

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

SAMANTHA BAILEY  
27 Morio Drive  
Tunkhannock, PA 18657

*Plaintiff,*

v.

DISTRICT ATTORNEY JEFFREY  
MITCHELL  
*In his official capacity*  
Wyoming County District Attorney's  
Office  
1 Courthouse Sq.  
Tunkhannock, PA 18657

CHIEF OF POLICE STANLEY J. ELY  
*In his individual and official capacity*  
Tunkhannock Township Police  
Department  
438 SR 92 South  
Tunkhannock, PA 18657

CHIEF OF POLICE JOHN KREIG  
*In his individual and official capacity*  
Meshoppen Borough Police  
Department  
Canal St.  
Mehoopany, PA 18629

POLICE OFFICER JOHN C.  
ZDANIEWICZ  
*In his individual and official capacity*

JURY TRIAL DEMANDED

CIVIL ACTION

CASE NO.

**COMPLAINT**

FILED ELECTRONICALLY

Tunkhannock Township Police  
Department  
438 SR 92 South  
Tunkhannock, PA 18657

TUNKHANNOCK TOWNSHIP  
113 Tunkhannock Twp Drive  
Tunkhannock, PA 18657

MESHOPPEN BOROUGH  
Meshoppen Borough Building  
PA-267  
Meshoppen, PA 18630

AND

WYOMING COUNTY  
1 Courthouse Sq.  
Tunkhannock, PA 18657,

*Defendants.*

## **COMPLAINT**

### **I. INTRODUCTION**

1. This is an action for damages brought under 42 U.S.C. §§ 1983, 1988, the Fourth Amendment, Fourteenth Amendment, and under state law for violations of Plaintiff's Constitutionally protected rights, which resulted from a malicious prosecution.

### **II. JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and the Fourth and Fourteenth Amendments to the United States Constitution.

Jurisdiction is based upon 28 U.S.C. §§ 1331, 1334(1), (3), and (4) and the previously mentioned statutory and Constitutional provisions.

3. Plaintiff invokes this Court's supplemental jurisdiction under 28 U.S.C. § 1367 to hear and decide claims arising under state law as the state law claims are so related to the federal claims as to form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is proper under 28 U.S.C. § 1391 in this Court because the conduct complained of occurred here and at least one defendant resides here.

### **III. PARTIES**

5. Samantha Leslie Bailey ("Plaintiff") is an adult individual who resides at 27 Morio Drive, Tunkhannock, Pennsylvania 18657.

6. John C. Zdaniewicz ("Officer Zdaniewicz") is, and was at all times relevant to this complaint, a police officer employed by the Tunkhannock Township Police Department and acting under color of state law. This suit is against Officer Zdaniewicz in his personal and official capacity.

7. Stanley J. Ely ("Chief Ely") is and was at all times relevant to this complaint the Chief of Police of the Tunkhannock Township Police Department and acting under color of state law. As such he was the commanding officer for Officer Zdaniewicz and was responsible for Officer Zdaniewicz's training, supervision, and conduct. He was also responsible by law for enforcing the

regulations of the Tunkhannock Township Police Department and for ensuring that Tunkhannock Township Police Officers obey the laws of the Commonwealth of Pennsylvania and the United States. At all relevant times, Chief Ely was acting in such capacity as the agent, servant, and employee of defendant Tunkhannock Township. This suit is against Chief Ely in his individual and official capacity.

8. John Kreig (“Chief Kreig”) is and was at all times relevant to this complaint the Chief of Police of the Meshoppen Borough Police Department and acting under color of state law. Officer Zdaniewicz charged Plaintiff with crimes that occurred in Chief Kreig’s jurisdiction. Chief Kreig gave his permission or otherwise ratified Officer Zdaniewicz’s investigation and prosecution of the criminal charges filed against Plaintiff. Therefore, Chief Kreig was responsible for Officer Zdaniewicz’s training, supervision, and conduct. Chief Kreig was also responsible by law for enforcing the regulations of the Meshoppen Borough Police Department and for ensuring that Officer Zdaniewicz and Meshoppen Borough Police Officers obeyed the laws of the Commonwealth of Pennsylvania and the United States. At all relevant times, Chief Kreig was acting in such capacity as the agent, servant, and employee of defendant Meshoppen Borough. This suit is against Chief Kreig in his individual and official capacity.

