town of Hammonton are insufficient to protect citizens from the police misuse of force. As such, there is no material dispute of fact. According, the Town of Hammonton is entitled to summary judgment as a matter of law.

Point V

DEFENDANTS, OFFICERS PINTO, BAGLIVO, AND CORPORAL MAZZEO, ARE IMMUNE FROM PLAINTIFFS' §1983 CIVIL RIGHTS CLAIMS UNDER THE DOCTRINE OF QUALIFIED IMMUNITY.

To recover under 42 U.S.C. §1983, plaintiffs must establish that the Town of Hammonton Police Officers Pinto, Baglivo, and Mazzeo, engaged in conduct that deprived them of "rights, privileges, or immunities" secured by the Constitution or laws of the United States. Kneipp v. Tedder, 95 F. 3d 1199, 1204 (3rd Cir. 1996). Under standards set forth in Harlow v. Fitzgerald, 457 U.S. 800 (1982) and Anderson v. Creighton, 483 U.S. 635 (1987), a public official performing a discretionary function enjoys qualified immunity from civil damages liability as long as his conduct does not violate a clearly established statutory or constitutional right of which a reasonable person would have known. Harlow, supra, at 818.

The U.S. Supreme Court held in Saucier v. Katz, 533 U.S. 194 (2001), that a two step inquiry must be used in ruling on qualified immunity. The court must consider whether the facts alleged, taken in the light most favorable to the plaintiffs, show that the officers' conduct violated a constitutional right. *Id.* at 201. The second step is to inquire whether the right was clearly established. *Id.* In making this determination, the relevant inquiry is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *Id.* at 202; Kopec v. Tate, 361 F.3d 772, 776 (3rd Cir. 2004).

A police officer is entitled to qualified immunity if it would not have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Davis v. Township of Paulsboro, 421 F. Supp. 2d 835, 851 (D.N.J. 2006, citing Gilles v. Davis, 427 F. 3d 197, 203-04 (3rd Cir. 2005). Police officers who reasonably but mistakenly conduct that their conduct coincides with the requirements of the Fourth Amendment are entitled to immunity. The qualified immunity standard allows ample room for police officers to act upon reasonable albeit mistaken conclusions in carrying out their duties. Qualified immunity casts a broad net and excludes only the plainly incompetent and those who knowingly violate the law.

Davis, supra. at 851; Orsatti v. New Jersey State Police, 71 F. 3d 480, 484 (3rd Cir. 1995).

Under qualified immunity, police officers are entitled to deference for decisions they make in the field, they must make split second judgments in circumstances that are tense, uncertain, and rapidly evolving. Saucier, supra., at 204-05.

On excessive force claims, the first inquiry is whether the facts asserted by plaintiffs, taken in the light most favorable to them, show that the police officers violated plaintiffs' Fourth Amendment rights. In order to establish a claim for excessive force as an unreasonable seizure, plaintiffs must show that a seizure occurred and that it was unreasonable. Kopec, supra., at 776; citing Estate of Smith v. Marasco, 318 F. 3d 497, 505 (3rd Cir. 2003). Defendants do not assert in this motion that plaintiffs arrests did not constitute a seizure. The only issue on this inquiry is whether the force the police officers used to effect the arrests were reasonable.

The test of reasonableness under the Fourth Amendment is whether under the totality of the circumstances, the police officers' actions were objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivations. Kopec, supra. at 776; citing Graham v. Connor, 490 U.S. 386, 397 (1989). If the use of force was objectively reasonable, the officers' good faith was irrelevant and any bad faith motivation was immaterial. Kopec, supra., at 776.

The Court may consider several factors in determining the reasonableness of the police officers actions, including the severity of the crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is resisting arrest. A court may also consider the duration of the action, whether the action takes place in the context of effecting an arrest, and the number of persons with whom the police officers must contend at one time. Kopec, supra., at 777. Graham, supra., at 396. Sharrar v. Felsing, 228 F. 3d 810, 822 (3rd Cir. 1997).

As the U.S. Supreme Court has stated:

The “reasonableness” of a particular use of force must be judged from the prospective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. Kopec, supra., at 777; citing Graham, supra., at 396-397.

