

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER G. BROADWATER,	:	No.:
Plaintiff	:	
		Judge:
v.	:	
	:	
CHRISTIAN D. FOW,	:	CIVIL ACTION - LAW
NATHAN R. SWINK,	:	
RALPH A. HOCKENBERRY,	:	
DAVID J. RUSH,	:	JURY TRIAL DEMANDED
CLIFFORD W. JOBE, JR.,	:	
JOHN DOES 1-5;	:	
PENNSYLVANIA STATE POLICE, and	:	
COMMONWEALTH OF PA,	:	
Defendants	:	

COMPLAINT

AND NOW comes the Plaintiff, Christopher G. Broadwater, by and through his undersigned counsel, Devon M. Jacob, Esquire, and the firm of Boyle, Autry & Murphy, and avers as follows:

INTRODUCTION

This case involves the beating and torture of Christopher G. Broadwater, a disabled person, by two Pennsylvania State Police troopers. The attack begins in the rear seat of a patrol vehicle while Mr. Broadwater is handcuffed to the rear and further restrained by a seatbelt. The savage attack is caught on videotape and prompted the Commonwealth of Pennsylvania Office of Attorney General to file

criminal charges against Cpl. Christian D. Fow, one of the involved troopers. While a jury ultimately determined that a criminal violation was not established beyond a reasonable doubt, it is clear from the video that a civil rights violation can be established by a preponderance of the evidence.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1983.
2. Jurisdiction is founded upon 28 U.S.C. § § 1331 and 1343(1), (3), and (4).
3. Venue is proper in this Court, as all parties are located within the Middle District of Pennsylvania, and the cause of action arose in the Middle District of Pennsylvania.

PARTIES

4. Plaintiff, Christopher G. Broadwater, is an adult individual, currently residing in Doylesburg, PA 17219.
5. Defendant, Christian D. Fow, is an adult individual, who, during all relevant times, was employed by the Defendant Pennsylvania State Police, as a trooper, with the rank of corporal. All of Defendant Fow's actions or inactions were taken under color of state law. He is sued in his individual capacity.
6. Defendant, Nathan R. Swink, is an adult individual, who, during all

relevant times, was employed by the Defendant Pennsylvania State Police, as a trooper. All of Defendant Swink's actions or inactions were taken under color of state law. He is sued in his individual capacity.

7. Defendant, Ralph A. Hockenberry, is an adult individual, who, during all relevant times, was employed by the Defendant Pennsylvania State Police, as a trooper. All of Defendant Hockenberry's actions or inactions were taken under color of state law. He is sued in his individual capacity.

8. Defendant, David J. Rush, is an adult individual, who, during all relevant times, was employed by the Defendant Pennsylvania State Police, as a trooper, with the rank of criminal investigator. All of Defendant Rush's actions or inactions were taken under color of state law. He is sued in his individual capacity.

9. Defendant, Clifford W. Jobe, Jr., is an adult individual, who is a retired employee of the Defendant Pennsylvania State Police. Defendant Jobe was employed by the Defendant Pennsylvania State Police from 1973 to 2010. All of Defendant Jobe's relevant actions or inactions were taken under color of state law. He is sued in his individual capacity.

10. Defendants John Does 1-5, are adult individuals, who, during all relevant times, were employed by the Defendant Pennsylvania State Police, as troopers, in a supervisory capacity. All of Defendants Does 1-5's actions or

inactions were taken under color of state law. They are sued in their individual capacities.

11. Defendant Pennsylvania State Police (“PSP”) was created by an act of legislation, which was signed into law on May 2, 1905. The Defendant PSP has jurisdiction in all political subdivisions in the Commonwealth. The Defendant PSP is headquartered at 1800 Elmerton Avenue, Harrisburg, PA 17110.

12. Defendant Commonwealth of Pennsylvania created Defendant PSP by an act of legislation, which was signed into law on May 2, 1905.

STATEMENT OF FACTS

Defendant Fow Directs Troopers to Unlawfully Arrest Mr. Broadwater

13. On September 29, 2010, Defendant Fow was employed as a uniformed officer in the patrol division, as a shift supervisor, with the rank of corporal.