9. Jeffrey Mitchell, Esq. (the “District Attorney”) is the District Attorney for Wyoming County Pennsylvania. This suit is against the District Attorney in his official capacity.<sup>1</sup>

10. Tunkhannock Township is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs, and controls the Tunkhannock Township Police Department, which at all relevant times hereto employed Officer Zdaniewicz and Chief Ely.

11. Meshoppen Borough is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs, and controls the Meshoppen Borough Police Department, which at all relevant times hereto employed Chief Kreig.

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<sup>1</sup> Since this suit is against the District Attorney in his official capacity, the real party in interest is Wyoming County. Additionally, this suit is not brought against Wyoming County for the prosecutorial actions of the District Attorney. Rather, this suit is brought against Wyoming County for Mr. Mitchell’s administrative and supervisory actions for which Wyoming County is liable. See *Spiess v. Pocono Mtn. Regional Police Dep’t*, 2010 WL 2985959, at \*7 (M.D. Pa. July 26, 2010). Additionally, the Pennsylvania Constitution and Pennsylvania Supreme Court state that District Attorneys are county officials. Pa. Const. art. IX, § 4; *Chalfin v. Specter*, 426 Pa. 464, 233 A.2d 562, 565 (Pa.1967) (“The aforesaid language of the Constitution of Pennsylvania is, we repeat, crystal clear. It states in the clearest imaginable language that District Attorneys are County-not State-officers. . . .”).

12. At all times relevant hereto, Chief Ely and Officer Zdaniewicz were acting in the course and scope of their agency, authority, and/or employment with Tunkhannock Township and under color of state law.

13. At all times relevant hereto, Chief Kreig was acting in the course and scope of his agency, authority, and/or employment with Meshoppen Borough and under color of state law.

14. At all times relevant hereto, and in their actions and inactions Chief Ely, Chief Kreig, and Officer Zdaniewicz were acting, alone and in concert, under color of state law.

15. At all times relevant hereto, Officer Zdaniewicz was acting directly or indirectly on behalf of Chief Ely who in turn was acting directly or indirectly on behalf of Tunkhannock Township.

16. At all times relevant hereto, Officer Zdaniewicz was acting directly or indirectly on behalf of Chief Kreig who in turn was acting directly or indirectly on behalf of Meshoppen Borough.

17. Chief Ely, Chief Kreig, and Officer Zdaniewicz are jointly and severally liable for the injuries and damages suffered by Plaintiff as set forth fully below.

#### **IV. STATEMENT OF CLAIM**

18. The foregoing paragraphs are incorporated herein by reference.

19. On January 1, 2016, Plaintiff's mother, Kandi Madill ("Madill"), took Plaintiff to Tyler Memorial Hospital because she believed Plaintiff had overdosed on heroin and that the overdose would result in serious bodily injury or death.

20. Madill's suspicions were reasonable and correct because Plaintiff was administered Narcan and treated for a heroin overdose.

21. Upon arrival at the Tyler Memorial Hospital emergency room, Madill remained present while Plaintiff received medical treatment and correctly identified herself to the hospital's personnel.

22. Madill continued to cooperate with the hospital's personnel and, after being told by a nurse at Tyler Memorial Hospital that Madill could bring the heroin and paraphernalia to the hospital to be disposed of, Madill gave the heroin and paraphernalia that she suspected caused the overdose to the staff at the hospital so it could be tested to ensure that Plaintiff could be treated properly and so it could be properly and safely discarded.

