

APPX.

A

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3199

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AARON BRESSI,  
Appellant

v.

JEFFERY BRENNEN; EDWARD PURCELL; CHRISTOPHER LAPOTSKIE;  
CHAD YODER; CHRISTOPHER WILLIAMS; CHIEF WILLIAM CARPENTER;  
TERRY KECHEM, Coal Township Police Officer; PATROLMAN ADAMS,  
Coal Township Police Officer

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil Action No. 4-17-cv-01742)  
District Judge: Honorable Matthew Brann

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
August 14, 2020  
Before: AMBRO, GREENAWAY, JR. and PORTER, Circuit Judges

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on August 14, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 13, 2019, be and the same is hereby affirmed in all respects except

that the order is hereby MODIFIED to reflect that the malicious prosecution claims are dismissed without prejudice. Costs are taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit  
Clerk

Dated: August 19, 2020

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3199

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AARON BRESSI,  
Appellant

v.

JEFFERY BRENNEN; EDWARD PURCELL; CHRISTOPHER LAPOTSKIE;  
CHAD YODER; CHRISTOPHER WILLIAMS; CHIEF WILLIAM CARPENTER;  
TERRY KECHEM, Coal Township Police Officer; PATROLMAN ADAMS,  
Coal Township Police Officer

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil Action No. 4-17-cv-01742)  
District Judge: Honorable Matthew W. Brann

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
August 14, 2020  
Before: AMBRO, GREENAWAY, JR. and PORTER, Circuit Judges

(Opinion filed: August 19, 2020)

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OPINION\*

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PER CURIAM

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Aaron Bressi, proceeding pro se, filed a § 1983 civil rights action on September 20, 2017, against numerous Coal Township police officers alleging unlawful arrests and prosecutions on multiple occasions over a five-year period.<sup>1</sup> Bressi claimed that he was first arrested in November 2011 by Officer Edward Purcell on charges that were based on false statements obtained from a family member. He described an arrest by Purcell and Officer Jeffrey Brennan<sup>2</sup> based on false reports from a Northumberland County commissioner in May 2013. He further stated that he was improperly charged three different times in one week in August 2015, after his neighbors called the police on him. Bressi then recounted an incident in June 2016 where Officer Christopher Lapotsky attempted to intimidate Bressi into selling his house to one of Lapotsky's family members.

Additionally, Bressi alleged that he was assaulted in September 2016, and that he called 911 more than seven times over a 90-minute period. Officer Purcell subsequently arrived at the scene, arrested Bressi, and took him to Coal Township police station. There, he was verbally harassed by Officer Brennan, and when they were leaving the station so that he could be transported to a county prison, "Brennan grabbed [him] by [his] neck and threatened [him] and [his] future with [his] children." Compl. at 6.

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<sup>1</sup> Because we write primarily for the benefit of the parties, we will recite only the facts necessary for our discussion.

<sup>2</sup> Jeffrey Brennan's name was incorrectly spelled as "Jeffery Brennen" in Bressi's complaint. Christopher Lapotsky's name was incorrectly spelled as "Lapotskie."

Brennan and Purcell threatened and harassed him “the whole way” to the prison. Id.

The defendants filed a motion to dismiss. The Magistrate Judge recommended that the motion to dismiss be granted because the charges accruing before 2015 were barred by the statute of limitations and because Bressi’s claims arising from the August 2015 incidents were barred by Heck’s favorable termination rule<sup>3</sup> or time-barred. The Magistrate Judge also determined that Bressi failed to state a claim under the Fourth or Fourteenth Amendments related to the June 2016 encounter, that Bressi failed to state a claim regarding the officers’ failure to investigate his reports between June and August 2016, and that any claims (including possible claims of false arrest, false imprisonment, and malicious prosecution) arising from the September 2016 incident were barred by Heck. See ECF #41. The Magistrate Judge recommended that the excessive force claim be dismissed as Brennan used a “de minimis” amount of force on Bressi’s neck. The District Court adopted the Magistrate Judge’s Recommendation and granted leave to amend only the excessive force claim. All other claims were dismissed with prejudice.

Bressi filed an amended complaint, where he expounded on the September 2016 excessive force incident by alleging that, while he was being transported to Snyder County Prison, Officer Brennan grabbed Bressi by the neck and slammed him against a

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<sup>3</sup> Heck v. Humphrey, 512 U.S. 477, 489 (1994) (holding that, where success in a § 1983 action would necessarily imply the invalidity of a conviction or sentence, an individual’s suit for damages or equitable relief is barred unless he can demonstrate that his conviction or sentence has been invalidated).

concrete wall “for no reason whatsoever.” See Am. Compl. at 20. Bressi attempted to add three more defendants and provide more information about the other incidents, but the additional defendants and all references to other dismissed claims were struck from the pleading. The Magistrate Judge again recommended dismissing the excessive force claim for failure to state a claim. Over Bressi’s objections, the District Court adopted the Report and Recommendation and dismissed the amended complaint with prejudice. Bressi timely appealed.

We have jurisdiction to review the District Court’s judgment pursuant to 28 U.S.C. § 1291. We review de novo the District Court’s grant of the motions to dismiss pursuant to Rule 12(b)(6). See Newark Cab Ass’n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). To survive dismissal, a complaint must “state a claim to relief that is plausible on its face” by including facts that “permit the court to infer more than the mere possibility of misconduct.” Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). We accept all factual allegations in the complaint as true and construe those facts in the light most favorable to the plaintiff. Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012).

Section 1983 claims are subject to Pennsylvania’s two-year statute of limitations. Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 78-79 (3d Cir. 1989). For a claim of false arrest or false imprisonment, the limitations period begins to run when the plaintiff is detained pursuant to legal process. Wallace v. Kato, 549 U.S. 384, 389-90 (2007). For malicious prosecution claims, a § 1983 cause of action does not accrue until the

conviction or sentence has been invalidated or terminated favorably, whether by direct appeal or some other means. Heck v. Humphrey, 512 U.S. 477, 489 (1994). “Only once the criminal proceeding has ended in the defendant’s favor, or a resulting conviction has been invalidated . . . , will the statute of limitations begin to run.” McDonough v. Smith, 139 S. Ct. 2149, 2158 (2019).

The District Court properly dismissed the claims arising out of the November 2011 incident (which did not result in a conviction) because they began to accrue outside the limitations period.<sup>4</sup> However, the District Court erred to the extent that it dismissed the malicious prosecution claims arising from the other incidents under the statute of limitations. Because the convictions in question do not appear to have been invalidated, the statute of limitations has yet to run.

Nonetheless, Bressi’s claims arising out of May 2013, August 2015, and September 2016 (except for the excessive force claim) are barred by Heck v. Humphrey, 512 U.S. 477 (1994). Under Heck, where success in a § 1983 action would necessarily imply the invalidity of a conviction or sentence, an individual’s suit for damages or equitable relief is barred unless he can demonstrate that his conviction or sentence has been invalidated. 512 U.S. at 486-87. If the conviction has not been invalidated, the claim is not cognizable under § 1983 and must be dismissed. Id. at 487.

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<sup>4</sup> The District Court properly considered the documents attached to appellees’ motion to dismiss as they were matters of public record. See Delaware Nation v. Pennsylvania, 446 F.3d 410, 413 n.2 (3d Cir. 2006).



Bressi was convicted pursuant to the May 2013, August 2015, and September 2016 incidents. Because Bressi's claims amount to challenges to the validity of his convictions, and because those convictions do not appear to have been invalidated, the claims are barred by Heck. However, the District Court erred in dismissing those claims with prejudice as Bressi may bring his malicious prosecution claims later if his convictions are later invalidated. See id. at 484-85 (stating that a § 1983 claim based on an allegedly unconstitutional conviction or sentence does not accrue until the invalidation of that conviction or sentence); Curry v. Yachera, 835 F.3d 373, 379 (3d Cir. 2016) (modifying dismissal of Heck-barred malicious prosecution claims to reflect that the claims are dismissed without prejudice).

Finally, we agree with the District Court that Bressi failed to state a claim of excessive force regarding the September 2016 incident.<sup>5</sup> The conduct Bressi describes may have been improper, but Bressi does not allege that he was harmed by the encounter, which, we conclude, did not rise to the level of a constitutional violation.<sup>6</sup> See Smith v.