14. At approximately 6:00 P.M., a nurse from Humana Insurance Company contacted Defendant PSP and explained that she worked for a service out of Florida that called people monthly to check on their welfare.

15. She stated that while speaking with Mr. Broadwater, he purportedly verbally threatened violence against a mechanic who he believed had ripped him off.

16. She stated that Mr. Broadwater suffered from manic depression and that she believed that he was potentially dangerous.

17. She advised that she was required to report the apparent threats to police but that she was not authorized to direct police to take Mr. Broadwater into custody.

18. As a result, Defendant Fow directed troopers to respond to Mr. Broadwater's residence to check on his welfare.

19. Trooper Nathaniel Drayer and Defendant Hockenberry responded in one patrol vehicle and Defendant Swink responded in a second patrol vehicle.

20. While a representative from the behavioral unit at the Chambersburg Hospital advised a dispatcher for Defendant PSP that the apparent threats were sufficient for Defendant PSP to bring Mr. Broadwater to the hospital for an evaluation, Defendant PSP was advised that the 302 warrant had not yet been issued.

21. Despite knowing that a 302 warrant had not yet been issued, Defendant Fow directed responding troopers that "Mr. Broadwater was to come voluntarily or involuntarily."

22. Defendant Fow's improper instruction set in motion a chain of events that caused Defendants Swink and Hockenberry to unlawfully arrest Mr.

Broadwater in that there was no warrant for his arrest, and no probable cause or exigent circumstances to justify the arrest.

Unlawful Use of Force to Effect an Unlawful Arrest

23. Defendant Hockenberry and Trooper Drayer arrived at Mr. Broadwater's residence.

24. Mr. Broadwater exited his front door to speak with the troopers.

25. While Defendant Hockenberry, Trooper Drayer, and Mr. Broadwater were standing on Mr. Broadwater's front porch discussing the issue that Mr. Broadwater had with his mechanic, Defendant Swink arrived.

26. Both before and after Trooper Swink arrived, Mr. Broadwater told the troopers that he wanted to be left alone and that he wanted to return to his residence.

27. Despite this fact, the troopers remained on Mr. Broadwater's front porch and attempted to convince him to voluntarily go with them to the hospital for a mental health evaluation.

28. Mr. Broadwater finally agreed to voluntarily go with the troopers to the hospital, stating that he would do so after he put his dogs back inside of his residence.

29. After putting his dogs back inside of his residence and closing the

front door, Mr. Broadwater turned back to go with the troopers.

30. At that time, Defendant Swink deployed the prongs of his TASER into Mr. Broadwater's chest.

31. The electrical current deployed by the TASER into Mr. Broadwater's chest caused Mr. Broadwater to fall into his front door, causing the door to open, and causing Mr. Broadwater to land in the threshold, where he squirmed around in pain.

32. Mr. Broadwater was able to remove the prongs from his chest, and fearing for his safety, reentered his residence and closed the door.

33. At some point in time while the above was occurring, Trooper Drayer stepped off the porch and twisted his knee.

34. At no time did Mr. Broadwater touch Trooper Drayer or cause him to fall off of the porch.

35. It is undisputed that Trooper Drayer did not suffer a serious injury.

36. In fact, he returned to work prior to the end of his shift.

37. Regardless, Trooper Drayer fell down and activated his emergency alert button, indicating that he needed immediate emergency assistance.

38. Defendant Hockenberry kicked Mr. Broadwater's front door twice, damaging the door and causing the door to open.

39. When the door opened, Defendants Swink and Hockenberry pulled Mr. Broadwater onto the porch.

40. Despite prior shoulder and wrist surgeries that were made known to Defendants Hockenberry and Swink, Defendants Hockenberry and Swink forced Mr. Broadwater's hands together behind his back and handcuffed him to the rear with one set of handcuffs.

41. This caused Mr. Broadwater to experience a level of pain that he would not have experienced had he not been physically disabled.

42. Defendants Hockenberry and Swink placed Mr. Broadwater in the rear of Defendant Swink's patrol vehicle and placed a seatbelt on him.