23. Emily Geras ("Geras") is a nurse employed at Tyler Memorial Hospital and was one of the nurses that helped treat Plaintiff on January 1, 2016.

24. Madill gave Geras the heroin and paraphernalia and Geras stored those items in a secured room at Tyler Memorial Hospital.

25. After Geras asked her supervisor what she should do with the heroin and paraphernalia, the police were called.

26. Officer Zdaniewicz was dispatched to Tyler Memorial Hospital and was given the heroin and paraphernalia by Geras.

27. Plaintiff was released from the hospital and never had any contact with Officer Zdaniewicz while at the hospital.

28. Officer Zdaniewicz conferred with the District Attorney's office of Wyoming County after retrieving the heroin and paraphernalia.

29. On or about January 4, 2016, Officer Zdaniewicz contacted Madill to discuss where she found the heroin and paraphernalia. Officer Zdaniewicz also stated that charges would be filed against Plaintiff and threatened to file charges against Madill for bringing the heroin and paraphernalia to the hospital. Additionally, Officer Zdaniewicz told Madill that Plaintiff was not permitted to leave town.

30. Madill informed Plaintiff that Officer Zdaniewicz ordered her not to leave town.

31. On or about January 4, 2016, Officer Zdaniewicz contacted Chief Kreig to advise him of the investigation against Plaintiff and the findings that he had

made. Chief Kreig advised Officer Zdaniewicz to continue his investigation and prosecution of Plaintiff.

32. Later that week, Officer Zdaniewicz contacted Madill again. Officer Zdaniewicz again threatened to file criminal charges against Madill and again stated that Plaintiff could not leave town.

33. Madill again informed Plaintiff that Officer Zdaniewicz ordered her not to leave town.

34. Plaintiff reasonably believed that she was prohibited from leaving town because Officer Zdaniewicz, a Tunkhannock Township police officer, ordered her not to leave town.

35. On January 12, 2016, Officer Zdaniewicz filed a criminal complaint against Plaintiff, which charged her with violations of 35 Pa.C.S. § 780-113(a)(16) (possession of a controlled substance) and 35 Pa.C.S. § 780-113(a)(32) (drug paraphernalia). A true and correct copy of the criminal complaint is attached as Exhibit A.

36. On March 29, 2016, a preliminary hearing on the above-referenced charges was held before Magisterial District Judge David K. Plummer. A true and correct copy of the transcript of the preliminary hearing is attached as Exhibit B.

37. Judge Plummer set bail at \$5,000.00 unsecured, required Plaintiff to “appear at all times required until full and final disposition of the case(s)”, refrain from criminal activity, obey any further orders of the bail authority, provide her current address and provide notice of a change of address to certain specified people within 48 hours of the change, and refrain from intimidating or retaliating against victims or witnesses. A true and correct copy of the Bail Bond and Bail Release Conditions are attached as Exhibit C.

38. Judge Plummer also added additional release conditions to Plaintiff’s bail, which are as follows:

- a. Plaintiff was prohibited from using alcohol;
- b. Plaintiff was prohibited from using any illegal non-prescription drugs;
- c. Plaintiff was prohibited from possessing and using alcohol, non-prescription controlled substances and mind altering substances;
- d. Plaintiff was forced to submit to random testing at Plaintiff’s expense to determine if any alcohol, non-prescription controlled substances or mind altering substances were present in her body at any time upon request; and
- e. Plaintiff was forced to undergo a full drug and alcohol assessment at A Better Today and to schedule an appointment

for the drug and alcohol assessment within 10 days. See Exhibit C.

39. After the preliminary hearing, the charges were bound over to the Wyoming County Court of Common Pleas (the “Trial Court”).

40. On June 3, 2016, Plaintiff filed an omnibus pre-trial motion requesting that the Trial Court quash the Criminal Information charging Plaintiff or, in the alternative, issue a Writ of Habeas Corpus on the charges.

