



## **PARTIES**

3. Plaintiff Paul Tucker is and was at all times relevant to this Complaint a resident of Philadelphia, Pennsylvania.

4. Defendant Southeastern Pennsylvania Transportation Authority (hereafter “SEPTA”) is a governmental agency that owns, operates, manages, directs and controls the SEPTA Police Department, which employs defendants Bervine and Gordon.

5. Defendant City of Philadelphia is a municipality in the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department, which employs defendant Brown.

6. Defendant Officer Bervine is and was at all times relevant to this Complaint an officer in the SEPTA Police Department. He is sued in his individual capacity.

7. Defendant Officer Gordon is and was at all times relevant to this Complaint an officer in the SEPTA Police Department. He is sued in his individual capacity.

8. Defendant Detective Vanburen Brown is and was at all times relevant to this Complaint an officer in the Philadelphia Police Department. He is sued in his individual capacity.

9. At all times relevant to this Complaint, defendants Bervine, Gordon, and Brown acted jointly and in concert and conspiracy.

10. At all times relevant to this Complaint, all defendants acted under color of state law.

## **FACTUAL ALLEGATIONS**

11. Plaintiff Paul Tucker is a 41-year-old resident of Philadelphia, Pennsylvania.

12. Since childhood, plaintiff has suffered from serious psychiatric conditions including a schizoaffective disorder and generalized anxiety. Additionally, as an adult, plaintiff has experienced critical problems with seizures.

13. Due to these and other medical conditions, plaintiff follows a strict daily medication regimen and, therefore, keeps his prescribed medications on his person. Plaintiff's prescribed medications include Schedule IV controlled substances under Pennsylvania law, 35 P.S. § 780-104(4).

14. On May 7, 2009, plaintiff was standing on the platform of the Somerset station on the Market-Frankford elevated subway line. Plaintiff was smoking a cigarette while waiting for a train to arrive.

15. At this time, defendant Officers Bervine and Gordon approached plaintiff and advised him that he was not permitted to smoke while standing on the platform.

16. Plaintiff quickly complied with the officers' directions and extinguished his cigarette.

17. Defendant Officers Bervine and Gordon asked plaintiff to supply identification. Plaintiff complied with this request and supplied the officers with his state-issued photo identification.

18. Defendant Officers Bervine and Gordon asked plaintiff whether he had any drugs in his possession.

19. Plaintiff advised the officers that he had only his prescribed medications, which he had consolidated into one prescription bottle.

20. Plaintiff voluntarily showed the officers that prescription bottle containing all of his various prescribed medications.

21. The bottle had a pharmacy sticker showing plaintiff's name and showing the name, address and telephone number of the pharmacy that had filled the prescription.

22. After examining the contents of the prescription bottle, defendant Officers Bervine and Gordon informed plaintiff that he was unlawfully in possession of controlled substances.

23. Plaintiff immediately protested that each of the medications contained in the prescription bottle were prescribed to him, that he had consolidated the medications into one bottle so as to avoid the need for carrying multiple bottles, and that a pharmacist at the pharmacy identified on the bottle could confirm that the contents of the bottle were in fact prescribed to plaintiff.

24. Despite plaintiff's protestations, defendant Officers Bervine and Gordon placed plaintiff under arrest.

25. As defendant Officers Bervine and Gordon were taking plaintiff into custody, plaintiff repeatedly asked that he be permitted to call the pharmacy to obtain confirmation that the medications were prescribed to him, or, alternatively, that the officers call the pharmacy themselves.

26. The officers refused to allow plaintiff to contact the pharmacy, declined plaintiff's request that they contact the pharmacy, and conducted no further investigation.

27. Thereafter, plaintiff was taken to police district headquarters.

28. While at police district headquarters, defendant Officers Bervine and Gordon submitted paperwork to defendant Philadelphia Police Detective Vanburen Brown alleging that plaintiff had been in unlawful possession of controlled substances.

29. While at police district headquarters, plaintiff continued to protest to defendants Bervine, Gordon, and Brown that each of the medications found in the prescription bottle were prescribed to him and that this fact could be confirmed by contacting the pharmacy identified on the prescription bottle at the phone number printed on the bottle.

30. Despite plaintiff's request, defendants Bervine, Gordon, and Brown acted jointly to issue a criminal complaint against plaintiff falsely charging him with unlawful possession of controlled substances.

31. As a result of the institution of criminal charges against plaintiff, plaintiff was taken to the Police Detention Unit at the Philadelphia Police Administration Building.

32. Plaintiff was held in custody in the Police Detention Unit for approximately thirty hours before he was released on bail.

33. During his entire time in custody, plaintiff was denied access to his medications.

34. This abrupt break in his medication regimen caused plaintiff to experience acute anxiety and emotional distress while he was held in custody.