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<sup>5</sup> To the extent that Bressi's brief can be read to challenge the District Court's dismissal of his claims against Lapotsky and his failure-to-investigate claim, we agree with the District Court's disposition of those claims. See DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 195-96 (1989) ([A]n allegation of a failure to investigate, without another recognizable constitutional right, is not sufficient to sustain a section 1983 claim.”).

<sup>6</sup> Bressi argues that the District Court erred by failing to give him leave to amend his initial complaint before dismissing it, but we disagree. The District Court was required to give Bressi leave to amend his complaint “unless amendment would be inequitable or

Mensinger, 293 F.3d 641, 648 (3d Cir. 2002).

Accordingly, we will affirm the judgment of the District Court, but we will modify the order of dismissal as to the malicious prosecution claims to reflect that they are without prejudice.<sup>7</sup>

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futile.” Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Granting leave to amend under these circumstances was not required as it would have been futile.

<sup>7</sup> Appellant’s motion for a default judgment is denied.

APPX.

B

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

AARON J. BRESSI,

Plaintiff,

v.

JEFFREY BRENNEN, et al.,

Defendants.

No. 4:17-CV-01742

(Judge Brann)

(Magistrate Judge Saporito)

**ORDER**

**SEPTEMBER 13, 2019**

Aaron J. Bressi filed this 42 U.S.C. § 1983 complaint alleging that numerous Defendants violated his constitutional rights.<sup>1</sup> In 2018, Magistrate Judge Joseph F. Saporito, Jr., issued a Report and Recommendation recommending that this Court dismiss Bressi's complaint.<sup>2</sup> Magistrate Judge Saporito noted that three of Bressi's claims were barred by the statute of limitations, six were barred by the favorable termination rule, two failed to state a claim as a matter of law, and an excessive force claim was not supported by sufficient factual averments.<sup>3</sup> This Court adopted the recommendation and dismissed the complaint.<sup>4</sup> Given the nature of the procedural

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 41.

<sup>3</sup> *Id.* at 11-29.

<sup>4</sup> Doc. 45.

bars to several of Bressi's claims, this Court "granted leave to amend *only* the excessive force claim that has dismissed without prejudice."<sup>5</sup>

Bressi duly filed his amended complaint in which he expanded upon his excessive force claim, but also reasserted several claims that the Court did not grant leave to amend.<sup>6</sup> As to the excessive force claim, Bressi asserted that, for no apparent reason, Officer Jeffrey Brennan "[w]rapped his hands around my neck from my right side, and slammed me up against the concrete cinder block wall . . ."<sup>7</sup> Because the amended complaint exceeded the scope of amendment permitted by the Court, Magistrate Judge Saporito struck all claims except the excessive force claim.<sup>8</sup>

In August 2019, Magistrate Judge Saporito issued a second Report and Recommendation recommending that this Court grant Defendants' motion to dismiss and dismiss Bressi's excessive force claim.<sup>9</sup> Specifically, Magistrate Judge Saporito concluded that Bressi's complaint asserts only a *de minimis* use of force, which is insufficient to support an excessive force claim.<sup>10</sup>

Bressi filed timely objections to the Report and Recommendation, asserting that portions of his amended complaint should not have been stricken, and

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<sup>5</sup> *Id.*

<sup>6</sup> Doc. 46.

<sup>7</sup> *Id.* at 20-21.

<sup>8</sup> Doc. 70.

<sup>9</sup> Doc. 73.

<sup>10</sup> *Id.* at 7-9.

asserting—in conclusory fashion—that Brennan used excessive force.<sup>11</sup> “If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”<sup>12</sup> Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.<sup>13</sup>

Upon de novo review of Magistrate Judge Saporito’s Report and Recommendation, the Court finds no error in the conclusion that Bressi has failed to state a claim for excessive force.<sup>14</sup> Moreover, because it is clear that amendment would be futile, that claim will be dismissed with prejudice.<sup>15</sup> The Court further finds no error in Magistrate Judge Saporito’s earlier order striking portions of

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<sup>11</sup> Doc. 75.

<sup>12</sup> *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

<sup>13</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.

<sup>14</sup> The force that Brennan allegedly used may, at first blush, seem unreasonable—and may well constitute an assault. However, “the constitutional floor against excessive force is not consonant with common-law assault” and, thus, “even where a suspect does not actively resist, the use of force must cross the *constitutional* line.” *Hanson v. Madison Cty. Det. Ctr.*, 736 F. App’x 521, 530 (6th Cir. 2018) (citing *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010); *Bell v. Wolfish*, 441 U.S. 520, 539 n.21 (1979)). As the United States Supreme Court has explained, “[a]n inmate who complains of a ‘push or shove’ that causes no discernible injury almost certainly fails to state a valid excessive force claim.” *Wilkins*, 559 U.S. at 38 (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). Brennan’s act—pushing Bressi into a wall without causing any apparent pain or injury—simply does not cross a constitutional threshold.

<sup>15</sup> Notably, Bressi has filed three complaints in this action, all of which suffer from the same defect. (See Docs. 1, 46, 57). Bressi’s “repeated, ineffective attempts at amendment suggest that further amendment of the complaint would be futile.” *Martin v. Duffy*, 858 F.3d 239, 247 (4th Cir. 2017).

Bressi's amended complaint that exceeded the scope of amendment authorized by this Court. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (Doc. 73) is **ADOPTED** in its entirety;
2. Defendants' motion to dismiss (Doc. 48) is **GRANTED** and Bressi's amended complaint is **DISMISSED** with prejudice; and
3. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann  
Matthew W. Brann  
United States District Judge

APPX.

C



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI,

Plaintiff,

v.

JEFFERY BRENNEN, et al.,

Defendants.

CIVIL ACTION NO. 4:17-cv-01742

(BRANN, J.)

(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This federal civil rights action was commenced by the filing of the plaintiff's *pro se* original complaint on September 26, 2017. (Doc. 1.) The original complaint was dismissed for failure to state a claim on July 26, 2018. (Doc. 45; *see also* Doc. 41.) In dismissing the original complaint, the Court granted the plaintiff leave to amend with respect to his excessive force claim *only*. (Doc. 45 ¶ 9.) All other claims were dismissed *with prejudice*. (*Id.* ¶ 8(b).) *See generally Bressi v. Brennen*, Civil Action NO. 4:17-cv-01742, 2018 WL 3596861 (M.D. Pa. July 6, 2018), *report and recommendation adopted by* 2018 WL 3584687 (M.D. Pa. July 26, 2018).

On August 28, 2018, the plaintiff filed an amended complaint. (Doc. 46.) But in addition to providing more detailed allegations regarding the events of September 30, 2016, that gave rise to his excessive force claim

against the original three defendants—Jeffery Brennan, Edward Purcell, and Christopher Lapotsky—the plaintiff included additional allegations concerning his other claims that were dismissed with prejudice, and he added three new party-defendants—Chad Yoder, Christopher Williams, and William Carpenter. (*Id.*) On August 2, 2019, the additional allegations and new parties that exceeded the scope of permission to amend that had been granted to the plaintiff were struck from the pleading. (Doc. 70.)

What remains then is an amended complaint asserting a federal civil rights claim for excessive use of force against a pretrial detainee, in violation of his Fourteenth Amendment due process rights, made actionable by 42 U.S.C. § 1983. On September 30, 2016, Bressi was arrested following a motor vehicle collision between Bressi and the mother of his children. Bressi alleges that she purposefully backed into his car multiple times, and that he called 911 to report the incident multiple times. But instead of her being prosecuted, Bressi alleges that police and probation officers arrested Bressi at his home later that same day and transported him to the Coal Township police station. Bressi alleges that he was placed in a holding cell and the defendants verbally

harassed him the whole time he was there.<sup>1</sup> Later, between 8:15 p.m. and 8:45 p.m., when it was time to transport Bressi to the Snyder County Prison,<sup>2</sup> Bressi alleges that, while he was handcuffed and shackled:

For no reason what so ever, Officer Brennen rapped his hands around my neck from my right side, and slammed me up against the concrete cinder block wall next to the office door in the hallway, I said what are you doing? He said shut up and stop resisting, and wispered in my ear that he will do whatever he has to do to put me away, and I never see my kids again. Officers Williams, Purcell, and Lapotsky failed to intervene, while Officer Brennan used excessive force for no reason while I was properly restrained for transport, and they were all in arms length of me and Officer Brennen to do so.