41. The Trial Court set August 5, 2016 as the date for the hearing on Plaintiff’s omnibus pre-trial motions.

42. On July 1, 2016, Plaintiff filed an amended omnibus pre-trial motion that moved the Trial Court to quash the Criminal Information since Plaintiff was immune from being charged and prosecuted under the Drug Overdose Immunity Act, 35 Pa.C.S. § 780-113.7.

43. On July 12, 2016, Plaintiff’s counsel sent a letter to the District Attorney informing him that the Drug Overdose Response Immunity Act compelled him to immediately dismiss the charges against Plaintiff. A true and correct copy of the July 12, 2016 letter is attached as Exhibit D.

44. The prosecution did not dismiss the charges before the August 5, 2016 hearing.

45. On August 5, 2016, the prosecution made an *ex parte* motion to the Trial Court for a continuance of the August 5, 2016 hearing after Plaintiff's counsel would not concur with the request for continuance. The hearing was continued the hearing until September 2, 2016.

46. Therefore, Plaintiff's liberty was constrained by her bail conditions for a longer period of time as a result of the prosecution's request for a continuance.

47. On August 5, 2016, Plaintiff's counsel again sent a letter to the District Attorney informing him that the charges "subjected [Plaintiff] to unnecessary restrictions on her liberty and unnecessary legal fees [and] [t]he failure to dismiss them compounds the issue and prolongs this wrong." Additionally, Plaintiff's counsel again informed the District Attorney that the Drug Overdose Response Immunity Act required him to dismiss the charges against Plaintiff. A true and correct copy of the August 5, 2016 letter is attached as Exhibit E.

48. On August 30, 2016, despite numerous requests from Plaintiff's counsel to dismiss the charges against Plaintiff, the Wyoming County District Attorney's office sent a trial notice that scheduled Plaintiff's trial for the week of September 19, 2016. The trial notice also stated that Plaintiff was required to appear in court at that time. A true and correct copy of the trial notice is attached as Exhibit F.

49. On September 6, 2016, the District Attorney finally filed a Petition for *Nolle Prosequi* and the Honorable President Judge Russell D. Shurtleff entered an order granting the requested action. A true and correct copy of the Petition for *Nolle Prosequi* is attached as Exhibit G.

50. The Drug Overdose Response Immunity Act, 35 P.S. § 780-113.7, was passed by the Pennsylvania legislature on September 30, 2014 and took effect sixty (60) days thereafter.

51. Therefore, the Drug Overdose Response Immunity Act was in effect for more than one year before January 1, 2016 and was in effect at all times relevant to this complaint.

52. The Drug Overdose Response Immunity Act provides that “[a] person may not be charged and shall be immune from prosecution for”, among other things, 35 Pa.C.S. § 780-113(a)(16) and 35 Pa.C.S. § 780-113(a)(32) if a person can establish the following:

- a. “law enforcement officers only became aware of the person's commission of an offense . . . because the person transported a person experiencing a drug overdose event to . . . a health care facility; or all of the following apply:
  - i. the person reported, in good faith, a drug overdose event to a law enforcement officer, the 911 system, a campus

security officer or emergency services personnel and the report was made on the reasonable belief that another person was in need of immediate medical attention and was necessary to prevent death or serious bodily injury due to a drug overdose;

- ii. the person provided his own name and location and cooperated with the law enforcement officer, 911 system, campus security officer or emergency services personnel; and
- iii. the person remained with the person needing immediate medical attention until a law enforcement officer, a campus security officer or emergency services personnel arrived.”

35 P.S. § 780-113.7(a).

53. Additionally, “[p]ersons experiencing drug overdose events may not be charged and shall be immune from prosecution . . . if a person who transported or reported and remained with them may not be charged and is entitled to immunity under this section.” 35 P.S. § 780-113.7(c).

54. The actions or inactions of Chief Ely, Chief Kreig, and Officer Zdaniewicz were committed deliberately, intentionally, willfully, wantonly, and constitute conduct so egregious as to shock the conscience.

