

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD BANKS, et al	: NO 3:08-1110
	: (CAPUTO, D.J.)
	:
Vs	: (MANNION, M.J.)
	:
KAREN GALLAGER, et al	:
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EDWARD J. KRAFT, JR.,	: NO: 3:08-1177
Plaintiff	:
	: (CAPUTO, D.J.)
Vs.	: (MANNION, M.J.)
	:
KAREN GALLAGER, et al:	:
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**PLAINTIFF, RICHARD BANKS SHORT AND CONCISE STATEMENT OF THE
MATERIAL FACTS PURSUANT TO L.R. 56.1**

And now comes the Plaintiff, Richard Banks, by and through his counsel, files this short concise statement of material facts pursuant to L.R.56.1 as follows:

1. The individual Defendants, Gallagher and Mariano, were at all relevant times duly appointed officers of the Police Department of Dickson City, and at all times were acting under color of state law. Doc.# 26, Amended Complaint, ¶5; Docket Number 27, Answer, ¶5:¹

¹ It is understood that the preferred method for citation to the record is to the docket entry number. Although this procedure will be employed the first time that a record docket is referenced, subsequent references will be to the document itself, for the sake of clarity.

2. At all times, the Defendant, William Stadnitski was the Chief of Police for the Dickson City Police Department. Amended Complaint, ¶6; Answer, ¶ 6;

3. At all relevant times, Dickson City had responsibility for the hiring, supervising and disciplining members of the Police Department, including Gallagher, Mariano and Stadnitski. Amended Complaint ¶ 7; Answer ¶ 7;

4. Gallagher has been employed by the Police Department since January 30, 2004. Doc # 45, Exhibit 2 (Gallagher) p. 19; Mariano has been employed by the Dickson City Police Department since January 2004 Doc# 45, Exhibit 5 (Mariano transcript) p18;

5. Gallagher and Mariano worked the three to eleven shift May 9, 2008. Gallagher, p. 45, and was attired in a police duty uniform, boots, ballistics vest, patches, badge, name tag, duty belt, firearm, magazine, handcuffs, flashlight, Taser weapon and radio. Id, p. 48. Mariano was similarly outfitted less the Taser, carrying pepper spray instead. Id., p. 78;

6. Mariano knew that it was legal to openly carry a firearm in the Commonwealth, Mariano, p.85; Gallagher did not. She thought that to carry a firearm, the individual needed a license and that the firearm had to be concealed. Gallagher, p. 70;

7. Mariano understood that for an investigatory detention to be justified, he needed to have a reasonable suspicion that criminal activity was afoot, Id, p. 45. Gallagher's understanding was that before she could demand that an individual produce

identification, she had to have a reasonable suspicion that a crime was being committed. Gallagher, pp.13-14.

8. Mariano and Gallagher were at a restaurant eating dinner when they received a call to respond to the Old Country Buffet for two males who were eating dinner with firearms at their sides, but were not doing anything wrong; at that time Mariano advised the dispatch that they were not going to respond because there was no crime being committed. Id., pp. 9-10;

9. After consuming a little more of their dinners, Mariano decided to respond to the Old Country Buffet to check on the safety of the people and to find out what was going on and they did so respond without lights or sirens. Id., p. 11;

10. While en route there were further communications with dispatch at which time Mariano was advised that other calls were coming in reporting the same incident of numerous males walking around with their guns holstered, Id, p. 14, and when they arrived at the restaurant they were flagged over by a patron who advised that there were multiple men inside with guns walking around eating dinner, Id., p. 18 but again, no indication that there was a type of criminal activity taking place. Gallagher, p. 56;

11. Neither upon their arrival at the restaurant nor at any time during the incident did Mariano or Gallagher ever speak to anybody from the management of Old

Country Buffet, nor did anyone from management ever approach them. Id., p. 18, Gallagher, p.154;

12. Upon entering the restaurant Mariano observed the visibly armed individuals and he approached them; his objective was to investigate to see what these gentlemen were doing inside the restaurant with weapons on them and to make sure that these people weren't terrorists, even though he had no reason to believe that these people were terrorists or psychopathic, nor did he have any reason to believe that they posed a threat to the other patrons in the restaurant. Id., pp. 22, 23. In fact, it appeared to be a family setting, Id., pp. 24-25

13. When he approached the table he saw four or five individuals who were open carrying. When he approached the table, dressed as described in paragraph five, he asked everyone seated at the table to come out to the vestibule. When a few of the individuals asked why they had to come outside, Mariano did not tell them that they did not have to. Id., pp. 25-27

14. While in the vestibule Mariano asked them to separate into two groups, with anyone who was carrying a concealed weapon to stand to his right, and anyone who was carrying a weapon visible to stand to his left. The group pretty much evenly divided. Id, p. 29

15. He then asked the individuals to his right to produce their concealed weapons permit and a few of them did, the only one who did not being the Plaintiff, Richard Banks. He assumed that Banks was carrying concealed because he was in the

group to Mariano's right. He continued to ask Mr. Banks to provide his concealed weapons permit and Richard Banks told him that he would not produce that document. Id, pp. 38-40.

