

DATED: November 14, 2012

TABLE OF CONTENTS

TABLE OF CITATIONS ii

NATURE AND STAGE OF PROCEEDINGS 1

SUMMARY OF THE ARGUMENT 2

STATEMENT OF FACTS 3

ARGUMENT

I. SUPERIOR COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO THE STATE DEFENDANTS ON PLAINTIFFS' CLAIM UNDER 42 U.S.C. § 1983 AS PLAINTIFF WAS NOT SEIZED IN VIOLATION OF THE FOURTH AMENDMENT AND ALTERNATIVELY, DEFENDANT PRITCHETT IS ENTITLED TO QUALIFIED IMMUNITY..... 8

II. SUPERIOR COURT CORRECTLY RULED THAT PLAINTIFF'S STATE LAW CLAIMS OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE ARREST, FALSE IMPRISONMENT, AND BATTERY WERE NOT SUPPORTED BY RECORD EVIDENCE AND GRANTED SUMMARY JUDGMENT TO STATE DEFENDANTS..... 23

CONCLUSION 34

Exhibit A

Hunt v. Cape Henlopen Sch. Dist., et al.,
2012 WL 3860808 (Del. Super. Aug. 23, 2012)

TABLE OF CITATIONS

CASES

<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	20
<i>Ashcroft v. al-Kidd</i> , 131 S. Ct. 2074 (2011)	19
<i>Branch v. McGeeney</i> , 718 A.2d 631 (Md. Ct. Spec. App. 1998)	28
<i>Brosseau v. Haugen</i> , 543 U.S. 194 (2004)	20
<i>Brzoska v. Olson</i> , 668 A.2d 1355 (Del. 1995)	31-32
<i>Burkhart v. Davies</i> , 602 A.2d 56 (Del. 1991)	8, 23
<i>California v. Hodari D.</i> , 499 U.S. 621 (1991)	10
<i>Camera v. Municipal Court of San Francisco</i> , 387 U.S. 523 (1967)	17
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	8, 23
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833 (1998)	16-17
<i>Daniels v. Williams</i> , 474 U.S. 327 (1986)	18
<i>Davidson v. Cannon</i> , 474 U.S. 344 (1986)	18
<i>D.D. v. Chilton County Bd. of Educ.</i> , 701 F. Supp. 2d 1236 (M.D. Ala. 2010)	19
<i>Edwards v. Rees</i> , 883 F.2d 882 (10th Cir. 1989)	15
<i>Farmer v. Wilson</i> , 1992 WL 331450 (Del. Super. Sept. 29, 1992) .	28
<i>Fisher v. Townsends</i> , 695 A.2d 53 (Del. 1997)	33
<i>Foraker v. State</i> , 394 A.2d 208 (Del. 1978)	12
<i>Gomez v. Toledo</i> , 446 U.S. 635 (1980)	9
<i>Gottlieb v. Laurel Highlands Sch. Dist.</i> , 272 F.3d 168 (3d Cir. 2001)	17-18
<i>Harrison v. Figueroa</i> , 1985 WL 552279 (Del. Super. Mar. 6, 1985).	29

<i>Hassan v. Lubbock Independent Sch. Dist.</i> , 55 F.3d 1075 (5th Cir. 1995)	15
<i>Hazel v. Delaware Supermarkets, Inc.</i> , 953 A.2d 705 (Del. 2008)	8, 23
<i>Hunt v. Cape Henlopen Sch. Dist.</i> , 2012 WL 3860808, ORDER (Del. Super. Aug. 23, 2012)	<i>passim</i>
<i>Illinois v. Lidster</i> , 540 U.S. 419 (2004)	14
<i>In re D.E.M.</i> , 727 A.2d 570 (Pa. Super. 1999)	14
<i>In re Roy L.</i> , 4 P.3d 984 (Ariz. Ct. App. 2000)	14
<i>In the Matter of L.A.</i> , 21 P.3d 952 (Kan. 2001)	14
<i>Ingraham v. Wright</i> , 430 U.S. 651 (1977)	17
<i>J.A.R. v. State</i> , 689 So. 2d 1242 (Fla. Dist. Ct. App. 1997) ...	14
<i>J.D.B. v. North Carolina</i> , 131 S. Ct. 2394 (2011)	11
<i>Jones v. Maloney</i> , 910 N.E.2d 412 (Mass. App. Ct. 2009)	28
<i>Mandelaka v. Boyd</i> , 1993 WL 258798 (Del. Super. 1993), <i>aff'd</i> , 633 A.2d 372 (Del. 1993)	26
<i>Mattern v. Hudson</i> , 532 A.2d 85 (Del. Super. 1987)	25-26
<i>Metcalf v. Long</i> , 615 F. Supp. 1108 (D. Del. 1985)	14
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985)	13-14, 16
<i>Oregon v. Mathiason</i> , 429 U.S. 492 (1977)	12
<i>Park v. Veasie</i> , 2012 WL 1382222 (M.D. Pa. Apr. 20, 2012)	19
<i>Paul v. Davis</i> , 424 U.S. 693 (1976)	16
<i>Pearson v. Callahan</i> , 129 S. Ct. 808 (2009)	20
<i>Reichle v. Howards</i> , 132 S. Ct. 2088 (2012)	20
<i>Ross v. State</i> , 925 A.2d 489 (Del. 2007)	12