*i. 42 U.S.C. § 1983 Malicious Prosecution Claim*

55. The foregoing paragraphs are incorporated herein by reference.

56. The Defendants in this case are persons within the meaning of 42 U.S.C. § 1983.

57. At all relevant times, the Defendants were acting under color of law within the meaning of 42 U.S.C. § 1983.

58. While acting under color of law, Defendants caused Plaintiff to be subjected to a deprivation of rights, liberties, and immunities secured by the Constitution. Namely, Defendants caused Plaintiff to be deprived of the rights, liberties, and immunities that she is granted under the Fourth Amendment, Fourteenth Amendment, and Pennsylvania's Constitution.

59. Officer Zdaniewicz initiated criminal proceedings against Plaintiff on January 12, 2016 by filing a criminal complaint against Plaintiff.

60. The criminal proceedings thereafter terminated in Plaintiff's favor when the Honorable President Judge Russell D. Shurtleff entered an order granting the District Attorney's petition for *Nolle Prosequi* on September 6, 2016. See Exhibit G.

61. The criminal proceedings were initiated without probable cause because neither Officer Zdaniewicz, nor any other person, saw Plaintiff possess the heroin and drug paraphernalia, Plaintiff cannot be held to have been in

possession of the heroin and drug paraphernalia, and Plaintiff cannot be held to have constructively possessed the heroin and drug paraphernalia.

62. Additionally, the criminal proceedings were initiated without probable cause because the Drug Overdose Response Immunity Act, 35 P.S. § 780-113.7, prohibits a person from being charged and/or prosecuted for a crime if they meet the requirements of the statute.

63. Plaintiff met the requirements for immunity under 35 P.S. § 780-113.7.

64. The Defendants acted maliciously or for a purpose other than bringing Plaintiff to justice, which is evidenced by, among other things, the filing of criminal charges when the Drug Overdose Response Immunity Act was in effect, and by refusing to dismiss the charges against Plaintiff despite numerous requests from Plaintiff's counsel.

65. Plaintiff suffered a deprivation of liberty consistent with the concept of seizure under the Fourth Amendment to the United States Constitution because of the terms of her bail conditions and because Officer Zdaniewicz ordered her not to leave town on multiple occasions.

66. Most notably, Plaintiff was required to submit to and pay for random warrantless searches and seizures of her body to determine if she had any alcohol, non-prescription controlled substances, or mind altering drugs in her body, was prohibited from consuming and possessing alcohol, and was

required to undergo a full drug and alcohol evaluation at A Better Today. Additionally, Madill and Defendant reasonably believed that Defendant was restricted from traveling due to Officer Zdaniewicz's commands.

67. Chief Ely has policy making authority such that his behavior is an act of official governmental policy for Tunkhannock Township and Wyoming County.

68. Chief Kreig has policy making authority such that his behavior is an act of official governmental police for Meshoppen Borough and Wyoming County.

69. The District Attorney has policy making authority such that his behavior is an act of official governmental policy for Wyoming County.

70. In this case, Chief Ely's, Chief Kreig's, and the District Attorney's behavior created the policy or custom that individuals would be charged and/or prosecuted for crimes in the absence of probable cause and/or if the accused was immune from being charged and prosecuted under the Drug Overdose Response Immunity Act.

71. It is the policy or custom of the Tunkhannock Township Police Department to charge and prosecute people for various crimes when they are in fact immune from being charged and prosecuted under the Drug Overdose Response Immunity Act in violation of their Federal and State Constitutional rights.

72. It is the policy or custom of the Meshoppen Borough Police Department to charge and prosecute people for various crimes when they are in fact immune from being charged and prosecuted under the Drug Overdose Response Immunity Act in violation of their Federal and State Constitutional rights.

73. It is the policy or custom of the Tunkhannock Township Police Department to charge and prosecute people for various crimes without probable cause in violation of their Federal and State Constitutional rights.

