

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM BYARD LANCASTER	:	
524 Brinton Street	:	
Philadelphia, PA 19144,	:	
Plaintiff	:	
v.	:	Civil Action No. 02-
SOUTHEASTERN PENNSYLVANIA	:	JURY TRIAL DEMANDED
TRANSPORTATION AUTHORITY,	:	
OFFICER F. WHITAKER,	:	
Badge Number 269	:	
individually and as a police officer	:	
for SEPTA,	:	
1234 Market	:	
Philadelphia, PA 19107,	:	
Defendants	:	

**COMPLAINT
Introduction**

Plaintiff William Byard Lancaster was subjected to arrest, detention and malicious prosecution in the absence of probable cause and, separately, by virtue of a decision by the policy-makers of the Southeastern Pennsylvania Transportation Authority (SEPTA) to detain, arrest, harass and prosecute musicians and others who are engaged in protected First Amendment activity. Mr. Lancaster's arrest and prosecution were undertaken in retaliation for the exercise of his First, Fourth and Fourteenth Amendment rights and were motivated, at least in part, by complaints made and a lawsuit filed by Plaintiff for previous constitutional violations by SEPTA and its employees.

Mr. Lancaster, a noted musician and educator, was not involved in criminal activity and there was no probable cause to arrest and initiate a prosecution. Mr. Lancaster seeks compensation for the violation of rights guaranteed by the First, Fourth and Fourteenth Amendments to the United

States Constitution and 42 U.S.C. §1983.

Jurisdiction

1. This action is brought pursuant to 42 U.S.C. §1983. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343(1), (3), (4) and the aforementioned statutory provision. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims.

Parties

2. Plaintiff William Byard Lancaster is a resident of the Eastern District of Pennsylvania, and at all times relevant to this action resided in Philadelphia, Pennsylvania.

3. Defendant Southeastern Pennsylvania Transportation Authority (SEPTA) is a governmental agency that owns, operates, manages, directs and controls the SEPTA Police Department which employs Defendant Whitaker.

4. Defendant F. Whitaker is and was at all times relevant to this action a police officer with the SEPTA Police Department and acting under color of state law. He is being sued in his individual capacity.

5. At all relevant times, all Defendants were acting under color of state law.

6. At all relevant times, the actions taken by all Defendants deprived Plaintiff of his constitutional and statutory rights.

Factual Allegations

7. On or about February 6, 2001, Mr. Lancaster was at or near the pedestrian Concourse below Two Penn Center in Philadelphia, Pennsylvania. Mr. Lancaster, a professional musician and educator, was playing a musical instrument in a public area.

8. At that time and place, SEPTA Police Officers Warren Bannister and Nate Bentley approached Mr. Lancaster. Bannister and Bentley were in uniform as SEPTA police officers and asserted their authority to act under color of law.

9. Bannister and Bentley, without cause or justification, arrested and detained Mr. Lancaster and charged him with the offense of obstructing highways and other public passages under 18 Pa.C.S. §5507. Mr. Lancaster was further detained and thereafter released on a Criminal Citation.

10. On May 1, 2001 Plaintiff appeared for trial on the obstruction case before the Honorable Marsha Neifield of the Municipal Court of Philadelphia County. At the conclusion of the prosecution's case, Mr. Lancaster was found not guilty.

11. At no time did Mr. Lancaster commit any offense against the laws of the Commonwealth of Pennsylvania, the United States or the County of Philadelphia for which an arrest may be lawfully made and a criminal prosecution initiated. At no time did Mr. Lancaster commit any illegal acts, or engage in any conduct which in any way justified the actions of Bannister and Bentley.

12. On May 2, 2001, Plaintiff filed suit under §1983 in the United States District Court for the Eastern District of Pennsylvania (Byard Lancaster v. SEPTA, et al., CA No. 01-CV-2162). The Complaint alleged violations of Mr. Lancaster's rights under the First, Fourth and Fourteenth Amendments of the United States Constitution as well as supplemental state law claims. The suit was based on the unlawful arrest, detention and malicious prosecution of Plaintiff by SEPTA, Bannister and Bentley on February 6, 2001.

13. On February 13, 2002, by Order of the Honorable Berle Schiller, judgment was entered for

Plaintiff and against Defendants SEPTA, Bannister and Bentley.

14. On or about July 26, 2002, Mr. Lancaster was at or near the pedestrian Concourse below 15th Street and John F. Kennedy Boulevard in Philadelphia, Pennsylvania. Mr. Lancaster was playing a musical instrument in a public area.

15. At that time and place, SEPTA Police Officer F. Whitaker approached Mr. Lancaster. Defendant Whitaker was in uniform as a SEPTA police officer and asserted his authority to act under color of law.

16. Defendant Whitaker, without cause or justification, arrested and detained Mr. Lancaster. After a period of detention, Defendant Whitaker charged Mr. Lancaster with the offense of "noise producing more than 100 feet" in Criminal Citation No. 02-49-000545. When Plaintiff did not want to sign the Criminal Citation, stating that he did not want to agree to the false allegations contained therein, Defendant Whitaker told Plaintiff that if he did not sign the Criminal Citation he would be handcuffed and held for four or five days. Mr. Lancaster signed the document and was thereafter released on the Criminal Citation which commanded that Mr. Lancaster appear in the Municipal Court of Philadelphia to answer the criminal charges or risk the issuance of a bench warrant for his arrest.

