

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DANNY WILLARD POLLOCK

and

SHERI POLLOCK

Plaintiffs,

vs.

PENNSYLVANIA STATE POLICE,

CORPORAL GREGORY BOGAN

in his individual and official capacities,

TROOPER NATHAN SPANGLER

in his individual and official capacities,

TROOPER MATTHEW KEPHART

in his individual and official capacities,

Defendants.

CIVIL ACTION

No.

JURY TRIAL DEMANDED

ELECTRONICALLY FILED

TYPE OF PLEADING:

COMPLAINT

Filed on behalf of Plaintiffs

Counsel of record for this Party:

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Plaintiffs,	)	
vs.	)	JURY TRIAL DEMANDED
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PENNSYLVANIA STATE POLICE,	)	
CORPORAL GREGORY BOGAN	)	
in his individual and official	)	
capacities, TROOPER NATHAN	)	
SPANGLER in his individual and	)	
and official capacities, and TROOPER	)	
MATTHEW KEPHART in his	)	
individual and official capacities,	)	
	)	ELECTRONICALLY FILED
Defendants.	)	

COMPLAINT

AND NOW comes Plaintiff, Danny Willard Pollock, by and through his attorneys, Alexander H. Lindsay, Jr., Esquire, Max B. Roesch, Esquire and THE LINDSAY LAW FIRM, P.C., files this Complaint and avers the following:

INTRODUCTION

1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging that he was the subject of excessive force used by the Pennsylvania State Police Troopers who arrested him at his home on August 21, 2017.

## **JURISDICTION and VENUE**

2. This action arises under 42 U.S.C. § 1983. This Court has jurisdiction of the action pursuant to 28 U.S.C. § 1331 and § 1343 and the Fourth and Fourteenth Amendment to the United States Constitution. This Court further has supplemental jurisdiction to hear Plaintiff's state claims of Plaintiff pursuant to 28 U.S.C. § 1367(a).

3. Venue is present in the Western District of Pennsylvania as this is the district where the cause of action arose, the district where the transactions and occurrences took place out of which the cause of action arose, and is a district in which Defendants regularly conduct activity.

## **THE PARTIES**

4. Plaintiff, Danny Willard Pollock, is an adult individual residing at 406 Muddy Creek Drive, Slippery Rock, Pennsylvania, and was and still is a citizen of the United States and the Commonwealth of Pennsylvania.

5. Plaintiff, Sheri Pollock, is an adult individual residing at 406 Muddy Creek Drive, Slippery Rock, Pennsylvania, and was and still is a citizen of the United States and the Commonwealth of Pennsylvania.

6. Defendant Pennsylvania State Police is a law enforcement agency established and operating under the laws of the Commonwealth of Pennsylvania.

7. Defendant, Gregory Bogan, is an adult individual and at all times material hereto was employed as a Corporal with the Pennsylvania State Police with a barracks

at 200 Barracks Road, Butler, PA 16001, and at all times material hereto, Defendant Bogan acted under color of law. He is sued in his individual and official capacities.

8. Defendant, Nathan Spangler, is an adult individual and at all times material hereto was employed as a Trooper with the Pennsylvania State Police with a barracks at 200 Barracks Road, Butler, PA 16001, and at all times material hereto, Defendant Spangler acted under color of law. He is sued in his individual and official capacities.

9. Defendant, Matthew Kephart, is an adult individual and at all times material hereto was employed as a Trooper with the Pennsylvania State Police with a barracks at 200 Barracks Road, Butler, PA 16001, and at all times material hereto, Defendant Kephart acted under color of law. He is sued in his individual and official capacities.

### **FACTUAL BACKGROUND**

10. Paragraphs 1 through 9 are hereby incorporated by reference as though set forth in their entirety.

11. Mr. and Mrs. Pollock had been residing at their address of 406 Muddy Creek Road in Slippery Rock, Pa since 1998 and through the date of the incident which is the subject of this complaint.

12. Mrs. Pollock began suffering from chronic back pain in approximately 2005, but was allergic to narcotics, and unable to take them to treat her pain.

13. Mrs. Pollock read online that people who reported using marijuana to treat various ailments were experiencing great pain relief.

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14. Mr. Pollock, seeing that his wife was suffering on a daily basis, commenced an experiment to see if he could grow two (2) marijuana plants for the purpose of pain mitigation.