74. It is the policy or custom of the Meshoppen Borough Police Department to charge and prosecute people for various crimes without probable cause in violation of their Federal and State Constitutional rights.

75. It is the policy or custom of the Tunkhannock Township Police Department to fail to train and supervise municipal employees on how to properly handle situations where a person is immune from being charged or prosecuted under the Drug Overdose Immunity Act.

76. It is the policy or custom of the Tunkhannock Township Police Department to fail to train and supervise municipal employees on how to properly handle situations where probable cause does not exist.

77. It is the policy or custom of the Meshoppen Borough Police Department to fail to train and supervise municipal employees on how to properly handle

situations where a person is immune from being charged or prosecuted under the Drug Overdose Immunity Act.

78. It is the policy or custom of the Meshoppen Borough Police Department to fail to train and supervise municipal employees on how to properly handle situations where probable cause does not exist.

79. It is the policy or custom of the Wyoming County District Attorney's Office, and thus Wyoming County, to prosecute people for various crimes when they are in fact immune from being charged and prosecuted under the Drug Overdose Response Immunity Act in violation of their Federal and State Constitutional rights.

80. It is the policy or custom of the Wyoming County District Attorney's Office, and thus Wyoming County, to charge and prosecute people for various crimes without probable cause in violation of their Federal and State Constitutional rights.

81. It is the policy or custom of the Wyoming County District Attorney's Office, and thus Wyoming County, to fail to train and supervise municipal employees on how to properly handle situations where a person is immune from being charged or prosecuted under the Drug Overdose Immunity Act.

82. It is the policy or custom of the Wyoming County District Attorney's Office, and thus Wyoming County, to fail to train and supervise municipal

employees on how to properly handle situations where probable cause does not exist.

83. The above-described policies or customs of Wyoming County, Meshoppen Borough, and Tunkhannock Township of failing to train and supervise municipal employees amounts to a deliberate indifference to the rights of the individuals that those municipal employees come into contact with, including but not limited to, Plaintiff.

84. In this case, the need for more or different training regarding the Drug Overdose Immunity Act and whether probable cause exists is obvious and the lack of this training is very likely to result in constitutional violations and, in fact, did result in constitutional violations in this case.<sup>2</sup>

85. Municipal policymakers for Wyoming County, Meshoppen Borough, and Tunkhannock Township know that their employees, servants, or agents,

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<sup>2</sup> The likeliness of a constitutional violation in this case is greatly increased by the heroin and opioid epidemic overtaking Pennsylvania since police officers and prosecutors are dealing with a record number of drug overdose cases that the Drug Overdose Response Immunity Act would apply to or probable cause would not exist to justify criminal charges. In 2014, Wyoming County ranked 12<sup>th</sup> out of 58 ranked Pennsylvania counties on the Drug Enforcement Agency's list for drug-related deaths with 21.33 drug related deaths per 100,000 people. See Drug Enforcement Administration, DEA Intelligence Report: Analysis of Drug-Related Overdose Deaths in Pennsylvania, 2014, 21 (Nov. 2015), *available at* [https://www.dea.gov/divisions/phi/2015/phi111715\\_attach.pdf](https://www.dea.gov/divisions/phi/2015/phi111715_attach.pdf).

specifically police officers and the District Attorney's office, will confront drug-related overdoses and other drug crimes frequently.<sup>3</sup>

86. There is a history of municipal employees such as police officers and the District Attorney's Office mishandling whether to charge someone for a drug-related overdose or otherwise making a difficult decision about whether to charge someone when determining if they are immune from prosecution under the Drug Overdose Response Immunity Act. This averment is likely to have evidentiary support after a reasonable opportunity for discovery.

87. There is a history of municipal employees such as police officers and the District Attorney's Office mishandling whether to charge someone for a drug-related overdose or otherwise making a difficult decision about whether to charge someone when determining if probable cause would justify criminal charges. This averment is likely to have evidentiary support after a reasonable opportunity for discovery.