43. When Mr. Broadwater was placed in the patrol vehicle, he did not have any injuries to his face.

44. Unbeknownst to Defendant Fow who had not yet arrived on scene, Defendant Swink turned the Mobile Video Recorder ("MVR") that was installed in his patrol vehicle around, so that it would record whatever occurred in the rear seat of his patrol vehicle.

Defendant Fow Threatens to Hogtie Mr. Broadwater

45. Upon hearing Trooper Drayer's emergency alert button activation, Defendant Fow responded to the scene.

46. While enroute, Defendant Fow can be heard on the police radio referring to Mr. Broadwater as a “retard.”

47. Upon his arrival, Defendant Fow observed Mr. Broadwater seated in the rear seat of Defendant Swink’s patrol vehicle, where he would remain handcuffed for approximately 30 minutes.

48. The handcuffs were not double-locked, and tightened up on Mr. Broadwater’s wrists when he leaned back in the seat.

49. As a result, Mr. Broadwater complained repeatedly about the pain caused by the handcuffs and fidgeted around.

50. However, at no time did Mr. Broadwater attempt to bang his head, kick out the windows, or escape the patrol vehicle.

51. Regardless, upon seeing movement from Mr. Broadwater, Defendant Fow opened the patrol vehicle door where Mr. Broadwater was sitting, and advised him that if he kept trying to get out of the handcuffs, they were going to hogtie him.

52. Mr. Broadwater assured Defendant Fow that he was not trying to get out of the handcuffs; but rather that he was moving around because he was in pain.

53. Interestingly, despite Defendant Fow’s purported concern that Mr. Broadwater was trying to get out of the handcuffs, Defendant Fow never checked

the handcuffs himself to ensure that Mr. Broadwater remained properly secured.

54. Since Defendant Fow did not check the handcuffs, it is believed that Defendant Fow's actions and comments were for the purpose of impressing fellow officers and justifying a future use of unlawful force against Mr. Broadwater.

55. Defendant Rush arrived on scene and Defendant Fow directed Defendants Swink, Hockenberry, and Rush to enter Mr. Broadwater's residence, so that Defendants Swink and Hockenberry could show Defendant Rush the location of the events in question.

56. Defendant Fow stated that he would remain outside to watch Mr. Broadwater.

Defendant Fow Physically Attacks Mr. Broadwater

57. Defendant Fow stood behind the patrol vehicle containing Mr. Broadwater, with his back facing the vehicle, and spoke with Richard Schur.

58. Mr. Schur was an emergency medical technician ("EMT"), who had responded to the scene as a member of the Fannet-Metal Fire Department.

59. Mr. Schur was also an off-duty police officer from the Pennsylvania State Capital Police.

60. While Defendant Fow and Mr. Schur were speaking, Mr. Schur advised Defendant Fow that "this guy **might** be trying to slip his cuffs[.]"

61. For no apparent reason, Defendant Fow opened the patrol vehicle door and immediately pepper sprayed Mr. Broadwater in the face.

62. He then pulled Mr. Broadwater toward him and struck Mr. Broadwater at least three times in the face with his fist and/or the pepper spray canister, stating, "Stop fucking with the fucking handcuffs. I am not going to ask you again. You understand?"

63. Mr. Broadwater immediately experienced severe pain, fear, a difficulty in breathing, temporary blindness, and deep lacerations to his face.

64. As a result, Mr. Broadwater began to scream in agony, which was heard by all of the Individual Defendants who were on scene at the time.

65. Mr. Broadwater can be seen in the MVR with blood pouring from his face.

66. In an attempt to get some relief from the pepper spray, Mr. Broadwater released the seatbelt and rolled out of the open door, headfirst, onto the grass next to the patrol vehicle and in front of Defendant Fow.

67. Mr. Broadwater can be seen in the MVR exiting the vehicle 26 seconds after Defendant Fow first opened the door.

Defendants Fow and Swink Continued to Beat and Torture Mr. Broadwater

68. Mr. Schur testified at Defendant Fow's criminal trial that Defendant

“Fow then proceeded to kneel down and place his knees on top of Mr. Broadwater who was moving around on the ground.”

