

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

<b>ROBERT L. ALLEY,</b>	)	
	)	
Plaintiff,	)	C.A. No. 99C-11-013 WCC
	)	
v.	)	
	)	
<b>STANLEY TAYLOR, BRADLEY</b>	)	
<b>LEE, LAURIE MCBRIDE,</b>	)	
<b>ERIC BATES, SCOTT TAYLOR,</b>	)	
<b>DONNA MCNATT, RALPH</b>	)	
<b>LIBERATORE, AND MICHAEL</b>	)	
<b>YOUNG, JR.</b>	)	
	)	
Defendants.	)	

**OPINION**

Submitted: November 13, 2000  
Decided: March 30, 2001

Defendants' Motion to Dismiss. Granted in Part; Denied in Part.

Robert Alley, Sussex Correctional Institution, #177399, P.O. Box 500, Georgetown, Delaware, 19947. Pro se.

Stuart B. Drowos, Esquire; Carvel State Office Building, 820 North French Street, Sixth Floor, Wilmington, DE 19801. Attorney for Defendants.

**CARPENTER, J.**

The Defendants move to dismiss the Plaintiff's complaint pursuant to Superior Court Civil Rule 12(b)(1) for lack of subject matter jurisdiction or 12(b)(6) for failure to state a claim upon which relief can be granted. For the reasons set forth below, the motion is granted in part and denied in part.

### ***FACTS***

Robert Alley (the "Plaintiff"), an incarcerated *pro se* litigant, brought suit against Stanley Taylor ("Commissioner Taylor"), Bradley Lee ("Captain Lee"), Laurie McBride ("McBride"), Eric Bates ("Officer Bates"), Scott Taylor ("Officer Taylor"), Donna McNatt ("Officer McNatt"), Ralph Liberatore ("Sergeant Liberatore"), and Michael Young, Jr. ("Officer Young") (collectively the "Defendants")<sup>1</sup> seeking compensation and punitive damages for injuries sustained in his rearrest on July 15, 1999. At the time of the incident, Defendant Stan Taylor was Commissioner of Corrections; Bradley Lee was employed at the Multi-Purpose Criminal Justice Facility ("MPCJF" also known as "Gander Hill") as Captain; Eric Bates and Scott Taylor were officers employed at the MPCJF; Donna McNatt, Ralph Liberatore and Michael Young, Jr. were probation and parole officers; and Laurie McBride was the records department supervisor at the MPCJF.

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<sup>1</sup> Donna McNatt, Ralph Liberatore, and Michael Young, Jr. were added in the Plaintiff's

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amended complaint.

The Plaintiff was originally incarcerated in the MPCJF after being sentenced on April 29, 1997 for 5 years at Level V with credit for 305 days. Based on the sentence calculations, the Plaintiff should have been released on November 19, 2000. But, he was mistakenly released on June 24, 1999. As such, on July 15, 1999, Captain Lee, accompanied by Sergeant Liberatore, Officer Bates, Officer Taylor, Officer McNatt, and Officer Young, went to the home of the Plaintiff's father to rearrest him.

At this juncture, the parties dispute the facts. During the rearrest, the Plaintiff alleges that without identification and documentation, officers entered his father's home, and despite a lack of provocation or resistance of arrest on the Plaintiff's part, Sergeant Liberatore sprayed him with mace and assaulted him with a nightstick. Then, Sergeant Liberatore, along with Officers Bates, McNatt, and Young, handcuffed and dragged him out of the house. The Plaintiff further alleges that he was denied medical treatment and was never informed that there was a mistake in his release.

The Plaintiff filed a complaint, *pro se*, as a result of the events that occurred on July 15, 1999. The Defendants move to dismiss his complaint because the claims are outside the Court's jurisdiction, or, alternatively, they fail to state a claim.

### ***STANDARD OF REVIEW***

While the Defendants posture this motion as a motion to dismiss, the motion

will be treated as a motion for summary judgment. Both parties submitted material, including affidavits, in addition to the complaint.<sup>2</sup> As such, the motion is converted to a motion for summary judgment. A party is entitled to summary judgment where there are no genuine issues of material fact and that party is entitled to judgment as a matter of law.<sup>3</sup> The Court must view all factual inferences in a light most favorable to the non-moving party.<sup>4</sup>

## ***DISCUSSION***

### ***I. Claims under 42 U.S.C. §1983***

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<sup>2</sup> See *Reynolds v. State*, Del. Super., C.A. No. 98C-07-021, Herlihy, J. (Nov. 10, 1999), Mem. Op. at 5; Super. Ct. Civ. R. 12(c).

