

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY J. HUNT, a minor,
by his next friend, LISA C. DeSOMBRE,
and LISA C. DeSOMBRE, individually,

Plaintiffs Below,
Appellants,

v.

THE STATE OF DELAWARE; THE
DEPARTMENT OF SAFETY AND
HOMELAND SECURITY; THE DIVISION
OF THE DELAWARE STATE POLICE;
and TROOPER PRITCHETT,

Defendants Below,
Appellees.

No. 488, 2012

Court Below: Superior Court
of Delaware, Kent County,
C.A. No. K10C-01-049 (WLW)

APPELLANTS' REPLY BRIEF

SCHMITTINGER & RODRIGUEZ, P.A.

WILLIAM D. FLETCHER, JR.
Bar I.D. No. 362
NOEL E. PRIMOS
Bar I.D. No. 3124
414 S. State Street
P.O. Box 497
Dover, DE 19903-0497
(302) 674-0140
Attorneys for Anthony J. Hunt
& Lisa C. DeSombre,
Plaintiffs Below-Appellants

Dated: November 29, 2012

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS.....	ii
-------------------------	----

ARGUMENT I.....	1
-----------------	---

THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO PLAINTIFFS' 42 U.S.C. §1983 CLAIMS, AS PLAINTIFFS DEMONSTRATED THAT DEFENDANT PRITCHETT IS NOT SHIELDED BY QUALIFIED IMMUNITY AND HAS VIOLATED PLAINTIFF'S CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEIZURES, PURSUANT TO THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION.....	1
---	---

ARGUMENT II

THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO PLAINTIFFS' STATE LAW CLAIMS OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE ARREST AND FALSE IMPRISONMENT, AND BATTERY, SINCE DEFENDANT PRITCHETT'S TORTIOUS CONDUCT IS NOT PROTECTED BY STATE LAW, PURSUANT TO 10 <u>DEL. C.</u> §4001.....	7
--	---

(a) Defendant Pritchett's Tortious Conduct is Not Protected by 10 <u>Del. C.</u> §4001.....	7
(b) Intentional Infliction of Emotional Distress.....	9
(c) False Arrest and False Imprisonment.....	12
(d) Battery.....	14

CONCLUSION.....	15
-----------------	----

EXHIBITS TO THE BRIEF

EX.

<i>Farmer v. Wilson</i> , 1992 Del. Super. LEXIS 420 (Del. Super. Ct. Sept. 28, 1992)	A
---	---

<i>Park v. Veasie</i> , 2012 U.S. Dist. LEXIS 56438 (M.D. Pa. Apr. 20, 2012).....	B
---	---

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987).....	5
<i>Branch v. McGeeney</i> , 718 A.2d 631 (Md. Ct. Spec. App. 1998).....	11
<i>Farmer v. Wilson</i> , 1992 Del. Super. LEXIS 420 (Del. Super. Ct. Sept. 28, 1992).....	10, 11
<i>Foraker v. State</i> , 394 A.2d 208 (Del. 1978).....	12
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002).....	4, 5
<i>Jones v. Maloney</i> , 910 N.E.2d 412 (Mass. App. Ct. 2009).....	11
<i>Mattern v. Hudson</i> , 532 A.2d 85 (Del. Super. 1987).....	9
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985).....	2, 3
<i>Oregon v. Mathiason</i> , 429 U.S. 492 (1977).....	12
<i>Park v. Veasie</i> , 2012 U.S. Dist. LEXIS 56438 (M.D. Pa. Apr. 20, 2012).....	3, 4
<i>Shuman v. ex. rel. Shertzer v. Penn Manor Sch. Dist.</i> , 422 F.3d 141 (3d Cir. 2005).....	2, 3
<i>Unitrin, Inc. v. American General Corp.</i> , 651 A.2d 1361 (Del. 1995).....	7
<i>Vick v. Haller</i> , 512 A.2d 249 (Del. Super. 1986).....	6
<i>White v. Walker</i> , 950 F.2d 972 (5 th Cir. 1991).....	11
 <u>STATUTES, RULES</u>	
U.S. Const. Amend. IV.....	1
U.S. Const. Amend. XIV.....	1
42 U.S.C. §1983.....	1, 3, 4, 6
10 Del. C. §4001.....	7, 8

