

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

| | | |
|--------------------------------------|---|----------------------------|
| EDWARD COFFIN , | : | |
| Plaintiff | : | Civil Action No. |
| | : | |
| v. | : | |
| | : | Jury Trial Demanded |
| CITY OF PHILADELPHIA; and | : | |
| POLICE OFFICER DOMINICK COLE, | : | |
| in his individual capacity, | : | |
| Defendants | : | |

COMPLAINT

Jurisdiction and Venue

1. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 42 U.S.C. §§ 1983 and 1988, and the First, Fourth and Fourteenth Amendments to the United States Constitution.
2. Plaintiff's claims arise in Philadelphia, Pennsylvania, and, therefore, venue properly lies within the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b)(2).

Parties

3. Plaintiff Edward Coffin is a resident of Philadelphia, Pennsylvania.
4. Defendant City of Philadelphia is a municipality incorporated in the Commonwealth of Pennsylvania.
5. Defendant Cole is a police officer in the Philadelphia Police Department. He is sued in his individual capacity.
6. At all relevant times, defendants acted under color of state law.

Factual Allegations

7. Edward Coffin is an animal rights advocate and activist. He frequently engages in non-disruptive leafleting, picketing and other protest activities to bring attention to animal welfare issues.

8. On December 23, 2009, Mr. Coffin was standing on the public sidewalk outside the Whole Foods store at 10th and South Streets in Philadelphia, distributing leaflets about the animal products sold at Whole Foods. He also had signs about the issue, which were standing on the sidewalk nearby. Mr. Coffin had notified the Police Department Civil Affairs Bureau that he and others would be leafleting outside Whole Foods stores in Philadelphia between 11:00 AM and 2:00 PM that day.

9. Shortly after Mr. Coffin began distributing information, he was approached by a person who identified himself as a manager for that Whole Foods store. The manager stated that Whole Foods has a policy against allowing solicitation at its stores and that if Mr. Coffin did not cease his activities, the manager would call the police. Mr. Coffin explained that he was not on Whole Foods' property, but on a public sidewalk, and that he had the right to distribute literature there.

10. Within a few minutes after this exchange, Mr. Coffin was approached by two uniformed Philadelphia Police Officers, one of them being Defendant Cole.

11. Defendant Cole informed Mr. Coffin that he could not distribute literature there because it was a "business district". Mr. Coffin asked for the law that prohibited distributing literature at that site. Defendant Cole again directed Mr. Coffin to cease leafleting and, when he did not, placed Mr. Coffin under arrest. He handcuffed Mr. Coffin and walked him down the

block in full view of shoppers and pedestrians.

12. Defendant Cole took Mr. Coffin to the Police mini-station approximately one block away from the Whole Foods store. Once there, Mr. Coffin asked again for the ordinance he was charged with violating. Officer Cole showed him a copy of Philadelphia Code section 10-723, which prohibits *commercial* leafleting without a permit. Mr. Coffin pointed out that he was not engaged in commercial activity. Instead of releasing Mr. Coffin because he had not violated the ordinance, Officer Cole wrote up a summary offense citation against Mr. Coffin under Philadelphia Code Section 12-1109, which states: "No parade, procession, or assemblages . . . shall occupy, march, or proceed along any street except in accordance with a written permit".

13. Section 12-1109 does not, nor could it, require a permit for leafleting by one person or a small group. Indeed, Philadelphia's demonstration permit regulations make clear that the City does not require a demonstration permit for groups of less than seventy-five people.

14. After Defendant Cole wrote up the citation, Mr. Coffin was taken to Community Court where he waited for approximately one hour to be seen by a judge. When Mr. Coffin stated that he wanted to be represented by an attorney, he was given a notice to appear for trial on January 29, 2010.

15. Mr. Coffin was released more than two hours after his arrest.

16. When Mr. Coffin and his attorney appeared for trial on January 29, 2010, they learned that the charge against Mr. Coffin had been withdrawn, apparently on December 23, 2009. Mr. Coffin had never received notice that the charge was dropped.