I. Patrolman James Pinto

Officer James Pinot is entitled to qualified immunity as to the §1983 claims made against him by the plaintiffs. When Officer Pinto arrived at the Wal-Mart parking lot, he immediately saw a beige Ford Explorer that was parked behind and blocking another vehicle. The Wal-Mart parking lot was crowded at the time. He soon came to realize that Tina Norcross had followed the vehicle driven by Debbie Keenan into the Wal-Mart parking lot and had blocked her in. When Officer Pinto exited his vehicle, Tina Norcross approached him and identified herself and her husband Harry. Norcross was very abusive, cussing and swearing that Keenan was screwing around with her husband. Officer Pinto advised Norcross several times to calm down, as he was going to talk to Keenan to get her side of the story. When Officer Pinto headed towards Keenan, Norcross would come up from behind him again, cussing and swearing that Keenan was not going to tell the truth. Officer Pinto instructed Norcross on several occasions to stay back and to calm down. Norcross ignored the Officer's instructions.

Tina Norcross admitted that Officer Pinto instructed her to stay at her vehicle, but she followed the Officer as Pinto kept telling her to stay back as he wanted to talk with Keenan. Officer Pinto kept telling Norcross to get back or he was going to arrest her. Tina Norcross was disorderly in the Wal-Mart parking lot as she was screaming and yelling. She was very combative. She was causing a scene and a public display in the parking lot at Wal-Mart. This put Officer Pinto and the other officers at risk. The scene was potentially explosive with emotions running high. Officer Pinto had to quickly control the situation before it got out of hand. She was causing a scene and was very disruptive and would not calm down. Officer Pinto's action of arresting Norcross for disorderly conduct was warranted.

When Officer Pinto placed Tina Norcross under arrest, Norcross did not want to be cuffed because she wanted to continue to tell Officer Pinto the reasons for her actions. Officer Pinto instructed plaintiff to let go of her cell phone, but plaintiff refused to do so. Not letting go of her cell phone was the second command that Officer Pinto gave that the plaintiff admitted she did not comply with. At some point plaintiff released her cell phone when Officer Pinto pulled plaintiff's right index finger off the phone and the cell phone fell. Officer Pinto then ordered the plaintiff to get into the police car. Plaintiff did not want to get into the police car. Officer Pinto had to assist the plaintiff in getting into the back of his patrol car. Under the circumstances presented to him, Officer Pinto's use of force in effecting the arrest on Norcross was objectively reasonable. Qualified immunity gives ample room for mistaken judgments of police officers by protecting all but the plainly incompetent or those who knowingly violated the law. Officer Pinto acted as a reasonable police officer under the circumstances. Accordingly, summary judgment is appropriate on behalf of the defendant, Officer Pinto under the doctrine of qualified immunity as to his actions of arresting Tina Norcross for disorderly conduct and resisting arrest.

After arresting Tina Norcross, Norcross' sister, Geraldine Singletary, came over towards Officer Pinto. She asked Pinto why he was arresting Tina. Singletary said that they (meaning her and Tina) called the police first. Singletary stated that Norcross' husband was the one fucking around. She further stated that you cops are all alike. Officer Pinto instructed her to please step back or she would be arrested as well. Singletary stated, "oooooh, big bad cop" something to that effect. Singletary said this before she was arrested. Singletary admitted in her deposition that her sister did not follow Officer Norcross' commands to get back, nor did Norcross drop her cell phone when instructed to while Officer Pinto was handcuffing Norcross. Singletary stated that she told Officer Pinto that he was arresting the wrong person. Officer Pinto told Singletary to get back, and Singletary continued to say that Officer Pinot was arresting the wrong person.

Singletary would not calm down nor comply with Officer Pinto's instructions. When Singletary kept approaching Officer Pinto despite his commands for her to stay back, Officer Pinto instructed

Officer Baglivo to place Singletary under arrest for disorderly conduct. As Officer Baglivo attempted to place handcuffs on Singletary, Singletary pulled her arm tight to her body and began to walk around in a circle, resisting arrest.

This was a very ugly, public incident. As the officer in charge, Officer Pinto had to quickly bring this situation under control before it escalated into a physical altercation. He did just that. He arrested both plaintiffs in order to bring the situation under control. Under the circumstances presented to him, Officer Pinto's arrest of the plaintiffs and his use of force to effect these arrests due to plaintiffs' resisting, was objectively reasonable. Accordingly, summary judgment is appropriate on behalf of the defendant, Officer Pinto under the doctrine of qualified immunity.