<i>Safford Unified Sch. Dist. #1 v. Redding</i> , 557 U.S. 364 (2009)	21
<i>Shuman v. Penn Manor Sch. Dist.</i> , 422 F.3d 141 (3d Cir. 2005)	13, 30
<i>State v. Baccino</i> , 282 A.2d 869 (Del. Super. 1971)	14
<i>Subh v. Wal-Mart Stores Inc.</i> , 2009 WL 4015649 (D. Del. Nov. 19, 2009) (Report and Recommendation), adopted by, 2010 WL 1286183 (D. Del. Mar. 31, 2010), aff'd, 386 Fed. Appx. 31 (3d Cir. 2010)	26
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	10
<i>Thompson v. Keohane</i> , 516 U.S. 99 (1995)	12
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969)	13
<i>T.S. v. State</i> , 863 N.E.2d 362 (Ind. Ct. App. 2007)	15
<i>Turnbull v. Fink</i> , 644 A.2d 1322 (Del. 1994)	9
<i>Tyburski v. Groome</i> , 1980 WL 333070 (Del. Super. Jan. 28, 1980)	30
<i>United States v. Crandell</i> , 554 F.3d 79 (3d Cir. 2009)	11
<i>United States v. Hollingsworth</i> , 495 F.3d 795 (7th Cir. 2007)	19
<i>United States v. Mendenhall</i> , 446 U.S. 544 (1980)	10-12
<i>Unitrin, Inc. v. American General Corp.</i> , 651 A.2d 1361 (Del. 1995)	21
<i>Walker v. City of Orem</i> , 451 F.3d 1139 (10th Cir. 2006)	21
<i>Wallace v. Batavia Sch. Dist.</i> 101, 68 F.3d 1010 (7th Cir. 1995)	15
<i>White v. Walker</i> , 950 F.2d 972 (5th Cir. 1991)	28
<i>Williamson v. United States</i> , 607 A.2d 471 (D.C. 1992)	15

STATUTES, RULES

U.S. CONST. AMEND. IV.....	12, 15-16
U.S. CONST. AMEND. V.....	11
U.S. CONST. AMEND. XIV.....	16
42 U.S.C. § 1983	8-9, 11, 15, 19-20
10 Del. C. § 4001.	23-24
11 Del. C. § 1901(1)	31
11 Del. C. § 8302	14, 25

OTHER AUTHORITIES

Restatement (Second) of Torts § 46	27
ERWIN CHEMERINSKY, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES (3d ed. 2006)	15-16

NATURE AND STAGE OF THE PROCEEDINGS

On January 28, 2010, Plaintiffs-Below Appellants Anthony J. Hunt, a minor and Lisa DeSombre filed their complaint against the State defendants, namely the State of Delaware, the Department of Safety and Homeland Security, the Division of the Delaware State Police, and Trooper Pritchett. (D.I. #1)(A-1). Appellants, in the same complaint, brought suit against School Defendants, namely the Cape Henlopen School District, the Board of Education of Cape Henlopen School District, and David S. McDowell. *Id.* On September 1, 2011, the Superior Court granted the unopposed motions of the State Defendant and School Defendants to file amended answers and cross-claims against each other. (D.I. #108)(A-14).

On May 11, 2012, the Superior Court granted a minor settlement between the plaintiffs and the School Defendants. (D.I. #152) (A-19). The School Defendants remained in the case for purposes of the State Defendants' cross-claim. On August 23, 2012, the Superior Court granted a motion for summary judgment filed by the State defendants. (D.I. #169)(A-21). A copy of the Superior Court Opinion is attached as Exhibit A to this Answering Brief. Plaintiffs have timely appealed to this Court. This is the Answering Brief of the Appellees-State Defendants.

SUMMARY OF ARGUMENT

I. Denied. The Superior Court correctly granted summary judgment, after ruling as a matter of law, that plaintiff failed to state a claim of deprivation of his constitutional rights under the United State Constitution. Alternatively, the trial court's ruling should be affirmed as defendant Pritchett was entitled to qualified immunity and immune from suit on any claimed violation of constitutional rights.

II. Denied. The Superior Court correctly granted summary judgment for the State defendants on plaintiffs' state law claims of Intentional Infliction of Emotional Distress, False Arrest, False Imprisonment, and Battery as those claims were not supported by the record evidence and State defendants were entitled to judgment as a matter of law.

STATEMENT OF FACTS

On or about January 30, 2008, appellee-defendant Delaware State Police Corporal David Pritchett (hereinafter "Corporal Pritchett" or "defendant Pritchett") was working as a School Resource Officer ("SRO") assigned to the Cape Henlopen School District. On that date, defendant David McDowell, the Assistant Principal at Richard A. Shields Elementary School, asked Corporal Pritchett to come to the school and talk to some fifth grade students regarding reports of bullying at the school. (B-37-39). Corporal Pritchett met with the five students on that date and discussed why bullying was not acceptable in school. (B-39). Although the State Police contract with the Cape Henlopen School District did not mention elementary school coverage, it was not unusual for Corporal Pritchett to be called out to an elementary school in the District. (B-28, 35).

On January 31, 2008, McDowell again called Corporal Pritchett and asked if he would report back to the School because one of the five students from the prior day was involved in another bullying incident. (B-44-45). The mother of an autistic student had called the school and complained that someone had stolen her son's money on the bus and that the thefts had been occurring frequently. (B-44). When Corporal Pritchett arrived, he was told by McDowell that the students to whom he spoke the previous day were not involved

but a student named AB¹ was involved in taking money from the autistic boy on the school bus. (B-47, 50-51). Corp. Pritchett then met with AB in a Reading Lab room at the School along with McDowell. (B-52). Pictures of the Reading Lab room are contained in the Appellees' Appendix at B-125-26. During this meeting with AB, Pritchett told the student that he was not in trouble but that he just needed to stop bullying. AB denied that he took any money and stated that he had received the money from a boy named Anthony. (B-53). Plaintiffs' Opening Brief appears to argue that AB agreed to pay the money back at this initial interview but Corporal Pritchett testified that AB did not agree to pay the money back until after the subsequent interview with AB and plaintiff Hunt. (B-71). AB stated that Anthony was someone with whom he sat on the bus. (B-53). McDowell was present for the beginning of this interview but left before its conclusion to respond to an emergency in the school. (B-52-53).