17. The arrest of Mr. Coffin was without probable cause.

18. Defendant Cole's arrest of Mr. Coffin was in retaliation for and designed to

discourage Mr. Coffin from the exercise of his right to protest. Upon information and belief, Defendant Cole arrested Mr. Coffin because of the complaint by the store manager and not because he was, in fact, acting illegally

Monell Allegations

19. Defendant City of Philadelphia 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, particularly in connection with perceived challenges to police authority;
- c. The right of individuals to engage in protected First Amendment activities without fear of harassment, detention, arrest and prosecution under such circumstances as presented herein;
- d. The failure of police officers to follow established policies, procedures, directives and instructions regarding the arrest and prosecution of those engaged in protected First Amendment activities under such circumstances as presented herein;
- e. The use of pretextual arrests for offenses such as disorderly conduct, obstruction of the highway and City Ordinance violations to remove individuals engaged in

protected First Amendment activities from public areas in Philadelphia and to deter those individuals from returning to such areas to engage in protected First Amendment activity;

- f. 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;
- g. The failure to identify and take appropriate remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct;
- h. The abuse of arrest powers by officers who retaliate against citizens due to the exercise of constitutional rights by those citizens;
- i. The use of police powers to undertake pretextual arrests and prosecutions in the area of Center City Philadelphia and elsewhere to resolve alleged “quality of life” offenses without regard to the constitutional rights of individuals including Plaintiff.

20. Defendant City of Philadelphia 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 Philadelphia police officers, thereby causing and encouraging police, including the defendant officer in this case, to violate the rights of citizens such as Mr. Coffin.

21. Defendant City of Philadelphia failed to take appropriate and timely steps to remedy known and continuing constitutional violations by its police officers.

22. In particular, the City of Philadelphia does not provide training to its uniformed officers regarding the rights of protesters and the application of the City’s ordinances regarding

leafleting and protests.

23. Instead, through Police Department Directive 70, the City directs its uniformed officers to rely upon the Department's Civil Affairs Bureau to deal with protest activities.

24. The City is well aware that dealing with protesters presents unique issues that police officers do not learn to handle in their academy training. The difference in training required for officers who deal with complaints about protesters has been acknowledged in testimony by Captain Fisher of the Civil Affairs Bureau as recently as December 2011.

25. Nonetheless, as is well known to the Police Department, uniformed officers frequently respond to complaints about protesters and deal with those complaints directly.

26. The Department has known for years that uniformed officers like Defendant Cole violate protesters' rights because of this lack of training.

27. Indeed, in responding to a Civil Affairs complaint lodged by a number of animal rights protesters regarding similar incidents, Inspector Robert Small of the Internal Affairs Division noted multiple occasions when officers had prohibited leafleting along the South Street commercial strip in erroneous reliance on Philadelphia Code section 10-723 and attributed those instances to inadequate training, stating:

As a result of this investigation, it is recommended that police officers who are tasked with issuing Code Violation Notices, for violation of City Ordinances that are documented in the Philadelphia Code, be trained in the nuances of those ordinances. A copy of this report will be forwarded to the Commanding Officer, Civil Affairs Unit, the Commanding Officer, 3rd District, the Commanding Officer, 15th District, the Commanding Officer, Research and Planning Unit, the Commanding Officer, S.I.T.E Unit, and the Police Commissioner's Office, for review and information.

28. That report was issued two years before Mr. Coffin's arrest by Defendant Cole yet, upon information and belief, neither Defendant Cole nor other uniformed officers had ever

received training on the right of protesters to leaflet without a permit.

29. Defendant City of Philadelphia, with deliberate indifference, failed to properly train Defendant Cole regarding protesters' rights, despite ample knowledge that untrained officers were likely to interfere, and were interfering, with the rights of peaceful protesters. That failure to train resulted in Defendant Cole's unconstitutional arrest of Mr. Coffin.

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

Count I
Violation of Fourth and Fourteenth Amendments (42 U.S.C. § 1983)
(False Arrest and Malicious Prosecution)

31. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein.

