

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RUTHER and LISA HAYES,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. _____
)	
CHRISTOPHER POPP, CPL DOUGHTY,)	
CPL/1 TORRES, CPL/2 BALLINGER, JOHN)	JURY TRIAL DEMANDED
DOE 1-25, and JOHN DOE 51-75, in their)	
individual capacities,)	
)	
NATHANIEL MCQUEEN, JR., and JOHN)	
DOE 26-50, in their individual and official)	
capacities, and)	
)	
DELAWARE STATE POLICE,)	
)	
Defendants.)	

COMPLAINT

1. Plaintiffs Ruther and Lisa Hayes (collectively “Plaintiffs”), by and through their attorneys, allege upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

INTRODUCTION

2. This case is about the excessive use of force by Delaware State Police officers against innocent bystanders during the execution of a search warrant. Delaware State Police officers deployed the State’s Special Operations Response Team (“S.O.R.T.”)—a team created to counter domestic terrorism—to execute a search warrant at the home of an 82-year old woman whose two grandchildren were suspected of small-time drug dealing. During the 6:00 a.m. raid, police met no resistance and quickly took the two suspects into custody.

3. In addition to the two suspects, the home was occupied by the elderly homeowner and her out-of-town family—the homeowner’s daughter, Plaintiff Lisa Hayes (“Mrs. Hayes”), a quadriplegic; the daughter’s husband, Plaintiff Ruther Hayes (“Mr. Hayes”), a disabled veteran; and their two young children. Mr. Hayes was giving his wife, Mrs. Hayes, a sponge bath before police encountered them in a bedroom of the home.

4. Because Mr. Hayes had been giving Mrs. Hayes a sponge bath, Mrs. Hayes was naked from the waist down when the police busted through the bedroom door. Mr. Hayes tried to cover Mrs. Hayes with a sheet; in response, the police attacked Mr. Hayes—beating him to the ground and shooting him repeatedly with Tasers. Mrs. Hayes was forced to watch and listen as her husband was beaten and Tased. Meanwhile, Mrs. Hayes was held at gunpoint while police screamed at her to “get the fuck up,” which she could not do because of her quadriplegia.

5. For the police, nothing came of the raid: One of the suspects was not charged; another was charged but with misdemeanor drug charges only; and Mr. Hayes, who was falsely charged with resisting arrest, later had the charges against him dropped.

6. Plaintiffs bring this action against Defendants to recover for the substantial harm caused by Defendants.

THE PARTIES

7. Plaintiff Mrs. Hayes is African-American. She has a bachelor’s degree in sociology and a master’s degree in counseling. She is pursuing a career as a school counselor. Mrs. Hayes is disabled. She has quadriplegia caused by cerebral palsy. She also has a speech impediment. From Mrs. Hayes’ appearance, her disabilities are readily apparent. Mrs. Hayes resides at 6 Beaver Dam Reach, Rehoboth Beach, Delaware 19971.

8. Plaintiff Mr. Hayes is African-American. He is Mrs. Hayes’ husband. Mr. and Mrs. Hayes have been married for 15 years. Mr. Hayes is an honorably discharged disabled

veteran. He served in the Army National Guard from 1980 to 1986. He was active duty with the United States Army from 1986 to 1990. Mr. Hayes suffers from schizophrenia. Mr. Hayes resides at 6 Beaver Dam Reach, Rehoboth Beach, Delaware 19971.

9. Mr. and Mrs. Hayes have two children, 9-year-old Legacy (“Daughter”) and 12-year-old Landon (“Son”) (collectively, the “Hayes Family”). Daughter and Son are not parties to this action.

10. Mrs. Hayes has two nephews, Joey L. Guy (“Mr. Guy”) and Louis H. Scott (“Mr. Scott”) (collectively “Nephews”), who reside at 724 W. Birchtree Lane, Claymont, Delaware 19703 (the “Residence”), which is the home of Alberta Scott—their 82-year-old grandmother and Mrs. Hayes’ mother (“Mrs. Hayes’ Mother”). Mrs. Hayes’ Nephews are not parties to this action.

11. Defendant Nathaniel McQueen, Jr. is a Delaware State Police (“DSP”) Colonel, DSP Superintendent, and a member of the DSP Executive Committee. He is named as a defendant both in his individual and official capacities.

12. Defendant Christopher Popp is a DSP Detective and S.O.R.T. Task Force Officer (“TFO”). He is named as a defendant in his individual capacity.

13. Defendants Corporal Doughty (“CPL Doughty”), Corporal Torres (“CPL/1 Torres”), and Corporal Ballinger (“CPL/2 Ballinger”) are DSP officers and S.O.R.T. operators.¹

¹ The identities of some of the DSP and S.O.R.T. personnel who raided the Residence are currently unknown to Plaintiffs, but include Defendants Popp, Doughty, Torres, and Ballinger. In order to avoid confusion, the terms “S.O.R.T. operator” and “S.O.R.T. operators” are used hereafter to refer to S.O.R.T. personnel who raided the Residence; the terms “DSP officer” and “DSP officers” are used to refer to DSP personnel, which includes S.O.R.T. operators.

