

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

<b>TODD WOLFSON,</b>	:	
<b>PETER FUNKE,</b>		
<b>MARTIN LAUTZ and</b>	:	
<b>ALISON TAYLOR,</b>		
<b>Plaintiffs</b>	:	
<b>v.</b>		<b>Civil Action No. 05-2903</b>
<b>CITY OF PHILADELPHIA;</b>	:	<b>JURY TRIAL DEMANDED</b>
<b>OFFICER SEAN ELKINS,</b>		
<b>BADGE NUMBER 4420,</b>	:	
<b>OFFICER WILLIAM GRESS,</b>		
<b>BADGE NUMBER 4702,</b>	:	
<b>OFFICER KEVIN GORMAN,</b>		
<b>BADGE NUMBER 3778,</b>	:	
<b>OFFICER DOE(S),</b>		
<b>individually and as police officers</b>	:	
<b>for the City of Philadelphia,</b>		
<b>c/o Law Department</b>	:	
<b>1515 Arch Street</b>		
<b>Philadelphia, PA 19102,</b>	:	
<b>Defendants</b>		

**AMENDED COMPLAINT  
Jurisdiction**

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

**Parties**

2. Plaintiffs Todd Wolfson, Peter Funke, Martin Lautz and Alison Taylor are residents of the Eastern District of Pennsylvania and at all times relevant to this action were present in Philadelphia, Pennsylvania.

3. Defendant City of Philadelphia is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department which employs Defendants Elkins, Gress, Gorman and Doe(s).

4. Defendants Elkins, Gress, Gorman and Doe(s)(hereinafter “the defendant officers”) are police officers for the Philadelphia Police Department acting under color of state law. They are being sued in their individual capacities.

5. At all relevant times, all Defendants were acting in concert and conspiracy and their actions deprived Plaintiffs Todd Wolfson, Peter Funke, Martin Lautz and Alison Taylor of their constitutional and statutory rights.

#### **Factual Allegations**

6. On the early morning hours of April 24, 2005, Plaintiffs Todd Wolfson, Peter Funke, Martin Lautz and Alison Taylor (hereinafter the “Plaintiffs”) were on or near Lorenzo’s Pizza Shop, 305 South Street in Philadelphia.

7. Plaintiffs were approached by the defendant officers who were in uniform as Philadelphia police officers. The defendant officers asserted their authority to act under state law.

8. The defendant officers, without cause or justification, ordered Plaintiffs to leave the area in front of the pizza shop. Plaintiffs complied and went to the corner of 3<sup>rd</sup> and South Street where they stood and ate pizza.

9. Plaintiffs were not violating the law and were otherwise licensed and privileged to walk on the public streets of Philadelphia.

10. While standing on the corner of 3<sup>rd</sup> and South Streets in Philadelphia, Plaintiffs observed the police arresting an individual who appeared to have done nothing more than stand in front of

or near the pizza shop. Plaintiffs or individuals with Plaintiffs made comments that were critical of the arrest.

11. Without cause or justification, and at least in part as a result of the exercise of their First Amendment rights, the defendant officers seized Plaintiffs Peter Funke and Martin Lautz, took their property, and placed them under arrest, causing them to sustain harm.

12. Without cause or justification, and at least in part as a result of the exercise of his First Amendment rights, Defendant Elkins assaulted Plaintiff Todd Wolfson, threw him to the ground, placed his foot on his neck, and placed him under arrest, causing him to sustain harm. While Plaintiff Wolfson was on the ground, Defendant Gress grabbed Mr. Wolfson and, with Defendant Elkins, handcuffed him.

13. Plaintiffs or individuals with Plaintiffs made comments that were critical of the arrest and mistreatment of Plaintiffs Wolfson, Funke and Lautz.

14. Without cause or justification, and at least in part as a result of the exercise of their First Amendment rights, the defendant officers arrested and handcuffed all Plaintiffs, causing all Plaintiffs to sustain harms.

15. Without cause or justification, Defendant Gress pushed Mr. Funke against a wall and, with the assistance of Defendant Gorman, applied handcuffs in an excessively tight manner to Plaintiff Peter Funke, causing him to sustain harm.

16. Without cause or justification and in the absence of probable cause, all Plaintiffs were arrested. Plaintiff Alison Taylor was released after a period of detention and no criminal charges were brought against her.

17. The defendant officers verbally abused Plaintiffs and made offensive and xenophobic comments about the national origin of Plaintiffs Funke and Lautz.

18. Plaintiffs Todd Wolfson, Peter Funke and Martin Lautz were placed into a police vehicle and transported to a police station. While bringing Plaintiff Funke into the police station, Defendant Elkins, without cause or justification, used unreasonable force, causing Mr. Funke to sustain additional harms.

19. At the police station, Plaintiffs were searched and detained for an extended period.

20. Without cause or justification, Plaintiffs Todd Wolfson, Peter Funke and Martin Lautz were later released with Criminal Citations charging them with failure to disburse.

21. On May 23, 2005, Plaintiffs Todd Wolfson, Peter Funke and Martin Lautz appeared for trial before the Honorable Wendy L. Pew of the Municipal Court of Philadelphia County. Based upon false information provided to the District Attorney's Office by Defendant Elkins, the Criminal Citations were amended to include the charge of disorderly conduct.

