

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DWAYNE BROWN,

Plaintiff,

v.

PATROLMAN SAMUEL WATERS, in his
individual capacity,

Defendant.

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C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT

1. This is a civil rights action for the unnecessary and excessive force used against Dwayne Brown, a forty-four year old black man (“Mr. Brown”), who had no violent criminal record as an adult but who was severely beaten by poorly trained and unqualified City of Wilmington police officer, patrolman, Ptlm. Samuel Waters (“Ptlm. Waters” or “Defendant”). Leading up to the beating, Mr. Brown was neither combative nor physically aggressive with Ptlm. Waters. He did not say anything threatening or verbally taunt Ptlm Waters. He was not fleeing from the scene of a felonious crime which involved serious physical injury or a threat of imminent harm to anyone. On the other hand, Mr. Brown's assailant never identified himself to Mr. Brown verbally as "Police" when he issued Mr. Brown commands. Moreover, he never warned Mr. Brown that excessive force would be used against him if his commands were not followed. Instead, Ptlm. Waters just brutally attacked Mr. Brown by slamming Mr. Brown’s head into plexiglass.

2. Mr. Brown, the plaintiff here, is Black and a member of a historically mistreated minority group. Defendant, Ptlm. Waters, the arresting officer who used the excessive force, is

white. Moreover, there have been past instances in Mr. Brown's neighborhood of Ptlm. Waters' inappropriate behavior in dealing with other members of the Black community. He is widely known and feared as a bully. Finally and most importantly, his racial animus was fully on display during the events of September 21, 2021, when he used the "N" word while assaulting Mr. Brown.¹ Therefore, this case, which seeks an award of compensatory and punitive damages, has a racial dimension. Allegedly, Ptlm. Waters would not have used excessive force on a similarly situated white person and any nonracial reasons offered for this are expected to be a pretext for intentional racial discrimination. Given the current national climate regarding police brutality and in light of the Eric Garner, George Floyd, and countless other cases involving members of law enforcement killing black men, Mr. Brown was in fear for his life when he was brutally beaten and slammed against the convenience store wall.

Jurisdiction and Venue

3. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983; 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, and the Fourth and Fourteenth Amendments to the U.S. Constitution. The cause of action arises under 42 U.S.C. § 1983.

4. Plaintiffs filed a Notice of Claim pursuant to 10 Del. C. 8124 with the Mayor of the City of Wilmington in a letter dated October 8, 2021.

The Parties

5. Mr. Brown, a 44-year old black man, resides in Wilmington, Delaware. He can be contacted through his attorneys, Jacobs & Crumplar, P.A.

6. At all relevant times Defendant Ptlm. Waters was a police officer with the

¹ Ptlm. Waters used the full actual word.

Wilmington Police Department (“WPD”). He is being sued in his individual capacity. At all times relevant, Ptlm. Waters was acting under the color of state law and participated in the violation of Mr. Brown’s clearly established federal constitutional rights of which a reasonable police officer were known. The federal constitutional deprivations described herein are fairly attributable to the actions of Ptlm. Waters.

September 21, 2021

7. Mr. Brown had no violent criminal conviction record as an adult.

8. On September 21, 2021, Mr. Brown was in the 3C’s convenience store at 518 New Castle Avenue in Wilmington, Delaware.

9. Mr. Brown was purchasing a few items in the convenience store. He was taking money from his wallet to pay so he could leave the store. As he began to leave, he stopped, and let a man on crutches enter the store.

10. As the man on the crutches passed Mr. Brown, Mr. Brown began to speak with someone.

11. At this point, Ptlm. Waters entered the store, grabbed Mr. Brown’s right wrist, and began to turn Mr. Brown, putting Mr. Brown’s right hand on the plexiglass near the cashier. Mr. Brown turned to the right to say something when Ptlm. Waters grabbed Mr. Brown’s left hand and grabbed the back of Mr. Brown’s head and banged it twice into the plexiglass. Ptlm. Waters used the word “n*gg*r” as he assaulted Mr. Brown. Such racial statements are reflective of his state of mind and discriminatory intent in this incident. Ptlm. Waters then took Mr. Brown down to the floor.

12. Ptlm. Waters pulled Mr. Brown out of the building and on to the sidewalk where he continued to use unnecessary and excessive force.

13. Under the totality of the circumstances discussed above, the actions of Ptlm. Waters were objectively unreasonable in light of the facts and circumstances confronting him, even without regard to his underlying intent or motivations, which were malicious.

14. Consideration of the following factors demonstrates that Defendant's actions were objectively unreasonable:

a) The Defendant never verbally identified himself as a police officer or gave a warning as required by the WPD "Use of Force" Directive;

b) Upon information and belief, Mr. Brown appeared unarmed to the reasonable observer;

c) Mr. Brown's actions did not indicate a criminal motive or intent or that he was undertaking criminal activity as he did not exhibit classic "fight or flight" behavior as the officer approached him;

d) Upon information and belief, Mr. Brown was not combative, physically aggressive, actively resisting arrest, or attempting to evade arrest by flight;

e) Mr. Brown did not verbally threaten the safety of the officer or others before or during the time he was being assaulted by Ptlm. Waters; and

f) Upon information and belief, it was known that Mr. Brown had no violent adult criminal record or history of violence as an adult.

15. As described above, it would be clear to a reasonable police officer that his conduct was unlawful in the circumstances of this case.