<sup>3</sup> *Wilmington Trust Co. v. Aetna Cas. & Sur. Co.*, Del. Supr., 690 A.2d 914, 916 (1996).

<sup>4</sup> *Alabi v. DHL Airways, Inc.*, Del. Super., 583 A.2d 1358, 1361 (1990).

The Plaintiff alleges, *inter alia*, that certain Defendants, in their individual capacities, entered a residence unlawfully and assaulted him during his rearrest, depriving him of his Fourth Amendment rights. As the Defendants concede in their brief, some of the Plaintiff's claims attempt to state a Fourth Amendment constitutional violation claim of "unreasonable search and seizure," which would be more appropriately brought pursuant to 42 U.S.C. §1983. Section 1983 provides a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory."<sup>5</sup> In other words, "Section 1983 imposes liability on government officials or actors through damages or injunctive relief for conduct which causes a deprivation of an individual's rights secured by the Constitution."<sup>6</sup>

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<sup>5</sup> 42 U.S. C. §1983. Section 1983 only provides a remedy and does not itself create any substantive rights. *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979). As such, a violation of Section 1983 cannot be alleged. *Id.*

<sup>6</sup> *Reynolds* at 12 (quoting *Teat v. Neal*, Del. Super., C.A. No. 93C-12-206, Quillen, J. (Jan. 9, 1996) at 5)).

The Defendants recognize that according to *Segars v. Redman*,<sup>7</sup> this Court adopted the view expressed by the United States Supreme Court in *Haines v. Kerner*,<sup>8</sup> that *pro se* pleadings should be held to “less stringent standards” and that however “inartfully pleaded” should not be dismissed lightly.<sup>9</sup> As such, while not precisely stated in the complaint, in order to give the Plaintiff’s claims the broadest, reasonable possible interpretation, Paragraphs 26<sup>10</sup> and 27<sup>11</sup> will be treated as ones seeking the

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<sup>7</sup> Del. Super., C.A. No. 84M-AU-25, Babiarz, J. (Aug. 18, 1986).

<sup>8</sup> 404 U.S. 519 (1972).

<sup>9</sup> *Segars* at 1.

<sup>10</sup> The complaint does not provide Counts, only Paragraph numbers. As such, the Court will use the Paragraph numbers in lieu of Counts to indicate the specific claims.

Paragraph 26 of the Plaintiff’s amended complaint states:

The Plaintiff further claims that Defendants Lee, Officer Taylor, and (Liberatore, Bates, Young, McNatt) [were] in violation of the Plaintiffs 4th Amendment rights applicable through the Due Process Clause of the 14th Amendment and the Delaware Constitution Article I. subsection 6. where as Defendants made an non consensual entry into a private residence to make a warrantless arrest.

<sup>11</sup> Paragraph 27 of the Plaintiff’s amended complaint states:

The Plaintiff further claims that Defendants Lee, Officer Taylor and (Liberatore, Bates, Young, McNatt) [were] in violation of the Plaintiffs 4th Amendment rights applicable through the Due Process Clause of the 14th Amendment and the Delaware Constitution Article I. subsection 6. where as no exigent circumstances present, the Defendants made an non consensual entry into a private residence to make an warrantless arrest of Plaintiff without first securing a search warrant for the third party residence.

remedies supplied in 42 U.S.C. §1983.<sup>12</sup>

The first challenge raised by the Defendants' motion is that this Court does not have subject matter jurisdiction over the claims implicitly asserted under 42 U.S.C. §1983 because the United States District Court has sole jurisdiction. But, settled law states the contrary. While it is true that the majority of such actions are filed in federal court, this Court has previously ruled that it has concurrent jurisdiction with federal courts over Section 1983 actions.<sup>13</sup> As such, this Court has jurisdiction to hear the Plaintiff's §1983 claims.

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<sup>12</sup> See *Dickens v. Brewington-Carr*, Del. Super., C.A. No. 97C-06-063, Quillen, J. (Oct. 8, 1999), Letter and Order at 2.

<sup>13</sup> *Marker v. Talley*, Del. Super., 502 A.2d 972 (1985)(citing *Maine v. Thiboutot*, 448 U.S. 1 (1980)). See also *Reynolds, supra*, at 5; *Gunzl v. Spayd*, Del. Super., C.A. No. 93C-09-089, Babiarz, J. (Mar. 28, 1995), Op. and Order at 4.