From reviewing the school bus seating chart, Pritchett determined that plaintiff Anthony Hunt was the student who sat behind the autistic child whose money was taken. (B-56). Corporal Pritchett had the school secretary call Anthony's class for him to report to the Assistant Principal's office. (B-58). Anthony was escorted to the office by a teacher. (B-59). McDowell saw Anthony

1. Pseudonyms refer to other students in this Answering Brief.

at the front office and asked why the student was there. Pritchett told McDowell that Hunt was just helping out with the situation and McDowell left the office. (B-60-61). Plaintiff Hunt was eight years old at the time and enrolled in the third grade. Corporal Pritchett advised the plaintiff that he was not in any trouble, and that the other child had stated that Anthony had given him a dollar to hold. Corporal Pritchett told the plaintiff that he wanted Anthony to tell the truth and there would be no consequences from their meeting. (B-62). Assistant Principal McDowell did not give Pritchett any direction on how to talk with Hunt. (B-63).

Corporal Pritchett met with the plaintiff and AB in the Reading Lab. The length of the meeting is in dispute. The student AB recalls the meeting took approximately thirty minutes. (B-102-03). Plaintiff recalls the meeting took close to fifty-five minutes. *Hunt Depo.* at 21 (B-17). Pritchett told the boys that they were not in any trouble and they were not under investigation. (B-64-65). The two students laughed during parts of this contact with the police officer. (B-65). Corp. Pritchett then explained to both boys the seriousness of bullying students at school and the possible criminal penalties for bullying. (B-66-70). During this talk, Corp. Pritchett tapped each student on the wrist and the students laughed. (B-65). Corp. Pritchett did talk about the consequences of bullying and persons who do not tell the truth

which could include detention of juvenile offenders at Stevenson House. (B-67-68). During this discussion, plaintiff Hunt began to act "shook up" and became serious. Corporal Pritchett asked if plaintiff Hunt was okay and he indicated that he was. Pritchett then told AB that he needed to tell the truth. (B-70). AB then admitted to bullying the autistic student on the bus and taking the victim's money. (B-71). Corporal Pritchett told the plaintiff that he did a great job by telling the truth. *Id.* Pritchett asked the plaintiff if he wanted his parents called and he declined. *Id.* Plaintiff then returned to his class. *Id.* AB stated that the police officer was polite during this meeting and did not scream or threaten the students. (B-104-05).

Plaintiff Anthony Hunt's version of the events differs in non-material ways from that of Corporal Pritchett. Hunt admits that the officer told him before the meeting that he was not in any trouble and that he needed to tell the truth. *Plaintiff Hunt Depo.* at 27 (B-18). Hunt's version is that he was present with the police officer for approximately one hour and that various students and a teacher were present for portions of that one hour but not for all of it. *Id.* at 18-21 (B-16-17). Hunt testified that the officer kept saying he had the authority to arrest the plaintiff and that he would put him in jail if he did not tell the truth. *Id.* at 20-21 (B-16-17). The plaintiff has a different recollection

about who was present in the reading lab room but appears to agree that he was never in the room by himself with the police officer. *Id.* During the meeting, plaintiff testified that the officer used a "really mean" voice. *Plaintiff Hunt Depo.* at 21 (B-17).

The plaintiff Anthony Hunt's father, Anthony R. Hunt ("Mr. Hunt"), was the first person to meet his son when he came home from school. *Anthony Hunt Depo.* at 6-8 (B-112). Plaintiff Hunt told his father about what happened at school that day including the incident involving the police officer. *Id.* The day after this conversation, Mr. Hunt made several statements about the incident to the Dan Gaffney radio talk show. Those statements include:

"But I don't blame the police officer. I still don't understand why it wasn't handled on the school level."

...

"But by no means am I saying that the police officer interrogated my son or handled this wrong. We love the police. Don't get that messed up."

...

"[N]ow that there's a throwing game here, but I just want to make it clear, I don't blame the officer for, you know, showing his presence and maybe trying to get a, you know...it solved out, you know, resolved, but, um it's still, the whole idea, like it went through all the chain of command and never the parent was called."

Transcript of Dan Gaffney Show, at p. 10-12 (A-113-115).

I. SUPERIOR COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO THE STATE DEFENDANTS ON PLAINTIFFS' CLAIM UNDER 42 U.S.C. § 1983 AS PLAINTIFF WAS NOT SEIZED IN VIOLATION OF THE FOURTH AMENDMENT AND ALTERNATIVELY, DEFENDANT PRITCHETT IS ENTITLED TO QUALIFIED IMMUNITY.

Question Presented

Did the Superior Court correctly grant summary judgment to the State defendants on the plaintiffs' claim under 42 U.S.C. § 1983 claim?

Standard and Scope of Review

This Court reviews a grant of summary judgment *de novo*. *Hazel v. Delaware Supermarkets, Inc.*, 953 A.2d 705, 708-09 (Del. 2008). The Court must "examine the record to determine whether, viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law." *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991). The moving party is entitled to summary judgment as a matter of law when the nonmoving party has failed to make a sufficient showing of proof on an essential element of the case for which she has the burden of proof. *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).

Merits of Argument

a. *The Superior Court Properly Granted Summary Judgment As Plaintiff Failed to Prove a Constitutional Violation*

Plaintiffs' complaint alleged three different theories for violations of 42 U.S.C. § 1983. Plaintiffs alleged that: (i) plaintiff Hunt was deprived of liberty without due process; (ii) plaintiff's substantive "liberty" guarantees of due process were violated due to government-occasioned violence and injury; and (iii) defendants violated plaintiff's rights to be free from unreasonable search and seizure guaranteed by the Fourth Amendment. *Complaint* at ¶46(a-c) (B-10-11). The Superior Court granted summary judgment to the State defendants on all three theories. *Hunt v. Cape Henlopen Sch. Dist.*, 2012 WL 3860808, at *5 (Del. Super. Aug. 23, 2012). In their Opening Brief, plaintiffs argue only that plaintiff Hunt was the subject of an illegal Fourth Amendment seizure, *see Appellants' Opening Brief*, at *8-13. The other two due process theories alleged in the complaint should be deemed abandoned. *Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994) (failure to raise issue on appeal constitutes abandonment of claim as error).