17. On October 16, 2002 Plaintiff appeared for trial on the Criminal Citation before the Honorable Eric Lilian of the Municipal Court of Philadelphia County. Judge Lilian dismissed the charges with prejudice.

18. At no time did Mr. Lancaster commit any offense against the laws of the Commonwealth of Pennsylvania, the United States or the County of Philadelphia for which an arrest may be lawfully made and a criminal prosecution initiated. At no time did Mr. Lancaster commit any

illegal acts, or engage in any conduct which in any way justified the actions of Defendants.

19. As a direct and proximate result of the actions of all Defendants, Mr. Lancaster suffered and continues to suffer pain and emotional distress, some or all of which may be permanent.

20. Defendant Whitaker knew that he was without authority to detain, arrest and prosecute Mr. Lancaster as he had committed no criminal offense and was exercising his First Amendment right to freedom of expression.

21. Defendant Whitaker lacked the jurisdiction and authority to detain, arrest and initiate a prosecution of Plaintiff.

22. The arrest and prosecution of Mr. Lancaster was the result of a decision by a policy-maker(s) of SEPTA to detain, arrest, harass and prosecute musicians and others who are engaged in protected First Amendment activity.

23. The arrest and prosecution of Mr. Lancaster was the result of a decision by Defendants to retaliate against Plaintiff for the exercise of his First, Fourth and Fourteenth Amendment rights and for complaints made and the above-mentioned lawsuit filed by Plaintiff for previous constitutional violations by SEPTA and its employees.

24. The actions of Defendant Whitaker were willful, wanton, malicious, intentional, outrageous, deliberate and/or so egregious as to shock the conscience.

25. Defendants engaged in this conduct for the purpose of removing from the public streets persons, including Mr. Lancaster, who are viewed as offensive to the public image of SEPTA and Philadelphia, thereby violating Mr. Lancaster's constitutional rights by subjecting him to an unlawful arrest, detention and malicious prosecution.

**FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS**

26. The allegations contained in paragraphs 1-25 of this Complaint are incorporated herein.

27. As a direct and proximate result of all Defendants' conduct, committed under color of state law, all Defendants deprived William Byard Lancaster of his right to be free from an unlawful detention, arrest and malicious prosecution, to be secure in his person and property and to due process and equal protection of the law. As a result, Mr. Lancaster suffered and continues to suffer harm, in violation of his rights under the laws and Constitution of the United States, in particular the First, Fourth and Fourteenth Amendments thereof, and 42 U.S.C. §1983.

28. As a direct and proximate result of the acts and omissions of all Defendants, Mr. Lancaster sustained pain and emotional distress and his right to freedom of expression, all to his detriment and loss.

29. Defendant SEPTA has encouraged, tolerated, ratified and has been deliberately indifferent to a pattern, practice and custom of and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. The proper exercise of police powers, including improper arrests, detentions and malicious prosecutions of citizens;
- b. Police officers' use of their status as police officers to employ the use of retaliation and malicious prosecution, or to achieve ends not reasonably related to their police duties;
- c. The failure of police officers to follow established policies, procedures, directives and instructions regarding the arrest and prosecution of street musicians, panhandlers and others under such circumstances as presented herein;

- d. The failure to properly train, supervise and discipline all officers regarding the use of pretextual arrests for offenses such as disorderly conduct, obstruction of the highway and noise violations to remove street musicians and those perceived to be panhandlers from public access areas in Philadelphia and to deter those individuals from returning to such areas to engage in protected First Amendment activity;
- e. The failure to properly train, supervise and discipline all officers regarding their jurisdiction and authority to detain, arrest and initiate prosecutions in matters where SEPTA police officers have no such jurisdiction or authority; and
- f. The abuse of arrest powers by officers who retaliate against citizens due to complaints made or lawsuits filed for previous constitutional violations by SEPTA and its employees.

30. Defendant SEPTA has failed to properly sanction or discipline officers, who are aware of and subsequently conceal and/or aid and abet violations of constitutional rights of citizens by other SEPTA police officers, thereby causing and encouraging police, including the defendant officer in this case, to violate the rights of citizens such as Mr. Lancaster.

31. By these actions, Defendants have deprived Mr. Lancaster of rights secured by the First, Fourth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.

**SECOND CAUSE OF ACTION
STATE LAW CLAIMS**

32. The allegations contained in paragraphs 1-31 of this Complaint, are incorporated herein.

33. The acts and conduct of all Defendants alleged in the above stated cause of action constitute assault and battery, false arrest and imprisonment, malicious prosecution, invasion of privacy -- casting in a false light, negligence, gross negligence, and negligent hiring, training, retention and supervision under the laws of the Commonwealth of Pennsylvania, and this Court has supplemental jurisdiction to hear and adjudicate those claims.

WHEREFORE, Plaintiff requests the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Reasonable attorney's fees and costs; and
- d. Such other and further relief as appears reasonable and just including, but not limited to, the adoption by SEPTA of a policy which accommodates and encourages the activities of musicians in the public areas and corridors on and adjoining SEPTA transportation facilities.
- e. Plaintiff demands a jury trial as to each Defendant and as to each count.

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