

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

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TERESA BROWN; MONICA JACKSON; and ANTHONY GRACE,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Civil Action No. _____
	)	
ELIZABETH VITALBO, Pittsburgh Bureau of Police Officer; and	)	
CITY OF PITTSBURGH,	)	
	)	
	)	
<i>Defendants.</i>	)	

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**COMPLAINT**

**INTRODUCTION**

After a long-time African-American resident of Pittsburgh’s Oakland neighborhood, her daughter and a neighbor responded to a police query about an incident occurring across the street, the police returned and unnecessarily and illegally detained them for an hour, threatened to arrest them for attempting to record the officers’ conduct, and then — months later — falsely charged them with disorderly conduct in retaliation for the three having filed complaints with official City agencies. The incident reflects the unfortunate and unconstitutional custom and practice of Pittsburgh police unnecessarily and illegally misusing their authority to intimidate and coerce innocent, law-abiding civilians who question or challenge improper police behavior. Plaintiffs in this 42 U.S.C. § 1983 action seek damages and attorneys’ fees.

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this Complaint under the First, Fourth, and Fourteenth Amendments to the United States Constitution and 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction to issue the requested relief under 28 U.S.C. §§ 2201 and 2202.
2. This Court has personal jurisdiction over Defendant who is located in this District.
3. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1402(b) because the acts at issue in this lawsuit occurred in this District.

## **PARTIES**

4. Plaintiff Teresa Brown is a citizen of the United States who resides in the Oakland neighborhood of Pittsburgh, located in Allegheny County, Pennsylvania.
5. Plaintiff Monica Jackson is a citizen of the United States who resides in Allegheny County, Pennsylvania.
6. Plaintiff Anthony Grace is a citizen of the United States who resides in Allegheny County, Pennsylvania.
7. Defendant City of Pittsburgh is a political subdivision of the Commonwealth of Pennsylvania and manages, directs, and controls the Pittsburgh Bureau of Police, which employs Defendant Vitalbo.
8. Defendant Elizabeth Vitalbo is and at all times herein mentioned was a police officer with the Pittsburgh Bureau of Police. In her capacity as a police officer, Defendant had a legal obligation to act in conformity with the United States Constitution and applicable federal and state laws. Defendant was at all times herein mentioned acting in accordance with the custom,

policies, and/or practices of the City of Pittsburgh Bureau of Police and was acting under color of state law. Defendant is sued in her individual capacity.

### **FACTUAL ALLEGATIONS**

9. In September 2013, Teresa Brown was an elected constable who had worked for the Pittsburgh Water and Sewer Authority for more than 20 years.

10. As of September 2013, Ms. Brown had lived in her home on Ward Street in the Oakland neighborhood of Pittsburgh for more than fifteen years.

11. On the evening of Saturday, September 28, 2013, Ms. Brown, her daughters Monica Jackson and Pamela Brown, and her neighbor Anthony Grace, all African-American, were gathered on or near the porch of her home on Ward Street in the Oakland neighborhood of Pittsburgh.

12. At about 7:30 p.m., they observed some young men engaging in a physical confrontation across the street on Oakland Court.

13. Teresa Brown walked across the street and diffused the fight.

14. After the young men left, Pittsburgh Police Officer Elizabeth Vitalbo, who is white, approached Teresa Brown and stated that she had just received a call about a fight.

15. The call came from a neighbor of Teresa Brown who lived at 201 Court Street and was complaining about a fight in front of the neighbor's home.

16. Teresa Brown responded that there had been a fight but that she had broken it up and indicated the direction in which the participants had dispersed.

17. Officer Vitalbo began walking in the direction indicated by Teresa Brown, but returned to Ms. Brown's home within a few minutes.

18. Officer Vitalbo stated that she could hear Teresa Brown, Pamela Brown, Ms. Jackson, and Mr. Grace from Oakland Court, which is diagonally across the street from Teresa Brown's home, and instructed them to "shut up."
19. Officer Vitalbo accused Teresa Brown of lying to her about where the fight took place and threatened to arrest her.
20. Officer Vitalbo also threatened to label Teresa Brown's house as a nuisance property.
21. Teresa Brown informed Officer Vitalbo that she was a constable and questioned why Officer Vitalbo would arrest her, explaining that she and Officer Vitalbo were on the "same side."
22. Officer Vitalbo then responded, "I don't give a shit who you are."
23. At that point, Ms. Jackson, concerned by Officer Vitalbo's aggressive demeanor and actions, picked up her cell phone and told Officer Vitalbo that she intended to record her.
24. Officer Vitalbo told Ms. Jackson that she would take her to jail unless she put her phone down.
25. Ms. Jackson stated that she knew her rights and was allowed to record Officer Vitalbo.
26. Officer Vitalbo repeated her statement that if Ms. Jackson did not put her phone down, she would take Ms. Jackson to jail.
27. As a result of Officer Vitalbo's threat, Ms. Jackson put her phone down and did not record the interaction.
28. Officer Vitalbo then called for additional police back-up.
29. About seven police cars carrying 15-20 police officers from the Pittsburgh Bureau of Police and University of Pittsburgh arrived at Teresa Brown's home.