88. If a municipal employee makes the wrong choice in the above-described situations, a deprivation of constitutional rights will result because someone will be charged and prosecuted when they are immune from being charged or prosecuted under the Drug Overdose Response Immunity Act or where probable cause does not support or justify criminal charges.

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<sup>3</sup> See Footnote 2, *supra*.

89. The District Attorney trained and/or supervised the Tunkhannock Township Police Department on the policy or custom of charging individuals even though no probable cause existed and/or they were immune from being charged or prosecuted under the Drug Overdose Response Immunity Act.

90. The District Attorney trained and/or supervised the Meshoppen Borough Police Department regarding the policy or custom of charging individuals even though no probable cause existed and/or charging individuals that were immune from being charged or prosecuted under the Drug Overdose Response Immunity Act.

91. The District Attorney also trained and supervised Wyoming County assistant district attorneys and other staff in the Wyoming County District Attorney's Office regarding how the Wyoming County District Attorney's Office trained and supervised the Tunkhannock Township Police Department, the Meshoppen Borough Police Department, and other police departments in Wyoming County, in regards to the policy or custom of charging individuals even though no probable cause existed and/or charging individuals that were immune from being charged or prosecuted under the Drug Overdose Response Immunity Act.

92. The District Attorney and/or the assistant district attorneys or other staff that the District Attorney trained and supervised oversaw the Tunkhannock

Township Police Department and Meshoppen Borough Police Department. This averment is supported by, among other things, the fact that Officer Zdaniewicz consulted with the Wyoming County District Attorney's office prior to filing the above-described charges against Plaintiff.

93. Because of the above-described policies and customs, Plaintiff suffered a deprivation of liberty under the Fourth Amendment, Fourteenth Amendment, and under the Pennsylvania Constitution through a malicious prosecution of charges that were not supported by probable cause and were in fact prohibited from being brought by the Drug Overdose Response Immunity Act.

94. The District Attorney also ratified the unconstitutional actions of his subordinate assistant district attorneys, the Meshoppen Borough Police Department, and the Tunkhannock Township Police Department because Officer Zdaniewicz contacted the District Attorney's Office prior to filing charges and then the charges against Plaintiff were prosecuted for roughly eight (8) months. Therefore, the District Attorney must have been aware of the custom or policy that his subordinates established and adopted that custom or policy be ratifying their actions.

95. Chief Ely also ratified the unconstitutional actions of his subordinate police officers because he was aware that the Tunkhannock Township Police

Department was charging individuals without probable cause or in violation of the Drug Overdose Response Immunity Act.

96. Chief Kreig also ratified the unconstitutional actions of his subordinate police officers because he was aware that Officer Zdaniewicz and the Meshoppen Borough Police Department were charging individuals without probable cause or in violation of the Drug Overdose Response Immunity Act.

97. As a result of the above-described malicious and illegal prosecution, Plaintiff incurred actual damages in the form of attorney's fees paid for her criminal defense, fees for the drug and alcohol assessment mandated by her bail conditions, embarrassment, loss of reputation, invasion of privacy, and emotional distress.

98. Pennsylvania's Constitution provides that the right to reputation is a fundamental right and cannot be infringed upon. *In re J.B.*, 107 A.3d 1, 16 (Pa. 2014) ("This Court has recognized that the right to reputation . . . is a fundamental right under the Pennsylvania Constitution.") (citing *R. v. Commonwealth, Dep't of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994); *Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346, 351 (Pa. 1987); *Moyer v. Phillips*, 341 A.2d 441, 443 (1975); *Meas v. Johnson*, 39 A. 562, 563 (Pa. 1898)).

99. Additionally, Plaintiff's personal healthcare information was disclosed in violation of the Health Insurance Portability and Accountability Act, otherwise known as HIPAA, thereby invading Plaintiff's privacy rights and damaging her reputation.

100. Plaintiff's reputation has been damaged as a result of this malicious prosecution, the actions, inactions, policies, customs, and other conduct of the Defendants.