In order to prove a claim under 42 U.S.C. § 1983, plaintiff must prove first, that a person deprived him of a federal right, and second, that the person acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). State defendants do not dispute that Corporal Pritchett was acting under color of state law. The only issue in dispute is whether plaintiff Hunt suffered

a deprivation of a federal right.

The plaintiffs' complaint sets forth the civil rights claim as follows:

Defendant McDowell and Defendant Prichett... conspire[ed] and act[ed] to wrongfully detain Plaintiff Anthony J. Hunt against his will; falsely seize and/or arrest Plaintiff Anthony J. Hunt without probable cause and without lawful warrant; intentionally make harmful and offensive contact with Plaintiff Anthony J. Hunt; and intentionally cause Plaintiff Anthony J. Hunt to suffer severe emotional distress.

Complaint at ¶47 (B-11). The plaintiffs' Opening Brief starts the analysis with the legal conclusion that Corporal Pritchett seized plaintiff Hunt in violation of the Fourth Amendment. *Appellants' Opening Brief*, at *9. However, the allegations in the complaint and the evidence in the record fail to set forth a Fourth Amendment claim.

Federal precedent holds that a person is seized only "when [a police officer], by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry v. Ohio*, 392 U.S. 1, 19-20 n. 16 (1968). The United States Supreme Court has applied an objective "show of authority" test which considers "whether the officer's word and actions would have conveyed" to a reasonable person that his movement was restricted. *California v. Hodari D.*, 499 U.S. 621, 628 (1991) (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). The *Mendenhall*

Court identified several circumstances that could indicate a Fourth Amendment seizure which include:

The threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

United States v. Crandell, 554 F.3d 79, 85 (3d Cir. 2009) (quoting *Mendenhall*, 446 U.S. at 554-55). At least for purposes of Fifth Amendment analysis, the United States Supreme Court has ruled that the court must consider the age of a child who is being questioned by police to determine if custody applies for *Miranda* purposes. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2405 (2011).

The Superior Court found as a matter of law that plaintiff Hunt was not in custody for purposes of the Fourth Amendment in the context of the false imprisonment claim. The trial court applied this finding when granting summary judgment on the § 1983 claim. The Superior Court applied a two part test, and first found that the circumstances of the interview did not support a finding of custody. The trial court noted that plaintiff Hunt was told at the beginning of the interview that he was not in trouble, that he was not in a police station, his movements were not restricted, he walked freely from one part of the school to the interview room,

and did cry during the questioning while in the presence of an older student. *Hunt Op.* at *3-4 (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). As to the second step, the trial court ruled that an objective, reasonable person, even in light of the plaintiff's age, would not believe he was in police custody and not free to leave. *Hunt Op.* at *4. The trial court's analysis is consistent with the factors identified in *Mendenhall* and should be affirmed. The plaintiff answered questions voluntarily from Corporal Pritchett. He was never arrested nor was he ever told that he was not free to leave. He was also told at the beginning and end of the interview that he was not in any trouble. (B-62, 79). See also *Ross v. State*, 925 A.2d 489, 493 (Del. 2007) ("We have held repeatedly that mere police questioning does not constitute a seizure. Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual."); *Foraker v. State*, 394 A.2d 208, 213 (Del. 1978) (person who voluntarily appears and answers police questions was not illegally detained); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (person who reported voluntarily to police station to answer questions was not in custody).

Even if the Court finds that the plaintiff was seized for purposes of the Fourth Amendment, the seizure of a student in a school by a school official or specially assigned school resource

police officer is reviewed under a reasonableness standard, not the standard of "reasonable suspicion" or "probable cause." *Shuman v. Penn Manor Sch. Dist.*, 422 F.3d 141, 149 (3d Cir. 2005). Plaintiff argues that Corporal Pritchett required either reasonable suspicion, probable cause, or a warrant in order to speak with plaintiff Hunt. See *Plaintiffs' Complaint*, at ¶47 (B-11). However, the courts have recognized the reduced liberty interests of students in the school setting and have applied the reasonableness standard to review school searches and seizures. *Shuman*, at 148 (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). In *Shuman*, the court ruled that the placement of a student in a conference room for four hours while school officials investigated a crime report of sexual misconduct did not violate the reasonableness test for a proper seizure of a student at school. 422 F.3d at 149.

With regard to the instant appeal, at the time Corporal Pritchett met with the plaintiff, Pritchett had received information from AB that plaintiff had taken money from another student. (B-53). Pritchett also had received information that AB was actually involved in the theft or bullying incident. (B-50-51). Pritchett also knew that plaintiff was seated behind the victim on the school bus. (B-56). With that knowledge, Corporal