OTHER AUTHORITIES

Restatement (Second) of Torts §46 (1965).....	10
W. Page Keeton, <i>et. al.</i> , <i>Prosser and Keeton on Torts</i> (5th ed. 1984).	14

ARGUMENT I

THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO PLAINTIFFS' 42 U.S.C. §1983 CLAIMS, AS PLAINTIFFS DEMONSTRATED THAT DEFENDANT PRITCHETT IS NOT SHIELDED BY QUALIFIED IMMUNITY AND HAS VIOLATED PLAINTIFF'S CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEIZURES, PURSUANT TO THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The only Section 1983 violation Plaintiffs have appealed is the unreasonable seizure to which Plaintiff Hunt was subjected, in violation of the Fourth and Fourteenth Amendments of the United States Constitution. While references to other constitutional violations were made in Plaintiffs' Complaint—a notice pleading—they are not at issue, as evidenced in Plaintiffs' not raising them in the Opening Brief.

Defendants have failed to cite to important parts of the record in concluding that the seizure to which Hunt was subjected was reasonable. Defendants state that AB told Pritchett that he had received the money from a boy named Anthony. (Ans. Brief, p. 4) This is a mischaracterization of the record: Pritchett testified that AB did not know Anthony's name; rather, AB stated the person who took the money was "someone in the seat with him." (B-53) Again this lack of an identifiable theft is concretized in Pritchett's testimony that he was "pretty sure that he [AB] was the one involved in taking the dollar" and that when AB stated "it's this other guy" (again no name given), Pritchett told AB "Well, you don't even know who it is, et cetera." (B-55)

One must wonder why AB was more believable than the four to five students with whom Pritchett had spoken the day before, and then again on the day of the incident. The original students stated that AB was the culprit of the theft, and did not mention Hunt's name. (This information was told to McDowell, who relayed it to Pritchett.) (B-49 – 52) Even after Pritchett looked at the seating chart subsequent to his talk with AB, he noted that there were three students

who had sat on that bus seat. (B-55 – B-57) While Plaintiffs dispute that this “fact-gathering” by Pritchett justified his search of Plaintiff, the review of the bus chart did not even narrow down the alleged suspect, of whom AB spoke, to Plaintiff Hunt. (B-55 – B-57) Indeed, the entirety of Pritchett’s testimony, itself, makes his seizure even less justifiable.

Pritchett’s testimony evidences his knowledge of Hunt’s innocence, including false statements to McDowell, a school employee, and Hunt. Pritchett told Hunt at their initial contact that Hunt was not in trouble, but Pritchett just needed him to help him out. (B-62) When McDowell objected to Pritchett’s speaking privately with Hunt, and demanded that Pritchett explain why Hunt was involved, Pritchett stated that Hunt had done nothing, that he (Pritchett) just needed Hunt’s help. (B-61) When the school staff person (identified only as a young, white female) brought Plaintiff Hunt to Pritchett, at Pritchett’s command, she asked whether she should stay with Hunt. (B-59 – B-60) “I said no. This is only going to take a brief moment. I already know what’s happened, but I got to go ahead and cover all my bases. And then I said no, I don’t need you.” (B-60) Pritchett stated that he knew Plaintiff had not stolen the money, that he was 99% sure. (B-62; B-86) Finally, Pritchett stated “I don’t know why I didn’t go ahead and take Anthony there immediately, and get him on out of there.” (B-60) All of these statements are extremely odd, considering how the interaction between Pritchett and Hunt actually occurred, including Hunt’s statement that, based on the presence of the clock and his watching it, the interrogation lasted nearly one hour. (B-17)

It is crucial to examine the above facts, as set forth in the record, as they relate to the unreasonable seizure of Plaintiff Hunt. A reasonable search in a public school setting must meet the “special needs exception.” *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).¹ While probable

¹ The U.S. Supreme Court has never addressed the *seizure* of a student in the public school setting. Lower courts often borrow the reasonableness standard of *T.L.O.*, including the Third

cause is not required in this context, the search must be “justified at its inception,” which means there are reasonable grounds for suspecting that the search will result in evidence that the student violated or is violating a rule of the school. *Id.* at 341-42. When the facts articulated to justify the reasonableness of the search or seizure become less and less specific, they demonstrate the absence of any justification for the seizure. Hence, it is important for the Court to understand the entire, especially the testimony of Defendant Pritchett.

