

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

<b>LONA SCARPA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	
	)	<b>No.:</b> _____
	)	
<b>COMMISSIONER FRANK PAWLOWSKI, CAPTAIN JOHN DOUGHERTY, and TROOPER KENNETH EDWARDS, Of the Pennsylvania State Police,</b>	)	<b>(Judge _____)</b>
	)	<b>(Filed Electronically)</b>
<b>Defendants.</b>	)	
	)	

**COMPLAINT**

Plaintiff Lona Scarpa files this complaint against Defendants Commissioner Frank Pawlowski, Captain John Dougherty, and Trooper Kenneth Edwards of the Pennsylvania State Police, in their individual capacities, for violations of her First Amendment rights.

**SUMMARY OF ACTION**

1. This is an action for declaratory judgment and money damages brought under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution against Pennsylvania State Police Commissioner, Frank Pawlowski (“Commissioner Pawlowski”), Troop P commanding officer, Captain

John Dougherty (“Captain Dougherty”), and Trooper Kenneth Edwards (Badge No. 6989/438804) (“Trooper Edwards”), the officer who committed the acts complained of herein.

2. Plaintiff alleges that the Pennsylvania State Police, under the leadership of Commissioner Pawlowski, has a custom, pattern, practice, and/or policy of issuing citations illegally to citizens under Pennsylvania’s disorderly conduct statute based on their use of speech protected by the First Amendment, to wit, expression involving profane language or gestures. As a result of this custom, pattern, practice and/or policy, Plaintiff Scarpa was cited by Defendant Edwards for speech that is protected by the First Amendment.

3. Plaintiff further alleges that the Pennsylvania State Police, including Troop P commander Captain Dougherty, fails to appropriately train, supervise and/or discipline its officers who illegally issue citations to people who include profane language or gestures in their expression. Pursuant to this custom, pattern, practice, policy, and/or failure to appropriately train, supervise and/or discipline, Trooper Edwards unlawfully issued a citation to Plaintiff based solely on Plaintiff’s conduct of uttering a profanity.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over Plaintiff’s 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.

5. Venue is proper under 28 U.S.C. § 1391(b) because all relevant events giving rise to the claim occurred in this judicial district.

### PARTIES

6. Plaintiff, Lona Scarpa, is an adult residing in Mocanaqua, which is located in Luzerne County, Pennsylvania.

7. Defendant, Colonel Frank Pawlowski is the Commissioner of the Pennsylvania State Police (“PSP”). His official address is 1800 Elmerton Avenue, Harrisburg, PA 17110.

8. Defendant, Captain John Dougherty, Troop P, Wyoming Commanding Officer, has supervisory responsibility for Troop P, Wyoming. His official address is 475 Wyoming Avenue, Wyoming, PA 18644.

9. Defendant, Trooper Kenneth Edwards (Badge No. 6989/438804) is a Pennsylvania State Police Trooper of Troop P, Wyoming. His official address is 872 Salem Blvd., Berwick, PA 18603.

10. All Defendants in this action are sued in their individual capacities.

11. The Defendants named in this action were at all relevant times acting under color of state law. At all relevant times, Trooper Edwards acted within the scope of his employment by the Pennsylvania State Police.

## FACTS

12. On October 9, 2008, Plaintiff and a friend were walking down Railroad Street, near Italy Street, in Mocanaqua, Pennsylvania.

13. As they walked, a man on a motorcycle who knew and disliked Plaintiff and her friend drove past, swerving close to Plaintiff as if to hit her. The motorcyclist yelled an insult about Plaintiff's weight at her.

14. Plaintiff yelled back, calling the motorcyclist an "asshole" and making other comments that did not include profanities.

15. The same day, Plaintiff called the Pennsylvania State Police to report the incident in which the motorcyclist intentionally swerved close to her as she walked on the side of the road.

16. Also on the same day, Trooper Edwards investigated Plaintiff's report.

17. After speaking to both parties, Trooper Edwards told Plaintiff over the telephone that if he cited the motorcyclist, he would have to issue her a citation as well because the motorcyclist claimed she yelled, "asshole, asshole, asshole" at him.

18. Plaintiff later received a citation for disorderly conduct in the mail.  
(Attached as Exhibit A.)

19. At all times, Plaintiff acted lawfully and did not engage in illegal activity.

20. At no time during the events described above was Plaintiff intoxicated, incapacitated, a threat to herself or others, or disorderly. Plaintiff did not commit any criminal offenses.