(Doc. 46, at 20–21.) For relief, Bressi seeks an award of \$1 million in damages and an injunctive order directing the Coal Township police department to acquire, install, and use dashboard and body cameras.

The defendants have moved to dismiss the amended complaint for failure to state a claim upon which relief can be granted, pursuant to Rule

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<sup>1</sup> Bressi's original complaint asserted civil rights claims arising out of his arrest and the alleged verbal harassment. Those claims were previously dismissed with prejudice.

<sup>2</sup> It appears that Bressi was transported to Snyder County Prison for pretrial detention because the Northumberland County Prison had been destroyed by fire, and construction of its replacement had not yet been completed. Publicly available Snyder County court records reveal no criminal or petty offense cases against Bressi.

12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 48.) The motion is fully briefed and ripe for decision. (See Doc. 49; Doc. 55; Doc. 56.)

## I. LEGAL STANDARD

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiff’s claims lack facial plausibility.” *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). In deciding the motion, the Court may consider the facts alleged on the face of the complaint, as well as “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Although the Court must accept the fact allegations in the complaint as true, it is not compelled to accept “unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation.” *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting

*Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). Nor is it required to credit factual allegations contradicted by indisputably authentic documents on which the complaint relies or matters of public record of which we may take judicial notice. *In re Washington Mut. Inc.*, 741 Fed. App'x 88, 91 n.3 (3d Cir. Sept. 25, 2018); *Sourovelis v. City of Philadelphia*, 246 F. Supp. 3d 1058, 1075 (E.D. Pa. 2017); *Banks v. Cty. of Allegheny*, 568 F. Supp. 2d 579, 588–89 (W.D. Pa. 2008).

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## II. DISCUSSION

Despite providing additional detail in his factual allegations, Bressi's amended complaint has failed to cure the defects that caused his excessive force claim, as articulated in the original complaint, to be dismissed for failure to state a claim.

Bressi claims that he was subjected to excessive force while in custody at the Coal Township police station, after his arrest on September 30, 2016. Specifically, he alleges that when it was time for him to be transported to Snyder County Prison, and while he was handcuffed and shackled, Officer Brennan wrapped his hands around Bressi's neck and "slammed" him up against a wall. He has alleged no injury as a result of this contact.

Bressi was a pretrial detainee at the time of the alleged use of excessive force, and thus his right to be free from the use of excessive force emanates from the Due Process Clause of the Fourteenth Amendment. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015) (citing *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989)). In evaluating such excessive force claims, we apply the standard governing Eighth Amendment cruel and unusual punishment cases. *See Fuentes v. Wagner*, 206 F.3d 335, 345 (3d Cir. 2000); *see also Smith v. Addy*, 343 Fed. App'x 806, 808–09 (3d Cir. 2009) (per curiam). Thus, the relevant inquiry is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Fuentes*, 206 F.3d at 345 (quoting *Hudson v. McMillian*, 503 U.S. 1, 7 (1992)).

In making this inquiry, the Supreme Court has highlighted five factors: “(1) the need for the application of the force;” (2) “the relationship between the need and the amount of force that was used;” (3) “the extent of the injury inflicted;” (4) “the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of facts known to them;” and (5) “any efforts made to temper the severity of a forceful response.”

*Baez v. Lancaster Cty.*, 487 Fed. App'x 30, 32 (3d Cir. 2012) (per curiam) (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). An inmate need not

prove that the harm he suffered was sufficiently serious in order to make out a constitutional claim where excessive force was used, as absence of injury does not necessarily foreclose the inquiry. *Hudson*, 503 U.S. at 7; see also *Brooks v. Kyler*, 204 F.3d 102, 104 (3d Cir. 2000).

At the same time, courts have held that the constitution does not protect an inmate against an objectively *de minimis* use of force, provided that the use of force is not “repugnant to the conscience of mankind.” *Whitley*, 475 U.S. at 327 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); see also *Lindsey v. O’Connor*, 327 Fed. App’x 319, 321 (3d Cir. 2009); *Reyes v. Chinnici*, 54 Fed. App’x 44, 48 (3d Cir. 2002) (“There exists some point at which the degree of force used is so minor that a court can safely assume that no reasonable person could conclude that a corrections officer acted maliciously and sadistically.”). “[N]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights.” *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973); see also *Murphy v. Palmer*, Civ. Action No. 14-cv-6896 (FLW) (DEA), 2017 WL 2364195, at \*13 (D.N.J. May 31, 2017) (“[N]ot every push, shove or grab constitutes excessive force.”).

Here, Bressi alleges merely that Brennan grabbed him by the neck

and pushed him against a wall. He does not allege any injury, much less one of any significance. Standing alone, this is simply insufficient to support a plausible claim that Brennan violated Bressi's due process rights as a pretrial detainee to be free from excessive force. See *Lindsey v. O'Connor*, 327 Fed. App'x 319, 321 (3d Cir. 2009) (grabbing and threatening inmate, without injury, was *de minimis* rather than excessive force); *Norton v. City of Marietta*, 432 F.3d 1145, 1156 (10th Cir. 2005) (per curiam) (grabbing and twisting of inmate's neck, causing pain, did not constitute excessive force); *Jordan v. Mayer*, Case No. 14-cv-723-SCW, 2017 WL 1132505, at \*4 (S.D. Ill. Mar. 27, 2017) (finding *de minimis* force where officer allegedly grabbed and squeezed inmate's throat); *Jamison v. Varano*, Civil No. 1:12-CV-1500, 2015 WL 4662696, at \*7 n.3 (M.D. Pa. Aug. 6, 2015) (finding *de minimis* force where inmate was pushed into a wall and restrained in handcuffs, with no discernable injury); *Felder v. Diebel*, No. 10-CV-343(JTC), 2012 WL 6690239, at \*5 (W.D.N.Y. Dec. 21, 2012) (finding *de minimis* force where officer allegedly grabbed inmate by throat and slapped him twice, causing no injuries); *Longendorfer v. Roth*, No. Civ.A. 04-0228, 2004 WL 963881, at \*2 (E.D. Pa. May 3, 2004) (finding *de minimis* force where inmate was allegedly



shoved into cell bars, causing severe bruising to his arms and back); *Acosta v. McGrady*, No. CIV.A. 96-2874, 1999 WL 158471, at \*8–\*9 (E.D. Pa. Mar. 22, 1999) (sharply pulling inmate’s handcuffed hands behind his back and slamming him into a wall was *de minimis*); *Sprau v. Coughlin*, 997 F. Supp. 390, 394 (W.D.N.Y. 1998) (finding *de minimis* force where officer allegedly grabbed inmate behind the neck and hit him in neck, face, and eye, causing only a small bump under inmate’s eye); *Gutridge v. Chesney*, No. CIV.A. 97-3441, 1998 WL 248913, at \*3 (E.D. Pa. May 8, 1998) (finding *de minimis* force where inmate was handcuffed and pushed against a wall, suffering a small scratch on his cheek as a result).

Accordingly, it is recommended that Bressi’s remaining § 1983 claim for the excessive use of force arising out of his September 30, 2016, arrest be dismissed with prejudice—and without leave to amend—for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

### III. RECOMMENDATION

For the foregoing reasons, it is hereby recommended that the amended complaint (Doc. 46) be dismissed with prejudice for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6)

of the Federal Rules of Civil Procedure.

Dated: August 5, 2019

*s/ Joseph F. Saporito, Jr.*  
JOSEPH F. SAPORITO, JR.  
United States Magistrate Judge

APPX.

D

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 19-3199

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AARON J. BRESSI,  
Appellant

v.