#### **THE INITIAL CONTACT WITH LAW ENFORCEMENT – TROOPER LEWIS**

15. Paragraphs 1 through 14 are hereby incorporated by reference as though set forth in their entirety.

16. On July 29, 2015, a National Guard helicopter conducting aerial surveillance in the area of Mr. Pollock's residence indicated to Trooper Michael Lewis of the Pennsylvania State Police that one (1) marijuana plant was observed in the backyard of Mr. Pollock's residence.

17. Trooper Lewis then traveled to Mr. Pollock's residence to make contact with him regarding the reported observation.

18. Mr. Pollock was forthright with Trooper Lewis, indicating that there were in fact two marijuana plants growing in his backyard, and that Mrs. Pollock used marijuana to ease the pain she experienced on a daily basis as a result of injuries suffered in a motorcycle accident.

19. Mr. Pollock further indicated to Trooper Lewis that his wife was allergic to narcotics and other pain killers which had been prescribed to her in the past.

20. Trooper Lewis indicated in an incident report that he seized the two plants and that the plants were sent to a lab for analysis.

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21. Trooper Lewis indicated to Mr. and Mrs. Pollock that they would probably never hear from the police about the two plants again.

22. A lab report which purports to reflect the results of the tested specimens seized by Trooper Lewis on July 29, 2015 is dated November 20, 2015.

23. From the two seized plants, law enforcement harvested a total of .2 grams of marijuana, which is about as heavy as a single rain drop.

24. On July 26, 2017, criminal charges were filed as a result of the interaction on July 29, 2015 and an arrest warrant was issued one day later on July 27, 2017.

25. Between July 29, 2015 and August 20, 2017, Mr. Pollock heard absolutely nothing regarding this incident.

#### **THE HEART ATTACK**

26. Paragraphs 1 through 25 are hereby incorporated by reference as though set forth in their entirety.

27. On August 9, 2017, twelve days before the Pollocks' interaction with police regarding the marijuana plants seized almost two years earlier, Mr. Pollock suffered a heart attack.

28. Mr. Pollock was treated at Butler Memorial Hospital, where the medical intervention included stenting one of his arteries.

29. Mr. Pollock had a well-documented history of cardiovascular disease, including a Triple Bypass Heart Surgery in 2006.

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### THE ASSAULT AND USE OF EXCESSIVE FORCE

30. Paragraphs 1 through 29 are hereby incorporated by reference as though set forth in their entirety.

31. On August 21, 2017, at approximately 5:00 p.m., Defendant Bogan, Defendant Kephart and Defendant Spangler traveled to Mr. Pollock's home to serve the arrest warrant for the incident which occurred more than two years earlier.

32. Upon their arrival, the Defendant Kephart and Defendant Spangler were greeted by Mr. and Mrs. Pollock on their front porch.

33. Once Defendant Bogan made his way from the rear of the residence to the front porch, he ran up the stairs to Mr. Pollock and shouted to Mr. Pollock that he was being placed under arrest pursuant to an arrest warrant.

34. Defendants refused to specify the cause for the warrant or show proof of its existence to Mr. Pollock.

35. Defendant Spangler then grabbed Mr. Pollock's left arm and placed a handcuff on his left wrist.

36. Mr. and Mrs. Pollock repeatedly told the Defendants that Mr. Pollock had just suffered a heart attack on August 9, 2017 (only twelve days earlier) and had recently been released from the hospital.

37. Mr. and Mrs. Pollock further indicated to the Defendants that due to the heart attack, Mr. Pollock had a stent put in one his heart arteries and that the Defendants

needed to be careful in arresting him.

38. Mrs. Pollock also advised the Defendants that Mr. Pollock was on medications as a result of the heart attack and that he was disoriented and confused due to the medication and his recent heart attack.

39. As Mr. Pollock had just walked out of his house to greet the Defendants, he was not wearing shoes.

40. Mr. Pollock requested to get shoes from just inside his front door, but was told by the Defendants that he was not allowed to do so.

41. While Plaintiffs relayed the medical information and the request for shoes to Defendants, Defendant Bogan yelled to Mr. Pollock to turn around and that he was under arrest, and rushed up to Mr. Pollock, who already had one handcuff placed on his left wrist by Defendant Spangler.

42. Mr. Pollock was being handcuffed by Defendant Spangler and was therefore unable to turn around.

43. Mrs. Pollock reiterated to the Defendants the seriousness of Mr. Pollock's recent heart attack and treatment, to which Defendant Bogan called Mrs. Pollock "a f\*\*\*ing liar".

44. Mr. Pollock became noticeably upset by what was occurring and the Defendants' treatment of his wife, which prompted him to begin breathing very heavily.