30. One of the officers approached the porch, grabbed Mr. Grace, and then slammed him up against the porch railing. The officer ordered Mr. Grace to put his hands behind his head and vigorously frisked him.

31. The officer then ordered Mr. Grace to sit down. Mr. Grace complied and remained seated.

32. Pamela Brown asked one of the University of Pittsburgh police officers, Justin Reck, for Officer Vitalbo's name, stating her concern that the officer had been very aggressive since she arrived and that she intended to file a complaint against her.

33. Officer Vitalbo overheard Pamela Brown's conversation with Officer Reck and stated that she was "about to be aggressive."

34. Neither Officer Reck nor Officer Vitalbo provided Officer Vitalbo's name to Pamela Brown.

35. At some point during the incident, Officer Vitalbo asked Ms. Jackson for her name, address, and social security number, all of which Ms. Jackson provided.

36. Ms. Jackson then attempted to read Officer Vitalbo's name and number off her badge, and Officer Vitalbo asked what she was doing.

37. Ms. Jackson stated that she wanted to know the officer's name.

38. Officer Vitalbo responded that her name was "Ms. Smith."

39. At no point did Teresa Brown, Ms. Jackson, or Mr. Grace raise their voices, shout, or use profanity or vulgar language in the presence of Officer Vitalbo or any other officer.

40. Teresa Brown told Officer Vitalbo that she intended to file a complaint against her for her actions that evening.

41. Officer Vitalbo and the other police officers left Teresa Brown's home around 9:00 p.m.

42. Teresa Brown, Ms. Jackson, and Mr. Grace were detained by Officer Vitalbo for approximately one hour and were not free to leave during that time.
43. No citations were issued at the time to any of the persons present.
44. After Officer Vitalbo left, Pamela Brown called the Zone 4 police station to learn the officer's name and was told her last name was Vitalbo.
45. Pamela Brown stated that she wanted Officer Vitalbo's name so that she could file a complaint against her.
46. The next day, Sunday, September 29, 2013, Officer Vitalbo returned to Teresa Brown's house, along with seven or eight police cars, demanding to speak with Ms. Jackson.
47. Teresa Brown told Officer Vitalbo that Ms. Jackson did not reside there and was not present at the time.
48. Officer Vitalbo refused to tell Teresa Brown why she wanted to speak to Ms. Jackson.
49. Officer Vitalbo left her card with Teresa Brown and instructed her to tell Ms. Jackson to call her.
50. Teresa Brown told Ms. Jackson about Officer Vitalbo's visit and provided her with the information on Officer Vitalbo's card.
51. Ms. Jackson called the phone number provided by Officer Vitalbo but did not receive a return call.
52. Teresa Brown was so frightened following Officer Vitalbo's second visit to her home that she left and spent the night at Ms. Jackson's home.
53. On or about Monday, September 30, 2013, Pamela Brown, Teresa Brown, Ms. Jackson, and Mr. Grace filed complaints about Officer Vitalbo's conduct with the City of Pittsburgh's Office of Municipal Investigations ("OMI").

54. The OMI complaints alleged that Officer Vitalbo was rude, falsely identified herself, did not allow Ms. Jackson to use her cell phone to record the officer, and acted unprofessionally.

55. They also filed informal complaints with the Citizens Police Review Board on October 16, 2013, which they swore to on October 21, 2013.

56. The ACLU of Pennsylvania also sent a letter to Pittsburgh Bureau of Police Acting Chief Regina McDonald on December 18, 2013, notifying her of a complaint it received from Pamela Brown regarding the incident of September 28, 2013, and Officer Vitalbo's threat to arrest Ms. Jackson for recording the encounter.

57. The letter asked Chief McDonald to ensure that Officer Vitalbo and all other Pittsburgh police officers were made aware of citizens' First Amendment right to record police officers in the performance of their duties.

