

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL PAUL WEITZSACKER,
4260 West 50th Street
Cleveland, Ohio 44144

Plaintiff,

v.

CITY OF BROOKLYN
c/o Mayor, Richard H. Balbier
7619 Memphis Avenue
Brooklyn, Ohio 44144
and

**DANIEL MEADOWS, individually and in his
official capacity as police officer for the City of
Brooklyn, Ohio**
c/o Brooklyn Police Department
7619 Memphis Avenue
Brooklyn, Ohio 44144
and

**SCOTT MIELKE, in his official capacity as
Chief of Police for the City of Brooklyn, Ohio**
c/o Brooklyn Police Department
7619 Memphis Avenue
Brooklyn, Ohio 44144
and

JANE AND JOHN DOE(S)
Address unknown

Defendants.

CASE NO. 1:14-cv-1690

JUDGE

COMPLAINT FOR DAMAGES
FOR VIOLATION OF CIVIL
RIGHTS (42 U.S.C. § 1983)

DEMAND FOR JURY TRIAL

Now comes the Plaintiff, Michael Paul Weitzsacker by and through undersigned counsel, and avers as follows on the basis of his knowledge, information, and belief:

INTRODUCTION

1. This case involves violations of the Plaintiff's civil rights under 42 U.S.C. § 1983 and pendent state law claims against the City of Brooklyn and a police officer employed by the city for violations of the constitutional rights of the Plaintiff resulting from a warrantless and baseless arrest for openly carrying a handgun lawfully.

PARTIES

2. The Plaintiff, Michael Paul Weitzsacker (hereafter "Mr. Weitzsacker" or "Plaintiff"), is an individual person who resides at 4260 West 50th Street, City of Cleveland, Cuyahoga County, Ohio 44144.
3. The Defendant, City of Brooklyn, now and at all times mentioned is a duly incorporated city of the State of Ohio, located in Cuyahoga County, and within the jurisdiction of this Court. The City of Brooklyn is a "person" pursuant to 42 U.S.C. § 1983.
4. The Defendant, Patrolman Daniel Meadows (hereafter "Ptlm. Meadows"), now and at all times mentioned was an employee of the City of Brooklyn Police Department, serving as a law enforcement officer, and is named in both his individual and official capacities.
5. The Defendant, Scott Mielke, now and at all times mentioned was an employee of the City of Brooklyn Police Department, serving as the Chief of Police, and is named in his official capacity.
6. Unknown Defendant(s) Jane and John Doe(s) are persons or entities who at this time are unknown and may have participated in the violation of Plaintiff's civil and constitutional rights, and are named in both their individual and official capacities. At such time as the

name and addresses of said unknown persons are discovered, the Plaintiff will move to amend this Complaint.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the federal civil rights claims pursuant to 28 U.S.C. §§ 1331 and 1343.
8. This Court has pendant/supplementary jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.
9. The acts and omissions giving rise to Plaintiff's claims occurred in the city of Brooklyn, Ohio and therefore, pursuant to 28 U.S.C. § 1391, the appropriate venue for this action is the United States District Court for the Northern District of Ohio, Eastern Division.

FACTUAL ALLEGATIONS

Arrest and Seizure at PNC Bank

10. On August 3, 2013, Mr. Weitzsacker left his house to run an errand to the ATM outside of the PNC Bank located at 7430 Memphis Avenue, Brooklyn, Ohio 44144.
11. Mr. Weitzsacker travelled by bicycle on the short trip for a chance to enjoy the nice fall weather.
12. Before leaving his house, Mr. Weitzsacker carefully attached his holster to the belt on the right side of shorts, tucking in his t-shirt behind the holster, and holstered his personal handgun.
13. As an active member of Northeast Ohio Carry, Mr. Weitzsacker understood that the Ohio Constitution and state law protected his right to carry his handgun openly, both to and from the ATM on the exterior of his local bank's building. He also understood Ohio's law on carrying concealed weapons, and the rules for openly carrying a firearm legally.

