

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

LANCE MARGESON,

Plaintiff,

v.

**OFFICER ROBERT SCOTT, in his
individual capacity,**

Defendant.

No. 16-cv-_____
(Judge _____)

(Filed Electronically)

COMPLAINT

Plaintiff Lance Margeson (“Mr. Margeson” or “Plaintiff”) files the following complaint against Defendant Officer Robert Scott (“Officer Scott” or “Defendant”).

SUMMARY OF ACTION

1. Lance Margeson has been unconstitutionally cited and required to appear in court in retaliation for exercising his First Amendment right to free speech. On June 9, 2015, while driving through Blossburg Borough as part of his employment, Mr. Margeson was flagged down by a Joann Collister (“Ms. Collister”) at the end of a driveway. Mr. Margeson stopped to speak to Ms. Collister, who accosted Mr. Margeson regarding his earlier reaction to profanities that were shouted by Ms. Collister’s children. Using words of his own choosing, including profanity, Mr.

Margeson expressed his frustration at the situation. Ms. Collister and Mr. Margeson then went to the Blossburg Borough Police Station where both gave statements regarding the interaction. Upon receiving the statements, Blossburg Borough Police Officer, Corporal Robert Scott (Badge No. 34311), issued a citation to Mr. Margeson for the use of an “obscenity.” Because Mr. Margeson’s language clearly was not *obscene* but merely *profane*, Officer Scott’s citation violated Mr. Margeson’s First Amendment right to free speech. Mr. Margeson files this Complaint seeking declaratory, injunctive, and compensatory relief.

PARTIES

2. Plaintiff, Lance Margeson, is an adult residing in Horesheads, New York.
3. Defendant, Officer Scott, is and was, at all times relevant to this complaint, a police officer in the Blossburg Borough Police Department. Plaintiff names Officer Scott in his individual capacity.
4. Upon information and belief, Defendant Officer Scott is a resident of the Commonwealth of Pennsylvania. At all relevant times, Officer Scott was operating under color of state law.

JURISDICTION AND VENUE

5. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. § 1983.
6. This Court has original jurisdiction over Plaintiff's federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) and 42 U.S.C. § 1983. This Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.
7. Venue is proper under 28 U.S.C. § 1391(b) because the Defendant resides in this judicial district and all relevant events giving rise to the claim occurred in this judicial district.

FACTS

8. On Tuesday, June 9, 2015, Mr. Margeson was driving in Blossburg Borough as part of his employment, in which he delivered mail from one post office to another.
9. He was flagged down by a Joann Collister ("Ms. Collister"), who stood at the foot of a driveway.
10. Mr. Margeson remained in his vehicle with the window rolled down as Ms. Collister accosted Mr. Margeson regarding Mr. Margeson's earlier reaction to being called a profanity by Ms. Collister's children.

11. Mr. Margeson attempted to explain that the children had shouted profanities, but Ms. Collister repeatedly interrupted Mr. Margeson, rejected his explanation, and continued to accost him.
12. Frustrated by the exchange, Mr. Margeson stated, “Listen, bitch.”
13. Mr. Margeson never moved toward Ms. Collister, never moved to exit his vehicle, and never moved his vehicle during the exchange.
14. Ms. Collister responded to Mr. Margeson’s statement by declaring that she was going to report him to the police.
15. Mr. Margeson proceeded to the Blossburg Borough Police Department, where he gave a statement regarding the interaction with Ms. Collister. Ms. Collister also appeared at the same Police Department and gave her statement.
16. Both statements recounted Mr. Margeson’s use of the phrase “listen, bitch.”
17. After receiving the statements of Mr. Margeson and Ms. Collister, Officer Scott issued Mr. Margeson a citation charging him with violating Pennsylvania’s disorderly conduct statute, 18 Pa.C.S. § 5503(a)(3), stating that Mr. Margeson “communicated obscene language.”
18. Subsection (a)(3) of Pennsylvania’s disorderly conduct statute, 18 Pa.C.S. § 5503(a)(3), makes it a crime to “use[] *obscene* language, or

make[] and *obscene* gesture . . . with intent to cause public inconvenience, annoyance or alarm, or recklessly creating the risk thereof” (emphasis added). When the statute is charged as a summary offense, as it was in Mr. Margeson’s case, it carries a term of imprisonment of as much as ninety (90) days and a fine of as much as \$300.

19. The Pennsylvania Supreme Court has, since 2000, interpreted the disorderly conduct statute narrowly to permit application only when the language or gesture satisfies the United States Supreme Court’s test for obscenity.
20. On August 4, 2015, after holding a summary trial, a Magisterial District Judge found Mr. Margeson guilty of the obscenity charge.
21. Mr. Margeson appealed to the Court of Common Pleas of Tioga County.
22. Upon information and belief, in response to a request by the Tioga County District Attorney’s Office, Officer Scott drafted a report of the incident and of the proceedings at the Magisterial District Court. The report includes Officer Scott’s position that the standard for determining obscenity is whether a word or phrase causes alarm or offense.

23. On October 26, 2015, following a summary appeal trial, a Court of Common Pleas Judge vacated the judgment of the Magisterial District Judge and dismissed the citation against Mr. Margeson in its entirety.
24. As a direct and proximate result of Defendant's actions, Mr. Margeson suffered the following injuries and damages:
 - a) Violation of his rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from criminal prosecution and retaliation for engaging in constitutionally protected speech;
 - b) Monetary loss of \$107.78 (\$75 of loss of wages which he would have made working as a plumber on October 16, 2015, had he not been required to attend the summary appeal trial; and \$32.78 in travel expenses for Mr. Margeson's 57 mile drive from his home in Horesheads, New York, to the Tioga County Court of Common Pleas, and back again); and
 - c) Physical pain and suffering, emotional trauma, humiliation and distress.

COUNT I

25. Defendant's actions constitute retaliation against Plaintiff for his exercise of his First Amendment right to freedom of speech. This retaliation is a

violation of the First Amendment, as applied to the states by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

REQUEST FOR RELIEF

26. WHEREFORE, Plaintiff Lance Margeson requests that this Honorable Court grant the following relief:

- a) Enter a declaratory judgment that Defendant Officer Scott applied 18 Pa.C.S. § 5503(a)(3) in an unconstitutional fashion when he issued a citation to Plaintiff;
- b) Enter an award for compensatory damages against Defendant;
- c) Enter an award for costs, expenses and counsel fees pursuant to 42 U.S.C. § 1988; and
- d) Enter such other relief as this Honorable Court may deem just and deserving.

Dated: March 3, 2010

Respectfully submitted,

/s/ Caroline Power
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