For purposes of the Section 1983 claim, the inability of AB to identify Anthony Hunt by name—even though Plaintiff Hunt apparently sat next to AB on the bus—is evidence that Defendant Pritchett had determined to find and interrogate Hunt, and that he would find a way to do so, despite the inability of AB—the only person to have first hand knowledge of the event—to identify Hunt specifically. Moreover, the finger pointing of different students also undermines Pritchett’s justification for seizing Hunt. These differing facts further point to Pritchett’s lacking any scintilla of credible evidence, let alone reasonable grounds to meet the “special needs exception.”

Plaintiffs also reiterate the importance of the issue at hand, which involved the taking of one dollar. As stated in the Opening Brief, Defendants failed to cite a single case below—including any non-authoritative decision—that is even closely related in its facts to the present matter. In their Answering Brief, Defendants have provided the Court with several more cases, some of which do not even have explanations to assist the Court in weighing their persuasiveness. There is only one case in which an elementary school child was seized, *Park v. Veasie*, 2012 U.S. Dist. LEXIS 56438 (M.D. Pa. Apr. 20, 2012), Exh. “A.” Therein, the events giving rise to the elementary school student’s speaking with a police officer began when a

Circuit, as applied to a seizure of a student. *See Shuman v. ex. rel. Shertzer v. Penn Manor Sch. Dist.*, 422 F.3d 141 (3d Cir. 2005).

teacher found drug paraphernalia on the student's person. *Id.* The teacher who found the drug paraphernalia contacted the principal, who contacted the guidance counselor, who contacted the superintendent, who contacted the local police, who contacted the attorney general. It was only after this chain of command was exhausted that a police officer came to the school to question the elementary school student. *Id.* The only similarity between this and Hunt's case is that both children were in elementary school; absent that, the facts could not be more dissimilar.

Other than *Park*, Defendants' citations do not involve elementary-aged children. It should also be noted that almost all of the cases cited by Defendants are from other jurisdictions, and therefore non-authoritative. None of the cited cases involve a student seized for the taking of any money, let alone one dollar. None involve an investigation of an event that occurred several days prior. Most importantly, out of every case cited by Defendants, throughout their entire brief, not one case involves seizure of *any person*, regardless of age, without reasonable suspicion, special needs, exigent circumstances, probable cause, or an arrest warrant.

Defendants argue that Pritchett is shielded by qualified immunity as to this Section 1983 claim. The Superior Court did not even address this issue. Defendants assert that Pritchett was not aware, nor could he have been aware, of controlling case law that prohibited him from speaking to a school student in connection with a report of a bullying at the school. (Ans. Brief, p. 20) This argument fails for two reasons. First, there is no evidence of this in the record; it is inappropriate for Defendants to make this argument without having established it through the record. Second, Plaintiffs have not disputed the broad proposition that an SRO can momentarily speak to a student about a report of bullying of school. Rather, Plaintiffs contend that the specific facts of Pritchett's interaction with Hunt constituted violation of Plaintiffs' right to be free from an unreasonable seizure.

In some circumstances, as when an earlier case expressly leaves open whether a general rule applies to the particular type of conduct at issue, a very high degree of prior factual particularity may be necessary. But general statements of the law are not inherently incapable of giving fair and clear warning, and in other instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though “the very action in question has [not] previously been held unlawful...”

Hope v. Pelzer, 536 U.S. 730, 740-741 (2002). *See also Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Certainly, Defendant Pritchett was aware that he could not conduct an unreasonable seizure of a person without a scintilla of evidence.