14. Mr. Weitzsacker arrived at the bank and had to wait for a few minutes while another individual using the ATM concluded his transaction.
15. Unbeknownst to Mr. Weitzsacker, another patron of the bank Mickey Roberts dialed 911 from his vehicle to report seeing a man carrying a firearm right out in the open on his hip.
16. After a brief discussion with Mickey Roberts, the 911 dispatcher explained that it was lawful to openly carry a firearm, and Mickey reiterated twice more that the firearm was being carried openly.
17. Mr. Weitzsacker approached the ATM at approximately 1:00PM and began to make his deposit.
18. At approximately 1:02PM, Mr. Weitzsacker concluded his deposit and, after taking his receipt, stepped onto the pedals of his bicycle to ride away.
19. As he rode away, the camera in the PNC Bank's ATM captured several frames showing Mr. Weitzsacker's firearm clearly and openly held in his holster, with his shirt tucked in behind the firearm. (See attached "Exhibit A").
20. Mere seconds later and before Mr. Weitzsacker could make it out of the PNC Bank parking lot, Ptlm. Dan Meadows of the Brooklyn Police Department yelled for him to stop and to keep his hands visible.
21. Mr. Weitzsacker complied with the orders and slowly approached Ptlm. Meadows as ordered.
22. Ptlm. Meadows then interrogated Mr. Weitzsacker at gunpoint with several questions about why he was carrying a firearm, and then berated him for scaring people before telling him he was being detained for carrying a gun at a bank.

23. After receiving a radio report that Mr. Weitzsacker had no wants or warrants, Ptlm. Meadows handcuffed Mr. Weitzsacker.
24. Mr. Weitzsacker asked if he was being arrested, and Ptlm. Meadows explained that he was being arrested for the crime of inducing panic.
25. Mr. Weitzsacker explained to the officer that he could not be guilty of inducing panic because he had not committed any other crime or threatened violence.
26. After putting him in the back of the police truck, Ptlm. Meadows told Mr. Weitzsacker that he was “lucky he didn’t resist”, because Ptlm. Meadows would have “shot and killed [him] right there” and that he “didn’t want to deal with that before his vacation.”
27. Ptlm. Meadows seized Mr. Weitzsacker’s handgun during the arrest and stored it as evidence at the Brooklyn Police Department.
28. On information and belief, Ptlm. Meadows was so undertrained with regards to firearm law and evidentiary procedures that he did not store Mr. Weitzsacker’s handgun in accordance with department policy. (See attached “Exhibit B”).
29. At all times prior to Ptlm. Meadows touching and securing Mr. Weitzsacker’s handgun, the handgun was being carried openly, with Mr. Weitzsacker’s t-shirt tucked behind his holster such that the handgun was always clearly visible.
30. In his incident report, Ptlm. Meadows states: “As WEITSAC ER [sic] approached, the ottom [sic] portion of a rown [sic] leather holster could e [sic] seen on WEITZSAC ERs [sic] right side, however whatever o ect [sic] was contained inside the holster was

covered up WEITZSAC ERs [sic] tshirt. The holster was only slightly protruding from underneath his t shirt.” (See attached “Exhibit C”).¹

31. The holster in fact covers only the trigger guard of his handgun, and permits the entire grip and nearly two inches of his handgun’s stainless steel barrel to extend beyond the holster. (See attached “Exhibit D” for a picture of the firearm and holster Mr. Weitzsacker carried on the date in question).
32. Even if Mr. Weitzsacker’s t-shirt had partially covered the grip of his handgun, there is no way that Ptlm. Meadows could have seen any part of Mr. Weitzsacker’s holster without clearly seeing the silver barrel of his handgun.
33. Under Ohio law, Mr. Weitzsacker’s handgun was not concealed for purposes of creating criminal liability for Carrying a Concealed Weapon.

Brooklyn Mayor's Court Proceedings

34. Mr. Weitzsacker was charged in Brooklyn Mayor’s Court with a violation of Brooklyn Codified Ordinance (“B.C.O.”) 509.06(a)(3) Inducing Panic.
35. B.C.O. 509.06 Inducing Panic states, in relevant part: “(a) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following: * * * (2) Threatening to commit any offense of violence; (3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.”
36. At the Mayor’s Court trial on August 28, 2013, Mr. Weitzsacker, through his attorney Derek DeBrosse, spoke with City of Brooklyn Prosecutor Hillary Goldberg (hereafter “Prosecutor Goldberg”).

¹ Although the incident report stops midsentence, we were not provided with a second page. We received no response to requests to clarify whether there were any additional pages. It also appears that the “B,” “J,” and “K” keys were not functioning properly at the time the report was created.

37. Attorney DeBrosse formally requested that the action be removed to the Parma Municipal Court after learning that Prosecutor Goldberg would not dismiss the case, and an entry removing the case to the Parma Municipal Court was made pursuant to Ohio Revised Code § 1905.032.