The full names of Corporals Doughty, Torres, and Ballinger are currently unknown to Plaintiffs. These individuals are named in their individual capacities.

14. Defendants John Doe 1-25 are individuals who were involved in the execution of the search warrant at the Residence on June 30, 2014. The identities of John Doe 1-25 are currently unknown to Plaintiffs. These defendants are named in their individual capacities.

15. Defendants John Doe 26-50 are individuals who were in charge of the policymaking for DSP, and the training of DSP personnel, relating to (i) use of Tasers, (ii) use of force and (iii) DSP procedure for interactions with disabled persons. The identities of John Doe 26-50 are currently unknown to Plaintiffs. These individuals are named both in their individual and official capacities.

16. Defendants John Doe 51-75 are individuals who made the decision to deploy S.O.R.T. to the Residence in connection with the June 30, 2014 raid. The identities of John Doe 51-75 are currently unknown to Plaintiffs. These defendants are named in their individual capacities.

17. Defendant DSP is an agency of the State of Delaware.

18. At all times and for all events described herein, Defendants acted under color of state law to deprive Plaintiffs of their state and federal rights.

JURISDICTION AND VENUE

19. This is a civil action for damages and injunctive relief arising under the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 and § 1988, Article I, § 6 of the Delaware Constitution and the statutory and common law of the State of Delaware.

20. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to entertain claims arising under state law.

21. Personal jurisdiction is proper because all parties reside in Delaware, conduct business in Delaware, and the unlawful actions giving rise to the claims took place within Delaware.

22. Venue is properly in this Court pursuant 28 U.S.C. §1391(b) because the events giving rise to the suit occurred in Delaware.

GENERAL ALLEGATIONS

I. The Special Operations Response Team of the Delaware State Police

23. S.O.R.T. is a unit of the Delaware State Police trained to counter the threat of domestic terrorism. It also was created to provide tactical support in a wide range of high-risk situations, including hostage and armed barricade incidents, high-risk warrant service and vehicle stops, and dignitary protection.

24. The team has trained on a monthly basis in hostage rescue, dynamic forced entry, covert clearing, weapons and scenario-based events. The team has also trained on live fire threat analysis and engagement, dynamic and stealth clearing techniques and close quarter combat. The team has received explosives training, sniper training, advanced tactical rappelling and FAST rope insertion, at both the state and federal level.

25. Although S.O.R.T. operators train extensively in how to use their weapons, they do not train sufficiently in *when* to use their weapons. The team is trained extensively in combat and application of overwhelming force, but S.O.R.T. operators have not been sufficiently trained

with regard to the proper use of force, use of Tasers, and procedure for interactions with disabled persons.

II. S.O.R.T. Prepares To Execute A Search Warrant on the Residence

26. In the spring of 2014, DSP investigated Nephews for suspected involvement in small-time drug transactions. On June 25, 2014, Defendant Detective Christopher Popp of DSP (and S.O.R.T. Task Force Officer) obtained a search warrant *In the Matter of Joey Guy and Louis Scott* for the search of the Residence (the “Search Warrant”). In issuing the Search Warrant, the Justice of the Peace signed a warrant stating that there was probable cause to believe the Residence contained certain items, including controlled substances, drug paraphernalia, business and photographic records indicative of drug transactions and drug use, guns and ammunition, scales and packaging equipment, and United States currency. On that basis, the Search Warrant authorized the search of any occupant found in the house.

27. The Search Warrant was executed at 6:00 a.m. on June 30, 2014.

28. S.O.R.T.—DSP’s counter-terrorism unit—executed the warrant.

III. Without Knowing Of The Search Warrant, The Hayes Family Visited Mrs. Hayes’ Mother, Who Owns The Residence

29. On June 29, 2014, the Hayes Family drove from their home in Rehoboth Beach to the Residence (Mrs. Hayes’ Mother’s house). The Hayes Family intended to stay overnight at the Residence, because early in the morning the following day, Daughter was scheduled to attend an ice skating camp in Newark at the University of Delaware.

30. The Residence is designed to accommodate Mrs. Hayes’ disability. Because Mrs. Hayes cannot walk, Mrs. Hayes’ Mother has a wheelchair ramp that runs up to the front door of the Residence. Mrs. Hayes also had a wheelchair inside the Residence for her use.

31. On the morning of June 30, 2014, the Hayes Family was at the Residence, getting ready to go to the ice skating camp. A little before 6:00 a.m., S.O.R.T. operators arrived at Mrs. Hayes' Mother's house in an armored personnel carrier to execute the Search Warrant.

IV. The Raid

32. At approximately 6:00 a.m., S.O.R.T. operators—armed with riot shields and assault rifles—swarmed the Residence.

33. They moved up the wheelchair ramp and kicked in the front door, breaking the frame and lock, even though the door was unlocked.

A. Mrs. Hayes' Mother, Daughter and Son

34. When S.O.R.T. operators kicked in the front door, Son was in the living room and Mrs. Hayes' Mother and Daughter were walking into the living room. S.O.R.T. operators directed Mrs. Hayes' Mother, Daughter and Son to sit down, which they did.