It is undisputed that no one contacted, or attempted to contact, Plaintiff DeSombre prior to Pritchett’s interrogation of Hunt. This is in contravention of Defendants’ actions in contacting other students’ guardians prior to contact with these students. AB’s mother was contacted and consented to Pritchett speaking with AB. (A-44 – A-49; A-40 – A-42) The guardians of the four or five students involved in the bullying incident of the prior day had been contacted and consented to Pritchett speaking with them. (A-60 – A-62; A-40 – A-41) The record undisputedly reflects this, yet Defendants do not offer any explanation of these inconsistencies and Defendants’ failure to contact Plaintiff Hunt’s parents.

Now Defendants insist that they had no obligation to speak to Hunt’s parents prior to Pritchett’s actions. Yet, McDowell profusely apologized to Plaintiff DeSombre for Pritchett’s questioning of Hunt, advising that he (McDowell) only became aware of the incident when he heard the Gaffney radio broadcast. (A-50 – A-52) McDowell stated that he had no idea Plaintiff Hunt was involved in the investigation by Trooper Pritchett and that McDowell would have promptly called DeSombre had he known Pritchett sought to interrogate the minor Plaintiff. (A-50 – A-52) Pritchett also called DeSombre, and apologized for the entire incident, stating that in hindsight he should have contacted her. (A-87) Additionally, when Pritchett spoke to radio

show host Dan Gaffney, Pritchett admitted that if an officer is going to interrogate someone, or if there is an investigation, then the parents absolutely have to be contacted. (A-85) These apologies and statements refute Defendants' present legal arguments that the seizure of Hunt was conducted in a reasonable manner.

For the reasons stated above, the record and the law, when properly articulated and contextualized, demonstrate that Pritchett's ad hoc interaction with Plaintiff Hunt constituted an unreasonable seizure, and that he is not shielded by qualified immunity as to Plaintiff Hunt's Section 1983 claim. Hence, the Superior Court erred in dismissing Plaintiffs' Section 1983 claim for unreasonable seizure, and this decision should be reversed to allow Plaintiffs to present this claim at trial.

ARGUMENT II

THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO PLAINTIFFS' STATE LAW CLAIMS OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE ARREST AND FALSE IMPRISONMENT, AND BATTERY, SINCE DEFENDANT PRITCHETT'S TORTIOUS CONDUCT IS NOT PROTECTED BY STATE LAW, PURSUANT TO 10 DEL. C. §4001.

(a). DEFENDANT PRITCHETT'S TORTIOUS CONDUCT IS NOT PROTECTED BY DEL. C. §4001

The Superior Court did not address Plaintiffs' argument regarding Defendant Pritchett's liability pursuant to 10 Del. C. §4001. However, the Court may rule on an issue that is fairly presented to the trial court, even if not addressed by the trial court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995)(internal citation omitted).

Plaintiffs assert that Defendant Pritchett violated all three criteria that can shield a police officer, like Pritchett, from liability under 10 Del. C. §4001. These are: The act or omission (1) arose out of and in connection with performance of an official duty involving the exercise of discretion on the part of a public officer, (2) was performed in good faith and in the belief that the public interest would best be served thereby; and (3) was performed without gross or wanton negligence. *Vick v. Haller*, 512 A.2d 249 (Del. Super. 1986). Defendants address only two of the three criteria. Defendants ignore, and therefore must concede for purposes of summary judgment, the third criteria, that the act or omission was performed with gross or wanton negligence.

As to the first element, Defendant misstates Plaintiffs' argument. "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." (Ans. Brief, p. 24) Plaintiffs have asserted that it is not within the scope of a Delaware State Police officer's official duties to seize and interrogate a student in a school setting, without the requisite justification. As stated in

the Opening Brief, the contract between DSP and Cape Henlopen did not provide for an SRO at the Elementary School; hence, any argument that Pritchett was acting as an SRO are not supported by the record. (A-55 – A-58; A-89 – A-90)

