

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

MATTHEW WALTERS,

Plaintiff,

v.

**OFFICER CHRISTOPHER
ZUBRIS, individually,**

Defendant.

No. 10-cv-_____
(Judge _____)

(Filed Electronically)

COMPLAINT

Plaintiff Matthew Walters (“Mr. Walters”) files the following complaint against Defendant Police Officer Christopher Zubris (“Officer Zubris”).

SUMMARY OF ACTION

1. Matthew Walters, a long-time resident of Mahanoy City, Pennsylvania, has been unconstitutionally cited, arrested and jailed for exercising his First Amendment right to free speech. One snowy night last December, Mr. Walters was doubled-parked outside the pizzeria for which he makes deliveries when he noticed Mahanoy City Police Officer Christopher Zubris writing him a parking ticket. Using words of his own choosing, including profanity, Mr. Walters expressed his dismay with his local law enforcement official. For this, Officer Zubris cited him with disorderly conduct for use of obscenity, arrested and jailed him. Because Mr.

Walters' language clearly was not *obscene* but merely *profane*, Officer Zubris' actions were retaliatory and violated his First Amendment right to free speech as well as his Fourth Amendment right to be free from unreasonable search and seizure. Mr. Walters files this complaint seeking declaratory and compensatory relief.

PARTIES

2. Plaintiff, Matthew Walters, is an adult residing within this district in Mahanoy City, Pennsylvania.
3. Defendant, Officer Zubris was, at all times relevant to this Complaint, a police officer in the Mahanoy City Police Department. Plaintiff names Officer Zubris in his individual capacity.
4. Upon information and belief, Defendant Officer Zubris is a resident of the Commonwealth of Pennsylvania. At all relevant times, Officer Zubris was operating under color of state law.

JURISDICTION AND VENUE

5. This action seeks to vindicate rights protected by the First, Fourth 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 Friday, December 19, 2008 at approximately 6:30 p.m., upon delivering pizza, Plaintiff double-parked his car, leaving it running with the hazard lights blinking, outside Amato Pizza at 308 E. Centre Street, Mahanoy City, Pennsylvania.
9. After parking, Plaintiff entered the pizzeria to wait for his next delivery to be prepared.
10. After about 10 minutes, Plaintiff observed two Mahanoy City police officers near his car.
11. One of them, Officer Zubris, was writing him a ticket.
12. Plaintiff walked outside and stood by the front door, which was about 10 feet from where the officers stood.
13. He told Officer Zubris that he double-parked because it had snowed earlier that day, the streets were not yet clear of snow, and upon returning

- from an earlier delivery, he had parked in a parking space but became stuck. He wanted to avoid getting stuck in the snow again.
14. Officer Zubris continued to write Plaintiff a ticket.
 15. Plaintiff felt that this was unfair and expressed this by calling Officer Zubris a “fucking asshole.”
 16. Plaintiff never moved toward the officers but remained next to the pizzeria door—about 10 feet away.
 17. Officer Zubris responded by telling Plaintiff that he would be arrested.
 18. Plaintiff quickly opened the pizzeria door and shouted to his employer that he was being arrested.
 19. Officer Zubris ran up to Plaintiff, grabbed him and threw him against the outside wall of Amato Pizza.
 20. Officer Zubris handcuffed Plaintiff, who never resisted, and put him in the back of the police cruiser.
 21. One of the officers then told Plaintiff that his car would be towed.
 22. The officers drove Plaintiff to the Mahanoy City Police Station.
 23. At the station, Plaintiff was searched. He was forced to remove everything from his pockets.
 24. Plaintiff was then placed in a holding cell for about 30 minutes.

25. At the time of Plaintiff's release, Officer Zubris handed him a citation for disorderly conduct. (Attached as Exhibit A.)
26. Officer Zubris told Plaintiff to sign for receipt of the citation, which Plaintiff did. Then, he was free to go.
27. Aside from hindering traffic by double-parking, Plaintiff was acting lawfully and did not engage in illegal activity.
28. At no time during the events described above was Plaintiff intoxicated, incapacitated, a threat to himself or others, or disorderly. Plaintiff did not commit any criminal offenses.
29. Officer Zubris issued Plaintiff a citation charging him with violating Pennsylvania's disorderly conduct statute, 18 Pa.C.S. § 5503(a)(3) based on Plaintiff's conduct of calling Officer Zubris a "fucking asshole."
30. 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 Plaintiff's case, it carries a term of imprisonment of as much as ninety (90) days and a fine of as much as \$300.

31. 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 obscene sexual conduct.
32. On February 18, 2009, after holding a summary trial, a Pennsylvania Magisterial District Judge found Plaintiff not guilty of the disorderly conduct charge. (Docket Sheet attached as Exhibit B.)
33. As a direct and proximate result of Defendant's actions, Plaintiff 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) Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from unreasonable search and seizure of his person;
 - c) Loss of his physical liberty;
 - d) Monetary loss of \$635 (\$75 towing fee for his car, which would not have been necessary absent his arrest; \$100 loss of wages,

which he would have made working at Amato's on the night of December 19, had he not been arrested; \$460 loss of wages which he would have made working as a plumber on February 18, had he not been required to attend the summary trial on February 18);

- e) Physical pain and suffering, emotional trauma, humiliation and distress.

COUNT I

- 34. Defendant's application of Pennsylvania's disorderly conduct statute, 18 Pa.C.S. § 5503(a)(3), to arrest and prosecute Plaintiff for engaging in constitutionally protected speech violated the First Amendment to the United States Constitution as it applies to the states through the Fourteenth Amendment to the United States Constitution.

COUNT II

- 35. Defendants' 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.

COUNT III

36. Defendant's arrest and detention of Plaintiff without reasonable suspicion or probable cause violated his Fourth Amendment right to be free from unreasonable searches and seizures, as that right is applied to the states by the Fourteenth Amendment to the United States Constitution.

REQUEST FOR RELIEF

37. WHEREFORE, Plaintiff Matthew Walters requests that this Honorable Court grant the following relief:

- a) Enter a declaratory judgment that Defendant applied 18 Pa.C.S. § 5503(a)(3) in an unconstitutional fashion when he detained and 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: May 12, 2010

Respectfully submitted,

/s/ Valerie A. Burch
Valerie A. Burch (PA 92873)

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