16. Ptlm. Waters' actions were willful, intentional, reckless, oppressive, outrageous and taken in bad faith, malicious, and without any reasonable grounds to support them. Furthermore Ptlm. Waters' use of the word "n*gg*r" while assaulting Mr. Brown demonstrates an

evil motive or intent. It also demonstrates a reckless or callous indifference to the federal protected rights of Dwayne Brown.

17. Under state law, his willful and wanton actions merit an award of punitive damages against the Defendant.

18. The Defendant's actions constitute an abuse of governmental power.

Damages

19. With the September 21, 2021 beating and assault by Ptlm. Waters, Mr. Brown now experiences blackouts, dizziness, and faint feelings. He continues to have pain.

20. As a direct and proximate result of the actions of Ptlm. Waters, as detailed herein, Mr. Brown suffered or will suffer damages which include, but are not limited to:

- a) The conscious suffering, emotional pain, terror, mental anguish, loss of enjoyment of life, mental and physical pain, and physical injuries suffered by Mr. Brown;
- b) Loss of civil rights found in the U.S. Constitution; and
- c) Punitive damages.

COUNT I: AGAINST DEFENDANT PTLM. WATERS EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983

21. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, as if fully set forth herein.

22. In violation of 42 U.S.C. § 1983, the actions of the Defendants violated Mr. Brown's constitutional rights to be free from unreasonable seizures as guaranteed to him by the Fourth and Fourteenth Amendments to the United States Constitution that occurred when he was beaten, assaulted, and injured.

23. As a direct and proximate result of Ptlm. Waters' actions, Mr. Brown was beaten

and injured and suffered the damages identified in Paragraph 20.

COUNT II: AGAINST DEFENDANT PTLM. WATERS
14TH AMENDMENT EQUAL PROTECTION CLAUSE – RACE DISCRIMINATION

24. Plaintiffs repeat and reallege the foregoing paragraphs.

25. Mr. Brown belongs to a racial minority. Upon information and belief, he was the victim of intentional racial discrimination. That discrimination concerned the right to be treated the same as a white male.

26. Mr. Brown is black. Ptlm. Waters is white.

27. Accordingly, Ptlm. Waters treated Mr. Brown in a less favorable manner because of his race, which was evidenced by Ptlm. Waters using the word “n*gg*r” while he assaulted Mr. Brown.

28. As a direct and proximate result of Ptlm. Waters’ actions, Mr. Brown was beaten and injured and suffered the damages identified in Paragraph 20.

29. Mr. Brown’s statutory right to be free of racial discrimination and the equal protection of the laws has been denied under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. 1983.

COUNT III: AGAINST DEFENDANT PTLM. WATERS
ASSAULT

30. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs, as if fully set forth herein, and further allege as follows.

31. In forcefully approaching Mr. Brown, Ptlm. Waters intended to cause a harmful or offensive contact with Mr. Brown.

32. Ptlm. Waters intended to cause Mr. Brown an imminent apprehension of harmful or offensive contact.

33. Mr. Brown was put in imminent apprehension of such contact.

34. As a direct and proximate result of Ptlm. Waters' actions, Mr. Brown suffered the damages listed in Paragraph 20.

35. Defendant's use of excessive and unjustified force resulted in Ptlm. Waters' intentional infliction of bodily harm against Mr. Brown without his consent violating his right to be free from assault under the common law of the State of Delaware.

36. Defendant's conduct exhibited wanton negligence and willful and malicious intent.

**COUNT IV - AGAINST DEFENDANT PTLM. WATERS
BATTERY**

37. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs, as if fully set forth herein, and further allege as follows.

38. Ptlm. Waters' actions amounted to an intentional, unpermitted contact of Mr. Brown's person.

39. Ptlm. Waters' contact with Mr. Brown was harmful and offensive.

40. Ptlm. Waters had no reason or justification to harmfully and offensively touch Mr. Brown.

41. As a direct and proximate result of Ptlm. Waters' actions, Mr. Brown suffered the damages listed in Paragraph 20.

42. Defendant's use of excessive and unjustified force resulted in Ptlm. Waters' intentional infliction of bodily harm against Mr. Brown without his consent violating his right to be free from battery under the common law of the State of Delaware.

43. Defendant's conduct exhibited wanton negligence and willful and malicious intent.

**COUNT V - AGAINST DEFENDANT PTLM. WATERS
RECKLESSNESS/WANTON CONDUCT**

48. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs, as if fully set forth herein, and further allege as follows.

49. Defendant owes a duty of care to Mr. Brown under the circumstances then existing to act as a reasonable police officer and not use excessive force.

50. Defendant intentionally, willfully, wantonly, and recklessly breached his duty by beating and assaulting Mr. Brown when such conduct was unjustified, as described above.

51. As a direct and proximate result of Ptlm. Waters' recklessness and intentional, willful, wanton and reckless acts, Mr. Brown was beaten and assaulted and suffered the damages identified in Paragraph 20.

52. The actions of Defendant was willful, wanton, or oppressive and merit an award of punitive damages.

WHEREFORE the Plaintiff Dwayne Brown respectfully requests this Court:

- a. Enter judgment in his favor and against the Defendant;
- b. Enter a declaratory judgment declaring the acts of the Defendants to be a violation of Mr. Brown's constitutional rights;
- c. Award him compensatory and special damages as he can prove;
- d. Award him punitive damages;
- e. Award him costs and attorneys' fees;
- f. Award him pre- and post-judgment interest; and
- g. Grant such other relief as the Court deems proper.

JACOBS & CRUMLAR, P.A.

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