As to the second element, Defendants state only that Pritchett did not act in bad faith, because he questioned Hunt only after AB told Pritchett that Hunt had taken the money from the student, and that McDowell was aware Pritchett was going to speak with Hunt. (Ans. Brief, p. 25) If the record stated so, this argument might have some credence. However, a full review of Pritchett's deposition evidences that AB never identified Hunt by name, but told Pritchett only that a guy who sat in the bus seat with him took the money. (B-53) Further, when Pritchett requested the seating chart from a school secretary, it showed that there were three students, collectively, who sat in AB's seat. (B-55 – B-57) As to McDowell's knowledge of Pritchett's interest in Hunt, while it is true that McDowell knew that Pritchett was going to speak with Hunt, Pritchett said Hunt was merely going to help him out, and gave no indication to McDowell of his true intent to interrogate and accuse Plaintiff Hunt. (B-61) This is further evidenced in McDowell's testimony that when Plaintiff DeSombre called McDowell subsequent to the event, McDowell apologized profusely, stating he had no idea of Pritchett's interrogation of Hunt. (A-50 – A-52) Lastly, as admitted by Pritchett on more than one occasion, he was 99% sure Hunt had no involvement in this incident. (A-76; A-86)

Because Defendants have not clearly enumerated, addressed or pointed to the record for evidence as to any of these three criteria of tort immunity under the State Tort Claims Act, and because the absence of only one of these elements is necessary to prevent Pritchett from availing himself of this immunity, this Court should find that Defendant Pritchett is not shielded by such immunity. As addressed in the state tort claims sections below, 10 Del. C. §4001 should not be a

bar for the finding of liability as to Pritchett, and as to the State Defendants pursuant to *respondeat superior*.

(b). INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Defendants argue that because Plaintiff Hunt's claim of intentional infliction of emotional distress is based only on the nearly one hour interrogation by Pritchett, there is no valid claim. Defendants also point out that the duration and intensity of the alleged extreme and outrageous conduct must be considered. This is true. However, Defendants cite to no case law that places a minimum duration requirement for conduct constituting a claim of intentional infliction of emotional distress. Delaware courts have not created a bright line rule defining the necessary parameters of duration and intensity of conduct to meet this requisite element of intentional infliction of emotional distress. Rather, the courts emphasize that extreme and outrageous conduct is a fact-specific inquiry. Plaintiffs need only set forth evidence of the potentiality of an intentional infliction of emotional distress claim, to show that a reasonable fact finder could find intentional infliction of emotional distress to have occurred. "Where reasonable men might differ, it is for the jury to determine whether the conduct has been sufficiently extreme and outrageous to result in liability." *Mattern v. Hudson*, 532 A.2d 85, 86 (Del. Super. 1987).

Defendants correctly state that Plaintiff Hunt did not provide any medical records evidencing emotional injury. However, intentional infliction of emotional distress does not require the claimant to have sought medical treatment for the alleged injury. Defendants also fail to mention that Plaintiff Hunt withdrew from Richard Shields Elementary School shortly after this incident. The incident had inflicted an ongoing harmful effect on Hunt, resulting in the need to transfer to another school.

Defendants also argue that the statements made by Plaintiff Hunt's father to Dan Gaffney "support the trial court's conclusion that the allegations fail to rise to the level of 'outrageous' conduct needed to support this claim." (Ans. Brief, p. 27) This argument should be rejected, as a layperson's general opinions of police officers should have no part in a court's determination of whether Pritchett's conduct of January 30, 2008 rose to the level of "outrageous," as defined by law.

Plaintiffs reassert the argument in their Opening Brief, also raised below, regarding comment e of the Restatement (Second) of Torts §46. This comment addresses the "plus factor" that should be considered in an intentional infliction of emotional distress analysis when the conduct involves a police officer. The Superior Court did not analyze this "plus factor." Rather, it started with the conclusion that Pritchett's conduct is not sufficiently severe and outrageous to permit recovery, supposedly rendering the "plus factor" irrelevant. (Superior Court Order, p. 8) Plaintiffs respectfully submit that the Superior Court erred in not analyzing this comment of the Restatement, which is due proper consideration, particularly as it relates to the perceptions of an eight-year-old child.