22. At the conclusion of testimony, Plaintiffs Todd Wolfson, Peter Funke and Martin Lautz were found not guilty of all charges.

23. Plaintiffs did not commit any offenses against the laws of the Commonwealth of Pennsylvania, the United States or the City of Philadelphia or engage in any conduct which justified the actions of the Defendants.

24. The unlawful arrests, search, detention and use of force in this case were the direct result of Defendants' pattern, practice and custom of subjecting citizens such as Plaintiffs to the use of force, arrest and prosecution in the absence of probable cause.

25. The actions and conduct of the defendant officers were undertaken, at least in part, in response to and in retaliation for Plaintiffs' exercise of protected First Amendment rights, including but not limited to critical comments about the arrest of the man who had been standing in front of or near the pizza shop and about the arrest and mistreatment of Plaintiffs Wolfson, Funke and Lautz.

26. The defendant officers acted wilfully, deliberately, maliciously or with reckless disregard of Plaintiffs' constitutional and statutory rights.

27. As a direct and proximate result of the actions of all Defendants, Plaintiffs suffered and continue to suffer physical and psychological harms, pain and suffering, some or all of which may be permanent, as well as financial losses.

28. Defendants engaged in the aforesaid conduct for the purpose of violating Plaintiffs' constitutional rights by subjecting Plaintiffs Wolfson and Funke to the unreasonable use of force, by subjecting Plaintiffs Wolfson, Funke, Lautz and Taylor to unlawful arrests and detentions, and by subjecting Plaintiffs Wolfson, Funke and Lautz to malicious prosecutions.

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

29. Plaintiffs incorporate by reference paragraphs 1-28 of the instant Complaint.

30. As a direct and proximate result of all Defendants' conduct, committed under color of state law, Plaintiffs Wolfson and Funke were deprived of the right to be free from the unreasonable use of force, Plaintiffs Wolfson, Funke, Lautz and Taylor were deprived of the right to be free from unlawful arrests and detentions, and Plaintiffs Wolfson, Funke and Lautz were deprived of the right to be free from malicious prosecutions. All Plaintiffs were deprived of the right to be

secure in ones person and property, to due process of law and to freedom of speech, association and expression. As a result, all Plaintiffs suffered and continue to suffer harm in violation of their rights under the laws and Constitution of the United States, in particular the First, Fourth and Fourteenth Amendments, and 42 U.S.C. §1983.

31. As a direct and proximate result of the acts of all Defendants, Plaintiffs sustained injuries, emotional harm, loss of liberty and financial losses, all to their detriment and harm.

32. Defendant City of Philadelphia has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. The use of force and unlawful detentions and arrests by police officers;
- b. The proper exercise of police powers, including but not limited to the use of force, unlawful detention, unlawful arrest, malicious prosecution, and violations of citizens' free speech rights, particularly in connection with perceived challenges to or criticism of police authority;
- c. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
- d. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct;
- e. Police officers' use of their status as police officers to employ the use of force and unlawful arrest, or to achieve ends not reasonably related to their police duties;
- f. The implementation of or acquiescence in a policy, practice and custom of undertaking arrests in the South Street business district in the absence of probable cause;

g. The use of police powers to undertake pretextual arrests and prosecutions in the South Street business district and elsewhere to resolve alleged “quality of life” offenses without regard to the constitutional rights of individuals including Plaintiffs; and

h. The failure of police officers to follow established policies, procedures, directives and instructions regarding the use of force and arrest powers under such circumstances as presented in this case.

33. The City of Philadelphia failed to properly sanction or discipline officers, who are aware of and conceal and/or aid and abet violations of constitutional rights of individuals by other Philadelphia Police Officers, thereby causing and encouraging Philadelphia police, including the defendant officers in this case, to violate the rights of citizens such as Plaintiffs.

34. Defendants have by the above described actions deprived Plaintiffs 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 SUPPLEMENTAL STATE CLAIMS**

35. Plaintiffs incorporate by reference paragraphs 1-34 of the instant Complaint.

36. The acts and conduct of the individual defendants in this cause of action constitute assault and battery (as to all Plaintiffs), false arrest and false imprisonment (as to all Plaintiffs), and malicious prosecution (as to Plaintiffs Wolfson, Funke and Lautz) under the laws of the Commonwealth of Pennsylvania, and this Court has supplemental jurisdiction to hear and adjudicate these claims.

WHEREFORE, Plaintiffs request the following relief:

- a. Compensatory damages as to all defendants;
- b. Punitive damages as to the individual defendants;
- c. Reasonable attorney's fees and costs as to all defendants;
- d. Such other declaratory and further relief as appears reasonable and just including, but not

limited to, a judgment that the City of Philadelphia has failed to properly train, supervise and discipline police officers regarding the use of police powers to undertake pretextual arrests and prosecutions in the South Street business district and elsewhere to resolve alleged “quality of life” offenses without regard to the constitutional rights of individuals including Plaintiffs; and

- e. A jury trial as to each defendant and as to each count.

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