16. Mariano believed that the Plaintiff was carrying a concealed weapon, because he was standing to his right, but he had no reason to believe that the Plaintiff did not have the required license to carry a concealed firearm. Id., pp. 45-46;

17. Once Mariano formed the belief that the Plaintiff was carrying a concealed firearm, the interaction escalated from a mere encounter to an investigatory detention and the individuals who were carrying concealed were not free to leave until after they produced identification. Id., pp. 44-45, 50.

18. Mariano demanded identification because he was of the belief that if someone is carrying a concealed weapon he has the right to demand for a concealed weapons permit. Id., p. 46. Gallagher was of the same belief. Gallagher, p.102. , although she did not know if she had the authority to otherwise arrest a citizen for failing to produce identification. Id., p. 168.

19. Other than his belief the Plaintiff was carrying a concealed firearm, he had no evidence to indicate that he was otherwise engaged in criminal activity. Mariano, p. 47.

20. Due to this belief, Mariano requested, on four separate occasions, that Banks produce his identification and his concealed weapons permit. Gallagher then

stepped in and advised Banks that he could be arrested for failing to produce identification to law enforcement upon request. *Id.*, pp. 51-52.

21. Richard Banks was the only one not complying and producing identification and the concealed weapons permit. *Gallagher*, p.101. Instead of complying, he stated that he was not required to produce these papers, and asked what they had or were doing wrong, and *Gallagher* cited some words from the Disorderly Conduct Statute. *Gallagher*, p. 98.

22. *Gallagher* did not know, one way or the other, whether Richard Banks did have the license that was being demanded of him, and when offered the opportunity to identify any evidence she had that led her to believe that he did not have the required license, she refused to answer the question. *Id.*, p.103; Furthermore, she had no reason to believe that any of the individuals had a PFA against them, were convicted felons, or were otherwise not legally entitled to be carrying firearms. *Id.*, pp. 112-114

23. At that time, she arrested and handcuffed the Plaintiff, Richard Banks, for disorderly conduct, and for failing to produce the concealed weapons permit. *Id.*, p. 104. She confiscated the openly carried firearm as well as a concealed firearm which was located in a holster on his ankle. The Plaintiff was then taken outside and placed in the police car. *Id.*, pp.105-107

24. The Plaintiff sat in the back of the police car, handcuffed, for about forty-five minutes. *Id.*, p. 119;

25. Other than failing to produce the documents, the Plaintiff complied with all other requests made of him by Gallagher. *Id.*, pp. 106-107;

26. After “running” the serial numbers on the firearms, Gallagher was advised that the smaller, concealed firearm was not registered to Richard Banks, and received advice that if a firearm is not “registered” to an individual, that individual is not permitted to possess that firearm. *Id.*, p. 118;

27. Due to the above, the firearm that was not registered to the Plaintiff was not returned to him that evening. *Id.*, p. 137;

28. Dickson City was in charge of the entire incident, with the other departments there only to assist. *Stadnitski*, pp. 56-57, and Gallagher was the Dickson City Police officer in charge. *Gallagher*, p. 56.

29. By the time he learned of the incident, it was already over. *Id.*, p.24.

30. The Defendant, *Stadnitski*, disagrees with the concept of open carrying and not being able to challenge such a person for identification. *Id.*, p. 35. Consistent therewith, he voiced his approval of the manner in which this incident was handled by Gallagher and Mariano. *Id.*, pp. 36, 37. Furthermore, he advised Gallagher that the call was handled properly. *Gallagher*, pp.140-141;

31. If *Stadnitski* saw an individual walking down the street and observed the butt of a concealed firearm protruding from the jacket, he would detain the individual, and require him to produce a gun permit. He did not know if the law actually allowed that, but that is what he would do, and worry about it being a bad arrest later on.

Respectfully submitted:

/s/ Robert J. Magee, Esquire

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CERTIFICATE OF SERVICE

I, Robert J. Magee, Esquire, hereby certify that the Motion, Proposed Order and Statement of Facts concerning Richard Banks, were filed electronically on August 17, 2009 and is available for viewing and downloading from the ECF System. I further certify that service of this document upon the individual identified below was affected by electronic service by virtue of such filing, pursuant to local Rule 5.1.2.8(b).

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CERTIFICATE OF SERVICE

I, Robert J. Magee, Esquire, hereby certify that the Motion, Proposed Order and Statement of Facts concerning Roger McCarren, were filed electronically on August 17, 2009 and is available for viewing and downloading from the ECF System. I further certify that service of this document upon the individual identified below was affected by electronic service by virtue of such filing, pursuant to local Rule 5.1.2.8(b).

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