35. When Mrs. Hayes' Mother and Son realized operators were continuing to search the house, they told the S.O.R.T. operators repeatedly that Mrs. Hayes cannot stand up or walk because she is disabled.

36. An operator told Mrs. Hayes' Mother and Son, "you don't have to keep saying she [Mrs. Hayes] is disabled; we get it."

37. The single female operator who was part of the raid remained with Mrs. Hayes' Mother, Daughter and Son.

B. Nephew Louis Scott

38. When S.O.R.T. operators kicked in the front door, Mr. Scott was asleep on the couch in the living room. The noise from S.O.R.T. operators breaking into the house woke Mr. Scott. He was immediately handcuffed.

39. Like Mrs. Hayes' Mother and Son, Mr. Scott informed the operators that Mrs. Hayes is disabled and cannot stand up or walk.

40. The response Mr. Scott received from an operator was: "that's enough out of you."

C. Nephew Joey Guy

41. Mr. Guy was asleep in one of the bedrooms. S.O.R.T. operators broke through the door to the bedroom, breaking the frame and lock, and took Mr. Guy into custody. Operators brought Mr. Guy out of the bedroom. Mr. Guy was not wearing a shirt. An operator told Mr. Guy to put on a shirt that was on the floor. Mr. Guy told the operator that he would not put on the shirt because it belonged to his brother, Mr. Scott. The operator told Mr. Guy that if he did not put on the shirt, the operator would put Mr. Guy in a dress.

42. Mr. Guy told S.O.R.T. operators that Mrs. Hayes is physically disabled.

D. Mr. and Mrs. Hayes

43. Mr. and Mrs. Hayes were alone in a back bedroom, the door to which is visible from the living room.

44. Mrs. Hayes' wheelchair was next to the bed in the bedroom.

45. Because Mrs. Hayes is a quadriplegic, Mr. Hayes helps her with her daily tasks. Shortly before S.O.R.T. arrived, Mr. Hayes placed Mrs. Hayes on the bed, undressed her from the waist down, and started to give her a sponge bath.

46. Mr. and Mrs. Hayes heard the commotion when S.O.R.T. operators broke into the Residence.

47. Mr. Hayes opened the bedroom door and glanced out.

48. Operators spotted Mr. Hayes in the bedroom and moved towards him.

49. Because his wife was naked from the waist down, Mr. Hayes asked the operators to wait while he covered his wife, and turned to shut the door.

50. As he was shutting the door, operators (including TFO Popp, CPL Doughty and CPL/1 Torres) rammed it open.

51. Mr. Hayes backed up and repeatedly identified himself as a disabled veteran.

52. He took out his military identification card and gave it to the operators.

53. As the operators swarmed the room, several operators leveled their assault rifles at Mrs. Hayes, who was lying on the bed naked from the waist down, and shouted, "This is a raid! Get the fuck up! Get the fuck up!"

54. Mrs. Hayes cried, "I can't get up!"

55. The operators screamed their commands again, their assault rifles aimed at her.

56. Mrs. Hayes' Mother, Son and Mr. Scott had all told S.O.R.T. operators that Mrs. Hayes is disabled and cannot walk.

57. Mrs. Hayes' wheelchair was right next to the bed, and right next to the operators, as they pointed their assault rifles at her and screamed at her to stand.

58. That Mrs. Hayes is disabled and was unable to get up was clear from her appearance, the statements of the other persons in the house, her husband's actions, the wheelchair next to her bed, and her urgent cries. In fact, the operators had to go up a wheelchair ramp to enter the Residence.

59. Mrs. Hayes was terrified. Because of her disability she could not move, and the operators continued to demand that she do so.

60. Her lower body, which was unclothed, went into spasms and her legs locked open.

61. A reasonable police officer would have known that the amount of force used against Mrs. Hayes was excessive.

62. When the operators held their assault rifles on Mrs. Hayes, she was lying on the bed, naked from the waist down. She was immobile.

63. The operators knew that Mrs. Hayes was disabled and could not walk.

64. Mrs. Hayes had made no threatening movements, and she did not possess weapons or drugs. And the operators had no reason to think otherwise.

65. Yet operators held their assault rifles on Mrs. Hayes for an extended period of time, while they shouted at her to do that which she obviously could not: stand up.

66. Seeing Mrs. Hayes' nakedness, Mr. Hayes tried to lay a sheet over Mrs. Hayes in order to cover her.

67. The operators reacted immediately. They grabbed Mr. Hayes' arms and held him in place. After detaining him, operators (including, upon information and belief, CPL Doughty) began to punch him repeatedly. Because Mr. Hayes (a disabled veteran) did not immediately fall, an operator said, "he must have been well trained." One of the operators pulled out his Taser and discharged it against Mr. Hayes' shoulder.

68. No warning was given before the Taser was used.

69. Not one S.O.R.T. operator or DSP officer tried to stop the S.O.R.T. operators from beating Mr. Hayes or the operator from discharging his Taser.

70. The operators did not stop there. After discharging the Taser into Mr. Hayes' shoulder, an operator slammed Mr. Hayes down onto his knees, and then to the ground, smashing his nose into the hardwood floor and drawing blood.