69. While Mr. Broadwater was facedown and handcuffed to the rear, Defendant Fow grabbed Mr. Broadwater’s hair and repeatedly punched him in the face, causing him to suffer further facial injuries.

70. Mr. Broadwater can be heard screaming and pleading for help on the MVR, begging for the troopers to “stop it.”

71. Hearing the commotion, Defendants Swink, Hockenberry, and Rush, went to the location of the noise.

72. Defendant Swink observed Defendant Fow near the door to the patrol vehicle and recalls seeing Mr. Broadwater, “flailing around and screaming.”

73. Defendant Swink confirms that Mr. Broadwater was still restrained at the time.

74. Defendant Swink had an opportunity to intervene to protect Mr. Broadwater from Defendant Fow’s physical attack but failed to do so.

75. Instead, he participated.

76. Defendant Swink straddled Mr. Broadwater’s midsection.

77. Defendant Fow directed Defendant Swink to dry stun (TASER) Mr. Broadwater while he was facedown, visibly injured, and handcuffed behind his

back, which he did.

78. Defendants Hockenberry and Rush observed Defendants Fow and Swink physically attacking Mr. Broadwater, had time to intervene to protect him from his abusers, but failed to do so.

79. The beating and torture of Mr. Broadwater lasted for approximately two minutes.

Defendant PSP Leaves Mr. Broadwater in the Custody of One of his Abusers

80. Mr. Broadwater was transported to the hospital where he received numerous stitches to repair his facial wounds.

81. Specifically, as a result of the beating, Mr. Broadwater had a 3 cm laceration on his forehead, a 4 cm gaping laceration below his left eye over his left cheekbone, extensive bruising, and muscle pain.

82. Defendant Fow sent Defendant Swink, one of Mr. Broadwater's abusers, to escort him at the hospital.

83. Mr. Broadwater was terrified about remaining in Defendant Swink's custody and asked the hospital to admit him, so that he did not have to remain in his custody.

84. Defendant Swink, however, pulled Mr. Broadwater out of the hospital bed, placed him against the wall, handcuffed him (again with only a single set of

handcuffs, despite knowing that this would cause Mr. Broadwater to experience severe pain because of his disability), and transported him to jail.

Defendant Fow Attempts to Cover up His Unlawful Actions

85. Defendant Fow told Defendant Hockenberry that Mr. Broadwater had gotten out of the seatbelt and a struggle occurred, giving no other details.

86. When interviewed by Defendant Criminal Investigator Rush, Defendant Fow told him that Mr. Broadwater had been messing with the handcuffs and seatbelt, and that when he opened the door to tell him to stop, Mr. Broadwater forced his way out of the car and tried to escape.

87. Defendant Fow did not tell Defendant Rush about the pepper spray or the “checking.”

88. Defendant Fow directed Defendant Rush to file a felony escape charge against Mr. Broadwater.

89. Defendant Fow is required, as a supervisor, to fill out a Significant Action Report (“SAR”), which is a compilation summary of the shift’s events that is required to be sent to the command staff of the station.

90. In the SAR, Defendant Fow refers to Mr. Broadwater as “Mr. Crazy.”

91. In the SAR, Defendant Fow further wrote, “Cpl. Julock just delivered the criminal complaint to H-1 for this guy. Julock reports they are currently

inserting a catheter into our crazy dude because he can't pee. You can hear the yelling in the lobby. (Karma).”

92. Due to the use of force, Defendant PSP regulations required that the incident be referred to Internal Affairs Division (“Blue Team” or “IAD”) by a supervisor.

93. Since Defendant Fow was a participant in the incident, the incident should have been referred to the Blue Team by Defendant Fow’s supervisor.

94. On October 4, 2010, however, under the guise of being “helpful,” Defendant Fow self-reported the incident to the Blue Team, so that he could control how the story was told.

95. Of relevance, Defendant Fow stated, “Broadwater slipped from the seatbelt and attempted to escape from the rear of the patrol vehicle. Broadwater was maced by Corporal Fow but continued to fight violently and exited the vehicle door.”