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45. It was then that Defendant Bogan bull-rushed Mr. Pollock, slamming Mr. Pollock and Defendant Spangler up against Mr. Pollock's house.

46. As Defendant Bogan and Defendant Spangler hurled Mr. Pollock to the ground, Mr. Pollock's face was smashed into an Amish-built porch swing, breaking two of Mr. Pollock's teeth, causing critical damage to his right eye and causing blood to spray from Mr. Pollock's face all over the porch and side of his house.

47. Mr. and Mrs. Pollock's dog was barking during this assault. Defendant Kephart threatened to shoot the dog.

48. While Mr. Pollock was being held face-down on the ground, the Defendants kicked, punched, kneed him in the groin and elbowed him while handcuffing him behind his back.

49. During the assault, Defendant Kephart began kneeling Mr. Pollock in the groin while threatening to use a Taser on Mr. Pollock.

50. While witnessing the brutal assault of her husband, Mrs. Pollock became agitated and began screaming to the Defendants that they were killing her husband.

51. While being repeatedly kneed in the groin is always dangerous, it was especially dangerous in Mr. Pollock's case as his groin was the site of the incision made by the surgeons who implanted the stent in Mr. Pollock's heart artery less than two weeks earlier.

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52. Mrs. Pollock was especially mortified to see the amount of blood coming from

Mr. Pollock's face and head, as he was on blood thinners due to the recent heart catheterization and stent.

53. Mr. Pollock never resisted the Defendants, even once they began assaulting him.

54. While Defendants transported Mr. Pollock to be seen by a judge pursuant to the warrant, Mr. Pollock complained to the Defendants of severe chest pain.

55. Mr. Pollock was then transported to Butler Memorial Hospital.

56. Defendants refused to allow Mrs. Pollock to check on her husband in the hours following the assault.

57. Mrs. Pollock had no idea where her husband was until she received a telephone call indicating that he had been admitted to the hospital.

### **THE HOSPITALIZATION**

58. Paragraphs 1 through 57 are hereby incorporated by reference as though set forth in their entirety.

59. Mrs. Pollock arrived at the hospital and saw her husband being treated in the emergency room and photographed the injuries inflicted upon her husband by the Defendants.

60. While in the emergency room and in the presence of Mr. Pollock, Defendant Bogan asked one of the nurses to consult Mr. Pollock's records to confirm whether or not Mr. Pollock and Mrs. Pollock had been truthful regarding his recent heart

catheterization and stent implantation.

61. The nurse confirmed that what the Pollock's had been telling the Defendants was true, to which Defendant Bogan said to Defendant Spangler, "oh f\*\*\*, eleven days ago."

62. Defendants Bogan and Spangler then exited Mr. Pollock's room.

63. Mr. Pollock was admitted to and remained in Butler Memorial Hospital from August 21, 2017 through August 23, 2017, undergoing evaluations, testing and various procedures to investigate Mr. Pollock's chief complaint – severe chest pain.

64. At Butler Memorial Hospital, tests were performed indicating that Mr. Pollock had recently suffered a heart attack.

65. Dr. Azous, Mr. Pollock's treating physician, observed multiple bruises all over Mr. Pollock's body, including a bruise on the back of his head, bruising on his right lower extremity and a right wrist bruise with deformity.

66. Mr. Pollock underwent a heart catheterization, which included sedation, to ensure that the grafting and stents which were implanted 12 days earlier remained in place after the assault.

67. Mr. Pollock's treating physicians released him, in a wheelchair, from the hospital on August 23, 2017, at which time he was immediately transported by State Police officers, to the Butler County Jail where he remained incarcerated for 15 days.

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68. Mr. Pollock's discharge instructions included a follow-up with his

cardiologist within 3-4 weeks of that date, which was not recommended prior to the assault.

69. While Mr. Pollock was in jail, Mrs. Pollock was only permitted to visit him once.

70. When Mrs. Pollock came home from visiting her husband, there were men all over her property who identified themselves as police.

71. Mrs. Pollock asked the police officers as to the purpose of their visit, and they promptly left without explanation.

### **RESULTANT PHYSICAL INJURIES**

72. Paragraphs 1 through 71 are hereby incorporated by reference as though set forth in their entirety.

73. The physical injuries Mr. Pollock sustained as a result of the excessive forced used by the Defendants against Mr. Pollock, of some of which appear to be permanent, include:

- a. Acute chest pain with unknown long term effects,
- b. Numbness in his right arm,
- c. Lower back pain, which forces him to walk with the assistance of a cane,
- d. Damage to his right eye, including blurred vision and obstructed peripheral vision as a result of blunt force trauma,
- e. Recurring neck and head aches,

- f. One cracked tooth and two chipped teeth,
  - g. Leg pain and instability, which, even with use of a cane, has resulted in falls down stairs and to the ground,
  - h. Testicular pain with fluid build-up surrounding one testicle,
74. Plaintiff is under the care of several medical professionals with whom he has been treating since this incident occurred.