58. Despite the fact that Pamela Brown and the plaintiffs filed complaints with OMI and the CPRB regarding Officer Vitalbo's actions, Assistant Solicitor Michael Kennedy stated in his January 27, 2014, response to the ACLU of Pennsylvania's letter that "no investigation had been conducted, to the law department's knowledge, by either the CPRB or OMI, or any other entity."

59. Mr. Kennedy further stated in his response that the City had provided information about the public's right to record the actions of police officers only to police supervisor personnel.

60. OMI Manager Deborah Walker notified Pamela Brown, Teresa Brown, Ms. Jackson, and Mr. Grace by letter dated March 28, 2014, that it had completed its investigation into their complaints concerning Officer Vitalbo.

61. According to the letter, the allegations that Officer Vitalbo had falsely identified herself and engaged in verbal misconduct were closed as unfounded.

62. The OMI letter also stated that the allegation that Officer Vitalbo had harassed Ms. Jackson was closed as unfounded.

63. The OMI letter stated that the allegation of the recording was closed as “not resolved” because there were conflicting accounts of the cell phone recording, and “[t]his office doesn’t take one person’s word over that of another.”

64. Shortly before receiving the letter stating the outcome of the OMI investigation, Teresa Brown, Ms. Jackson, and Mr. Grace received summary citations in the mail for violating 18 Pa. Cons. Stat. § 5503(a)(2).

65. Under 18 Pa. Cons. Stat. § 5503(a)(2), “A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he ... makes unreasonable noise.”

66. The citations were issued by Officer Vitalbo for the incident on September 28, 2013.

67. Teresa Brown’s citation falsely alleged that “Defendant was ordered several times to keep the noise level down. I could hear her using vulgar language from almost a block away. She was aggressive and uncooperative. The original call came out for a fight involving 10-20 people.”

68. Officer Vitalbo testified that she issued the citations because Teresa Brown, Ms. Jackson, and Mr. Grace were using profanity. Vitalbo’s allegations were false.

69. According to the court docket, the citations were filed on October 4, 2013, but no summons were issued until March 10, 2014.

70. Officer Vitalbo did not personally issue the citations to Teresa Brown, Ms. Jackson, or Mr. Grace on September 28, 2013.



71. After receiving the citations more than five months after the incident giving rise to them, Teresa Brown, Ms. Jackson, and Mr. Grace each pleaded not guilty to the summary charge of disorderly conduct for unreasonable noise.

72. Following a summary trial in Pittsburgh Municipal Court at which Officer Vitalbo testified, Teresa Brown, Mr. Jackson, and Mr. Grace were each found not guilty of the charges Officer Vitalbo filed against them.

**The City's Policy, Practice, and/or Custom: Recording Police Activity**

73. Officer Vitalbo's threat to arrest Ms. Jackson for video-recording the police is a direct result of Defendant City of Pittsburgh's failure to adopt a policy recognizing citizens' First Amendment right to record police and to train its police officers about the right to record.

74. More than three months' prior to the incident of September 28, 2013, the City was aware of a June 26, 2013, incident in which a Pittsburgh police officer ordered a man, Dennis Henderson, to stop recording and handcuffed Mr. Henderson and another man to prevent them from recording the officer.

75. Mr. Henderson filed an OMI complaint on or about July 9, 2013, in which he alleged, among other things, that he was handcuffed in retaliation for trying to record a Pittsburgh police officer.

76. In another incident just a few months before the one at issue in this case, Nicholas Gerhold was handcuffed and detained on or about June 22, 2013, by a Pittsburgh police officer for video-recording the arrest of a friend outside of a music concert.

77. As far back as 1996, the City of Pittsburgh was on notice that its police officers arrested citizens for photographing police activity in violation of citizens' First Amendment rights. In the matter of Palla v. City of Pittsburgh (GD # 92-22333), an Allegheny County Court of Common

Pleas Jury held the City of Pittsburgh liable for such misconduct finding that the City's custom, policy, and/or practice of deliberate indifference to citizens' First Amendment rights was the cause of such violations.