96. Conspicuously missing from Defendant Fow’s rendition of the events is the fact that Mr. Broadwater was handcuffed to the rear and punched repeatedly in the face by Defendant Fow.

97. On October 6, 2010, Defendant Fow submitted a State Police 201 Form, which is supposed to be a written statement to the IAD investigator about

what had happened, so that the investigator could prepare to interview Defendant Fow.

98. Of relevance, Defendant Fow stated that “Broadwater slipped from the seatbelt and was moving about the rear of the patrol vehicle still trying to manipulate his handcuffs. I opened the door, used pepper mace on Broadwater who immediately exited the vehicle door.”

99. As evidenced by the MVR, this statement is false.

Criminally Charged

100. Defendant Rush charged Mr. Broadwater with the following crimes: Aggravated Assault (F2), Simple Assault (M2), Criminal Attempt Escape (F3), and Resisting Arrest (M2).

101. The Criminal Attempt Escape and Aggravated Assault charges were withdrawn.

102. Realizing that it was his word against the word of several troopers, to avoid the risk of being convicted and sent to jail, Mr. Broadwater entered into a Nolo Contendere plea agreement on the Simple Assault and Resisting Arrest charges and was sentenced to probation.

Defendant Fow Acted Pursuant to Defendant PSP’s Policies and Training

103. From 1988 until 2008, Defendant PSP employed Defendant Jobe in

the Pennsylvania State Police Bureau of Training and Education, as an instructor in all aspects of basic training, including the use of force.

104. In 2006, Defendant PSP promoted Defendant Jobe to the rank of Commander, where he was responsible for the advanced and regional training of all of the troopers employed by Defendant PSP.

105. Defendant PSP assigned Defendant Jobe the responsibility of evaluating cases to determine whether or not the troopers' actions were consistent with Defendant PSP's policies and the law, in accordance with Defendant PSP's training program.

106. Defendant Jobe, as a supervisor in Defendant PSP, trained Defendant Fow.

107. Defendant Jobe admitted under oath at Defendant Fow's criminal trial that the actions of all of the Individual Defendants "were consistent with not only accepted law enforcement practice as Pennsylvania State Police officers would have been trained, but they were also consistent with the policies that were in place by the Pennsylvania State Police including the use of force options that were accepted and issued by the Pennsylvania State Police and the tactics that would have been expected to be carried out to fulfill the objectives of not only law enforcement but the objectives of Pennsylvania State Troopers with regard to the

assignment in the incident that took place on this date in question.”

108. Moreover, according to Defendant Jobe, keeping a mentally ill person in a running police vehicle for 30 minutes would be in conformity with the standards and practices in place at Defendant PSP.

109. Furthermore, according to Defendant Jobe, Defendant PSP did not require troopers to provide complete information in the electronic daily command report SAR that is circulated to command staff for the purpose of keeping the command staff informed about the actions of the troopers.

Defendants John Does 1-5 Failed to Properly Supervise Defendant Fow

110. On November 7, 1994, Defendant PSP hired Defendant Fow and put him through Defendant PSP’s police academy which he graduated from in April of 1995.

111. Prior to hiring Defendant Fow, Defendant John Does 1-5 failed to conduct a proper background and character check on Defendant Fow.

112. During the scope of his employment, Defendant John Does 1-5 failed to continue to monitor Defendant Fow’s character and mental health to ensure the safety of the citizens to whom he would come into contact.

113. Had they done so, they would have discovered the following about Defendant Fow:

- a. While he was in the United States military, Defendant Fow had a disciplinary history.
- b. Defendant Fow has engaged in significant acts of domestic violence.
- c. Defendant Fow has a reputation of engaging in acts of violence.
- d. Defendant Fow's nickname, "The General Shit Magnet," is supposedly widely known at Defendant PSP.
- e. Defendant Fow often bragged about "beating up a goof."
- f. While off duty but representing himself as a trooper, Defendant Fow has gotten into fights where he has unlawfully arrested people and/or used unlawful force.
- g. Defendant Fow was identified as a problem employee through the Early Intervention Program ("EIT").
- h. Defendant Fow has had between 20-30 internal affairs complaints lodged against him, many for the use of unlawful force.