### **COUNT I**

**Danny Pollock v.  
Gregory Bogan, Nathan Spangler and Matthew Kephart, in their individual  
capacities**

**Violation of 42 U.S.C. § 1983 (Violation of Fourth Amendment and Fourteenth  
Amendment): Excessive Force**

75. Paragraphs 1 through 74 are hereby incorporated by reference as though set forth in their entirety.

76. Section 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress

77. The Fourteenth Amendment provides in relevant part that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property

without due process of law.”

78. The Fourth Amendment protects individuals from excessive force.

79. The Fourth Amendment applies to the manner in which a seizure is conducted.

80. Defendants are state actors subject to the Fourth Amendment by operation of the Fourteenth Amendment.

81. Defendants acted under color of state law.

82. Defendants acted intentionally and with callous disregard for Mr. Pollock’s clearly established constitutional rights.

83. “To state a claim for excessive force as an unreasonable seizure under the Fourth Amendment, a plaintiff must show that a ‘seizure’ occurred and that it was unreasonable.” *Estate of Smith*, 318 F.3d at 515 (quoting *Abraham v. Raso*, 183 F.3d 279, 288 (3d Cir.1999)).

84. The test of reasonableness under the Fourth Amendment is whether under the totality of the circumstances, “the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivations.” *Graham v. Connor*, 490 U.S. 386, 397 (1989).

85. In determining reasonableness, a court considered the following factors: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he actively is resisting arrest or attempting

to evade arrest by flight. *See Graham*, 490 U.S. at 396.

86. A court in making a reasonableness assessment also may consider the possibility that those subject to the police action are violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time. *See Sharrar v. Felsing*, 128 F.3d 810, 822 (3d Cir.1997).

87. Mr. Pollock did not pose an immediate threat to the safety of police.

88. Mr. Pollock was not actively resisting or attempting to evade arrest by flight when he was slammed into the exterior of his home, ripped to the ground, his face smashed off a wooden swing, and repeatedly, forcefully punched, kicked, kneed and elbowed by the Defendants.

89. The Defendants were not in the midst of a dangerous situation involving a serious crime.

90. The facts as set forth above amount to excessive force; to wit, the Defendants slammed Mr. Pollock into the exterior of his home, ripped him to the ground, smashed his face off a wooden swing, and repeatedly, forcefully punched, kicked, kneed and elbowed him.

91. Defendant Kephart failed to intervene and stop the brutal assault/excessive force being used by Defendant Bogan and Defendant Spangler, despite observing it in

its entirety.

92. Defendant Kephart had a realistic and reasonable opportunity to intervene to prevent Defendant Bogan and Defendant Spangler from repeatedly assaulting Mr. Pollock but failed to do so.

93. The aforementioned conduct deprived Mr. Pollock of rights, privileges or immunities secured by the Constitution of the United States including a deprivation of liberty.

94. The Defendants acts were with malice and willful wanton and/or done with reckless disregard for Mr. Pollock's federally protected constitutional and civil rights, thereby subjecting Defendants to punitive damages.

95. As a direct and proximate result of the unlawful conduct of the Defendants as aforesaid, Mr. Pollock has suffered and will continue to suffer irreparable injury, including but not limited to humiliation and significant psychological and emotional trauma and monetary damages.

96. As a direct result and proximate result of the unlawful conduct of the Defendants, Mr. Pollock has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages.

97. As a further result of the Defendants' unlawful conduct, Mr. Pollock has incurred special damages, including medically related expenses and may continue to



incur further medically or other special damages related expenses, in amounts to be established at trial.

98. On information and belief, Mr. Pollock will suffer lost future earnings and impaired earnings capacity as a result of the not yet fully ascertained consequences of his injuries.

99. Mr. Pollock is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

**WHEREFORE**, Plaintiff, Danny Pollock, respectfully requests judgment against the Defendants for monetary and compensatory damages in an amount in excess of the jurisdictional limit of said Court, plus court costs, interest, attorneys' fees, declaratory and prospective injunctive relief and other damages as the Court deems appropriate. **A JURY TRIAL IS DEMANDED.**

## **COUNT II**

**Danny Pollock v.  
Gregory Bogan, Nathan Spangler and Matthew Kephart, in their individual  
capacities**

**State Law Claim: Assault**

100. Paragraphs 1 through 100 are hereby incorporated by reference as though set forth in their entirety.

101. Defendant Bogan, Defendant Spangler and Defendant Kephart intended to cause a harmful or offensive contact with Plaintiff and caused Mr. Pollock to be in imminent apprehension of such contact.