II. Patrolman Baglivo

Patrolman Baglivo is entitled to summary judgment under qualified immunity. According to Baglivo, when he arrived at the Wal-Mart parking lot, he observed Norcross' car on an angle blocking the vehicle driven by Keenan. As he approached Officer Pinto, Officer Baglivo witnessed Norcross screaming profanities, flaring her arms, being absolutely disruptive in the Wal-Mart parking lot, and just making an absolute spectacle of herself. Officer Baglivo indicated that Officer Pinto responded to Norcross on numerous occasions to calm down and just relax. Norcross continued to scream and continued her verbal barrage. Norcross attempted to walk towards Keenan's vehicle. Plaintiff Singletary was also screaming. Officer Baglivo walked closer toward Singletary to attempt to keep her calm and walk her away from the situation. Singletary would not stop screaming.

The Wal-Mart parking lot was crowded. A situation such as this puts the police officers' safety in jeopardy, and traffic could not flow through the parking lot because Norcross' vehicle was parked in the middle of the lane of travel in the parking lot. Officer Baglivo told Singletary to calm down approximately 8-10 times. She did not comply. Officer Baglivo did not have any communications with Tina Norcross. Officer Pinto advised Officer Baglivo to place Singletary into custody and place her into the vehicle. Officer Baglivo placed handcuffs on Singletary and placed her in the patrol car.

Plaintiff Norcross testified that she never had any conversations with Officer Baglivo in the Wal-Mart parking lot. She also stated Officer Baglivo never touched her in any manner.

Officer Baglivo was on the scene to assist Officer Pinto in bringing this situation under control. Officer Baglivo's actions in this incident were appropriate and reasonable. He placed Singletary under arrest under instructions from Officer Pinto. He had no communication or contact with plaintiff Norcross in the Wal-Mart parking lot. Accordingly, summary judgment is appropriate on behalf of the defendant, Patrolman Baglivo under the doctrine of qualified immunity.

III. Corporal Mazzeo

Corporal Mazzeo is entitled to summary judgment under qualified immunity. When Corporal Mazzeo arrived at the scene, he saw Tina Norcross who was very upset. She stated that her husband was cheating on her. She was attempting to assault Debbie Keenan who was in a pick-up truck. When Corporal Mazzeo arrived, Norcross was being placed in Officer Pinto's police car. Corporal Mazzeo did not have any participation with respect to Norcross being placed under arrest or in handcuffs. He did not assist in placing Norcross into the patrol car. Corporal Mazzeo did observe Officer Pinto tell Norcross to get into the patrol car. Norcross did not want to get in but she eventually complied. Tina Norcross testified that Corporal Mazzeo loosened the handcuffs on her as she complained that the handcuffs were too tight. That was the only interaction Tina Norcross had with Corporal Mazzeo.

As to Geraldine Singletary, Mazzeo stated that Singletary was very upset and very boisterous about the situation. Corporal Mazzeo believed Officer Pinto gave Singletary commands that if she continued to act in a disorderly manner, she was going to get arrested too. Officer Pinto indicated that he was going to charge Singletary with disorderly conduct because she was acting in such a manner. Corporal Mazzeo did not have any participation in handcuffing Singletary. Officer Pinto was trying to gain control of the situation. Singletary was acting in a disorderly manner, and that threatened the safety of everyone, because the situation could escalate. Tempers were flaring. The situation could have become physical. Geraldine Singletary did not indicate that Corporal Mazzeo was involved with her in any way.

As was the case with Patrolman Baglivo, Corporal Mazzeo came onto scene to assist in controlling the situation. Corporal Mazzeo had no interaction with Tina Norcross, other than to loosen her handcuffs due to her complaints. Corporal Mazzeo had no participation in the arrest and handcuffing of Singletary. Accordingly, summary judgment is appropriate on behalf of the defendant, Corporal Mazzeo under the doctrine of qualified immunity.

Point VI

PLAINTIFFS ARE BARRED FROM ALLEGING ANY STATE LAW CLAIMS AGAINST THESE DEFENDANTS FOR FAILURE TO FILE A TORT CLAIMS ACT NOTICE PURSUANT TO N.J.S.A. 59:8-8.

N.J.S.A. 59:1-1, et seq., otherwise known as the New Jersey Tort Claims Act, defines the parameters within which recovery for tortuous injury may be had against public entities and public employees. Defendant police officers are defined as public employees under the Act, N.J.S.A. 59:1-3. No action shall be brought against a public employee under this Act unless the claim upon which it is based shall have been presented in accordance with the time requirements pursuant to N.J.S.A. 59:8-8.

To date, plaintiffs have never filed a Tort Claims Act Notice pursuant to the statute. Accordingly, all state law claims alleged by the plaintiffs in their Complaint must be dismissed as to these defendants.