Parma Municipal Court Proceedings

38. On September 19, 2013, Prosecutor Goldberg filed case no. 13 CRB 04607 in the Parma Municipal Court.

39. Inexplicably, on filing the case in Parma Municipal Court, Prosecutor Goldberg changed the charge from a violation of B.C.O. 509.06(a)(3) to a violation of B.C.O. 509.06(a)(2).

40. In the Parma Municipal Court case no. 13 CRB 04607 on October 9, 2013, Mr. Weitzsacker filed: a Subpoena Duces Tecum for Amy Sanovich of PNC Bank, a Request for Bill of Particulars, a Jury Demand, and a Motion for Discovery.

41. Despite repeated attempts to secure discovery and a bill of particulars, Prosecutor Goldberg never answered the motions filed by Mr. Weitzsacker.

42. On or about October 24, 2013, Mr. Weitzsacker's counsel contacted Prosecutor Goldberg by phone to explain that PNC Bank's security cameras had captured photographs of Mr. Weitzsacker at the ATM clearly showing his handgun being openly carried.

43. Mr. Weitzsacker's counsel forwarded the photographs taken by the PNC Bank ATM to Prosecutor Goldberg.

44. Mr. Weitzsacker's counsel also again requested that Prosecutor Goldberg provide discovery and the bill of particulars.

45. On October 24, 2013, Prosecutor Goldberg replied to the email from Mr. Weitzsacker's counsel and stated, "I reviewed the 911 call and it appears that there was a period of time

where [sic] the gun was carried as an open carry. Therefore, the inducing panic charge will be dismissed.”

46. On October 28, 2013, Prosecutor Goldberg ultimately filed her Notice of Dismissal Without Prejudice in Parma Municipal Court case no. 13 CRB 04607.

No Bill in Cuyahoga Court of Common Pleas

47. Subsequent to dismissal of the Parma Municipal Court case, Mr. Weitzsacker’s counsel discovered that the Prosecutor for the Cuyahoga Court of Common Pleas was preparing to seek an indictment against Mr. Weitzsacker for R.C. 2923.12 Carrying Concealed Weapons.
48. Mr. Weitzsacker’s counsel reached out to the Cuyahoga County Prosecutor in the grand jury division and provided him with copies of the security camera footage from the PNC Bank.
49. On or about November 26, 2013, the grand jury returned a No Bill for Mr. Weitzsacker on the charge of R.C. 2923.13 Carrying Concealed Weapons. (See attached “Exhibit E”).
50. Mr. Weitzsacker continues to suffer delays when he attempts to purchase firearms and for issuance of his concealed handgun license as a result of the wrongful arrest on his record.

The City of Brooklyn was Aware of Ptlm. Meadows Inability to Determine Probable Cause and Did Nothing to Prevent Future Misconduct

51. On August 18, 2008, Patrolman Dan Meadows was the subject of formal counseling for failing to follow police procedure, to wit: failing to make an arrest for drug paraphernalia and failing to give a field sobriety test to a driver after stopping a vehicle that smelled of the strong odor of burnt marijuana. (See attached “Exhibit F”).
52. There is no record in Ptlm. Meadows file that he received any additional training on lawful grounds for arrest or probable cause standards as a result of the formal counseling.

53. Ptlm. Meadows had previously been disciplined for falsifying his timesheets at a Giant Eagle while working as private security. (See attached "Exhibit G").

54. On information and belief, Ptlm. Meadows feared punishment if he did not arrest Mr. Weitzsacker and, not knowing whether Mr. Weitzsacker's conduct was legal, arrested Mr. Weitzsacker and falsely accused him of a misdemeanor Inducing Panic charge and felony Carrying a Concealed Weapon charge.

ALLEGATIONS COMMON TO ALL CLAIMS

55. The City of Brooklyn and Chief Scott Mielke were negligent in their training, supervision, and retention of Ptlm. Meadows.

56. Ptlm. Meadows acted under the color of state law when he unlawfully seized, searched, and arrested Mr. Weitzsacker, and was acting under the color of state law at all times during the subsequent criminal case.

57. Because Mr. Weitzsacker had not actually committed any criminal offense at the time he was seized, searched, and arrested, Ptlm. Meadows lacked probable cause to seize, search, or arrest Mr. Weitzsacker.

