

AMY JOHNSTON and
 GREGORY LAGROSA,

 Plaintiffs,

 v.

 HOMESTEAD BORO,
 a Pennsylvania municipality, and
 FRANCIS KEYES,

 Defendants.

Introduction

1. This is an action for declaratory judgment and money damages brought under 42 U.S.C. § 1983 and the First, Fourth and Fourteenth Amendments to the United States Constitution against the Homestead Boro Police Department and Francis Keyes, the arresting officer who committed the acts complained of herein. Plaintiffs allege that the Homestead Boro Police Department has a custom, pattern, practice or policy of authorizing its officers to arrest people illegally under Pennsylvania's disorderly conduct statute based on their use of speech protected by the First Amendment. Pursuant to this custom, policy or practice, Officer Francis Keyes unlawfully and falsely arrested and

maliciously prosecuted Plaintiffs based solely on Plaintiff Amy Johnston's use of supposed profanity in objecting to Officer Keyes' own dangerous and reckless operation of his patrol car in a pedestrian crosswalk.

Jurisdiction

2. This Court has original jurisdiction over Plaintiffs' 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.

Parties

3. Plaintiff Amy Johnston is an adult residing within this district in Pittsburgh, Pennsylvania. Johnston is a full-time undergraduate student who attends Chatham College. In addition to her studies, Johnston works as a nanny and child care provider.

4. Plaintiff Gregory Lagrosa is an adult residing within this district in Pittsburgh, Pennsylvania. Lagrosa is a library assistant employed by the Carnegie Library of Pittsburgh, and is a part-time graduate student at the University of Pittsburgh.

5. Defendant Homestead Boro is a municipal government entity organized under the laws of Pennsylvania, with its main offices located at 140 East Ninth Avenue, Homestead, Allegheny County, Pennsylvania 15120. The Homestead Boro Police Department has a legal responsibility to operate according to the laws of the United States and the Commonwealth of Pennsylvania, including but not limited to the United States Constitution.

6. Defendant Francis Keyes is a police officer employed by and acting under the authority of the Homestead Boro Police Department. Plaintiffs name Officer Keyes in his individual capacity.

7. At all relevant times, the Defendants acted under color of state law. At all relevant times, Defendant Francis Keyes acted within the scope of his employment by Defendant Homestead Boro Police Department.

General Allegations

A. Events Leading to Defendants' Unlawful Arrest of Plaintiffs

8. On November 26, 2000, Plaintiffs Amy Johnston and Gregory Lagrosa were shopping at the Giant Eagle grocery store located in the Waterfront development in Homestead Boro at 420 Waterfront Drive East, Homestead, Pennsylvania 15120.

9. At all times, Johnston and Lagrosa were acting lawfully, and furthermore were supporting the local economy and the Homestead Boro tax base by shopping at the Waterfront Giant Eagle. Johnston and Lagrosa were not engaging in any illegal activity at any time.

10. As Johnston and Lagrosa exited from the Giant Eagle, carrying the groceries they had purchased, they prepared to enter a marked pedestrian crosswalk when Officer Keyes drove his patrol car recklessly through the crosswalk at a dangerous speed, without slowing or yielding to the pedestrian right-of-way, forcing Johnston and Lagrosa to jump out of the way for their own safety. Johnston objected to the reckless driving of Officer Keyes by reminding him "It's a crosswalk, asshole." As Office Keyes later admitted under oath, Johnston made the utterance in a "normal tone" audible to the officer in his car through his open window, without screaming or otherwise being louder than necessary. Johnston did not make any threatening or otherwise demonstrative gestures to accompany her comments. The statement was an isolated comment and was not accompanied by any other remarks.

11. Officer Keyes thereupon abruptly slammed on his brakes, causing the patrol car to skid before stopping, put the patrol car in reverse, backing through the pedestrian crosswalk, and pulled into the parking area to follow Johnston and Lagrosa as they walked to their parked car.

12. Officer Keyes stepped from his car in a rage and chased after Johnston and Lagrosa, yelling loudly and exhibiting aggressive body language. Further, he yelled "You think I'm an asshole, how would like it if I called you an asshole. I tell you what, you go around calling people assholes, next time I'll let them kick your ass." Such enraged, irrational comments and physical threats directly contravene Officer Keyes' obligation to protect the public, including the Plaintiffs.

13. Officer Keyes then arrested Johnston, placing her in hand cuffs in public view. As Officer Keyes placed Johnston in cuffs, Lagrosa attempted to reason with him, using a clam and moderate tone of voice, to no avail.

14. Johnston and Lagrosa were terrified by Officer Keyes' enraged behavior. Johnston was reduced to tears, pleading with bystanders for their aid.

15. Several bystanders became alarmed at the enraged behavior of Officer Keyes and attempted to intervene, objecting that Johnston and Lagrosa had done nothing wrong and insisting to Officer Keys that he had not been hired to act in this fashion.

16. Several bystanders used their cell phones to call the Homestead Boro Police Department to report that it had an officer "out of control," that he was arresting people "for something that has no right to arrest them for," and that they should send someone right away to contain Officer Keyes.