Next, the Defendants argue that the facts alleged would not entitle the Plaintiff to relief under 42 U.S.C. §1983. In order to sustain a Section 1983 claim, “a plaintiff must allege and prove: (1) the conduct was committed by a person acting under the color of state law, and (2) the conduct deprived the plaintiff of rights secured by the Constitution.”<sup>14</sup> Furthermore, a plaintiff “must allege a ‘casual link’ between the official conduct and the alleged deprivation of a constitutional right in order to state a claim under §1983.”<sup>15</sup> The Defendants argue that there was no violation of the Plaintiff’s Fourth Amendment rights because his erroneous release from incarceration did not effectuate a severance of the Department of Correction’s jurisdiction over him.

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<sup>14</sup> *Reynolds* at 12 (*quoting Teat* at 5).

<sup>15</sup> *Gunzl* at 5.

Despite the Plaintiff's premature release and his obligation to fulfill the sentence imposed by this Court, the Court is not convinced at this juncture that this provided free reign to the Department of Corrections to ignore the constitutional rights of individuals when attempting to correct an error made by the government. In his amended complaint, the Plaintiff tacitly alleges that Defendants Captain Lee, Officer Taylor, Sergeant Liberatore, Officer Bates, Officer Young, and Officer McNatt violated his Fourth Amendment rights by entering the private residence of his father without a search warrant and arresting him without an arrest warrant.<sup>16</sup> As mentioned above, the Court is reluctant to dismiss a complaint filed by a *pro se* litigant, which may state a colorable cause of action, particularly when there are disputed issues of fact as to the circumstances that necessitated a warrantless search and whether the Plaintiff's custody status justified such action. The parties also dispute whether the Plaintiff attempted to escape. In addition, the Court finds that the complaint contains supporting factual averments which, if proven, could perhaps demonstrate that the specified Defendants unconstitutionally deprived the Plaintiff of his Fourth Amendment rights. As such, Paragraphs 26 and 27 of the amended complaint, which will be treated as those brought under 42 U.S.C. §1983, will remain, and the motion to that extent is denied.

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<sup>16</sup> See *supra* notes 10 and 11.

The Court also finds that the allegations made in Paragraphs 23, 24, and 25, to the extent they state a cause of action, are duplicative and are incorporated into the allegations found in Paragraphs 26 and 27. Because they fail to assert independent actionable claims, these allegations are dismissed.

***A. Claims Against Defendants Made in their Official Capacities***

While the Plaintiff asserts that he does not attempt to hold any Defendant liable for damages in their official capacities and further states in his amended complaint, in Paragraph 22, that he “seeks to sue all the Defendants in their individual capacities,”<sup>17</sup> the Court finds that to the extent the complaint could be interpreted to include claims made in the Defendants’ official capacities, those claims are dismissed.

When a plaintiff brings a civil rights claim against a State actor in that actor’s official capacity, the action is treated as an action against the State.<sup>18</sup> The State, and an individual in his or her official capacity, are not included within the definition of a “person” under 42 U.S.C. §1983.<sup>19</sup> As such, any implied claim against a Defendant in their official capacity is dismissed.<sup>20</sup>

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<sup>17</sup> Plaintiff’s Amended Complaint.

<sup>18</sup> *Dickens* at 2 (citing *Hafer v. Melo*, 502 U.S. 21, 25 (1991)).

<sup>19</sup> *Dickens* at 2 (citing *Hafer*, 502 U.S. at 26).

<sup>20</sup> Based upon this finding, the Court will not address the Defendants’ claim regarding the Eleventh Amendment.

### ***B. Claims Against Commissioner Taylor***

The Plaintiff asserts claims against Commissioner Taylor, who was not physically present during the rearrest on July 15, 1999. The Plaintiff implies that under 11 *Del. C.* §§6516 and 6517, Commissioner Taylor was liable based on his supervisory role.<sup>21</sup> But a State employee cannot be liable under 42 U.S.C. §1983 merely because those under his supervision violate the constitutional rights of another.<sup>22</sup> Instead, the State officer can only be liable in a supervisory position if he was the “moving force [behind] the constitutional violation,” or “exhibited deliberate indifference to the plight of the person deprived.”<sup>23</sup> While supervisory liability does exist under Section 1983, it is based on actual knowledge and acquiescence and not

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<sup>21</sup> Paragraph 32 of the Plaintiff’s amended complaint states:

The Plaintiff now claims that Defendant Stan Taylor pursuant to 11 Del. C. Subsection 6516 shall assume full and active charge of the Dept and is the chief executive and administrative officer.