JEFFERY BRENNEN; EDWARD PURCELL; CHRISTOPHER LAPOTSKIE;  
CHAD YODER; CHRISTOPHER WILLIAMS; CHIEF WILLIAM CARPENTER;  
TERRY KECHEM, Coal Township Police Officer; PATROLMAN ADAMS,  
Coal Township Police Officer

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil Action No. 4-17-cv-01742)  
District Judge: Honorable Matthew W. Brann

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SUR PETITION FOR REHEARING

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Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,  
PORTER, MATEY, and PHIPPS, *Circuit Judges*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

BY THE COURT,

s/ Joseph A. Greenaway, Jr.  
Circuit Judge

Dated: December 9, 2020

NMR/cc: Mr. Aaron J. Bressi  
Kimberly A. Boyer-Cohen, Esq.

APPX.

E

(Page 1) 20th Day of Aug. 2018 Case #

4:17-CV-01742

Attn: Office of the Clerk

Aaron J. Bressi

Plaintiff

V.

Jeffery Brennen, et al.,

Defendants

Honorable Matthew W. Brann

U.S. Magistrate Judge

Joseph F. Saporito, Jr.

Plaintiff's amended Complaint for Case # 4:17-CV-01742. For defendants Jeffery Brennen, Edward Purcell, Christopher Lapotsky, Chad Yoder, Christopher Williams, and Chief William Carpenter.

All defendants listed in this Complaint were contacted by me multiple times by phone, and in person, June, July, Aug., and Sept. 2016 in regards to multiple crimes committed against me by Kimberly Rickert, the mother of my children, and her boyfriend Brian Ross.

Officers Purcell and Brennen would tell me they were going to arrest me, or mail me charges

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if I would continue to report these crimes. I contacted chief William Carpenter multiple times about these crimes, and also about the crimes his police officers were committing against me by threatening me with false arrest claims, by saying there going to arrest me for whatever they want, and nobody is going to do anything about it. I also told chief William Carpenter how his officers already arrested me multiple times for crimes I did not commit, he laughed at me over the phone, and told me there is nothing he can do about it.

In Sept. 2016 while in the office of chief probation officer Jim Miller from Montour County, Ms. Rickert and Mr. Ross sent me multiple harrassing and ~~threatening~~ threatening text messages to my phone. Mr. Miller asked me why my phone was going off



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nonstop, and I told him that I was being a victim of a crime in progress. I told him that this has been going on for months now, and that the Coal township police dept. have been committing crimes against me also, by threatening to arrest me for no reason, just because I am reporting these crimes.

I showed Mr. Miller the text messages from through the day, up until sitting in his office. I told Mr. Miller that the Coal Township police officers threats are real, because they arrested me multiple times already for made up crimes that never even happened. Mr. Miller told me to leave his office and go report this to the Coal township police, I left his office and drove right to the Coal township police Station where I came in contact with Officer Chad Yoder about

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the all day long crimes in progress, and that Mr. Miller from Montour County told me to come to the Station, and to report this to whoever is on duty.

I showed Officer Yoder all the harrassing and threatening text messages from that day alone, which was about 30 to 40 messages. Plus a hundred of the most serious harrassing and threatening messages saved over the past three months. The phone I had would only let you save one hundred messages at a time.

Officer Yoder also listened to three voice mails I had saved from the week before this incident, one from Ms. Rickert and two from Mr. Ross threatening my life, and also threatening me about never seeing my son mylez ever again. Officer Yoder laughed and though it was funny,

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and he told me there is nothing he can do about it.

June of 2016 Officer Lapotsky came to my house with his sister to look at it because he seen I had (for sale by owner) signs up on my home. He and his sister walked through my whole house, we started in the attic and worked our way to the basement and out the back door toward the backyard.

I told Mr. Lapotsky that I was advertising my home for \$45,000.00 dollars on craigslist and was ready to put it in the newspaper very soon. I told him if your sister really wants this house, I will sell it to her fully furnished for \$35,000.00 not a dollar less. As we walked through my backyard to go look at the shed, the garden, fire place, off street parking, and the patio I put in by the fireplace,

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his sister wanted to look inside the shed and was asking what was staying in the shed if Sold. I opened the shed to let her in and walked back over on the patio by the fireplace to Continue to talk with Mr. Lapotsky.

Thats when Mr. Lapotsky told me, if my sister wants this house, you better sell it to her for \$ 25,000.00 and knock \$ 10,000.00 off that \$ 35,000.00. I said I can't go less then \$ 35,000.00 fully furnished because I just put a 50 year roof on in March, and all them new interior doors you just seen in May.

That's when Mr. Lapotsky told me that he will arrest me for no reason, so I end up in Jail for a long time and lose my home, and his sister will get it for almost nothing. He Said you know we can do whatever

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We want and nobody's going to do anything about it. He said look how many times we did it to you already. When his sister was done looking inside the shed and around the yard, they both proceeded up the yard and through my walkway on the side of my home to the front of the house, and they left in Mr. Lapotsky's vehicle.

March 8th 2016, I was a victim (again) of another violent crime by Kimberly Rickert. This crime took place in my kitchen when I questioned her about her whereabouts with my son Mylez. Ms. Rickert was highly intoxicated while under the influence of drugs and alcohol. She assaulted me by digging her fingernails into my neck.

March 9th 2016, I called the Coal Township police dept. to see why and who the officers

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were who called my mother and Fathers house after midnight, after receiving false reports from somebody at the Rickert residence in excelsor the night of this incident. Officer Brennen answered the phone and I proceeded to tell him about the incident, and also asked him about the call after midnight to my mother and Fathers home for no reason.

I told Officer Brennen that I wanted her arrested, and that my neck was all cut up from her ~~own~~ fingernails. Officer Brennen told me to forget the incident ever happen, or he was going to file charges against me.

Sept. 2016, I spoke with Officer Brennen again about coming to get a (right to know form) from the manicapality Building so I could fill it

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out to obtain all the paperwork and also copies of falsely written Statements of a crime I was the victim (again) from Ms. Rickert in Aug. 2016, when she assaulted me and my son mylez in the middle of the Street while dropping him off at my house for the weekend. The statements were wrote by the Duzick / Fantagrosse residence that did not even witness the incident.

Officer Brennen told me that if I come to the police Station to get a (right to know form), that he was filing Charges against me, handcuffing me, and taking me to Jail. I told Officer Brennen that I can come to the manicapality Building to get a (right to know) form whenever I want to, because I have the right too.

Officer Brennen told me if he finds out that I come

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to the manicapality building when he is not there and get a form from the Secretary (molly), he will still file some kind of Criminal charges and mail them to my house, which he already did once before.

On Sept 30th 2016, I was a victim (again) from another Serious Crime from Kimberly Rickert. Ms. Rickert ragged out on me while highly intoxicated on drugs and alcohol (again), It all started when she backed into me in front of the Dollar General in the anthra Plaza, in Coal Township. On my way home I seen her pulling out from gas pump into the alley, from the gas station located at the RT. 901 / RT. 61 Junction.

I pulled in front of Ms. Rickert to render aid and obtain her Insurance information for her backing into me in front of the



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Dollar General and damaging my Vehical. Ms. Rickert ragged out again, and tryed to go around my vehical on the passenger side and smashed my front passenger Headlight fixture out and also hit the bumper at the same time.

I traveled down the alley and took a left turn on the street behind the gas station, then another left onto main St. in Ranshaw, which brought me back to the RT. 901 / RT. 61 Junction at the stop sign. I pulled out at the intersection and Seen Ms. Rickerts Car across the street at the Advanced Auto / Aaron's Electronics plaza on RT. 901, I pulled into a parking spot next to Ms. Rickert located Between the two stores.

I was located on the drivers side of Ms. Rickerts Car and put my passinger side window down, She put down her drivers

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Side window, I told her she was paying for the damage she just done to my vehical, so you better have car insurance. I told her I was going home to call the police for what she has just done to me, also to call CYS to have mylez removed from that drug house in Mt. Carmel, and going to the Courthouse to file for custody of our three children.