78. There have been numerous cases filed by individuals in Pennsylvania in recent years challenging their arrests for video-recording police officers in the public performance of their duties. *See, e.g., Kelly v. Borough of Carlisle*, 622 F.3d 248 (3rd Cir. 2010); *Robinson v. Fetterman*, 378 F. Supp. 2d 534, 541 (E.D. Pa. 2005); *Matheny v. County of Allegheny*, No. 2:09-cv-01070 (W.D. Pa.) (filed Aug. 13, 2009); *Riker v. Lukart*, No. 2:12-cv-01012 (W.D. Pa.) (filed July 19, 2012); *Montgomery v. Killingsworth*, No. 2:13-cv-256 (E.D. Pa.) (filed Jan. 16, 2013); *Fleck v. Nicholson*, No. 2:13-cv-03081 (E.D. Pa.) (filed June 5, 2013); *Loeb v. Gaspar*, No. 2:13-cv-03082 (E.D. Pa.) (filed June 5, 2013); *Fields v. City of Philadelphia*, No. 2:13-cv-4434 (E.D.Pa.) (filed July 24, 2014); *Geraci v. City of Philadelphia*, No. 2:13-cv-5264 (E.D.Pa.) (filed September 15, 2014).

79. The United States Department of Justice has also taken the position that police departments should adopt policies explicitly acknowledging that private citizens' right to record the police derives from the First Amendment. *See* Statement of Interest (attached as Exhibit 1). According to the Department of Justice, "constitutionally adequate policies must be designed to effectively guide officer conduct, accurately reflect the contours of individuals' rights under the First, Fourth and Fourteenth Amendments, and diminish the likelihood of future constitutional violations." May 14, 2012, letter from Department of Justice to Baltimore Police Department (attached as Exhibit 2).

80. As of January 17, 2014, however, the City had no finalized policies, training materials, or other memoranda regarding citizens' right to photograph or record Bureau of Police officers performing their official duties.

81. The City's failure to train its officers about the public's First Amendment right to record police officers performing their official duties and adopt policies or memoranda discussing that right evinces a deliberate indifference to the risk that officers would arrest or threaten to arrest individuals who exercised their First Amendment right to record police activity.

**The City's Policy, Practice, and/or Custom: Issuance of Summary Citations**

82. The Pennsylvania Rules of Criminal Procedure permit police officers to institute a criminal proceeding in a summary case by filing a citation with the proper issuing authority only "when it is not feasible to issue the citation to the defendant or evidence is discovered after the issuance of a citation that gives rise to additional summary charges against the defendant resulting from the same incident." Pa. R. Crim. P. 410.

83. According to the Comment to Rule 410, "[a] law enforcement officer should file a citation with the issuing authority when, due to the circumstances of the case, the law enforcement officer is unable to issue the citation directly to the defendant at the time of the offense. Examples of situations when the law enforcement officer would be unable to issue a citation include, but are not limited to, when the officer receives information that the defendant has committed a summary violation from a witness but the defendant is not then present; when a witness is not present at the scene and the officer wants to question the witness before completing the investigation; or when the officer is summoned to another case that requires prompt action."

84. Otherwise, police officers are required to contemporaneously give the defendant a paper copy of the citation containing all the information required by Pa. R. Crim. P. 403. *See* Comment to Pa. R. Crim. P. 403.

85. Officer Vitalbo testified that she filed the citations rather than issue them contemporaneously to Teresa Brown, Ms. Jackson, and Mr. Grace because she did not want to detain them any longer and because she “always” files summary citations rather than issuing them directly to defendants.

86. Officer Vitalbo further testified that police officers “have the option of issuing citations on the scene or filing them through our APRS system.”

87. Upon information and belief, the City has a policy, custom, or practice whereby its officers are permitted to file summary citations in lieu of contemporaneously giving defendants a paper copy of the citation even when it is feasible to do so.

**The City’s Policy, Practice, and/or Custom: Deliberate Indifference to the Use of Unnecessarily Provocative Confrontational Tactics, including Unjustified Physical and/or Verbal Intimidation, Unwarranted Threats of Criminal Prosecution and/or Use of Force against Citizens Neither Suspected Not Believed to Have Committed a Criminal Offense**

88. The actions of Officer Vitalbo are representative of a widespread custom and/or practice by City of Pittsburgh police officers who misuse their badge of authority to escalate tensions during what are innocuous interactions with law-abiding civilians. Under this custom and/or practice, the police demean, ridicule, intimidate, provoke, make baseless threats of criminal prosecution, and/or threaten law-abiding citizens with unwarranted physical violence when there are absolutely no grounds or justification for doing so.

89. These tactics are intended to and/or often do cause the escalation of otherwise innocuous interactions between citizens and police into physical and/or verbal confrontations, which the

police improperly rely upon to justify arrests, the use of force, and/or the filing of criminal charges.

90. The City of Pittsburgh has been on notice of such tactics as the result of numerous citizens' complaints, including prior lawsuits filed against City of Pittsburgh police officers in which such conduct was alleged and/or reported.