And, Paragraph 33 states:

Plaintiff further claims that pursuant to 11 Del. C. Subsection 6517(5) (7) the Commissioner is responsible for the administration, supervision, operation, management and control of all state correctional institutions and is in charge of all probation and parole field services.

<sup>22</sup> *Dickens* at 3 (citing *Sample v. Diecks*, 3d Cir., 885 F.2d 1099, 1117-18 (1989)).

<sup>23</sup> *Dickens* at 3 (citing *Sample*, 885 F.2d at 1118).

*respondeat superior*.<sup>24</sup>

The Court finds that no facts have been alleged in the complaint that would point to actual knowledge or acquiescence by Commissioner Taylor. There is no evidence that Commissioner Taylor was the “moving force behind” the Plaintiff’s alleged assault nor that Commissioner Taylor “exhibited deliberate indifference.”<sup>25</sup>

As a matter of fact, no facts have been alleged that indicate Commissioner Taylor’s involvement except in his supervisory position. As such, all claims against Commissioner Taylor are dismissed.

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<sup>24</sup> *Dickens* at 3 (citing *Brown v. Stewart*, D. Pa., 910 F. Supp. 1064, 1074-75 (1996)).

<sup>25</sup> *See Dickens* at 3.

### *C. Attorney's Fees under 42 U.S.C. §1988*

The Defendants seek attorney's fees under 42 U.S.C. §1988(b), which provides that a "court, in its discretion, may allow the prevailing party...a reasonable attorney's fee as part of the costs" in any action to enforce a provision of Section 1983 of this title. In *Hughes v. Rowe*,<sup>26</sup> the United States Supreme Court stated that attorney's fees may be awarded where "the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith."<sup>27</sup> The plaintiff's action must be meritless in the sense that it is groundless or without foundation, and the fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees.<sup>28</sup> Furthermore, relying upon *Haines, supra*, the Court stated that attorney's fees should rarely be awarded against plaintiffs who are uncounseled prisoners.<sup>29</sup> "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims."<sup>30</sup> In light of the fact that the Court has denied the Defendants' motion in regards to the claims implicitly asserted under 42 U.S.C. §1983, it finds that the Plaintiff's action is not entirely

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<sup>26</sup> 449 U.S. 5 (1980).

<sup>27</sup> *Id.* at 14 (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)).

<sup>28</sup> *Hughes*, 449 U.S. at 14.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.*

meritless and without foundation. Consequently, the Defendants are not entitled to attorney's fees.

## *II. Qualified Immunity*

The Defendants also claim that the complaint should be dismissed in its entirety under the doctrine of qualified immunity. Under the formulation for this doctrine, “government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>31</sup>

Generally, courts sever this formulation into a three-part inquiry:

(1) whether the allegations state a claim for a violation of any rights secured by the United States Constitution, (2) whether the rights and law at issue are clearly established and (3) whether a reasonably competent official should have known that his conduct was unlawful, in light of the clearly established law.<sup>32</sup>

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<sup>31</sup> *Carrigan v. State*, D. Del., 957 F. Supp. 1376, 1387 (1997)(citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)).

<sup>32</sup> *Carrigan*, 957 F. Supp. at 1387.

Qualified immunity generally shields governmental officials, who perform discretionary functions, from civil damage liability as long as their actions are consistent with the rights guaranteed by the Constitution.<sup>33</sup> The motion is denied on qualified immunity grounds because from the facts presented, there may possibly be a claim that the Defendants' actions were not consistent with clearly established principles of Constitutional law.<sup>34</sup>

### ***III. Immunity under 10 Del. C. §4001 for State Tort Claims***

In various paragraphs of the complaint, the Plaintiff explicitly and implicitly alleges several torts. In Paragraph 30, the Plaintiff alleges that Captain Lee committed the act of negligence by entering the residence without identification, which would likely result in injuries. In Paragraph 31, the Plaintiff alleges that McBride committed negligence and negligent infliction of emotional distress in her failure to keep accurate records. In addition, while the Plaintiff specifically alleges violations of 11 *Del. C.* §611 for the crime of assault in Paragraphs 28 and 29 against Captain Lee and Sergeant Liberatore, the Court will interpret them to mean claims for the torts of assault and battery.<sup>35</sup>

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<sup>33</sup> *Dickens* at 6.