Point VII

PLAINTIFFS HAVE NOT MET THE STANDARD OF CONDUCT NECESSARY TO ESTABLISH A CLAIM FOR PUNITIVE DAMAGES.

In their prayer for relief in the Complaint, plaintiffs have requested punitive damages against these defendants. Punitive damages are not recoverable against a public entity under §1983. City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981); Bolden v. Septa, 953 F. 2d 807 (3d Cir. 1991). Accordingly, plaintiffs cannot recover punitive damages against the defendants Town of Hammonton under federal law.

As to the individual police officers, punitive damages may be awarded under §1983 “when the defendants’ conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others”. Smith v. Wade, 461 U.S. 30 (1983); Coleman v. Kaye, 87 F. 3d 1491, 1509 (3d Cir. 1986). Applying this standard to the facts of this case, a reasonable jury could not find that these police officers acted with “reckless or callous indifference” to plaintiffs’ rights. Accordingly, plaintiffs’ request for punitive damages under federal law must be dismissed.

As to claims for punitive damages under State law, the New Jersey Tort Claims Act prohibits punitive damages being awarded against a public entity under N.J.S.A. 59:9-2(c). Accordingly, plaintiffs' request for punitive damages against the Town of Hammonton must be dismissed.

In addition, it is the position of the defendants that plaintiffs have not shown that the conduct of the individual defendants gives rise to a claim for punitive damages under State Law. Accordingly, any State law claims for punitive damages against the individual defendants must be dismissed.

Conclusion

Plaintiffs have failed to meet any of the criteria set forth in separate arguments in this brief. Summary judgment is appropriate pursuant to F.R.C.P. 56 for there exists no issue as to these material facts. Defendants, Patrolman Pinto, Patrolman Baglivo and Corporal Mazzeo, are immune from plaintiffs' civil rights claims under the doctrine of qualified immunity. Any and all State law claims against these defendants should be dismissed for plaintiffs' failure to file a Tort Claims Act notice. Plaintiffs' federal civil rights claims against the Town of Hammonton must be dismissed as a matter of law because plaintiffs cannot demonstrate the existence of a policy or custom of the Town of Hammonton to fail to train its officers, and to fail to supervise and discipline its officers. Finally, plaintiffs have not met the standard of conduct necessary to establish a claim for punitive damages against these defendants under federal law or State law.

For the foregoing reasons, the undersigned attorney for the defendants, Town of Hammonton, Patrolman Pinto, Patrolman Baglivo, and Corporal Mazzeo, respectfully request this Honorable Court to grant summary judgment dismissing the plaintiffs' Complaint with prejudice.

Respectfully submitted,

POWELL, BIRCHMEIER & POWELL

By: s/James R. Birchmeier [JB1274]

James R. Birchmeier, Esquire

Attorneys for Defendants,

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Patrolman Baglivo, and Corporal Mazzeo

Date: September 29, 2006

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**Plaintiff(s),
CONCETTA NORCROSS and GERALDINE
SINGLETERY and ROBERT SINGLETERY,
h/w**

v.

**Defendant(s),
TOWN OF HAMMONTON, PATROLMAN
JAMES PINTO, PATROLMAN BAGLIVO
and CORPORAL MAZZEO**

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

CIVIL ACTION NO. 04-cv-2536

CERTIFICATION

James R. Birchmeier, Esquire, being of full age, hereby certifies as follows:

1. I am a partner in the law firm of Powell, Birchmeier & Powell, and am licensed to practice law in the State of New Jersey.
2. I am counsel for Defendants, and have full knowledge and charge of the within matter.
3. I make this Certification in support of Defendants' Motion For Partial Summary Judgment.
4. The supporting exhibits annexed hereto are true and accurate copies of the following:

Exhibit A: Deposition transcript of Concetta Norcross

Exhibit B: Deposition transcript of Geraldine Singletary

Exhibit C: Deposition transcript of Deborah Keenan-Norcross

Exhibit D: Deposition transcript of Harry Norcross

Exhibit E: Deposition transcript of Patrolman James Pinto

Exhibit F: Deposition transcript of Patrolman Jared Baglivo

Exhibit G: Deposition transcript of Corporal Joseph Mazzeo

Exhibit H: Arrest report dated August 30, 2002

Exhibit I: Plaintiffs' Complaint

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements is willfully false, I am subject to punishment.

POWELL, BIRCHMEIER & POWELL

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Date: September 29, 2006