114. Despite Defendant Fow's violent history both prior to and during his employment with Defendant PSP, Defendant PSP promoted Defendant Fow and held him out to be a model trooper:

- a. In around 1998 and again in 1999, Defendant PSP selected Defendant Fow to attend a week long officer survival school focused on escaping

situations where the officer is taken hostage.

- b. Defendant Fow was a plain clothes criminal investigator;
- c. Defendant Fow was an undercover detective with Troop H's vice and narcotics unit;
- d. Defendant Fow was a supervisor of the criminal investigation section at the Gettysburg station;
- e. In 2003, Defendant PSP made Defendant Fow a member of the Special Emergency Response Team ("SERT");
- f. In his capacity as a SERT Team member, Defendant Fow trains other troopers on how to handle high risk incidents where deadly force may be required;
- g. In 2007, Defendant PSP promoted Defendant Fow to the rank of corporal;
- h. In May of 2010, Defendant Fow was selected as one of 30 troopers to attend a use of force expert symposium, for the purpose of becoming qualified to provide expert opinion testimony on the use of force.
- i. After being acquitted in the related criminal matter, Defendant PSP and John Doe supervisors returned Defendant Fow to the street.

COUNT I

**Plaintiff v. Defendants Fow, Swink, Hockenberry, and Rush
Fourth Amendment – Unlawful Search and Excessive Force
Pursuant to 42 U.S.C. § 1983**

115. Paragraphs 1-114 are stated herein by reference.

116. Pursuant to the Fourth Amendment of the U.S. Constitution, police officers enjoy a privilege to use objectively reasonable force to effect a lawful arrest.

117. Moreover, officers may not enter a citizen's home without a warrant, or probable cause and exigent circumstances.

118. Defendant Fow caused Defendants Swink and Hockenberry to unlawfully enter Mr. Broadwater's home without a warrant, or the requisite probable cause and exigent circumstances to do so.

119. Defendant Fow caused Defendants Swink and Hockenberry to use unlawful force against Mr. Broadwater to effect an unlawful arrest.

120. Even if the arrest would have been lawful, the force used by Defendants Swink and Hockenberry to effect the arrest was excessive and therefore unlawful.

121. Defendants Fow and Swink again used excessive and unlawful force against Mr. Broadwater after Mr. Broadwater was in the custody of Defendant

PSP.

122. Defendants Hockenberry and Rush observed Defendants Fow and Swink use excessive and unlawful force against Mr. Broadwater while Mr. Broadwater was in the custody of Defendant PSP, had an opportunity to intervene to protect Mr. Broadwater, but failed to do so.

123. The unlawful force used against Mr. Broadwater was for the purpose of inflicting pain and physical injury, torturing, and punishing Mr. Broadwater.

124. As a direct and proximate cause of the Defendants' actions, Mr. Broadwater suffered immense physical pain, humiliation, and physical injuries.

125. Policymakers and prosecutors of Defendant Commonwealth of Pennsylvania from the Office of Attorney General agree that at least Defendant Fow's actions were unlawful, as the PA Office of Attorney General filed criminal charges against Defendant Fow related to his conduct discussed herein and prosecuted same.

COUNT II

**Plaintiff v. Defendants Jobe and John Does 1-5
Fourth Amendment – Supervisor Liability
Pursuant to 42 U.S.C. § 1983**

126. Paragraphs 1-125 are stated herein by reference.

127. Defendants Jobe and John Does 1-5 are/were supervisors of

Defendant PSP who either directly participated in or had knowledge of and acquiesced in the unlawful conduct of their subordinates.

128. Defendants Jobe and John Does 1-5 are/were supervisors of Defendant PSP who recklessly or knowingly failed to conduct proper background checks on Defendants Fow and Swink and were therefore deliberately indifferent to the rights of the citizens to whom they would come into contact.