17. Based on the mounting objections of bystanders, Office Keyes momentarily removed the handcuffs from Johnston. Within approximately five minutes, as backup units began to arrive, Officer Keyes again placed handcuffs on Johnston. Further, Officer Keyes grabbed Lagrosa to restrain him while the backup units arrived, whereupon Lagrosa was likewise placed in handcuffs. Defendants then transported Plaintiffs in separate patrol cars to the station.

18. Throughout this episode, Lagrosa remained very calm and demonstrated great control, trying to persuade Officer Keyes to calm down. Each time he tried to reason with Officer Keys, however, Keyes shouted at him to "shut up."

19. At no time during the events described above were Plaintiffs intoxicated, incapacitated, a threat to themselves or to others, or disorderly. Plaintiffs did not commit any criminal offenses.

B. Unlawful Criminal Charges and the Swift Dismissal Thereof

20. Defendants charged Johnston with violating Pennsylvania's disorderly conduct statute, 18 Pa. Cons. Stat. Ann. § 5503(a)(3), on the basis of her use of the term "asshole." The disorderly conduct citation served as the sole legal basis for Johnston's detention.

21. Defendants charged Lagrosa with harassment in violation of 18 Pa. Cons. Stat. Ann. § 2709(a)(1), alleging that he "did shove Officer Keyes while he was placing another person under arrest."

22. Officer Keyes had neither a warrant nor probable cause for Plaintiffs' arrest, and no legal cause to seize them.

23. Subsection (a)(3) of Pennsylvania's disorderly conduct statute, 18 Pa. Cons. Stat. Ann § 5503(a)(3), makes it a crime to "use[] *obscene* language, or make[] an *obscene* gesture" with intent to "cause public inconvenience, annoyance or alarm, or recklessly creating the risk thereof."

(Emphasis added.) The statute provides for a fine not to exceed \$300 and/or imprisonment for a term not to exceed ninety days.

24. The courts have interpreted the language of 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.

25. At a hearing held on January 17, 2001, Officer Keyes testified under oath that Lagrosa shoved him with force in the chest with both hands, causing Keyes to step back. However, two disinterested eyewitnesses testified that they witnessed the entire event and that Lagrosa never pushed Officer Keyes.

26. At the conclusion of the hearing held on January 17, 2001, a district justice dismissed the charges filed against Plaintiffs, finding that Johnston did not engage in unlawful disorderly conduct and that Lagrosa did not engage in unlawful harassment. No appeal was taken.

27. As a direct and proximate result of Defendants' actions, Plaintiffs 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 criminal prosecution or to be retaliated against in any way for engaging in constitutionally-protected speech;
- b. 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 an unreasonable search and seizure of their persons;
- c. 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 malicious prosecution;
- d. Loss of their physical liberty; and
- e. Physical pain and suffering, emotional trauma, humiliation and distress.

28. The Homestead Boro Police Department, by virtue of custom, pattern, practice, training and/or policy, authorizes its police officers to act in an unconstitutional fashion by enforcing 18 Pa. Cons. Stat. Ann. § 5503(a)(3) against people who merely use supposed profanity, which is, nevertheless, constitutionally-protected speech.

29. Defendant Homestead Boro Police Department policymakers and officials are deliberately indifferent to the misapplication of the disorderly conduct statute to arrest and prosecute people engaged in constitutionally-protected expressive activity.

COUNT 1

30. Defendants' application of 18 Pa. Cons. Stat. Ann. § 5503(a)(3) to arrest and prosecute Plaintiffs 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 2

31. Defendants' arrest of Plaintiffs without warrant or probable cause violated their 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.

COUNT 3

32. Defendants' prosecution of Plaintiffs without appropriate legal foundation violated their Fourth Amendment right to be free from malicious prosecution, as that right is applied to the states by the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Amy Johnston and Gregory Lagrosa request that this Honorable Court grant the following relief:

- a. Enter a declaratory judgment that the Defendants applied 18 Pa. Cons. Stat. Ann. § 5503(a)(3) in an unconstitutional fashion when Defendant Keyes arrested Plaintiffs Amy Johnston and Gregory Lagrosa;
- b. Enter a declaratory judgment that the Defendant municipality has a custom, practice and/or policy of applying 18 Pa. Cons. Stat. Ann. § 5503(a)(3) in an unconstitutional manner to retaliate against, and chill, citizens' First Amendment free-speech rights;
- c. Enter an award for compensatory damages against all Defendants, jointly and severally, in an amount to be determined at trial;
- d. Enter an award for costs, expenses, and counsel fees pursuant to 42 U.S.C. § 1988; and
- e. Enter such other relief as this Honorable Court may deem just and deserving.

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Angela P. Kamin, Esquire
Pa. I.D. No. 85083

Bartony & Hare
Law & Finance Building
Suite 1801
429 Fourth Avenue
Pittsburgh, PA 15219

Tel: 412-338-8632

Witold J. Walczak, Esquire
Pa. I.D. No. 62976

American Civil Liberties
Foundation of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213-4090

Tel: 412-681-7736

On behalf of the American Civil
Liberties Foundation of
Pennsylvania

Counsel for Plaintiffs

Date: July 2, 2002