Defendants allege that the Superior Court's dismissal of the intentional infliction of emotional distress claim is consistent with precedent. Defendants proffer a single Delaware case, *Farmer v. Wilson*, 1992 Del. Super. LEXIS 420 (Del. Super. Ct. Sept. 28, 1992), Exh. "B." The facts of *Farmer* are completely inapposite to this case. In *Farmer*, student Amanda Morris participated in track, and such participation required that she undergo a physical examination by a doctor. *Id.*, at *2. Morris' track coach offered to drive her to the doctor's office during her last period of school, after confirming with Morris' teacher that there would be no negative educational impact from Morris' missing her last period of school. *Id.*, at *4. Morris voluntarily

agreed to the coach's proposal, and the coach took her to the appointment. *Id.* There was no police officer involved, and Morris went with the coach of her own volition. Defendants fail to mention that it was the **student's father**, not the student, who claimed that **he** had suffered from intentional infliction of emotional distress. *Id.*, at *6.

Defendants cite to three cases from other jurisdictions, which are also unpersuasive. In *White v. Walker*, 950 F.2d 972 (5th Cir. 1991), the court affirmed dismissal of the claim for intentional infliction of emotional distress because it was based on a police officer's statement to the decedent-plaintiff that his keys were being taken so that his car could be impounded—after the officer found the boy was driving without a license—and because the police officer told two girls not to hang around the decedent-plaintiff. *Id.* The decedent was never placed under arrest, handcuffed, nor physically restrained; hence, no intentional infliction of emotional distress claim existed. *Id.* In *Jones v. Maloney*, 910 N.E.2d 412 (Mass. App. Ct. 2009), the plaintiff's claim of intentional infliction of emotional distress was dismissed because the court found the conduct to be negligent, and because the actor was shielded by a Massachusetts statute providing that negligent conduct by public employees does not permit recovery. Further, Massachusetts has a four-prong test for a claim of intentional infliction of emotional distress, which is not identical to Delaware's test. *Id.*

Finally, in *Branch v. McGeeney*, 718 A.2d 631 (Md. Ct. Spec. App. 1998), the plaintiff brought several common law state claims, including intentional infliction of emotional distress. That court stated that handcuffing plaintiff did not meet the elements of intentional infliction of emotional distress because plaintiff had been properly placed under arrest before being handcuffed. *Id.* at 642. Further, that court did not independently or substantially evaluate the

intentional infliction of emotional distress claim; it analyzed all of plaintiff's state law claims as a whole. *Id.*

For these reasons, Plaintiffs submit that the Superior Court erred in stating that Plaintiffs' intentional infliction of emotional distress claim should be dismissed as a matter of law. This Court should reverse this dismissal, to allow the trier of fact to decide whether intentional infliction of emotional distress occurred.

(c). FALSE ARREST AND FALSE IMPRISONMENT

Defendants assert that Plaintiff Hunt could not be falsely imprisoned or arrested, because he answered Pritchett's questions voluntarily. (Ans. Brief, p. 12) Defendants cite two cases in which the courts held that voluntary police questioning does not constitute a seizure. *See, Oregon v. Mathiason*, 429 U.S. 492 (1977) and *Foraker v. State*, 394 A.2d 208 (Del. 1978). These cases are not similar to Plaintiff Hunt's case, wherein Hunt was summoned to the reading lab, escorted from his classroom by a teacher, and put into a room behind closed doors with a fully uniformed police officer. It is inappropriate for Defendants to equate the voluntary movement of adult persons who reported to the police station for questioning with the interrogation of Plaintiff Hunt by Pritchett. Hunt was not free to refuse to answer Pritchett's questions, especially under threats of jail. Hunt was certainly not free in his movement from the classroom to the reading lab, his imprisonment in the reading lab, or his option to be questioned by Pritchett.