129. Defendants Jobe and John Does 1-5 are/were supervisors of Defendant PSP who recklessly or knowingly failed to continue to monitor and supervise Defendants Fow and Swink and were therefore deliberately indifferent to the rights of the citizens to whom they would come into contact.

130. Defendants Jobe and John Does 1-5 are/were supervisors of Defendant PSP who recklessly or knowingly either improperly trained or failed to properly train the Individual Defendants in the law governing their respective law enforcement duties or accepted police practices, and were therefore deliberately indifferent to the rights of the citizens to whom they would come into contact.

131. The Defendant supervisors ignored a pattern of similar constitutional violations that occurred as a result of their actions or inactions.

132. The Defendant supervisors ignored a known or obvious consequence of their actions or inactions.

133. The Defendant supervisors permitted the aforementioned policies, practices, and customs, discussed herein to continue, which bred officers who routinely and brazenly violate the rights of the citizens with whom they have contact.

134. As a direct result of the Defendants' actions or inactions, Mr. Broadwater was injured as discussed herein.

COUNT III

Plaintiff v. Defendants Commonwealth of PA and PSP Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973

135. Paragraphs 1- 134 are stated herein by reference.

136. Defendants PSP and Commonwealth of PA violated Mr. Broadwater's right to be free from discrimination on the basis of his disability pursuant to Title II of the ADA and § 504 of the RA.

137. Specifically, Defendant PSP and Commonwealth of PA failed to properly train troopers to have peaceful encounters with mentally and physically disabled persons and failed to establish a proper policy for handling such encounters, which resulted in the discrimination against Mr. Broadwater that caused him to suffer his injuries.

138. Title II of the ADA provides, in relevant part, that "no qualified

individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities by a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

139. Similarly, pursuant to § 504 of the RA, “[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency[.]” 29 U.S.C. § 794.

140. In order to state a claim under either statute, a Plaintiff must prove that he (1) is disabled, (2) is otherwise qualified for the services, programs or activities sought or would be qualified if the defendant had made reasonable modifications to the services, programs or activities, and (3) was discriminated against solely on the basis of his disability. *See Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1009 (3d Cir.1995).

141. Defendant PSP is a public entity that receives federal funding.

142. Mr. Broadwater suffers from qualifying disabilities of manic depression and physically limiting back, shoulder, and wrist injuries.

143. Moreover, the Individual Defendants employed by Defendant PSP and Commonwealth of PA who interacted with Mr. Broadwater regarded him as being disabled.

144. Mr. Broadwater is entitled to the same law enforcement services that Defendant PSP provides to other non disabled persons.

145. Specifically, Mr. Broadwater is entitled to the benefit of a lawful exercise of police powers, including (1) the right not to be unlawfully arrested, (2) the right not to be subjected to an unlawful use of force, and (3) the right not to have his home unlawfully entered.

146. Defendants PSP and Commonwealth of PA discriminated against the Plaintiff solely because of his disabilities.

147. This is evidenced by the fact that Defendants PSP and Commonwealth of PA created a culture where a supervisor of Defendant PSP, Defendant Fow, felt comfortable openly referring to Mr. Broadwater as a “retard” and as “Mr. Crazy,” in official PSP communications, and felt justified in threatening to hogtie, beat, and TASER Mr. Broadwater for not being able to stop complaining or fidgeting while in handcuffs for over 30 minutes.

148. Policymakers and prosecutors of Defendant Commonwealth of Pennsylvania from the Office of Attorney General agree that at least Defendant

Fow's actions were unlawful, as the PA Office of Attorney General filed criminal charges against Defendant Fow related to his conduct discussed herein and prosecuted same.

WHEREFORE, the Plaintiff, Christopher G. Broadwater, respectfully requests that judgment be entered in his favor as follows:

- A. That this Court declare that the Defendants' actions violated Mr. Broadwater's constitutional rights;
- B. Compensatory damages;
- C. Punitive damages;
- D. Reasonable attorney's fees and costs;
- E. A jury trial; and,
- F. Such other financial or equitable relief as is reasonable and just.

BOYLE, AUTRY & MURPHY

/s/Devon M. Jacob

Devon M. Jacob, Esquire

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