Pritchett could properly talk to the plaintiff as either a potential witness with knowledge of the incident involving the taking of the money or as a possible suspect who had been identified by another student. See 11 Del. C. § 8302(a) (State Police shall be conservators of the peace throughout the State and authorized to enforce all laws relating to the safety of persons and property). Pritchett had a reasonable basis to speak with plaintiff Hunt in an attempt to determine the facts of the reported bullying of another minor student at the school. Pritchett's interview with Hunt and AB was limited to that purpose and was "reasonably related to the scope of the circumstances which justified the interference in the first place." *T.L.O.*, 469 U.S. at 341. Courts have routinely approved of seizures of persons based on tips received from either other students, anonymous tips, or other evidence. See *In re Roy L.*, 4 P.3d 984, 988 (Ariz. Ct. App. 2000); *State v. Baccino*, 282 A.2d 869, 872 (Del. Super. Ct. 1971); *J.A.R. v. State*, 689 So. 2d 1242, 1243-44 (Fla. Dist. Ct. App. 1997); *In the Matter of L.A.*, 21 P.3d 952, 959 (Kan. 2001); *In re D.E.M.*, 727 A.2d 570, 572, 576 (Pa. Super. Ct. 1999). The United States Supreme Court and other authorities have also upheld the detention of a possible witness for brief questioning by the police. *Illinois v. Lidster*, 540 U.S. 419, 425 (2004); *Metcalf v. Long*, 615 F. Supp. 1108, 1114 (D. Del. 1985) (police could detain

and question person about the whereabouts of a fleeing felon); *Williamson v. United States*, 607 A.2d 471, 476 (D.C. 1992) (police had the right to detain person who was either potential suspect or witness). Corporal Pritchett's discussion with plaintiff Hunt and AB did not violate the "reasonableness standard" set forth by the Third Circuit in *Shuman* and the trial court correctly ruled that the plaintiffs' civil rights claim failed as a matter of law. See *Wallace v. Batavia Sch. Dist.* 101, 68 F.3d 1010, 1014-15 (7th Cir. 1995) (allegation that teacher grabbed student by the wrist to escort her out of the class did not constitute a Fourth Amendment seizure); *Hassan v. Lubbock Independent Sch. Dist.*, 55 F.3d 1075, 1079, 1080 (5th Cir. 1995) (brief detention of student during class trip did not violate Fourth Amendment); *Edwards v. Rees*, 883 F.2d 882, 885-86 (10th Cir. 1989) (twenty minute interrogation of student at school about bomb threat did not even come close to stating a Fourth Amendment claim); *T.S. v. State*, 863 N.E.2d 362, 371 (Ind. Ct. App. 2007) (reasonableness test applicable to school seizures applies to School Resource Officer who is acting to further educational goals). The trial court correctly rejected the plaintiffs' § 1983 claim, noting that "[i]f there is not a denial of life, liberty, or property, then the government does not have to provide procedural or substantive due process." *Hunt Op.* at *16 (quoting ERWIN CHEMERINSKY, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES, 547 (3d

ed. 2006)).

For the reasons set forth above, there is no evidence in the record supporting plaintiffs' claims in the Complaint at ¶47 that Corporal Pritchett wrongfully detained plaintiff Hunt. The allegations of a conspiracy in the complaint at ¶47 have not been argued by appellants in their brief and are not supported by the record. Plaintiffs' claim that Corporal Pritchett falsely seized and/or arrested plaintiff without probable cause and a warrant, Complaint at ¶47, is contrary to the controlling federal case law set forth in *T.L.O.* and *Shuman* and fails as a matter of law. Finally, plaintiffs' allegation that Corporal Pritchett made unlawful contact with plaintiff Hunt and caused emotional distress, complaint at ¶47, are simply state tort claims that cannot serve as the basis for denial of a federal constitutional right. See *County of Sacramento v. Lewis*, 523 U.S. 833, 848 (1998) (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976) ("the Fourteenth Amendment is not a 'font of tort law to be superimposed upon whatever systems may already be administered by the States.'").

i. Substantive Due Process. Federal precedent also supports a finding that the police questioning of plaintiff Hunt as a potential witness to a criminal incident should be considered under a substantive due process Fourteenth Amendment analysis, and not under a Fourth Amendment analysis. As noted by the Third Circuit

Court of Appeals, "the Fourth Amendment's 'principal concern ... is with intrusions on privacy,' and therefore when the infraction deals not 'with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails, but rather with the conditions of ongoing custody following such curtailment of liberty,' then the claim invokes principles of substantive due process." *Gottlieb v. Laurel Highlands Sch. Dist.*, 272 F.3d 168, 172 (3d Cir. 2001) (emphasis added) (quoting *Ingraham v. Wright*, 430 U.S. 651 (1977)). But see *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 530 (1967) (anomalous to hold that person's property is only subject to Fourth Amendment protection against unreasonable searches when he is a suspect of criminal acts).

In *Gottlieb*, the plaintiff, a disruptive student entered the school to confront another student and was escorted to the principal's office by a security officer. 272 F.3d at 170. Plaintiff eventually had a confrontation with the assistant principal who pushed her into a door and injured the plaintiff's back. *Id.* The court reviewed the claim under the substantive due process test which requires government conduct that is arbitrary or conscience shocking in a constitutional sense, and the conduct must be intended to injure in some unjustifiable way. *Id.* (citing *Lewis*, 523 U.S. at 849). The court concluded that the assistant

principal's conduct, although possibly tortious, did not constitute a brutal or inhumane abuse of official power that shocked the conscious and did not state a substantive due process claim. 272 F.3d at 175.

Even if plaintiff Hunt's claim is analyzed under the substantive due process standard of the Fourteenth Amendment, the claim fails as a matter of law. As the trial court noted, the plaintiffs' case consisted of claims regarding "[m]ere conditional threats and a mean-spirited demeanor for an hour long period in the course of an investigation that upset Plaintiff, an eight year old..." *Hunt Op.*, at *3. The record contains no evidence that would support the necessary finding that Corporal Pritchett acted in a manner that was brutal or inhumane such as to rise to the level of conscience-shocking behavior. See *Daniels v. Williams*, 474 U.S. 327, 331 (1986) ("Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property.") (emphasis in original); *Davidson v. Cannon*, 474 U.S. 344, 348 (1986) (ruling that *Daniels* applies to substantive and procedural due process). Plaintiff did not recall any contact with Corporal Pritchett. *Hunt Depo.* at 28 (B-18). Pritchett's testimony was that he merely jokingly tapped both boys to indicate that there were no consequences after which they laughed. (B-65). On this