58. The City of Brooklyn is liable for the actions of Ptlm. Meadows, as the City was aware that Ptlm. Meadows did not understand what constitutes probable cause for arrest after the 2008 incident, and the City of Brooklyn failed to adequately train Ptlm. Meadows in what constitutes sufficient evidence to justify an arrest.

59. The City of Brooklyn directly participated in the misconduct by reprimanding Ptlm. Meadows after the 2008 incident without subsequently providing adequate training to ensure that he understood when he did and did not have probable cause to arrest an individual.

60. The city's lack of remedial training for Ptlm. Meadows ultimately groomed him to err on the side of making an arrest rather than risking another reprimand for failing to arrest an individual whom he should have arrested.
61. The failure to properly train and supervise Ptlm. Meadows, and the decision to retain him amount to deliberate indifference on the part of the City of Brooklyn.
62. The City of Brooklyn should have been aware that Ptlm. Meadows was likely to violate the constitutional rights of individuals as a result of its training, supervision, and retention policy.

**FIRST CLAIM – FOR UNLAWFUL SEARCH, A VIOLATION OF PLAINTIFF'S
FOURTH AMENDMENT RIGHTS THROUGH 42 U.S.C. § 1983**

63. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.
64. Ptlm. Meadows violated Mr. Weitzsacker's Fourth Amendment right against unlawful search when, through threat of force and actual display of authority, Ptlm. Meadows searched Mr. Weitzsacker's person without probable cause.
65. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker's constitutional rights, and Mr. Weitzsacker's rights were clearly established at the time of the violation.
66. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.
67. The unlawful search of his person in front of other citizens caused Mr. Weitzsacker emotional trauma and humiliation.

**SECOND CLAIM – FOR UNLAWFUL SEIZURE, A VIOLATION OF PLAINTIFF’S
FOURTH AMENDMENT RIGHTS THROUGH 42 U.S.C. § 1983**

68. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.

69. Ptlm. Meadows violated Mr. Weitzsacker’s Fourth Amendment right against unlawful seizure when, through threat of force and actual display of authority, Ptlm. Meadows detained and arrested Mr. Weitzsacker without probable cause.

70. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker’s constitutional rights, and Mr. Weitzsacker’s rights were clearly established at the time of the violation.

71. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.

72. As a result of Ptlm. Meadows unlawful arrest of Mr. Weitzsacker, Mr. Weitzsacker suffered loss of income, emotional distress and humiliation, and suffered harm to his reputation.

**THIRD CLAIM – FOR UNLAWFUL SEIZURE OF PROPERTY, A VIOLATION OF
PLAINTIFF’S FOURTH AMENDMENT RIGHTS THROUGH 42 U.S.C. § 1983**

73. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.

74. Ptlm. Meadows violated Mr. Weitzsacker’s Fourth Amendment right against unlawful seizure when, through threat of force and actual display of authority, Ptlm. Meadows seized Mr. Weitzsacker’s handgun without probable cause.

75. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker's constitutional rights, and Mr. Weitzsacker's rights were clearly established at the time of the violation.
76. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.
77. Ptlm. Meadows deprived Mr. Weitzsacker of his ability to defend himself and forced him to endure significant legal hurdles to recover his property.

FOURTH CLAIM – FOR MALICIOUS PROSECUTION, A VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS THROUGH 42 U.S.C. § 1983

78. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.
79. Ptlm. Meadows violated Mr. Weitzsacker's Fourth Amendment right against unlawful seizure when he influenced and participated in the prosecution of Mr. Weitzsacker in Brooklyn Mayor's Court, Parma Municipal Court, and the Cuyahoga County Court of Common Pleas grand jury without probable cause.
80. As a consequence of the prosecution, Mr. Weitzsacker was forced to post bail and to endure the humiliation and the public spectacle of a criminal prosecution.
81. Prosecutor Goldberg voluntarily dismissed the Inducing Panic charges in the Parma Municipal Court.
82. The Cuyahoga County Court of Common Pleas grand jury issued a no bill to the charge of Carrying a Concealed Weapon.

83. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker's constitutional rights, and Mr. Weitzsacker's rights were clearly established at the time of the violation.

84. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.

85. As a result of Ptlm. Meadows malicious institution and support of the criminal cases against Mr. Weitzsacker, Mr. Weitzsacker suffered loss of income, emotional distress, humiliation, and legal expenses, and suffered harm to his reputation.