I started to back out of the parking spot and was cutting my wheels at the same time, which positioned my vehical's passenger side behind Ms. Rickert's car. That's when Ms. Rickert ragged out again and reversed her car into my vehical, her back drivers side Bumper Bounced off my back passenger bumper on the corner, she continued to cut her wheels and her drivers door hit the same back passenger corner of my bumper. She put

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her car in drive, and went around my vehical on the passenger side were she scraped the side of her car down the front passengers side bumper were she hit me in front of the gas station, Ms. Rickert exited the parking and proceeded out RT. 901 towards excelsor.

I drove right to my house, which is only a couple blocks away and start dialing 911 immediately because my cell phone was on the charger in the kitchen as this incident was unfolding. I dialed 911 multiple, multiple, times for over an hour and a half, reporting this crime that I was a victim of.

Officer Purcell from the Coal Township police dept. showed up to my house with four probation officers, they pulled in front of my home in three

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Vehicals, one Coal township police cruiser, one blue four door sedan driven by Jill Henrich, and one four door SUV gray/black color with Mr. Shoop, Mr. McClay, and Mr. Narcavage in it.

As soon as they pulled in, I walked out my front door and off my porch to the passenger side of my vehical, which was located on the street side, due to the way I was parked in front of my house. I was going to show them the damage she did to my vehical and explain the details of the incident as it unfolded.

Officer Purcell spun me around and handcuffed me immediately, I said what are you doing, I called 911 for over an hour and a half to report that I was the victim of a crime (again) from Kimberly Rickert, he said I don't care.

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Mr. McClay walked me across the street to the SUV and put me in the back seat on the driver's side. On the way to the police station I tried to tell the three male probation officers that I was the victim of another violent crime by Kimberly Rickert, and also was trying to tell them the events of the incident.

Mr. Narcavage was telling me to shut up, and that you're going to jail no matter what because you're on probation. I told Mr. Narcavage that you can't go to jail for being the victim of a crime, just because you're on probation. I told them I called 911 for over an hour and a half to report this crime that I am the victim of, I followed all the laws of being a victim of a crime by dialing 911 immediately, and also told them I want her insurance information because she is paying for the damages to my vehical. All three

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probation officers said we don't care what happens, shut up, your going to jail, know matter what.

When we arrived at the police station, they walked me to the side door and we were let into the building by officer Purcell who was just getting out of the police cruiser when we pulled in. Once inside the police station, we were met by officer Brennen in plain street cloths who started to harrass and threaten me right away as he walked me back to the holding cell and put me in.

Once in the holding cell at the police station, all four probation officers, officer Purcell, and officer Brennen were taking turns coming back and forth from the office to the holding cell making nonstop threats and harrassing me.

Officer Lapotsky showed up about a half hour later to

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Start second shift and involved himself into the threats and harrasment. I told all three police officers, that I was the victim of another crime from Kimberly Rickert, that I am the one who called 911 multiple times, for over an hour and a half to report the crime that she committed against me, and also tryed telling them the events of the incident. They all continued to harrass and threaten me, and said we don't care your going to Jail.

About a half hour later, the probation officers left the police station and I was left there with Officer Purcell, Officer Brennen, and Officer Lapotsky. The harrasment and threats from these three officers, for hours continued, Officer Brennen was telling Officer Lapotsky what charges to file as officer Purcell and officer Brennen were coming

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Back and forth to the holding Cell area to see what me, and by this time Officer Williams was there to mop the water up that was all over the Cell floor, and into the front of the holding Cell from the toilet being broke since I got there and overflowed every time I flushed it.

Officer Williams and I were cleaning up the water with a mop and a bucket with a ringer on it, which each of us had. While I was out of the holding cell, Officer Williams left me use the employees bathroom and also get a couple cups of water out of the water fountain, because the only and other holding cell was out of order due to major plumbing problems. Officer Brennen and Officer Purcell continued to say, how there names ain't going to be on any of the arrest paperwork,



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and nobody will know they were here, and how they can do whatever they want and nobody can ever stop them.

Once me and Officer Williams were done, he put me back into the holding cell and went into the office with the other police officers. About a half hour later Officer Lapotsky came to the holding cell with a cell phone in his hand while I was still inside the cell, and video arraigned me using (face time), with magistrate John Gembic III on the other end of the cell phone.

It was sometime between 8:15 pm and 8:45 pm when officers Brennen and Purcell came back to the holding cell and told me I was going to Snyder County prison. They entered the holding cell and put shackles, a restraint belt, and handcuffed me to the ring on the restraint belt, which

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was located on the bottom of my stomach.

Officer Williams came back to the holding cell area as we were walking out, Officer Brennen was on the right side of me, Officer Purcell was in front of me, and Officer Williams ended up behind me, when we made the right hand turn into the holding cell area into the main hallway. As we were walking down the hallway Officer Lapotsky came out of the office located on my left in front of me and handed me my arrest paperwork. He turned around and start walking back toward the office door, which now he was located in front of me next to Officer Purcell.

For no reason what so ever, Officer Brennen rapped his hands around my neck from my right side, and slammed me up against the concrete cinder

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block wall next to the office door in the hallway, I said what are you doing? He said shut up and stop resisting, and whispered in my ear that he will do whatever he has to do to put me away, and I never see my kids again. Officers Williams, Purcell, and Lapotsky failed to intervene, while Officer Brennen used excessive force for no reason while I was properly restrained for transport, and they were all in arms length of me and Officer Brennen to do so.

At my preliminary hearing in sunbury on the 22nd day of Nov. 2016, Officer Lapotsky, the Constable who transported me, and I, were the only three people in the courtroom area of the magistrates office, while we were waiting for magistrate Alpherbalm and (ADA) Michael Seward to come in before the

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Start of the hearing. Officer Lapotsky walked over to where I was sitting waiting for my attorney, and said I am adding these two charges on your docket, as he pointed down to where he had two things written in pen with a bunch of letters and numbers next to it, down on the bottom of the criminal Complaint paperwork.

After magistrate Alpherbalm and (ADA) Seward and my attorney came into the courtroom area, the preliminary hearing started. While this hearing was in progress, not one thing at all was said about the two charges officer Lapotsky showed me he handwritten in pen on the Criminal Complaint form before the hearing started.

The first time I seen that a felony charge was one of the charges going to trial, was in April of 2017 when (ADA) Michael Toomey handed me and

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attorney James Best a copy of the charges proceeding to trial, which was dated Dec. 16th 2016 and was signed by Mr. Toomey himself. This felony charge was added illegally to my docket by Officer Lapotsky when he heard I was taken this case to trial. This felony charge was not amended to my docket at this preliminary hearing by following the Rules and laws of Court procedures, and Somehow conspired with Mr. Toomey to add it on ~~to~~ to the trial docket in Dec. 2016, which I didn't find out about until April 2017.

These police officers listed on this amended Complaint injured me physically and emotionally, to the state where I was physically drained in emotional helplessness for the continuous intentional infliction of emotional distress, they caused through out this whole amended Complaint, along

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with the nonstop crimes these  
Criminals Committed against me.

(This Part of Complaint was left out  
from page 21 in the first paragraph at the end)

After the excessive force and  
failure to intervene part of Complaint  
on (Page 21) in the first paragraph,

I Left out that, officer Brennen  
and Officer Purcell, then put me  
inside a police cruiser and

transported me to Snyder County  
prison, threatening and harrasing

me the whole way there. They

waited to see my results of my  
drug screening, (which was

negative), and they left.

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With this amended Complaint,

I am sending (Exhibits A, B,

C, D, E, and F), that shows

well enough evidence to backup

this amended Complaint, and also

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well enough evidence to show the nonstop crimes these police officers / criminals committed against me.

I am also asking a federal Judge from this Honorable Courts to grant me, (#1 and #2 of Exhibit D), with this properly filed amended Complaint, which States: I ask a federal Judge to grant me, that he Court orders that the Coal Township police department must install body cameras on there uniforms, and also a court order to have dashboard cameras installed in every Coal Township police cruiser, due to the serious nature of this suit, and also the serious nature of crimes these police officers committed against me.

This will keep the Citizens of Coal Township safe from these corrupt police officers,

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and also Corrupt Northumberland County, and will stop them from committing crimes against innocent people to cover up there's and the County's Corruption.

Claims against these defendants with this amended Complaint will be: (Malicious Prosecution), (Abuse of Power), (Abuse of Process), (Excessive Force), (Failure to Intervene), and (Intentional Infliction of Emotional Distress).