record, plaintiffs' constitutional claim would also fail under substantive due process analysis. See *United States v. Hollingsworth*, 495 F.3d 795, 802 (7th Cir. 2007) (police questioning of nine year old child at school about criminal activity of parents did not violate substantive due process; questioning whether such a *de minimis* intrusion could ever "shock the conscience"); *D.D. v. Chilton County Bd. of Educ.*, 701 F. Supp. 2d 1236, 1242 (M.D. Ala. 2010) (teacher's actions in placing disruptive four year old in toddler chair in school hallway for ten minutes did not violate substantive due process); *Park v. Veasie*, 2012 WL 1382222, at *6-7 (M.D. Pa. Apr. 20, 2012) (school officials and police questioning of second grader without parents about drug paraphernalia did not violate substantive due process).

ii. *Qualified Immunity*. Corporal Pritchett is also entitled to qualified immunity on the federal claim in count V alleging a § 1983 violation. The United States Supreme Court has ruled that "[q]ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2080 (2011). In order for a constitutional right to be "clearly established," it must be sufficiently clear "that every 'reasonable official would [have understood] that what he is

doing violates that right.'" *Id.* at 2078 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The constitutional right in issue must be clearly established "not as a broad general proposition, but in a particularized" sense so that the "contours" of the right are clear to a reasonable official. *Reichle v. Howards*, 132 S. Ct. 2088, 2094 (2012) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam); *Anderson*, 483 U.S. at 640) (internal quotations omitted).

Defendant Pritchett is entitled to qualified immunity "if reasonable officers could have believed their conduct was lawful 'in light of clearly established law and the information the [] officers possessed.'" *Anderson*, 483 U.S. at 641. The Court no longer must first decide if the officer's conduct violated a clearly established constitutional right of the plaintiff; a state official is entitled to qualified immunity when he "reasonably believes that his or her conduct complies with the law." *Pearson v. Callahan*, 129 S. Ct. 808, 821-23 (2009).

Corporal Pritchett is entitled to qualified immunity on the plaintiff's § 1983 claim of unlawful detention. Defendant Pritchett was not aware, nor could he have been aware, of any controlling case law that prohibited him from speaking to a school student in connection with a report of a bullying at the school. Defendant Pritchett was not aware of any case law that

prohibited him from speaking to a student, after receiving a report that this student was involved in a bullying and theft incident and he is therefore entitled to qualified immunity. To the extent there is ambiguity in the scope of the Fourth Amendment as applied to this specific fact pattern, Corporal Pritchett is entitled to qualified immunity as the plaintiff's alleged constitutional rights were not clearly established. See *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 377-378 (2009) (school official who conducted strip search of student at school was entitled to qualified immunity where the law regarding the intrusiveness of school searches was unsettled and the right was not clearly established); *Walker v. City of Orem*, 451 F.3d 1139, 1151 (10th Cir. 2006) (officers who impermissibly detained house occupants for ninety minutes were entitled to qualified immunity where there was no pertinent case law that addressed the contours of the legally permissible detention of witnesses). While the Superior Court did not address the issue of qualified immunity in its summary judgment opinion, this Court can affirm the summary judgment on the civil rights claim on this alternative ground which was raised in the State defendants' motion for summary judgment (B-132-33). See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) ("We also recognize that this Court may rule on an issue fairly presented

to the trial court, even if it was not addressed by the trial court.") (citation omitted)).

II. SUPERIOR COURT CORRECTLY RULED THAT PLAINTIFF'S STATE LAW CLAIMS OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE ARREST, FALSE IMPRISONMENT, AND BATTERY WERE NOT SUPPORTED BY THE RECORD EVIDENCE AND GRANTED SUMMARY JUDGMENT TO STATE DEFENDANTS.

Question Presented

Did the Superior Court correctly grant summary judgment to the State Defendants on the plaintiffs' state law claims of Intentional Infliction of Emotional Distress, False Arrest, False Imprisonment, and Battery, and is defendant Pritchett entitled to the protection of the State Tort Claims Act, 10 Del. C. § 4001?

Standard and Scope of Review

This Court reviews a grant of summary judgment *de novo*. *Hazel v. Delaware Supermarkets, Inc.*, 953 A.2d 705, 708-09 (Del. 2008). The Court must "examine the record to determine whether, viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law." *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991). The moving party is entitled to summary judgment as a matter of law when the nonmoving party has failed to make a sufficient showing of proof on an essential element of the case for which she has the burden of proof. *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).

Merits of Argument

(a) STATE TORT CLAIMS ACT

Plaintiffs argue in their Opening Brief that their claims against defendant Pritchett are not barred by the State Tort Claims Act, 10 Del. C. § 4001. *Appellants' Opening Brief*, at *14-16. In advancing this argument, plaintiff contends that the protections of § 4001 do not apply as: (i) defendant Pritchett acted outside the scope of his official duties as a Delaware State Police officer; (ii) defendant Pritchett acted in bad faith; and (iii) defendant Pritchett acted intentionally.

The Superior Court did not rely on the State Tort Claims Act in reaching its decision to grant summary judgment on the plaintiffs' state law claims. For purposes of this appeal, the State defendants submit that this Court need not reach the issue. State defendants do concede that, to the extent plaintiffs allege intentional torts on the part of Corporal Pritchett, the protection of § 4001(3) would not apply. State defendants do not concede that defendant Pritchett was acting outside the scope of his duties when he was called to the Shields School by Assistant Principal McDowell. Plaintiffs' argument is that it is not within the scope of a Delaware State Police officer's official duties to interrogate a person, and that those duties are limited to reasonable seizures. *Appellants' Opening Brief*, at *15. All of the testimony in the

record indicated that Corporal Pritchett was called to the school in his capacity as a Delaware State Police officer. Plaintiffs' argument is also contrary to Delaware law, 11 Del. C. § 8302, which designates the Delaware State Police as the primary law enforcement agency in the State. State defendants also do not concede that the record evidence supports a finding that defendant Pritchett acted in bad faith. Pritchett questioned plaintiff Hunt and the other student AB only after AB had stated that Hunt was the person who took the money from the other child. (B-53, 59-61). Plaintiffs also argue that Pritchett interrogated plaintiff Hunt contrary to instructions from Assistant Principal McDowell. See *Appellants' Opening Brief*, at *15. In fact, Corporal Pritchett testified that McDowell was aware that Pritchett was going to speak with plaintiff Hunt. (B-61).

