

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

**MARIANNE BESSEY,
Plaintiff**

v.

**CITY OF PHILADELPHIA; POLICE
OFFICER CHARLES SHELTON,
Badge # 7444; and POLICE OFFICER
DONALD WEST, Badge No. 1172,
in their individual capacities,
Defendants**

:
: **Civil Action No. 07-**
:
:
:
:
: **Jury Trial Demanded**
:
:

COMPLAINT

Jurisdiction

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.

Parties

2. Plaintiff Marianne Bessey is a resident of Lansdowne, Pennsylvania.
3. Defendant City of Philadelphia is a municipality incorporated in the Commonwealth of Pennsylvania.
4. Defendant Shelton is a police officer in the Philadelphia Police Department. He is sued in his individual capacity.
5. Defendant West 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. Beginning on March 23, 2005 and continuing through April 3, 2005, plaintiff Bessey went to the Mann Music Center (“Center”), which was hosting performances of the UniverSoul Circus in a field adjacent to the Center. She intended to demonstrate peacefully outside the Center to bring attention to the Circus’s treatment of animals, particularly elephants.

8. Plaintiff Bessey is a strong believer in animal rights and regularly engages in peaceful public protest to bring attention to the mistreatment of animals by businesses.

9. On April 1, 2005, plaintiff Bessey arrived outside the Center at approximately 6:00 PM with signs and literature and began offering the literature to and discussing the circus with patrons arriving for the performance. Depending on the flow of circus patrons, Bessey stood at or near the curb line of 52nd Street Drive and along the street leading to the Center, where she had previously protested without incident.

10. On this evening, however, Bessey was approached by a security guard for the circus, who demanded that she retreat to the curb line of 52nd Street. She refused. Upon information and belief, the circus security guard then asked Defendants West and Shelton to remove Bessey.

11. Plaintiff Bessey at all times stood on public property – either on the street or on the grass outside the Center – areas that were open to and used by patrons walking to and from the Center, as well as by other members of the public.

12. At approximately 6:30 PM, Defendants West and Shelton approached Bessey, who was standing along the street leading to the Center, among the circus patrons, and told her she would have to move to the curb line of 52nd Street Drive, where very few, if any, circus patrons were located. Bessey refused because she was on public property and not interfering with the

circus patron traffic. Defendants West and Shelton then arrested Bessey, hand cuffed her, and transported her to a police station. Bessey was held in a cell for close to three hours before being released with a citation for disorderly conduct.

13. On April 2, 2005 and April 3, 2005, Bessey returned to the Center to protest and stood along the street leading to the Center where she had been arrested on April 1, 2005. Although officers were present, she was not asked to move nor arrested.

14. Plaintiff was found not guilty of disorderly conduct and failure to disperse at a trial held October 25, 2005.

15. Following her trial, plaintiff filed an Internal Affairs complaint with the Police Department regarding the incident. She has pursued that complaint diligently, but the Department has failed to either resolve the complaint or take any action against Officers West and Shelton for their improper arrest of plaintiff.

16. The arrest of plaintiff was without probable cause.

17. The conduct of the defendant officers was in retaliation for and designed to discourage Bessey from her exercise of her right to protest. Upon information and belief, the officers demanded that she move and arrested her because of the complaint by the circus security guard and not because she was, in fact, acting improperly.

18. Defendant City of Philadelphia, with deliberate indifference, failed to properly train, supervise, and discipline defendants West and Shelton with respect to the rights of persons engaged in protest. The failure to train, supervise and discipline defendants West and Shelton and other officers in the Philadelphia Police Department caused the constitutional violations alleged in this Complaint.

19. Plaintiff Bessey regularly makes use of public property and other public fora to protest the treatment of animals by private property owners and users. On numerous occasions she has been harassed or directed to cease her protest activities by Philadelphia police officers acting at the request of the private property owners or users who are the target of her protests. Defendant City of Philadelphia, with deliberate indifference, has failed to properly train, supervise, and discipline Philadelphia police officers, including defendants West and Shelton, not to accede to the requests of private property owners or users to interfere with the rights of persons engaged in protest. That failure to train, supervise and discipline caused the constitutional violations alleged in this Complaint.

20. Plaintiff Bessey intends to continue her regular protest activities directed at private property owners and users.

21. As a result of the defendants' conduct, practices, and policies, plaintiff Bessey suffered emotional pain and suffering and humiliation, as well as economic losses associated with defending the baseless charge.

Claims

22. Plaintiff re-alleges paragraphs 1-21.

23. The acts and conduct of defendants West and Shelton constituted an illegal and unconstitutional arrest under the Fourth Amendment. Further, the defendants' conduct was in retaliation for and designed to chill plaintiff's exercise of her right to speak publicly on matters of public concern guaranteed by the First Amendment.

24. The defendant City of Philadelphia caused the constitutional violations by reason of its practice and custom, with deliberate indifference, of failing to properly train, supervise and

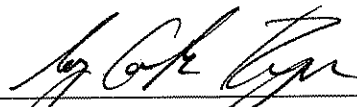
discipline police officers, including defendants West and Shelton, in the rights of protestors. The practices, policies and customs of the defendant City of Philadelphia have caused and will in the future cause violations of the rights of the plaintiff and other persons in the City of Philadelphia.

Wherefore, Plaintiff requests this Court to Order:

1. Compensatory damages;
2. Punitive damages against defendants West and Shelton;
3. A declaratory judgment that the practices, policies and customs complained of in this Complaint are unconstitutional.
4. A permanent injunction against the continued implementation and application of the policies, practices and customs of the defendant City of Philadelphia complained of in this Complaint, and specifically an Order requiring appropriate training, supervision, and discipline for Philadelphia police with respect to the rights of protestors.
5. Attorney's fees and costs;
6. All other appropriate relief.

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF PENNSYLVANIA

Dated: March 30, 2007.



Mary Catherine Reper
Attorney ID # 71107
P.O. Box 40008
Philadelphia, PA 19106
Tel.: (215) 592-1513 ext. 116
Fax: (215) 592-1343
Email: mreper@aclupa.org