101. Specifically, Plaintiff's reputation was damaged by, among other things, the publication of the facts concerning Plaintiff's criminal case in a local newspaper.

102. At the time Officer Zdaniewicz filed the criminal complaint against Plaintiff, it was clearly established that Plaintiff was immune from being charged and prosecuted under the Drug Overdose Response Immunity Act and therefore, any prosecution would amount to a violation of Plaintiff's rights.

103. A reasonable person would have realized that Officer Zdaniewicz was not permitted to charge and prosecute Plaintiff because she was immune from being charged and prosecuted under the Drug Overdose Response Immunity Act.

104. At the time Officer Zdaniewicz filed the criminal complaint against Plaintiff, it was clearly established that probable cause did not exist and that

Plaintiff could not be found to be in possession or constructive possession of the heroin and paraphernalia and therefore, any prosecution would amount to a violation of Plaintiff's rights.

105. A reasonable person would have realized that probable cause did not exist and that Plaintiff could not be found to be in possession or constructive possession of the heroin and paraphernalia and therefore, could not be charged and prosecuted for violations of 35 Pa.C.S. § 780-113(a)(16) and 35 Pa.C.S. § 780-113(a)(32).

**WHEREFORE**, Plaintiff demands judgment against Defendants for actual damages, costs, attorney's fees, and punitive damages.<sup>4</sup>

*ii. State Malicious Prosecution Claim*

106. The foregoing paragraphs are incorporated herein by reference.

107. Officer Zdaniewicz initiated criminal proceedings against Plaintiff on January 12, 2016 by filing a criminal complaint against Plaintiff.

108. The criminal proceedings thereafter terminated in Plaintiff's favor when the District Attorney filed a Petition for *Nolle Prosequi* on September 6, 2016.

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<sup>4</sup> Plaintiff only asserts the punitive damages claims against Officer Zdaniewicz, Chief Ely, and Chief Kreig in their individual capacities since punitive damages cannot be obtained when a lawsuit under 42 U.S.C. § 1983 is brought against someone in their official capacity.

109. The criminal proceedings were initiated without probable cause because Plaintiff could not be found to be in possession or constructive possession of the heroin and drug paraphernalia.

110. Additionally, the criminal proceedings were initiated without probable cause because the Drug Overdose Response Immunity Act, 35 P.S. § 780-113.7, prohibits a person from being charged and/or prosecuted for a crime if they meet the requirements of the statute.

111. Plaintiff met the requirements for immunity under 35 P.S. § 780-113.7.

112. The Defendants acted maliciously or for a purpose other than bringing Plaintiff to justice, which is evidenced by, among other things, the filing of criminal charges when the Drug Overdose Response Immunity Act was in effect and applied to the facts of Plaintiff's situation, probable cause did not exist to justify criminal charges, and by refusing to dismiss the charges against Plaintiff despite numerous requests from Plaintiff's counsel.

113. The Defendants' actions constitute willful misconduct in this case since they desired to bring about the deprivation of Plaintiff's liberty by filing criminal charges.

114. The Defendants did not act in good faith when filing the criminal complaint and continuing to prosecute this case.

**WHEREFORE**, Plaintiff demands judgment against Defendants for actual damages, punitive damages, costs, and attorney's fees.

**V. DEMAND FOR JURY TRIAL**

115. Plaintiff hereby demands a jury trial.

**WHEREFORE**, Plaintiff demands judgment against Defendants for

- a. Actual damages;
- b. Punitive damages;
- c. Attorney's fees;
- d. Costs;
- e. Interest; and
- f. Any further relief that the Court deems just and proper.

Respectfully Submitted,

*s/ Leonard Gryskewicz, Jr.*

Leonard Gryskewicz, Jr.

Attorney for Plaintiff

PA321467

Lampman Law

2 Public Sq.

Wilkes-Barre, PA 18701

Phone: (570) 371-3737

Fax: (570) 371-3838