(b) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In order to prove the claim of Intentional Infliction of Emotional Distress, Delaware law requires proof that "one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another ... and if bodily harm to the other results from it, for such bodily harm." *Mattern v. Hudson*, 532 A.2d 85, 85 (Del. Super. 1987). The *Mattern* Court defined "extreme conduct" as conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency,

and to be regarded as ... utterly intolerable in a civilized community." *Id.* at 86. A plaintiff must prove that the distress was "so severe that no reasonable man could be expected to endure it." *Mandelaka v. Boyd*, 1993 WL 258798, at *1 (Del. Super. June 14, 1993), *aff'd*, 633 A.2d 372 (Del. 1993). Courts must consider the intensity and duration of the alleged conduct in determining if the conduct reached the level of "outrageous." *Subh v. Wal-Mart Stores Inc.*, 2009 WL 4015649, at *11 (D. Del. Nov. 19, 2009) (Report and Recommendation), *adopted by*, 2010 WL 1286183 (D. Del. Mar. 31, 2010), *aff'd*, 386 F. App'x 31 (3d Cir. 2010).

The plaintiffs' Intentional Infliction of Emotional Distress claim in this case contains a vague allegation that Corporal Pritchett caused severe distress to the plaintiff by extreme and outrageous conduct. *Complaint* at ¶34 (B-6-7). In discovery, plaintiff failed to identify any basis for his claim of suffering "severe emotional distress, physical and emotional injury pain and suffering, mental anguish and humiliation." *Plaintiffs' Response to State Defendants' Interrogatories*, at #14 (B-121). Plaintiffs' claim appears to be that the questioning of a juvenile by a police officer for approximately one hour establishes the claim. In discovery, plaintiffs did not produce any medical records to show that plaintiff Hunt ever received any medical attention or treatment for the alleged emotional distress. *Deposition of*

Plaintiff Lisa DeSombre at 45 (B-110). The comments of plaintiff's father on the day following the incident, *Answering Brief*, at *7-8, support the trial court's conclusion that the allegations fail to rise to the level of "outrageous" conduct needed to support this claim.

The trial court accurately summarized plaintiffs' claim as follows:

Pritchett discussed the Stevenson House as a place where delinquent children go, and he stated that he had his handcuffs and could arrest Plaintiff. Pritchett allegedly expressed his ability to arrest and put Plaintiff in jail if he did not tell the truth 11 or 12 times in the first five minutes of questioning. Plaintiff implied that Pritchett had a mean-spirited demeanor. Further, it is alleged that McDowell told Pritchett to "act mad."

Hunt Opinion, at *3. The Superior Court correctly concluded that:

Mere conditional threats and a mean-spirited demeanor for an hour long period in the course of an investigation that upset Plaintiff, an eight year old, are not sufficiently extreme or outrageous to permit recovery. It is certainly possible that the techniques used, if performed in a more gentle fashion, could have achieved the same result. The Court, however, will not substitute its discretionary actions for Officer Pritchett.

Id. The Superior Court properly considered the relationship between plaintiff and Corporal Pritchett as a police officer in its analysis. Plaintiffs have relied on comment (e) to the RESTATEMENT (SECOND) OF TORTS § 46 to support their claim. The Superior Court did

consider the relationship between plaintiff Hunt as a student and the police officer Pritchett but also properly considered the entire nature of the contact between the two. The Superior Court's decision is consistent with other precedent rejecting claims of Intentional Infliction of Emotional Distress. See *Farmer v. Wilson*, 1992 WL 331450, at *5 (Del. Super. Ct. Sept. 29, 1992) (school officials did not exhibit outrageous conduct in removing student from school to obtain physical at doctor's office, as tort does not provide a cause of action based on claims of poor judgment; plaintiff's anxiety does not constitute extreme emotional distress). See also *White v. Walker*, 950 F.2d 972, 975, 978 (5th Cir. 1991) (police officer's statements to fourteen year old boy that he was stopped for driving without a license and grand theft auto, after which boy later committed suicide out of possible fear of beating from his father did not set forth claim for IIED); *Jones v. Maloney*, 910 N.E.2d 412, 417 (Mass. App. Ct. 2009) (assistant principal's questioning of student about criminal allegation without notifying parent was not extreme or outrageous); *Branch v. McGeeney*, 718 A.2d 631, 642 (Md. Ct. Spec. App. 1998) (police officers' handcuffing of nine year old in front of parent for throwing stones at a house did not set forth a claim for IIED).

The Superior Court correctly ruled that State defendants were entitled to summary judgment on plaintiffs' claim for Intentional

Infliction of Emotional Distress.