21. Trooper Edwards issued Plaintiff a citation on October 15, 2008, charging her with violating Pennsylvania's disorderly conduct statute, 18 Pa. C.S. § 5503(a)(3), based on Plaintiff's conduct of yelling "asshole, asshole, asshole" at the motorcyclist.

22. Subsection (a)(3) of Pennsylvania's disorderly conduct statute, 18 Pa. C.S. § 5503, 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). 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.

23. The Pennsylvania Supreme and Superior courts have, since 2000, 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 obscenity.

24. Despite this, Defendant Pawloski and Defendant Dougherty maintain a custom, pattern, practice and/or policy of failing to train PSP troopers about the proper use of the disorderly conduct statute, and of failing to discipline or correct troopers, like Defendant Edwards, who issue citations under the disorderly conduct statute for public profanity.

25. In February 2009, counsel for Plaintiff contacted the PSP, seeking redress for Plaintiff, but also corrective policies and training for all PSP troopers. In response, the PSP denied repeatedly that there was any pattern of PSP troopers improperly citing individuals for the use of profanity.

26. Counsel for Plaintiff therefore sent the PSP a Right To Know Law request for all PSP citations issued under 18 Pa. C.S. § 5503(a)(3) for the period September 2008 to September 2009.

27. Defendants' unlawful custom, pattern, practice and/or policy, is illustrated by the fact that during from September 2008 to September 2009, PSP troopers issued over 770 separate citations under 18 Pa. C.S. § 5503(a)(3), and not a single one of these citations described speech or conduct that could meet the legal definition of "obscenity". Indeed, for nearly 65% of the legible citations, the only conduct described as the basis for the charge was the use of profanity or equivalent gestures.

28. Upon information and belief, Defendant Pawlowski is the person responsible for the development and implementation of training for PSP troopers, including Defendant Edwards. Also upon information and belief, Defendant Pawlowski has failed to implement training for PSP troopers regarding the proper meaning and lawful application of 18 Pa. C.S. § 5503(a)(3) despite being aware of the courts' interpretation of that provision and despite the fact that this issue arises with both frequency and regularity.

29. Upon information and belief, Defendant Dougherty is the person responsible for supervision and discipline of PSP Troop P troopers, including Defendant Edwards. Also upon information and belief, Defendant Dougherty has failed to appropriately train, supervise and/or discipline troopers who issue said citations illegally, despite being aware of the courts' interpretation of 18 Pa. C.S. § 5503(a)(3) and despite the fact that this issue arises with both frequency and regularity.

30. As a result of this custom, pattern, practice and/or policy, Trooper Edwards issued Plaintiff a disorderly conduct citation for saying "asshole" to the passing motorcyclist.

31. On January 22, 2009, after a summary trial, a Pennsylvania Magisterial District Judge found Plaintiff not guilty of the disorderly conduct charge. (Docket Sheet attached as Exhibit B.)

32. Upon information and belief, Trooper Edwards was acting at the express or implied direction of the other Defendants when he issued Plaintiff a citation for disorderly conduct for the use of a profanity.

33. Upon information and belief, the Defendants, other than Trooper Edwards, acted with deliberate indifference by failing to train Trooper Edwards in his constitutional obligations to respect individuals' right to free speech, and that failure was a direct cause of Trooper Edward's actions detailed above.

34. As a direct and proximate result of Defendants' actions, Plaintiff suffered the following injuries and damages:

- a. Violation of her 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. Monetary loss of \$1,500.00 for an attorney's representation at the summary trial for her disorderly conduct citation; and
- c. Emotional trauma, humiliation and distress.

### COUNT I

#### First Amendment – Freedom of Expression

35. The foregoing paragraphs are incorporated by reference.



36. The Defendants' application of Pennsylvania's disorderly conduct statute, 18 Pa. Cons. Stat. Ann. § 5503(a)(3), to 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

### First Amendment – Retaliation

37. The foregoing paragraphs are incorporated by reference.

38. The Defendants' actions constitute retaliation against Plaintiff for her exercise of her 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.

### PRAYER FOR RELIEF

*WHEREFORE*, Plaintiff, Lona Scarpa, requests this Honorable Court grant the following relief:

- a. Enter a declaratory judgment that Defendants' actions have violated Plaintiffs' constitutionally-protected First Amendment rights;

- b. Enter a declaratory judgment that the Trooper Edwards applied 18 Pa. Cons. Stat. § 5503(a) in an unconstitutional fashion when he issued a citation to Plaintiff;
- 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.

Date: May 12, 2010

/s/ Mary Catherine Roper

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