Thank you,

Caron Bressi

Case # 4:17-CV-01742

8-20-18



APPX.

F

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Case #  
4:17-cv-1742

Attn: Office of the Clerk

Aaron J. Bressi  
(Plaintiff)

Vs.

Honorable Matthew W. Brann  
U.S. Magistrate Judge  
Joseph F. Saporito, Jr.

(Demand Jury Trial)

Jeffery Brennen  
Edward Purcell

Christopher Lapotsky  
Chad Yoder

Christopher Williams, and  
William Carpenter  
(Defendants)

Plaintiff's brief in response  
to defendants brief to dismiss  
amended Complaint.

I, I Aaron J. Bressi am writing  
this brief in response to Mr.  
Carmelite's brief to dismiss my  
amended Complaint under Federal  
Rules of Civil Procedure.

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Brief: Continued

2. (Survive a motion to dismiss 12(b)(6)), It States,  
To determine if a Complaint would survive a motion to dismiss under Rule 12(b)(6), the Court must accept as true all the facts alleged in the pleading, draw all reasonable inferences in favor of the Plaintiff, and determine if ("Under any reasonable reading of the Complaint, the Plaintiff may be entitled to relief [.]") (See), Phillips V. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008). (Also See), (Exhibits A-F), that goes along with amended Complaint. (Also See), Brown V. Hospital Corporation of America, Inc., No. 2:18-cv-68, 2009 U.S. Dist. Lexis 138920 (E.D. Tenn. Jan. 16 2009).

Brief: Continued

3. (Malicious Prosecution), (1) defendants Brennen, Lapotsky, Purcell, and Williams (did) let a criminal proceeding get initiated on the 30th day of Sept. 2016, all four of these defendants played a role in charging me for a crime, that I was the victim of, with all evidence showing proof of that, and still initiated a criminal proceeding against me.

(2) The criminal proceeding is about to be terminated from the 30th day of Sept. 2016, through the Superior Court of Pennsylvania, from a direct appeal right after the Jury trial conviction. This claim should not be dismissed until the outcome of this appeal verdict.

(3) This proceeding was initiated without probable cause, from the 30th day of Sept. 2016, I was the victim of this crime, I dialed 911 multiple times for

Brief: Continued

help and to render aid and to obtain Ms. Rickert's Insurance information, for the crime she committed against me, (Again).

(4) these defendants acted maliciously and for the purpose other than bringing the plaintiff to justice; these defendants tried to make me look like I committed a crime, for which I was the victim of this crime, with all evidence clearly showing that. These defendants tried to cover up the nonstop crimes they committed against me for multiple years now, and throughout this entire amended Complaint, and also the nonstop crimes by Ms. Rickert and multiple other people that were committed against me.

(5) The plaintiff (me) suffered a deprivation of liberty consistent with the

Brief: Continued

Concept of Seizure as a  
Consequence of a legal proceeding,  
these defendants prosecuted me  
for a crime, that I was the  
victim of, and maliciously  
knowing I was the victim  
(Again), from another violent  
Crime from Ms. Rickert. I am  
a innocent person in State  
prison for over two years now,  
waiting on my appeal so this  
Case gets overturned to a  
not guilty verdict, for a crime  
I was the victim of and all  
evidence clearly shows that, and  
maliciously prosecuted by these  
defendants to cover up there  
Criminal activity and crimes  
Committed against me, and other  
major crimes Committed against  
me by Ms. Rickert and other  
multiple people with these  
defendants clearly knowing  
about. (See) Rubin V. Nowak,

Brief: Continued

590 A.2d 249, 252, 248 N.J. Super. 80 (N.J. Super. Ct. App. Div. 1991); (see also), Hector   
V. Watt, 235 F.3d 154, 156 (3d Cir. 2000). (Also see), (Exhibits A-F), that goes along with amended Complaint. (Also see), McGee V. Feege, 517 Pa. 247, 535 A.2d 1020, 1023 (1987).

4. (Abuse of Power), It is clearly seen throughout this whole amended Complaint, also with the (Exhibits A-F) sent with amended Complaint as evidence, that this (abuse of power) is one of the most egregious official conduct, that is clearly to be arbitrary in the Constitutional Sense.

(1) The behavior of these (defendants/criminals) "shocks the Conscience", and (injured me "Physically and emotionally")

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## Brief: Continued

that these defendants (did) let three months worth of nonstop crimes be committed against me, and not file one charge.

That these defendants would threaten me with false charges, just because I was the victim of multiple crimes and would call them to try to have these crimes stopped, by following all the rules and laws of Pennsylvania Criminal Procedure. That these defendants would laugh and think it's funny that someone was the victim of multiple crimes (serious crimes), by multiple people. Now that, "shocks the conscience."

That these defendants would go to the extreme as to try and threaten to arrest me for false charges, to drop the price for the sale of my home, then actually (did) go through



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Brief: Continued

With the plan, weeks later on the 30th day of Sept. 2016, when I was clearly the victim of a crime (again) by Ms. Rickert. That these (defendants / criminals) (did) commit seven plus hours worth of crimes to me at the Coal township police station, for no reason what so ever on the 30th day of Sept. 2016, after I called 911 over an hour and a half to report (Again) another serious crime against me by Ms. Rickert. That Ms. Rickert never even reported this incident until Mr. Lopotsky made her and her drug attic Cousing and his ~~some~~ friends and one of her friends, write false statements to cover up his criminal activity. (Mr. Lapotsky's). Now that, "Shocks the Conscience", and is "clearly egregious official conduct, that is arbitrary in the Constitutional sense."

Brief: Continued

(See), UA Theatre Circuit V. Twp. of Warrington, 316 F.3d 392, 399 (3d Cir. 2003). (Also see), (Exhibits A-F), that goes along with amended Complaint.

5. (Abuse of Process), It is clearly seen throughout this whole amended Complaint, also with (Exhibits A-F) sent with amended Complaint as evidence, that this (abuse of Process) shows these defendants used the legal process against me, that was perverted and directed toward me for a purpose other than that which the process was designed.

(1) These defendants (did) use a legal process against me multiple times throughout this amended Complaint. (Read brief for details).

(2) The purpose these defendants (did) accomplish was (injuring) me by not doing there designed

Brief: Continued

Jobs, by following the legal process, and knowingly charging me for a crime, that I was the victim of, and illegally filing a felony charge on my criminal docket, just cause I was taking the case to trial. (3) Harm has been caused to me for being harrassed and threatend to the point of (phisically drained), and a state of (emotional helplessness), from these multiple individuals, and these multiple defendants, that were committing crimes against me, and from being harrassed and threatened at the police station to the point of (they exceeded there goal), from the incidents on the 30th day of Sept. 2016. (See) McGee V. Feege, 517 Pa. 247, 535 A.2d 1020, 1023 (1987).

These defendants (did) let three months worth of nonstop crimes be committed

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## Brief: Continued

against me, and not file one charge. That these defendants would threaten me with false charges, just because I was the victim of multiple crimes and would call them to try to have these crimes stopped, by following all the rules and laws of Pennsylvania criminal procedure. That these defendants would laugh and think it's funny, that someone was the victim of multiple serious crimes, by multiple people, (see) Brown v. Johnston, 675 F. Supp. 287, 290 (W.D. Pa. 1987).

"Examples of actions that are recoverable under the abuse of process tort are extortion by means of attachment, execution or garnishment, and blackmail by means of arrest or criminal prosecution." That defendant (Lapotsky) would go to the extreme as to try and threaten

Brief: Continued

to arrest me for false charges, to drop the price for the sale of my home, then actually (did) go through with his plan, weeks later on the 30th day of Sept. 2016, when I was clearly the victim of a crime (again) by Ms. Rickert.

These (defendants/criminals) (did) commit seven plus, hours worth of crimes to me at the Coal township police station, for no reason what so ever on the 30th day of Sept. 2016, after defendant Brennen told defendant Lapotsky what charges to file when he came to the police station to start 2nd shift and I was already in the holding cell from reporting (Again) another serious crime committed against me by Ms. Rickert. That Ms. Rickert never even reported this incident and Mr. Lapotsky made her ~~her~~

Brief: Continued.

and her drug attic Cousin,  
one of his friends, and one  
of Ms. Rickerts friends, write  
false statements to cover up  
his (Mr. Lapotsky's),  
Criminal activity.