32. Defendant Cole, acting under color of state law, arrested Mr. Coffin and charged him with a crime without probable cause in violation of Mr. Coffin's clearly established rights under the Fourth and Fourteenth Amendments.

33. The City of Philadelphia caused the constitutional violation by reason of its practice and custom, with deliberate indifference, of failing to properly train uniformed officers, including Defendant Cole, in the rights of protesters.

34. As a direct and proximate result of all defendants' conduct, committed under color of state law, all defendants deprived Edward Coffin of his right to be free from 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. Coffin 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.

35. As a direct and proximate result of the acts and omissions of all defendants, Mr. Coffin sustained pain and emotional distress, financial losses, and a violation of his right to freedom of expression.

Count II
Violation of First and Fourteenth Amendments (42 U.S.C. § 1983)
(Freedom of Speech and Assembly)

36. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein.

37. Mr. Coffin had a clearly established right to distribute leaflets on the sidewalk.

38. Defendant Cole violated Mr. Coffin's First Amendment free speech and free-assembly rights by arresting and charging Plaintiff for nothing more than exercising his right to leaflet peacefully on a public sidewalk.

39. The City of Philadelphia caused the constitutional violation by reason of its practice and custom, with deliberate indifference, of failing to properly train uniformed officers, including Defendant Cole, in the rights of protestors.

40. As a direct and proximate result of all defendants' conduct, committed under color of state law, all defendants deprived Edward Coffin of his rights of free speech and assembly, to be secure in his person and property and to due process and equal protection of the law. As a result, Mr. Coffin 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.

41. As a direct and proximate result of the acts and omissions of all defendants, Mr. Coffin sustained pain and emotional distress, financial losses, and a violation of his right to freedom of expression.

Count III
Violation of First and Fourteenth Amendments (42 U.S.C. § 1983)
(Retaliation for Protected Speech)

42. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein.

43. Mr. Coffin had a clearly established right to distribute leaflets on the sidewalk without fear of official retaliation.

44. Defendant Cole violated Mr. Coffin's First Amendment right to be free from retaliation by arresting and charging Plaintiff for nothing more than exercising his right to leaflet peacefully on a public sidewalk.

45. The City of Philadelphia caused the constitutional violation by reason of its practice and custom, with deliberate indifference, of failing to properly train uniformed officers, including Defendant Cole, in the rights of protestors.

46. As a direct and proximate result of all defendants' conduct, committed under color of state law, all defendants deprived Edward Coffin of his right to be free from retaliation for the exercise of his constitutional rights, to be secure in his person and property and to due process and equal protection of the law. As a result, Mr. Coffin 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.

47. As a direct and proximate result of the acts and omissions of all defendants, Mr. Coffin sustained pain and emotional distress, financial losses, and a violation of his right to freedom of expression.

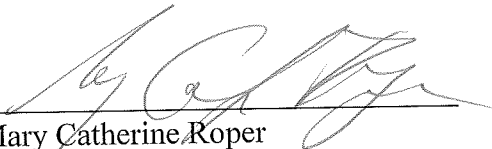
WHEREFORE, Plaintiff respectfully requests:

- A. A declaration that the Defendants violated Mr. Coffin's rights.
- B. Compensatory damages.
- C. Punitive damages against Defendant Cole.
- D. Reasonable attorneys' fees and costs;
- E. Such other and further relief as may appear just and appropriate.

Plaintiff hereby demands a jury trial as to all claims stated in this Complaint.

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF PENNSYLVANIA

Dated: December 22, 2011.



Mary Catherine Roper

Attorney ID # 71107

Christopher Markos

Attorney ID # 308997

P.O. Box 40008

Philadelphia, PA 19106

Tel.: (215) 592-1513 ext. 116

Fax: (215) 592-1343

Email: mroper@aclupa.org

Paul Messing

Attorney ID # 17749

KAIRYS, RUDOVSKY,

MESSING & FEINBERG, LLP

718 Arch Street, Suite 501S

Philadelphia, PA 19106

(215) 925-4400