71. After the operators had Mr. Hayes on the ground, they continued to punch him.

72. While Mr. Hayes was being held on the ground, another operator (upon information and belief, CPL/2 Ballinger) shot Mr. Hayes in the back with a Taser.

73. None of the DSP officers or other S.O.R.T. operators made any attempt to stop the operator before he fired his Taser into Mr. Hayes' back.

74. Mrs. Hayes was lying on the bed, unable to move, while she was forced to listen and watch as the operators beat and Tasered her husband.

75. She was scared that they were going to kill him.

76. Despite the threat to her own safety posed by the operators who had pointed their military-style assault weapons at her, Mrs. Hayes attempted to scream for the operators to stop beating Mr. Hayes—but, because of her speech impediment, she was unable to do so.

77. Mrs. Hayes began to panic as the beating continued, she felt pain in her chest and she was able to—and did—yell that she was having a heart attack.

78. Hearing Mrs. Hayes say she was having a heart attack, the operators stopped beating Mr. Hayes and called for a medic.

79. At the time Mr. Hayes was beaten, he did not have a weapon—nor did any other occupant of the house.

80. At the time Mr. Hayes was beaten, he did not have any drugs. And the operators had no reason to believe otherwise.

81. At the time Mr. Hayes was beaten, he was not making any sudden or aggressive movements.

82. At the time Mr. Hayes was beaten, Mrs. Hayes' Mother, Son, Daughter, and Nephews were under police control.

83. The operators knew Mr. Hayes was not the subject of the Search Warrant.

84. The Nephews were the subjects of the Search Warrant and both of them were already under S.O.R.T. control.

85. A reasonable police officer would have known that the amount of force used against Mr. Hayes was excessive.

86. S.O.R.T. operators placed Mr. Hayes in handcuffs. An operator with medical training ("Medic") arrived.

87. A S.O.R.T. operator removed the Taser barbs from Mr. Hayes' back.

88. Mr. Hayes was then removed from the room.

89. Mr. Hayes was not offered medical attention.

90. Medic told Mrs. Hayes he wanted to take her to the hospital.

91. Mrs. Hayes did not want to go to the hospital because she was worried about her children.

92. Medic suggested that Mrs. Hayes' Mother could watch the children.

93. Mrs. Hayes was reluctant to leave her children with her mother because she is 82-years-old and has a heart condition, and because Mrs. Hayes' young children had just witnessed an attack on their family by the police.

94. Medic insisted on taking Mrs. Hayes to the hospital. DSP officers (including but not limited to S.O.R.T. operators) picked Mrs. Hayes up and set her on the floor.

95. A DSP K-9 officer entered the bedroom. Mrs. Hayes was on the floor, unable to move, when she heard the police dog approaching her. She turned her head to see the dog and saw her husband's blood on the floor.

96. Mrs. Hayes asked the DSP K-9 officer to keep the police dog away from her.

97. Medic told Mrs. Hayes to calm down and told her he would feel better if she let DSP take her to the hospital.

98. An officer wrapped a thick sheet around Mrs. Hayes but did not cover the lower half of her body.

99. Despite the fact that Mrs. Hayes' wheelchair was right next to her and the fact that Mrs. Hayes was still not dressed, officers picked her up by the arms and legs and carried her outside, where many of Mrs. Hayes' Mother's neighbors had gathered.

100. The lower half of Mrs. Hayes' body was still unclothed.

101. No one covered Mrs. Hayes or provided her with any kind of garment until she received a gown at the hospital.

102. Medic and officers made no effort to accommodate Mrs. Hayes' disability, causing her further trauma and humiliation.

V. DSP Officers Took Mr. Hayes to Newark, Delaware And Made Him Walk All The Way Back To Claymont

103. DSP officers took Mr. Hayes to the DSP barracks in Newark, Delaware.

104. Mr. Hayes was not permitted to collect his wallet, money or a cell phone before he was taken from the Residence.

105. Mr. Hayes was charged with resisting arrest. He was video arraigned (entering a plea of not guilty) at Justice of the Peace Court #2 and released on unsecured bail at around 1:00 p.m. on June 30, 2014.

106. The charges against Mr. Hayes were eventually dropped.

107. Because Mr. Hayes had been taken into custody without any money and because DSP officers did not return to Mr. Hayes his identification², which they had seized, Mr. Hayes was forced to walk back to Claymont from Newark, during the summer, without food or water—a distance of over 20 miles.

108. Mrs. Hayes was taken to Wilmington Hospital from about 7:30 a.m. to 1:30 p.m. on June 30, 2014.

109. After she was released, Mrs. Hayes called the barracks in Newark and told the officers that Mr. Hayes needed his medicine for his schizophrenia.

110. The officers were uncooperative and refused to provide Mrs. Hayes any information about the status of her husband.

111. Mrs. Hayes was frantic at her husband's absence, because it meant he was unable to take his medicine. Mrs. Hayes called several television stations and attempted to file a missing persons report.

112. On foot, Mr. Hayes arrived at the Residence at approximately 11:00 p.m. on June 30, 2014.

VI. Charges Resulting From The Raid

113. After executing the warrant, DSP officers said they found drugs (mostly prescription-required medication), in small quantities indicative of personal use, and items they referred to as drug paraphernalia.