35. Upon his release from custody on bail, plaintiff was not permitted to take with him the prescribed medications that the arresting officers had confiscated from him. As a result, and because plaintiff's medical insurance would not pay for additional medications, plaintiff was forced to limit his medication intake for approximately one month following his release from custody.

36. During the month following his release from custody, as a result of the need to limit his medication intake, plaintiff continued to suffer from enhanced anxiety and emotional distress.

37. At no time did plaintiff commit any offense in violation of the laws of the City of Philadelphia, the Commonwealth of Pennsylvania, or the United States.

38. There was no legal cause to justify the stop, detention, and/or arrest of plaintiff or the institution of charges against plaintiff.

39. To the extent that there was legal cause to support the stop, detention and/or arrest of plaintiff, defendants Bervine, Gordon, and Brown failed to take reasonable steps to investigate and pursue information that would have indisputably negated any such legal cause.

40. As a result of the institution of a baseless prosecution, plaintiff was required to retain legal counsel to defend against the charges and attend multiple court proceedings.

41. Ultimately, the charges brought against plaintiff for possession of controlled substances were discharged upon the prosecution's motion thus resulting in a favorable termination of the prosecution.

42. At all times relevant to this Complaint, the conduct of the defendant officers was in willful, reckless and callous disregard of plaintiff's rights under federal and state law.

43. As a direct and proximate result of the conduct of all defendants, plaintiff suffered substantial damages, including physical and psychological harm related to the confiscation and deprivation of his medications, pain and suffering, loss of liberty, some or all of which may be permanent, and financial losses.

**CAUSES OF ACTION**

**Count I**

**Plaintiff v. Defendants Bervine, Gordon, and Brown  
Federal Constitutional Claims**

44. The actions of defendants Bervine, Gordon, and Brown violated plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unlawful stop, detention and/or arrest and malicious prosecution.

**Count II**

**Plaintiff v. Defendant SEPTA  
Federal Constitutional Claims**

45. The violations of plaintiff's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, plaintiff's damages, and the conduct of the defendants Bervine and Gordon were directly and proximately caused by the actions and/or inactions of defendant SEPTA, which has encouraged, tolerated, ratified and has been deliberately indifferent to the following policies, patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. Legal cause to stop, detain and/or arrest a citizen;
- b. Officers' duties to take reasonable steps to investigate and pursue information that would negate any legal cause to stop, detain and/or arrest a citizen;
- c. The proper exercise of police powers, including but not limited to police officers' arrest powers;
- d. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;

- e. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct and/or civil litigation concerning misconduct;
- f. The absence of any process to ensure the provision of meaningful discipline for police officers who engage in misconduct;
- g. Police officers' use of their status as police officers to employ arrest powers to achieve ends not reasonably related to their police duties;
- h. The failure of police officers to follow established policies, procedures, directives and instructions regarding arrests under such circumstances as presented by this case; and
- i. The failure to properly sanction or discipline officers who are aware of and conceal and/or aid and abet violations of constitutional rights of citizens by other police officers.

**Count III**  
**Plaintiff v. Defendant City of Philadelphia**  
**Federal Constitutional Claims**

46. The violations of plaintiff's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, plaintiff's damages, and the conduct of the defendant Brown were directly and proximately caused by the actions and/or inactions of defendant City of Philadelphia, which has encouraged, tolerated, ratified and has been deliberately indifferent to the following policies, patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. Legal cause to stop, detain and/or arrest a citizen;



- b. Officers' duties to take reasonable steps to investigate and pursue information that would negate any legal cause to stop, detain and/or arrest a citizen;
- c. The proper exercise of police powers, including but not limited to police officers' arrest powers;
- d. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
- e. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct and/or civil litigation concerning misconduct;
- f. The absence of any process to ensure the provision of meaningful discipline for police officers who engage in misconduct;
- g. Police officers' use of their status as police officers to employ arrest powers to achieve ends not reasonably related to their police duties;
- h. The failure of police officers to follow established policies, procedures, directives and instructions regarding arrests under such circumstances as presented by this case; and
- i. The failure to properly sanction or discipline officers who are aware of and conceal and/or aid and abet violations of constitutional rights of citizens by other police officers.

**Count IV**  
**Plaintiff v. Defendants Bervine, Gordon, and Brown**  
**State Law Claims**

47. The actions of defendants Bervine, Gordon and Brown constitute the torts of false arrest, false imprisonment and malicious prosecution under the laws of the Commonwealth of Pennsylvania.

**Wherefore**, plaintiff respectfully requests:

- A. Compensatory damages as to all defendants;
- B. Punitive damages as to defendants Bervine, Gordon, and Brown;
- C. Reasonable attorney's fees and costs as to all defendants;
- D. Such other and further relief as may appear just and appropriate.

Plaintiff hereby demands a jury trial.

/s/ Jonathan H. Feinberg  
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