(c) FALSE ARREST AND FALSE IMPRISONMENT

Count II of the plaintiffs' complaint alleges a false imprisonment claim while Count III alleges a false arrest claim. (B-7-9). The tort of false imprisonment "is defined as the unlawful restraint by one person of the physical liberty of another." The elements are "(a) restraint which is both (b) unlawful and (c) against one's will." *Harrison v. Figueroa*, 1985 WL 552279, at *2 (Del. Super. Mar. 6, 1985). The trial court ruled that plaintiff Hunt was not in custody based on a review of the circumstances surrounding Pritchett's interview with Hunt. *Hunt Op.*, at *3-4. The Superior Court noted that plaintiff was told before the interview that he was not in trouble and told in the presence of AB that there were no consequences to the discussion. *Id.* at *4. The Superior Court also stated that plaintiff was not handcuffed, was not at a police station, and that his movements throughout the school were not restricted. *Id.* The Superior Court concluded that a reasonable person would not have believed that he was in custody and that the restraint of plaintiff Hunt was not unlawful. *Id.*

As an alternative ruling, the trial court found that even if plaintiff had been seized, Pritchett had a reasonable basis as acting as an agent for the School District to speak to plaintiff

Hunt in light of AB's allegation. *Id.* at n.39.

The trial court properly granted summary judgment on the false imprisonment claim as plaintiff was not unlawfully restrained or detained in the school Reading Lab room by Corporal Pritchett. Furthermore, Corporal Pritchett's meeting with the plaintiff was not an "unlawful" restraint as the police officer had reasonable grounds to talk to the plaintiff as a potential witness. It is undisputed from the record that the student AB identified plaintiff Hunt as the person who had taken the money from the other student on the bus. (B-53). As previously argued in this Answering Brief, Pritchett had a legal basis to speak to plaintiff Hunt and there is no legal basis to conclude that a police officer speaking to a student in a school setting constitutes an unlawful imprisonment. In addition, the trial court correctly noted the compulsory attendance laws in Delaware for schooling involve restraint of students. *Hunt Op.*, at *3 (citing *Shuman*, 422 F.3d at 149).

Finally, as stated by the trial court, the tort of unlawful restraint requires proof of restraint "effected by physical force, by threats of force or intimidation or by assertion of legal authority." *Hunt Op.*, at *3 (citing *Tyburski v. Groome*, 1980 WL 333070, at *6 (Del. Super. Jan. 28, 1980) (citation omitted)). Therefore, plaintiff cannot prove the elements of the claim of unlawful imprisonment.

The trial court did not distinguish between the false imprisonment and false arrest claims. However, for the reasons previously stated, plaintiffs' false arrest claim also fails. In Count III of the Complaint, plaintiff alleged that he was subject to false arrest without any justification. *Complaint* at ¶40 (B-8-9). Under 11 Del. C. § 1901(1), the term "arrest" means "the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime." There is absolutely no evidence in the record that the police took the plaintiff into custody to answer for a crime, that he was ever handcuffed, or transported to a police station to answer for a crime. Furthermore, the police had legal justification to speak with the plaintiff as either a potential witness or suspect.

The Superior Court properly granted summary judgment to the State Defendants on the plaintiffs' claims of false imprisonment and false arrest.

(d) BATTERY

Under Delaware law, "the tort of battery is the intentional, unpermitted conduct upon the person of another which is harmful or offensive." The test for what is "offensive" is not subjective but must offend a *reasonable* sense of personal dignity. *Brzoska v. Olson*, 668 A.2d 1355, 1360 (Del. 1995).

In Count IV of the plaintiff's complaint, plaintiffs allege

that defendant Pritchett made intentional and unjustified contact with plaintiff Hunt "in a harmful and offensive way." *Complaint* at ¶43 (B-9-10). The only evidence of any "contact" in this case occurred when Corp. Pritchett momentarily tapped the plaintiff's hand and told him of the need to tell the truth. (B-65). Plaintiff Hunt laughed at the time of this tapping. *Id.* Plaintiff testified that he was never touched by the police officer. *Hunt Depo.* at 28 (B-18). The allegations in plaintiff's complaint fail to allege any conduct as a matter of law that sets forth a claim for battery. The complaint fails to allege conduct even close to the conduct in *Brzoska* which this Court ruled as a matter of law did not state a battery claim. See *Brzoska*, 668 A.2d at 1362-64 (plaintiffs who suffered no injuries failed to state battery claim based on allegation of being treated by HIV infected dentist).

Appellant's argument appears to be that the trial court should have presumed that any contact between a police officer and a minor had to be offensive as a matter of law. See *Appellants' Opening Brief*, at *20. Plaintiff cites to no controlling legal doctrine that would compel a court to find that certain contact, as set forth in the record, constituted a battery as a matter of law. The trial court correctly ruled that "[t]he contact between Pritchett and Plaintiff, which was so inconsequential that Plaintiff does not even remember it, is not offensive to an ordinary person." *Hunt*

Opinion, at *5. For purposes of summary judgment where the plaintiff has produced no contrary evidence, the trial court correctly ruled that a tap on the plaintiff's hand that caused him to laugh does not constitute the tort of battery as a matter of law.

(e) CLAIMS AGAINST STATE AGENCIES

Plaintiffs named the State of Delaware, the Department of Safety and Homeland Security, and the Division of the Delaware State Police as defendants in this action. Plaintiff sought to hold these state agencies liable solely on the theory that Corporal Pritchett acted as the agent of the named state agencies. *Complaint* at ¶26 (B-5). The Superior Court correctly granted summary judgment to the state agency defendants on the plaintiffs' state law claims as the underlying claims against Pritchett fail as a matter of law. *Hunt Op.* at *2 n.15; *see also Fisher v. Townsends*, 695 A.2d 53, 58 (Del. 1997) (principal is liable for acts committed within scope of employment under doctrine of *respondeat superior*).

CONCLUSION

For the foregoing reasons, the decision of the Superior Court should be affirmed.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Michael F. McTaggart
Michael F. McTaggart (ID #2682)
Marc P. Niedzielski (ID #2616)
Department of Justice
Carvel State Office Building,
6th Floor
820 N. French Street
Wilmington, DE 19801
(302) 577-8400
Attorney for Defendants-
Below, Appellees State
Defendants

DATED: November 14, 2012