102. Defendant Bogan, Defendant Spangler and Defendant Kephart used more than threatening words to put Mr. Pollock in reasonable apprehension of physical injury because they were in a position to carry out the threat immediately.

103. Defendants' harmful or offensive contact caused Mr. Pollock to be in reasonable apprehension of physical injury.

104. The actions of Defendant Bogan, Defendant Spangler and Defendant Kephart, as more fully set forth above, constituted willful misconduct.

105. As a direct result of Defendants' unlawful conduct, Mr. Pollock has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial. As a further result of the Defendants' unlawful conduct, Mr. Pollock has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses.

106. On information and belief, Mr. Pollock will suffer lost future earnings and impaired earnings capacity as a result of the not yet fully ascertained consequences of his closed head injury.

**WHEREFORE**, Plaintiff, Danny Pollock, respectfully requests judgment against the Defendants for monetary and compensatory damages in an amount in excess of the jurisdictional limit of said Court, plus court costs, interest, attorneys' fees, declaratory and prospective injunctive relief and other damages as the Court deems appropriate. **A JURY TRIAL IS DEMANDED.**

**COUNT III**

**Danny Pollock v.  
Gregory Bogan, Nathan Spangler and Matthew Kephart, in their individual  
capacities**

**State Law Claim: Battery**

107. Paragraphs 1 through 106 are hereby incorporated by reference as though set forth in their entirety.

108. Defendant Bogan, Defendant Spangler and Defendant Kephart touched Mr. Pollock in a way that was harmful and offensive without his consent as more fully set forth above.

109. Defendant Bogan, Defendant Spangler and Defendant Kephart intended to cause a harmful or offensive contact with Mr. Pollock or put him in imminent apprehension of such a contact, and the offensive contact with Plaintiff resulted.

110. Specifically, Defendant Bogan, Defendant Spangler and Defendant Kephart acted with an intent to cause a harmful or offensive contact, when:

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- a. Defendants slammed Mr. Pollock into the exterior of his home,

- b. Defendants slammed Mr. Pollock's face off of a wooden swing,
- c. Defendants ripped Mr. Pollock to the ground,
- d. Defendants repeatedly punched, kicked, kneed and elbowed Mr. Pollock about the head and body,

111. The actions of Defendant Bogan, Defendant Spangler and Defendant Kephart constitute willful misconduct.

112. As a direct result of Defendant's unlawful conduct, Mr. Pollock has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages.

113. As a further result of the Defendants' unlawful conduct, Mr. Pollock has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses.

114. On information and belief, Mr. Pollock will suffer lost future earnings and impaired earnings capacity as a result of the not yet fully ascertained consequences of his closed head injury.

**WHEREFORE**, Plaintiff, Danny Pollock, respectfully requests judgment against the Defendants for monetary and compensatory damages in an amount in excess of the jurisdictional limit of said Court, plus court costs, interest, attorneys' fees, declaratory and prospective injunctive relief and other damages as the Court deems appropriate. **A**

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**JURY TRIAL IS DEMANDED.**

**COUNT IV**

**Sheri Pollock v.  
Gregory Bogan, Nathan Spangler and Matthew Kephart, in their individual  
capacities**

**State Law Claim: Loss of Consortium**

115. Paragraphs 1 through 114 are hereby incorporated by reference as though set forth in their entirety.

116. Defendant Bogan, Defendant Spangler and Defendant Kephart caused the above delineated injuries to Plaintiff Mr. Pollock which gives Plaintiff Mrs. Pollock a legal cause of action to recover damages for that interference.

117. As a result of these incidents and the aforementioned injuries incurred by Plaintiff Danny Pollock, Plaintiff Sheri Pollock has suffered the loss of her husband's companionship, society, cooperation, affection, assistance, and conjugal fellowship.

**WHEREFORE**, Plaintiff, Sheri Pollock, respectfully requests judgment against the Defendants for monetary and compensatory damages in an amount in excess of the jurisdictional limit of said Court, plus court costs, interest, attorneys' fees, declaratory and prospective injunctive relief and other damages as the Court deems appropriate. **A JURY TRIAL IS DEMANDED.**

Respectfully submitted:

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