FIFTH CLAIM – FALSE IMPRISONMENT UNDER OHIO LAW

86. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.

87. Ptlm. Meadows unlawfully restrained Mr. Weitzsacker's freedom of movement when he detained, arrested and searched him at PNC Bank.

88. Ptlm. Meadows lacked probable cause to detain, arrest or search Mr. Weitzsacker.

89. Ptlm. Meadows used a threat of force and show of authority to detain, arrest, and search Mr. Weitzsacker against his will and without his consent.

90. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker's constitutional rights, and Mr. Weitzsacker's rights were clearly established at the time of the violation.

91. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.

92. As a result of Ptlm. Meadows false imprisonment of Mr. Weitzsacker, Mr. Weitzsacker suffered loss of income, emotional distress and humiliation, and suffered harm to his reputation.

**SIXTH CLAIM – MALICIOUS PROSECUTION FOR PROCEEDINGS IN THE
BROOKLYN MAYOR’S COURT AND PARMA MUNICIPAL COURT UNDER OHIO
LAW**

93. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.

94. Ptlm. Meadows participated in and contributed to the filing of criminal charges in the Brooklyn Mayor’s Court for a violation of B.C.O. 509.06(a)(3).

95. Ptlm. Meadows acted maliciously when he instituted the aforesaid proceedings to protect himself from possible retribution if he had failed to make the arrest.

96. Ptlm. Meadows also acted maliciously when he continued to support the proceedings once they were transferred to the Brooklyn Municipal Court

97. Ptlm. Meadows’s malice may also be inferred from the lack of probable cause for the arrest or institution of criminal proceedings.

98. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker’s constitutional rights, and Mr. Weitzsacker’s rights were clearly established at the time of the violation.

99. The City of Brooklyn is liable for failing to properly train and supervise Ptlm. Meadows, and for retaining Ptlm. Meadows, with such failures amounting to deliberate indifference.

100. Prosecutor Goldberg dismissed the criminal case in the Parma Municipal Court.

101. As a result of the malicious institution and continuation of criminal proceedings in the Brooklyn Mayor's Court and Parma Municipal Court, Mr. Weitzsacker suffered loss of income, emotional distress, humiliation, and legal expenses, and suffered harm to his reputation.

**SEVENTH CLAIM – MALICIOUS PROSECUTION FOR THE CUYAHOGA COUNTY
COURT OF COMMON PLEAS GRAND JURY UNDER OHIO LAW**

102. Plaintiff hereby incorporates by reference paragraphs 1 through 62 as if the same were fully set forth herein.

103. Ptlm. Meadows participated in and contributed to the presentation of an indictment to the Cuyahoga County Court of Common Pleas grand jury

104. Ptlm. Meadows acted maliciously when he instituted the aforesaid proceedings to protect himself from possible retribution for failing to make an arrest when he lacked probable cause.

105. Ptlm. Meadows malice may also be inferred from the lack of probable cause for the arrest or institution of criminal proceedings.

106. Ptlm. Meadows is personally liable and ineligible for qualified immunity as his conduct violated Mr. Weitzsacker's constitutional rights, and Mr. Weitzsacker's rights were clearly established at the time of the violation.

107. The City of Brooklyn is liable for failing to properly train, supervise, and retain Ptlm. Meadows, with such failure amounting to deliberate indifference.

108. The City of Brooklyn should have been aware that Ptlm. Meadows was likely to violate the constitutional rights of individuals as a result of its training policies and procedures.

109. As a result of Ptlm. Meadows malicious institution and support of the Cuyahoga County Court of Common Pleas grand jury, Mr. Weitzsacker suffered loss of income, emotional distress, humiliation, and legal expenses, and suffered harm to his reputation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael Paul Weitzsacker requests judgment be granted against the Defendants, jointly and severally, for:

- A. Compensatory damages in the amount of \$ 1,500,000.00, or an amount to be determined by a jury;
- B. Punitive damages in the amount of \$ 500,000.00, or an amount to be determined by a jury;
- C. Equitable relief including, without limitation, that the City of Brooklyn be ordered to adopt, implement, and enforce appropriate policies and practices to ensure its law enforcement officers comply with Ohio and Federal law, and the United States Constitution;
- D. Attorneys' fees and the costs of this action pursuant to 42 U.S.C. § 1988; and
- E. Such other relief that this Court deems equitable, just, and proper.

Respectfully submitted,

s/ Derek A. DeBrosse
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