² After the Raid, DSP officers (including, upon information and belief, TFO Popp) refused to return Mr. Hayes' driver's license for over two weeks. When Mr. Hayes asked the officers what he should do about driving while the State held his license, the officers told him to drive and not get caught doing so without his license. After the two weeks, TFO Popp agreed to meet the Hayes Family but only if they came to Wilmington, even though the DSP barracks is in Newark and the Hayes Family lives in Rehoboth Beach.

114. Mr. Scott was told he would receive misdemeanor drug charges as a result.

115. Mr. Guy received no drug- or weapon-related charges, but was committed to the Department of Corrections for his failure to appear for a hearing on support arrears.

116. Neither the Hayes Family nor Mrs. Hayes' Mother were suspected of, or charged with, any crimes related to weapons or drugs.

VII. The Second Raid

117. DSP raided the Residence again in September 2014.

118. Mrs. Hayes' Mother consented to the search of the Residence. DSP found nothing.

VIII. Injuries

119. Mr. and Mrs. Hayes suffered injuries as a result of DSP conduct on June 30, 2014 (the "Raid").

120. Mr. Hayes had multiple Taser wounds, bruises from the beating, friction burns and damage to his knees from being slammed into the floor and a nosebleed from his face hitting the floor when he was taken to the ground by S.O.R.T. operators.

121. Because of the Raid, Mr. Hayes missed his scheduled appointment with his psychologist.

122. With the trauma from the Raid, Mr. Hayes' mental illness worsened. His dosage of medication has been increased.

123. The Raid changed Mr. Hayes' personality. It made Mr. Hayes more timid, cautious and afraid to speak. He has disengaged from his family. The Raid has also damaged Mr. and Mrs. Hayes' marital intimacy, and it has increased marital stress. Mr. Hayes feels like everything from his military background was stripped away from him by the Raid. Since the Raid, Mr. Hayes feels as though he cannot protect his family.

124. From the exhaustion of walking back to Mrs. Hayes' Mother's house in Claymont, Delaware from Newark, Delaware—over twenty miles—Mr. Hayes was unable to care for his wife or kids until he rested. Because Mrs. Hayes relies on Mr. Hayes to move her, Mrs. Hayes was stuck in a hospital gown and could not go to the bathroom for hours while Mr. Hayes walked back to Claymont and then again after he arrived and needed to rest.

125. Mr. Hayes' knee injuries, as exacerbated by the Raid, are such that on at least one instance he could not lift Mrs. Hayes into their car. Mrs. Hayes had to ask a colleague to lift her into the car and then she had to call an ambulance attendant to lift her out of the car and into her bed.

126. Mr. and Mrs. Hayes no longer feel comfortable at Mrs. Hayes' Mother's house because of the Raid. Mrs. Hayes cannot enter the Residence due to anxiety and stress. As a result, they have not spent the night at the Residence for over a year.

127. Mrs. Hayes is tormented by her memories of the Raid. She re-lives the experience on a regular basis. She suffers from sleeplessness and depression. She suffers panic attacks and chest pain. After the Raid, she had to take many days off work and leave work early because of her mental state.

COUNT I

VIOLATION OF 42 U.S.C. § 1983, USE OF EXCESSIVE FORCE

(By Plaintiffs against Defendants Christopher Popp, CPL Doughty, CPL/1 Torres, CPL/2 Ballinger, John Doe 1-25, and John Doe 51-75)

128. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

129. Defendants Christopher Popp, CPL Doughty, CPL/1 Torres, CPL/2 Ballinger, and John Doe 1-25 (collectively, the "Raid Defendants") used excessive force when they seized Mr. Hayes' arms, violently struck him, knocked him to the floor and shot him with their Tasers. Mr.

Hayes was not suspected of any criminal activity. Mr. Hayes did not have any weapons or guns. Mr. Hayes had identified himself and handed over his military identification card. Mr. Hayes did not take any aggressive action toward the Raid Defendants. Mr. Hayes posed no danger to the Raid Defendants. The Raid Defendants' beating and shooting of Mr. Hayes violated Mr. Hayes' clearly established and well-settled constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from the unreasonable, excessive and unjustified use of force. Mr. Hayes is entitled to recover under 42 U.S.C. § 1983 against the Raid Defendants for his injuries and losses.

130. Raid Defendants also used excessive force when they held Mrs. Hayes at gun point, half-naked and in spasms for an extended period of time, after the scene was secure. Raid Defendants repeatedly commanded Mrs. Hayes—who is a quadriplegic—to get up. Mrs. Hayes had committed no crime. Mrs. Hayes did not (and could not) move or otherwise resist arrest. Mrs. Hayes was not armed. Mrs. Hayes posed no danger to S.O.R.T.'s operators, who were armed with riot shields and assault rifles. Raid Defendants' hyper-aggressive and dangerous conduct violated Mrs. Hayes' clearly established and well-settled constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from the unreasonable, excessive and unjustified use of force. Mrs. Hayes is entitled to recover under 42 U.S.C. § 1983 against Raid Defendants for her injuries and losses.