Defendants fail to mention several facts of importance to Plaintiffs' claims. Defendant Pritchett shut the door during his interrogation of Plaintiff Hunt. (A-83 – A-84) Pritchett told Hunt that if he did not tell the truth, he would go to kid's jail (Defendants stated "Stevenson House," and failed to mention "kid's jail"), and consequently, his family would not be able to see

him and would say he was bad. (A-78 – A81; A88) Pritchett was sitting between Hunt and the door of the room, which prevented Hunt from freely leaving (without any physical contact with Pritchett). (A-83 – A84) Pritchett told Hunt that he could arrest him about 11-12 times during the first five minutes of the questioning. (A-92). Pritchett was fully uniformed, with a gun, and told Plaintiff that he could use his handcuffs on Hunt if he wanted to. (A-95) Defendants assert that Pritchett's and Hunt's versions of the events differ in non-material ways. (Ans. Brief, p. 6) If this were the case, then Defendants should have cited the aforementioned facts in the record, and then explained how Hunt's account is to be reconciled with Pritchett's. Even the Superior Court stated that most of the facts were in dispute, and never intimated that the differences between the two accounts were non-material.

The basis of Plaintiffs' claims of false arrest and false imprisonment arise from viewing the record in the light most favorable to Plaintiffs. E.g., how long was the interrogation and was Plaintiff truly free to leave the room? Did Pritchett tell Hunt that he had handcuffs and could arrest Plaintiff if he wanted to? Was Pritchett's mentioning of Stevenson House a passing comment or a repeated threat? Was the encounter light-hearted, filled with laughter and playful slapping of the wrists, or was the encounter terrifying? It is inappropriate for Defendants to ignore those facts in the record that place Pritchett in an unfavorable light.

Plaintiffs respectfully submit that the Superior Court erred in dismissing Plaintiffs' claims, and Defendants have not provided a full factual account of the record in their Answering Brief. For these reasons, the Court should reverse dismissal of Plaintiffs' claims of false arrest and false imprisonment and remand this matter for trial of these claims.

(d). BATTERY

There is no requirement that a person be injured by physical contact; that is the purpose of the separate common law claim of assault.² “Proof of the technical invasion of the integrity of the plaintiff’s person by even an entirely harmless, yet offensive, contact entitles the plaintiff to vindication of the legal right by the award of nominal damages.” *Prosser and Keeton on Torts*, §§ 9, 18 (5th ed.) 1984. It is undisputed that Pritchett touched Plaintiff’s wrist. (A-77) The subjective intent of Pritchett to touch Plaintiff to “break the ice” is irrelevant. The Superior Court should not have substituted its judgment for that of the fact-finder in determining that Pritchett’s tapping Hunt’s hand in jest would not offend a person of reasonable sensibilities. (Superior Court Order, p. 15) The Court seems to conclude that because Pritchett was investigating the theft of money from an autistic student, Pritchett’s decision to touch Plaintiff is justifiable. (Superior Court Order, p. 15). Plaintiffs submit that the Court erred in substituting its interpretation of Pritchett’s actions for those of a reasonable eight-year-old child, and incorrectly determined that there was no possibility that a jury could find the contact offensive. This Court should reverse the Superior Court’s dismissal of Plaintiffs’ battery claim and remand the matter for trial of this claim.

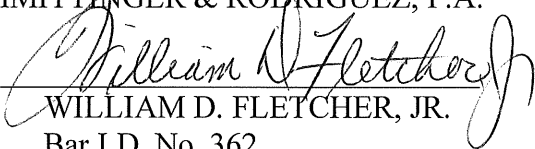
² Plaintiffs have not appealed the Superior Court’s dismissal of the assault claim.

CONCLUSION

For the aforementioned reasons, the Superior Court's order granting Summary Judgment on behalf of Defendants should be reversed, on all counts, and the case remanded to Superior Court for trial by jury.

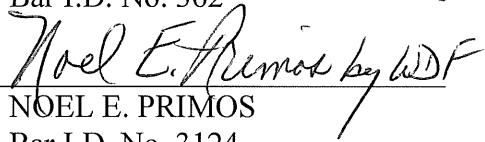
SCHMITTINGER & RODRIGUEZ, P.A.

BY:


WILLIAM D. FLETCHER, JR.

Bar I.D. No. 362

BY:


NOEL E. PRIMOS

Bar I.D. No. 3124

414 S. State Street

P.O. Box 497

Dover, DE 19903-0497

(302) 674-0140

Attorneys for Anthony J. Hunt

& Lisa C. DeSombre,

Plaintiffs Below-Appellants

WDF/NEP/ljo