<sup>34</sup> *See Id.*

<sup>35</sup> *See Segars, supra*, at note 7, and accompanying text.



To the extent that the Plaintiff attempts to hold the Defendants liable in their individual capacities for an alleged tort, the Defendants assert that they are afforded the protection of immunity under 10 *Del. C.* §4001 of the State Tort Claims Act. The Court in *Vick v. Haller*<sup>36</sup> summarized the terms of Section 4001 into three concepts:

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<sup>36</sup> Del. Super., 512 A.2d 249 (1986).

First, judges, the Attorney General and Deputy Attorneys General and members of the General Assembly are absolutely immune from liability for civil claims founded upon an act or omission arising out of the performance of an official duty. Second, all other State officials have qualified immunity from liability in any civil suit or proceeding; that is, they are immune if the three criteria enumerated in the statute are satisfied. Third, the plaintiff has the burden of providing the absence of one or more of the criteria or elements of immunity.<sup>37</sup>

As such, the Plaintiff has the burden of proving the absence of one or more of the following elements of immunity:

- (1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;
- (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
- (3) The act or omission complained of was done without gross or wanton

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<sup>37</sup> *Id.* at 251. The Act was intended to discourage law suits which might create a chilling effect on the ability of public officials or employees to exercise their discretionary authority. *Doe v. Cates*, Del. Supr., 499 A.2d 1175, 1181 (1985). The synopsis of the Act also says that the Act was to make clear that public officers and employees would be fully liable where they exercised their authority in a grossly negligent, or bad faith manner. *Id.*

negligence...<sup>38</sup>

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<sup>38</sup> 10 *Del. C.* §4001.

To survive this motion, a plaintiff must allege specific circumstances that would support the absence of one or more of these three elements.<sup>39</sup> Specifically, the complaint must allege:

circumstances that would negate the existence of any of the three criteria enumerated in §4001, i.e., that the act or omission complained of (i) arose out of and in connection with the performance of an official duty; (ii) was done in good faith and in the belief that the public interest would best be served thereby, or (iii) was done without gross or wanton negligence.<sup>40</sup>

The Court finds that the complaint fails to set forth facts that would negate these elements. In addition, the Defendants are immunized against any allegations of ordinary negligence because the Delaware Tort Claims Act immunizes acts that are alleged to be merely negligent.<sup>41</sup> As a result, claims made against the Defendants in

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<sup>39</sup> *Reynolds* at 11.

<sup>40</sup> *Vick*, 512 A.2d at 252.

<sup>41</sup> *Carrigan*, 957 F. Supp. at 1391. *See also Davis v. Winslow*, Del. Super., C.A. No. 94C-08-120, Silverman, J. (Sept. 22, 1994)(ORDER)(holding that State employees are immune from liability for ordinary negligence claims); *Walls v. Department of Corrections*, Del. Super., C.A. NO. 88C-AU-129, Del Pesco, J. (Mar. 2, 1989)(Mem. Op.)(holding that a complaint stating

Paragraphs 28, 29, 30, and 31 are dismissed.

***IV. Dismissal under 28 U.S.C. §1915***

Lastly, the Defendants argue that dismissal of this *in forma pauperis* proceeding should be granted under 28 U.S.C. §1915(e)(2)(B)(i) and(ii), which provides that “the court shall dismiss the case at any time if the court determines that -- the action or appeal -- (i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted.” This standard has not been met, so the Court will not dismiss the case under 28 U.S.C. §1915.

***CONCLUSION***

For the reasons set forth above, (1) claims made implicitly under 42 U.S.C. §1983 in Paragraphs 26 and 27 of the Plaintiff’s amended complaint will remain, and to that extent, the Defendants’ motion is DENIED; (2) claims made under Paragraphs 23, 24, and 25 are dismissed, and the motion is GRANTED; (3) any implied claims made regarding the Defendants’ official capacity and all claims against Commissioner Taylor are dismissed, and the motion is GRANTED; (4) claims made under Paragraphs 28, 29, 30, and 31 are dismissed, and the motion is GRANTED; (5) the

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nothing more than ordinary negligence is an insufficient basis upon which to impose personal liability against state officers or employees).

Defendants are not entitled to attorney's fees under 42 U.S.C. §1988, and (6) dismissal is not warranted under 28 U.S.C. §1915.

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Judge William C. Carpenter, Jr.