131. The decision by Defendants John Doe 51-75 (collectively, the "Command Defendants") to deploy S.O.R.T.—a team trained for counter-terrorism operations—to execute a search warrant at the home of an 82-year-old woman, whose grandchildren were suspected of small-time drug dealing, was not reasonable in light of the totality of the circumstances. The use of S.O.R.T. constituted an excessive use of force in this situation. No crimes of violence were

suspected, and no weapons were found at the Residence. After the raid, Mr. Scott was told he would receive misdemeanor drug charges only. The suspected crimes at issue were not severe or violent, and execution of the Search Warrant did not pose a risk to public or officer safety. Moreover, the presence of the people in the Residence—namely, a disabled veteran, an 82-year-old woman, a quadriplegic and two young children—counseled against the use of overwhelming force. The deployment of S.O.R.T. operators to execute the Search Warrant violated Plaintiffs' clearly established and well-settled constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from the unreasonable, excessive and unjustified use of force. Plaintiffs are entitled to recover under 42 U.S.C. § 1983 against the Command Defendants for their injuries and losses.

132. As a direct and proximate result of the foregoing failures, Plaintiffs suffered the damages alleged herein.

COUNT II
VIOLATION OF 42 U.S.C. §1983, BREACH OF DUTY TO INTERVENE
(By Plaintiffs against Raid Defendants)

133. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

134. Each Raid Defendant failed or refused to intervene when other Raid Defendants used excessive force against Plaintiffs in violation of the Fourth and Fourteenth Amendments to the United States Constitution. Raid Defendants were present for and knew about the constitutional violations as they were happening. They were in the bedroom with Plaintiffs when excessive force was used against Plaintiffs. Raid Defendants failed to take reasonable steps to protect Plaintiffs. In fact, no action was taken to protect Plaintiffs. A reasonable police officer would have understood that it was unlawful to fail to intervene in this situation. Plaintiffs are

entitled to recover under 42 U.S.C. § 1983 against the Raid Defendants for their injuries and losses.

135. As a direct and proximate result of the foregoing failures by Raid Defendants, Plaintiffs suffered the damages alleged herein.

COUNT III
**VIOLATION OF 42 U.S.C. §1983, FAILURE TO TRAIN OFFICERS &
FAILURE TO IMPLEMENT AN APPROPRIATE POLICY**
(By Plaintiffs Against Defendants Nathaniel McQueen, Jr. and John Doe 26-50)

136. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

137. Defendants Nathaniel McQueen, Jr. and John Doe 26-50 (“Supervisor Defendants”) failed to create, mandate and enforce adequate policies, practices, and customs concerning—and adequately and properly supervise and train DSP officers in—the constitutional bounds and limits concerning the use of excessive force against persons and suspects, the use of Tasers, use of S.O.R.T., and police interactions with disabled persons.

138. Supervisor Defendants acquiesced to Raid Defendants’ unlawful conduct—and to the failure to create, mandate and enforce adequate policies, practices and customs—alleged herein.

139. The above-described acts and omissions by Supervisor Defendants demonstrated a deliberate indifference to the constitutional rights of the citizens of Delaware and were the direct and proximate cause of the violations of Plaintiffs’ constitutional rights as set forth herein.

140. As a direct and proximate result of the foregoing failures by Supervisor Defendants, Plaintiffs suffered the damages alleged herein.

141. Plaintiffs are entitled to recover under 42 U.S.C. § 1983 from Supervisor Defendants for their injuries and losses. Plaintiffs are also entitled to injunctive relief against

Supervisor Defendants in their official capacities in order to prevent further violations of their constitutional rights.

COUNT IV

BATTERY

(By Mr. Hayes against Raid Defendants)

142. Mr. Hayes incorporates the allegations of the foregoing paragraphs as if they were fully set forth herein.

143. Raid Defendants' actions described above were without Mr. Hayes' consent.

144. Raid Defendants' actions were unreasonable and unjustified under the circumstances. Specifically, Raid Defendants' arrest of Mr. Hayes was unlawful, and the amount of force Raid Defendants used against Mr. Hayes was excessive.

145. Raid Defendants committed an intentional, willful, and malicious battery against Mr. Hayes when they violently struck him, drove him to the floor and shot him with their Tasers.

146. Mr. Hayes is entitled to recover against Raid Defendants under the common law of Delaware for his injuries and losses.

COUNT V

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(By Plaintiffs against Raid Defendants)

147. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

148. Mr. and Mrs. Hayes are husband and wife and are therefore members of each other's immediate family.

149. Raid Defendants engaged in willful, reckless, wanton and oppressive acts which constituted extreme and outrageous conduct that they knew would cause Plaintiffs severe mental distress.

150. Raid Defendants' intentional beating and Tasing of Mr. Hayes in front of Mrs. Hayes inflicted extreme emotional distress on both Mr. and Mrs. Hayes.

151. Raid Defendants' reckless conduct in pointing their assault rifles at Mrs. Hayes and ordering her to stand, when she could not stand, and when the scene was already secure, also inflicted emotional distress on both Mr. and Mrs. Hayes. Raid Defendants' conduct is all the more egregious because Raid Defendants were recklessly indifferent to Mrs. Hayes' disability. Their conduct caused her lower body, which was unclothed, to go into spasms—locking her legs open.