**Defendants' Actions Unlawfully Harmed Plaintiffs**

91. As a direct and proximate result of Officer Vitalbo's actions and the City's policies, practices, and/or customs, Teresa Brown, Ms. Jackson, and Mr. Grace suffered the following injuries and damages:

- a. Violation of their rights under the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, to be free from retaliation for engaging in protected speech and/or petition activity;
- b. Emotional trauma, humiliation, and distress; and
- c. Damage to reputation.

92. As a direct and proximate result of Officer Vitalbo's actions, Teresa Brown, Ms. Jackson, and Mr. Grace suffered the following injuries and damages:

- a. Violation of their rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from unreasonable seizure;
- b. Emotional trauma, humiliation, and distress; and
- c. Damage to reputation.

93. As a direct and proximate result of Officer Vitalbo's actions and the City's policies, practices, and/or customs, Ms. Jackson also suffered the following injuries and damages:

- a. Violation of her rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to engage in constitutionally protected expressive activity;
- b. Emotional trauma, humiliation, and distress; and
- c. Damage to reputation.

94. At all times relevant to this Complaint, the conduct of Officer Vitalbo was intentional and/or in reckless disregard of plaintiffs' rights under federal law.

### **CAUSES OF ACTION**

#### **Count I – First Amendment Right to Engage in Expressive Conduct (Monica Jackson v. All Defendants)**

95. Plaintiff Monica Jackson incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

96. Observing and recording police activities in a public place, and not interfering with those activities, is a legitimate means of gathering information for public dissemination and is therefore expressive conduct protected by the First Amendment to the United States Constitution.

97. Officer Vitalbo's threatening and/or intimidating conduct, including but not limited to her unwarranted threat to arrest Ms. Jackson for recording Officer Vitalbo's actions, prevented Ms. Jackson from recording the encounter, in violation of Ms. Jackson's First Amendment rights.

98. Defendant City of Pittsburgh is responsible for the violations of Plaintiff Jackson's First Amendment rights because the Defendant officer's actions resulted from the City's deliberate indifference to a custom, pattern, practice, or policy of allowing officers to intimidate, retaliate or threaten retaliation against individuals for their expressive conduct in video-recording police

undertaking their official duties and/or the City's failure to train, supervise, and discipline officers who engage in such conduct.

**Count II – First Amendment Retaliation  
(All Plaintiffs v. All Defendants)**

99. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

100. Filing complaints against police officers for unprofessional conduct is activity protected by the First Amendment.

101. Officer Vitalbo's issuance of citations against the plaintiffs after they told her that they intended to file complaints against her violated the plaintiffs' right to free speech and right to petition, which are protected by the First Amendment to the U.S. Constitution.

102. Defendant City of Pittsburgh is responsible for the violations of plaintiffs' First Amendment right to be free from retaliation for engaging in protected speech and petition activity because Officer Vitalbo's actions resulted from a City policy whereby police officers are permitted to file summary citations after an incident occurs instead of contemporaneously giving defendants summary citations, thus increasing the likelihood that officers will retaliate against individuals who file complaints against them.

**Count III – Fourth Amendment Right to be Free from Unreasonable Seizure  
(All Plaintiffs v. Defendant Vitalbo)**

103. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

104. Officer Vitalbo violated plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable seizure when she unlawfully

detained them without probable cause or reasonable basis to believe any of the plaintiffs had committed a crime or were engaged in criminal activity.

**PRAYER FOR RELIEF**

Wherefore, in light of the foregoing, Plaintiffs respectfully request the following:

- (a) compensatory damages against all Defendants;
- (b) punitive damages against Defendant Vitalbo for her intentional, and/or reckless, disregard of Plaintiffs' constitutional rights, as described herein;
- (c) an award of costs, expenses, and counsel fees pursuant to 42 U.S.C. § 1988; and
- (d) such other relief as this honorable Court may deem just and deserving.

Plaintiffs hereby demand a jury trial as to all claims stated in this Complaint.



September 22, 2015

Respectfully submitted,

/s/ Witold J. Walczak

Witold J. Walczak

PA ID No. 62976

/s/ Sara J. Rose

Sara J. Rose

PA ID No. 204936

AMERICAN CIVIL LIBERTIES FOUNDATION

OF PENNSYLVANIA

247 Fort Pitt Boulevard

Pittsburgh, PA 15222

(412) 681-7864

/s/ Timothy P. O'Brien

Timothy P. O'Brien

PA ID No. 22104

1705 Allegheny Building

429 Forbes Avenue

Pittsburgh, PA 15219

412-232-4400

*Counsel for Plaintiffs*