(Also see), Rose V. Bartle,  
871 F.2d 331, 350 n.17 (3d Cir. 1989).  
(Also see), (Exhibits A-F), that  
goes along with amended  
Complaint.

Brief: Continued

6. (Excessive Force), defendant Brennen did maliciously and Sadistically use excessive force while I was walking through the police station to be transferred to Snyder County prison. This was no "push or shove", this was a violent attack by a mentally unstable officer, who thinks he is above the law.

This defendant, minutes earlier came to the holding cell after committing hours of crimes against me, and properly restrained me for transportation to Snyder County prison, along with defendant Purcell.

I was shackled at my feet with a restraint belt on, and handcuffed to a ring on my stomach, which is located on the restraint belt. For no reason what so ever, defendant Brennen's explosive anger disorder kicked in and he assaulted

Brief: Continued

me to the point, it was clearly repugnant to Conscience of mankind, and could of resulted into the threats of, never being able to see my children again.

By me dying from blunt force trauma, due to my head being slammed off the Concrete wall in the hallway, or a broken neck, due to being restrained for transportation and violently assaulted with no way to use my hands to protect myself from serious injury. (See), Mason V. Corizon, Inc., No. 2:17-CV-00201-WTL-MJD, 2018 U.S. Dist. Lexis 38002 (S.D. Ind. Mar. 8, 2018).

(Also See), (Exhibits A-F), that goes along with amended Complaint. This act was 100% without a doubt a 8th amendment violation. (Also see), (Case law), listed in #7 of brief, (Failure to Intervene).



Brief: Continued

7. (Failure to Intervene), Defendants (Lapotsky), (Purcell), and (Williams), did not try to stop the Constitutional Violations that were happening at the police station on the 30th day of Sept. 2016. (see), Byrd v. Clark, 783 F.2d 1002, 1007 (11th Cir. 1986).

These defendants did not intervene or try to stop defendant (Brennen), at the police station on the 30th day of Sept. 2016. (see), Shiloh v. Does, 2013 U.S. Dist. Lexis 131101, 31 (M.D. Pa. Apr. 19 2013). These defendants did not intervene, or report to Chief when Officer Brennen used excessive force, a 8th amendment violation.

(1) The police defendants failed or refused to intervene when a Constitutional Violation

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## Brief: Continued

took place in his or her presence or with his or her knowledge; and (2) there was a "realistic and reasonable opportunity to intervene." (See, Smith V. Mensinger, 293 F.3d 641, 650-51 (3d Cir. 2002). These (defendants / criminals) are guilty, because they did not stop officer Brennen's actions. (Also See, (Exhibits A-F), that goes along with amended Complaint.

8. (Intentional Infliction of Emotional Distress), It states (1) These (defendants / criminals) clearly, without a doubt displayed extreme and outrageous conduct against the plaintiff (me). (2) These defendants / criminals, clearly, without a doubt displayed, and are guilty of intentionally and recklessly causing "Severe emotional distress" throughout this

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Brief: Continued

whole amended Complaint. (See also),  
(Exhibits A-F), that goes along  
with amended Complaint, to (me)  
the Plaintiff. (3) These defendants  
one after another constantly (did)  
throughout this amended Complaint,  
take turns inflicting emotional  
distress upon me and kept telling  
one after another that it was ok  
for them to do to (me) the Plaintiff.  
(4) The nonstop crimes these (defendants  
/ criminals) committed to me for  
multiple years, and the nonstop  
crimes these defendants let  
multiple people committ against  
me throughout this amended  
Complaint, that this intentional  
distress is severe. (see),  
(Exhibits A-F), that goes along  
with amended Complaint. (See Also),  
Reardon V. Allegheny College,  
2007 PA Super 160, 926 A.2d 477,  
487 & n. 12 (Pa. Super. 1997).  
The crimes these defendants

Brief: Continued

Committed against me are very extreme and outrageous in conduct, and are outrageous in character, and so extreme in degree, as to these defendants would go beyond all possible bounds of decency, that the crimes these defendants committed against me are to be regarded as atrocious, and utterly intolerable in a civilized society.

That these defendants (did) let three months worth of nonstop crimes be committed against me, and not file one charge. That these defendants would threaten me with false charges, just because I was the victim of multiple crimes and would call them to try to have these crimes stopped, by following all the rules and laws of Pennsylvania Criminal Procedure.

Brief: Continued

That these defendants would laugh and think it's funny, that someone was the victim of multiple serious crimes, by multiple people.

That defendant (Lapotsky) would go to the extreme as to try and threaten to arrest me for false charges, to lower the price of my home for his sister, then actually (did) go through with his plan, weeks later on the 30th day of Sept. 2016, when I was clearly the victim of a crime (again) by Ms. Rickert. (See) Williams v. Guzzardi, 875 F.2d 46 (3d Cir. 1989).

That these (defendants / criminals) (did) commit seven plus, hours worth of crimes to me at the Coal township police station, for no reason what so ever on the 30th day of Sept. 2016, after defendant Purcell handcuffed me for being a victim of a crime

Brief: Continued

and dialing 911 multiple time to report the crime, then defendant Brennen telling defendant Lapotsky what charges to file, when he came to the police station to start 2nd shift, and I was already in the holding cell from reporting (Again), another serious crime committed against me by Ms. Rickert.

That Ms. Rickert never even reported this incident and defendant Lapotsky made her and her drug attic Cousing, one of his friends, and one of Ms. Rickerts friends, write false statements to cover up defendant (Lapotsky's) criminal activity. (See) Napold V.

Parvatishver, LLC., No. 17-584,  
2018 U.S. Dist. Lexis 32236  
(W. D. Pa. Feb. 28, 2018). (Also see),  
(Exhibits A-F), that goes along  
with amended Complaint.

Brief: Continued

9. I Aaron J. Bressi without a doubt, showed this Honorable Courts that the plaintiff (me), established that these (defendants / criminals) acting under color of state law, deprived the plaintiff (me), of multiple rights secured by the United States Constitution. (see) Mark V. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995).

10. I now ask this Honorable Courts in this brief in response, to Mr. Carmelite's brief to dismiss my amended Complaint, and as I did in my motion in response, that this Honorable Courts grant me a demand for jury trial against these (defendants / criminals).

Thank you,  
Aaron Bressi  
Case # 4:17-cv-1742  
11-14-18

APPX.

G



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

Case Number: 19-3199

Case Name: Aaron Bressi v. Jeffery Brennen, et al.

District Court Case Number: 4:17-CV-01742

INFORMAL BRIEF

**DIRECTIONS:** Answer the following questions about your appeal or petition for review to the best of your ability. Use additional sheets of paper if necessary. You need not limit your brief solely to this form, but you should be certain that any brief you file contains answers to the questions below. The Court prefers short and direct statements.

1. **Jurisdiction:** What order(s) of the district court or agency are you appealing? (Doc. 77),

(Doc. 75), (Doc. 74), (Doc. 73), (Doc. 71), (Doc. 66),  
(Doc. 65), (Doc. 60), (Doc. 59), (Doc. 57), (Doc. 55), (Doc. 46).

What is the date of the order(s)? (9-13-19), (8-19-19), (8-7-19), (8-5-19),  
(8-5-19), (4-3-19), (3-14-19), (2-4-19), (1-31-19), (1-30-19),  
(11-20-18), (8-28-18).

When did you file your notice of appeal or petition for review? Sept. 20, 2019

2. **Statement of the case:** Explain the proceedings in the district court or before the agency (i.e. what the district court or the agency did in deciding your case).

Please (See) attached Paper, stapled to the back of this page, for question # 2. Statement of the Case.

(Continued from Page 1)

(Page 1)

## #2. Statement of the Case:

1. The District Court erred by dismissing the claims on plaintiff's Second Amended Complaint (Doc. 57), (See) (Doc. 65) also on statute of limitations grounds, (See) Wallace V. Kato, 549 U.S. 384, 389-90 (2007). Also (See) five page argument filed in support of plaintiff's appeal through this Honorable Appeals Court docketed (11-12-19).