152. Raid Defendants did not cover Mrs. Hayes' nudity. And Raid Defendants beat and shot Mr. Hayes with a Taser for trying to do so. Mrs. Hayes was not covered when the scene was secure at the Residence. Mrs. Hayes was not covered when Raid Defendants were prepared to remove her from the Residence. Mrs. Hayes was not covered before she was paraded before her mothers' neighbors.

153. Plaintiffs suffered physical harm as a result of Raid Defendants' conduct, including as set forth above.

154. The emotional distress suffered by Plaintiffs as a result of Raid Defendants' conduct was so severe that no reasonable person could be expected to endure it. Raid Defendants knew that their actions would cause Plaintiffs extreme emotional distress. Raid Defendants' actions were so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.

155. Plaintiffs are entitled to recover against Raid Defendants under the common law of Delaware for their injuries and losses.

COUNT VI

FALSE ARREST

(By Mr. Hayes against Raid Defendants)

156. Mr. Hayes incorporates the allegations of the foregoing paragraphs as if they were fully set forth herein.

157. Raid Defendants arrested Mr. Hayes for resisting arrest. Mr. Hayes was taken to Newark, Delaware where he was later released. Charges against Mr. Hayes have since been dropped.

158. Raid Defendants did not have probable cause to arrest Mr. Hayes. He did not intentionally prevent or attempt to prevent Raid Defendants or any other police officer from detaining or arresting him. Mr. Hayes was not given any commands, and Mr. Hayes did not disobey any commands. Mr. Hayes did not act or fail to act to prevent Raid Defendants from detaining or arresting him. Mr. Hayes cooperated with Raid Defendants.

159. Mr. Hayes did not fight back when Raid Defendants attacked him without provocation or justification. Mr. Hayes did not resist when Raid Defendants put him in handcuffs. None of the Raid Defendants were injured by Mr. Hayes.

160. Mr. Hayes is entitled to recover against Raid Defendants under the common law of Delaware for his injuries and losses.

COUNT VII

ASSAULT

(By Mrs. Hayes against Raid Defendants)

161. Mrs. Hayes incorporates the allegations of the foregoing paragraphs as if they were fully set forth herein.

162. Raid Defendants committed an intentional, willful, and malicious assault against Mrs. Hayes.

163. Raid Defendants held Mrs. Hayes at gun point and screamed at her to get up, which she could not do, and which was readily apparent to them. Raid Defendants also beat and shot with Tasers Mrs. Hayes' husband.

164. Raid Defendants' actions during the Raid caused Mrs. Hayes to fear an immediate harmful or offensive contact by Raid Defendants against her.

165. Raid Defendants' actions during the Raid were without Mrs. Hayes' consent.

166. Raid Defendants' actions during the Raid were unreasonable and unjustified under the circumstances.

167. Mrs. Hayes is entitled to recover against Raid Defendants under the common law of Delaware for her resulting injuries and losses.

COUNT VIII
GROSS AND WANTON NEGLIGENCE
(By Mrs. Hayes against Raid Defendants)

168. Mrs. Hayes incorporates the allegations of the foregoing paragraphs as if they were fully set forth herein.

169. Raid Defendants had a duty to act reasonably when executing the Search Warrant. Raid Defendants also had a duty to use reasonable force in detaining Mrs. Hayes during the course of the Raid. Raid Defendants also had a duty to protect Mrs. Hayes from constitutional violations that they knew or should have known were happening in front of them. Raid Defendants also had a duty to accommodate Mrs. Hayes' disability. More generally, Raid Defendants had a duty to exercise due care and diligence in performing their official duties as police officers. Raid Defendants thus owed duties to Mrs. Hayes.

170. Raid Defendants breached their duties to Mrs. Hayes.

171. Raid Defendants had to climb a wheelchair ramp to get to the Residence.

172. Mrs. Hayes' Mother, Son and Mr. Scott identified Mrs. Hayes as disabled to Raid Defendants and Raid Defendants verbally confirmed that they knew she was disabled and ordered Mrs. Hayes' family members to stop telling them about her condition.

173. When Raid Defendants encountered Mrs. Hayes, her appearance made it obvious to Raid Defendants that she is disabled.

174. When Raid Defendants encountered Mrs. Hayes, her circumstances—unclothed and receiving a sponge bath—and her obvious quadriplegia made it obvious to Raid Defendants that she is disabled.

175. Mrs. Hayes' wheelchair was right next to Raid Defendants as they demanded that she stand.

176. Even though Raid Defendants knew of Mrs. Hayes' disability, they did not take care in how they interacted with her. Despite being told that she could not stand, and after the scene was secure, Raid Defendants repeatedly pointed assault rifles at her and commanded her to stand—the very thing she could not do because of her disability. Because of Mrs. Hayes' disability, Raid Defendants unnecessarily and unreasonably carried her—while she was naked from the waist down—out of the house, even though her wheelchair was immediately accessible.