2. The District Court erred by disallowing amendment to Plaintiff's initial Complaint (Doc. 46), See (Doc. 55) also with respect to all claims but the excessive force claim, (see) Grayson V. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Also (See) five page argument filed in support of

(Page 2)

#2. Statement of the Case,  
Continued

plaintiff's appeal through  
this Honorable Appeals Court  
docketed (11-12-19). Also (Doc. 75).

3. The District Court erred  
in concluding that the  
plaintiff did not state an  
excessive force claim in his  
amended Complaint (Doc. 46),  
See (Doc. 55) also, and  
(Doc. 75). Please (See) five  
page argument filed in  
support of plaintiff's appeal  
through this Honorable Appeals  
Court docketed (11-12-19).  
Also (See) Grayson V. Mayview  
State Hosp., 293 F.3d 103,  
108 (3d Cir. 2002).

**3. Statement of facts:** Explain the facts and events that led to the complaint in the district court or the action before the agency.

Please (See) Amended Complaint (Doc. 46), Brief in opposition/Jury Trial Demand (Doc. 55), and also Second Amended Complaint. (Doc. 57). All dockets/documents are filed with this informal brief.

---

4. **Statement of related cases:** Have you filed an appeal or petition for review in this case before? If so, give title of case and docket number.

NO

Do you have any cases related to this case pending in the district court, in the court of appeals or before the agency? If so give title of case and docket number.

Yes, Distric Court Case No. 4:18-CV-1345  
↓ Appeals Court Case No. 19-3894  
↓ Appeals Court Case No. 20-1077

Aaron J. Bressi V. Tracy McCloud, et al.

5. Did the district court or the agency incorrectly decide the facts of your case? yes If so, what facts?

All facts of the case, are stated throughout all documents/dockets filed along with this informal brief. Also (see) five page argument in support of plaintiff's appeal through this Honorable Appeals Court docketed (11-12-19).

6. Did the district court or the agency apply the wrong law (either cases or statutes)? yes  
If so, what law do you want applied?

Please (See) Brief in Opposition/  
Jury Trial Demand (Doc. 55), Brief  
in support of motion to amend  
Complaint (Doc. 65), and also  
Objection to Magistrates Report  
and Recommendations (Doc. 75).  
All dockets/documents are filed  
with this informal brief. Also (See)  
five page argument in support  
of plaintiff's appeal through  
this Honorable Appeals Court  
docketed (11-12-19).

7. Are there any other reasons why the district court's judgment or the agency's decision was wrong? NO

If so, briefly state these reasons.

N/A

8. What action do you want the Court of Appeals to take in this case?

Please (see) attached Paper, stapled to the back of this page, for question # 8. What action do you want the Court of Appeals to take in this case?

Aaron Bressi / 3-23-20

Signature

You may attach any documents filed in the district court or before the agency that you think the court of appeals must see in order to decide your appeal or your petition for review. For appeals from the district court, please keep in mind that the entire district court record is transmitted to the court of appeals and is available for the court's review. You must attach copies of the district court docket entries, the opinion and order appealed, and the notice of appeal. Documents not admitted in the district court may not be submitted to the court of appeals without permission of the court.

**IMPORTANT: IF YOU ARE PROCEEDING PROCEEDING IN FORMA PAUPERIS, YOU MUST FILE AN ORIGINAL AND THREE (3) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. IF YOU HAVE PAID THE DOCKETING FEE, YOU MUST FILE AN ORIGINAL AND TEN (10) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST ALSO BE SENT TO ALL OPPOSING PARTIES. YOU MUST CERTIFY ON THE ATTACHED PROOF OF SERVICE THAT A COPY OF THIS BRIEF AND ANY ATTACHMENTS WERE SENT TO ALL OPPOSING PARTIES.**

(Continued from Page 5)

(Page 1)

# 8. What action do you want the Court of Appeals to take in this case?

I Aaron J. Bressi ask this Honorable United States Appeals Court Under 28 U.S.C. § 1291, and also pursuant to Fed. R. App. P. 3(c)(1)(B) and 4(a) 4(A), that this Honorable Appeals Court would remand this Case back to the Honorable District Court with the Demand for Jury Trial granted (Doc. 55), and order the District Court with instructions to Set a date on the earliest trial by Jury Term/Jury trial Selection term for this case, in the Honorable District Court.

I also ask that if need be, that this Honorable Appeals Court would reverse all orders/dockets in this appeal that the Honorable District Court erred on



(Page 2)

# 8. what action do you want the Court of Appeals to take in this case?  
Continued

when ruled upon, and or remand all orders/dockets that the Honorable District Court erred on when ruled upon, back to the Honorable District Court with orders that have specific instructions from this Honorable United States Appeals Court.

## PROOF OF SERVICE

I certify that on 3-23-20 (date) I mailed a copy of this brief and all attachments via first class mail to the following parties at the addresses listed below:

Kimberly A. Boyer-Cohen, Esq.  
2000 Market Street  
Suite 2300  
Philadelphia, PA 19103

## PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 3-23-20 (date) for forwarding to the Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.

Aaron Bressi

Signature

Dated: 3-23-20

APPX.

H

(Page 1) 4th Day of Sept. 2020

Case No. 19-3199

Attn: Office of the Clerk

United States Court  
of Appeals

Aaron J. Bressi — Plaintiff

v.

Jeffery Brennen, et al. — Defendants

Case No. 19-3199

District Court Case No. 4:17-CV-1742

Petition: For a rehearing  
on the entry of Judgment.

1. I Aaron J. Bressi Petition  
this Honorable United States  
Court of Appeals for a  
rehearing on the entry of  
Judgment on this Case, due  
to this Honorable Appeals Court  
disregarded the facts between  
truth and error when entering  
the Judgment in this Case.

(Page 2) 4th Day of Sept. 2020  
Case No. 19-3199

2. I ask this Honorable Appeals Court to grant this petition for a rehearing, due to I wish to seek a review of this Court's decision so that this Honorable Appeals Court can take a closer/better look at plaintiff's filed informal brief and all attachments filed along with brief in this case.

(Page 3) 4th Day of Sept. 2020

Case No. 19-3199

3. I also ask this Honorable Appeals Court to grant this petition for rehearing, so this Honorable Court when taking a closer/better look/review of all attachments filed along with informal brief, to take into consideration all Federal Rules of Civil Procedure throughout all plaintiff's filings/attachments. Which shows this Honorable Appeals Court all the filings/rulings the Honorable District Court erred on in this case.

(Page 4) 4th Day of Sept. 2020  
Case No. 19-3199

4. I again ask that this Honorable Appeals Court grant this petition for rehearing on this case's entry of Judgment, So this Honorable Appeals Court can also review plaintiff's related case/cases and all filings filed through this Honorable Appeals Court, including an already filed informat brief on the related Case/cases through this Honorable Appeals Court.

(Page 5) 4th Day of Sept. 2020

Case No. 19-3199

5. I Aaron J. Bressi ask this Honorable Appeals Court in this petition for a rehearing, that this Honorable Appeals Court grant this rehearing and take a very good close review of the Honorable District Courts ruling and also this Honorable Appeals Court's decision on plaintiff's excessive force Claim. Plaintiff's full detailed excessive force Claim without a doubt states a Claim in plaintiff's amended Complaint. (See) Fuentes V. Wagner, 206 F.3d 335, 345 (3d Cir. 2000). (See also) Hudson V. McMillian, 503 U.S. 1, 7 (1992).

Thank you,  
Aaron Bressi  
(9-4-20)

Case No. 19-3199



(Page 6) 4th Day of Sept. 2020  
Case No. 19-3199

Also served with a copy  
of this petition for rehearing  
pursuant to the Proof of  
Service Rules of this Honorable  
United States Court of Appeals  
was as followed:

Kimberly A. Boyer-Cohen, Esq.  
2000 Market Street  
Suite 2300  
Philadelphia, PA 19103

Thank you,  
Aaron Bressi  
(9-4-20)

Case No. 19-3199