177. Raid Defendants failed to intervene when other Raid Defendants discriminated against Mrs. Hayes.

178. Raid Defendants failed to intervene when other Raid Defendants used excessive force against Mrs. Hayes.

179. Raid Defendants failed to accommodate Mrs. Hayes' disability.

180. The foregoing acts and omissions by Raid Defendants were carried out with an “I don't care” attitude and with deliberate indifference to, and in conscious disregard of, Mrs.

Hayes' rights, both constitutional and otherwise. Raid Defendants' actions and omissions were grossly negligent.

181. The foregoing acts and omissions by Raid Defendants also constitute wanton negligence. Their acts and omissions were so unreasonable and dangerous that Raid Defendants knew or should have known that their actions and omissions created an imminent risk of harm to Mrs. Hayes.

182. Raid Defendants' actions and omissions arose out of the performance of their official duties—the execution of the Search Warrant—which involved the exercise of discretion on the part of Raid Defendants.

183. As a direct and proximate result of the foregoing grossly and wantonly negligent acts and omissions, Mrs. Hayes suffered injuries and losses.

184. Mrs. Hayes is entitled to recovery under the common law of Delaware for her injuries and losses.

COUNT IX
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
(By Plaintiffs against Raid Defendants)

185. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

186. By pointing their assault rifles at Mrs. Hayes and screaming at her to stand, even though Mrs. Hayes clearly could not stand and even though at that time the scene was secure, Raid Defendants were grossly and wantonly negligent.

187. Both Mr. and Mrs. Hayes were present in the bedroom when these actions and omissions occurred.

188. These actions and omissions caused both Mr. and Mrs. Hayes to fear for Mrs. Hayes' safety.

189. Raid Defendants' conduct caused Plaintiffs to suffer recurring physical harm as a result of their contemporaneous shock, as set forth above.

190. Plaintiffs are entitled to recover against Raid Defendants under the common law of Delaware for their resulting injuries and losses.

COUNT X
LOSS OF CONSORTIUM
(By Plaintiffs against Raid Defendants)

191. Plaintiffs incorporate the allegations of the foregoing paragraphs as if they were fully set forth herein.

192. Mr. and Mrs. Hayes are and were at all relevant times married.

193. Mr. Hayes suffered injuries that have deprived Mrs. Hayes of benefits which formerly existed in their marriage.

194. Mrs. Hayes suffered injuries that have deprived Mr. Hayes of benefits which formerly existed in their marriage.

195. Plaintiffs have valid state law causes of action for recovery against Raid Defendants. *See* Counts IV-IX.

196. Under the common law of Delaware, Mr. and Mrs. Hayes are entitled to recover from Raid Defendants for their loss of society and services.

COUNT XI
VIOLATION OF AMERICANS WITH DISABILITIES ACT & THE REHABILITATION ACT
(By Mrs. Hayes against DSP)

197. Mrs. Hayes incorporates the allegations of the foregoing paragraphs as if they were fully set forth herein.

198. DSP is a public entity within the meaning of the Americans With Disabilities Act, 42 U.S.C. § 12131 and the Rehabilitation Act, 29 U.S.C. § 794.

199. DSP receives federal financial assistance.

200. Mrs. Hayes has a physical impairment which substantially limits one or more of her major life activities. Mrs. Hayes has cerebral palsy. She is a quadriplegic. She cannot stand or walk. She also has a speech impediment. Mrs. Hayes is a qualified individual with a disability within the meaning of the Americans With Disabilities Act, 42 U.S.C. § 12132 and the Rehabilitation Act, 29 U.S.C. § 794.

201. At all relevant times, DSP knew of Mrs. Hayes' disability.

202. Mrs. Hayes was subjected to intentional discrimination by DSP because of her disability in that DSP knew of Mrs. Hayes' disability and did not reasonably accommodate it during the raid and after the scene was secure.

203. DSP's failure to accommodate Mrs. Hayes' disability violates the Americans With Disabilities Act, the Rehabilitation Act and the Fourteenth Amendment of the United States Constitution.

204. Mrs. Hayes suffered harm as a result of DSP's failure to accommodate her disability. Mrs. Hayes is entitled to monetary damages from DSP to compensate her for its intentional discrimination against her. Mrs. Hayes is also entitled to injunctive relief preventing further violation of her rights under the Americans With Disabilities Act, the Rehabilitation Act and the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows and request that this Court:

- A. Enter judgment for Plaintiffs and against Defendants on all counts;
- B. Award Plaintiffs damages resulting from the violations described in Counts I-XI, together with interest and costs;

C. Award Plaintiffs prospective relief, resulting from the violations described in Counts III and XI, mandating that DSP and Supervisor Defendants create, promulgate and enforce policies, procedures and customs (including training, counseling, and adequate supervision of its officers) that would provide for robust and proper internal affairs investigations and resulting discipline, punishments, training and counseling as is and may be necessary to avoid further instances of excessive force, improper use of Tasers, discrimination against disabled persons, and other police misconduct. Plaintiffs seeks an enforcement mechanism that will enable the public to determine whether DSP and Supervisor Defendants have taken appropriate remedial measures and complied with the orders of this Court;

D. Award Plaintiffs their costs and attorneys' fees; and

E. Grant Plaintiffs such further relief as the Court may deem just and equitable.

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