

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CLARENCE J. GRAHAM	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 4:17-cv-2263-CAS
	)	
UNIVERSITY CITY, MISSOURI	)	<b>JURY TRIAL DEMANDED</b>
	)	
and	)	
	)	
LARRY BECTON,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Clarence J. Graham (“Graham”) alleges as follows:

**INTRODUCTION**

1. In this civil rights action, Graham seeks judgment against police officer Larry Becton (“Officer Becton”) and University City for unlawfully seizing and arresting him in violation of his constitutional rights.

**PARTIES**

2. Graham is a citizen of Missouri who resides in the City of St. Louis, Missouri.
3. Graham is an African American male who was born on November 18, 1960, and was fifty-five years old at the time of the incident described below.
4. Defendant University City is a political subdivision and municipality of the State of Missouri.

5. Defendant Officer Becton is a police officer employed by University City who was, at all times relevant to this Complaint, acting under color of law. Officer Becton is sued in his individual capacity.

### **JURISDICTION AND VENUE**

6. Graham brings these claims pursuant to 42 U.S.C. § 1983 (“Section 1983”), the Fourth Amendment and the Due Process Clause of the Fifth Amendment, incorporated as against States and their municipal divisions through the Fourteenth Amendment of the United States Constitution, and Article I, section 15 of the Missouri Constitution.

7. The jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331, because Graham’s action arises under the Constitution of the United States, and § 1343(a)(3) to redress the deprivation of rights secured by the Constitution of the United States.

8. This Court has supplemental jurisdiction of Graham’s state law claim pursuant to 28 U.S.C. § 1367.

9. Venue is proper in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in St. Louis County, Missouri.

10. Divisional venue is proper in the Eastern Division because the events leading to the claim for relief arose in St. Louis County. E.D. Mo. L.R. 2.07(A)(1), (B)(2).

### **FACTS**

11. For many years, Graham has done odd jobs for many of the residents who live in University City’s Parkview subdivision.

12. On March 17, 2016, Graham was performing a small job at the home of Mrs. Kathleen Merlo, who resides in University City’s Parkview subdivision.

13. When the rake he was using broke, Graham started walking towards the home of Dr. Flint Fowler, the current President of the Herbert Hoover Boys and Girls Club, where Graham stores some of his yard tools.

14. Along the way, Graham came across Dr. Dillon Johnston (“Johnston”) who lives in the Parkview subdivision and was walking his dog, Liam.

15. Graham has done odds jobs for Dr. Johnston for many years.

16. Since Graham has difficulty walking extended distances because of his bad knees, Graham sat down and started talking with Dr. Johnston, while playing with Liam.

17. At the same time, Officer Becton slowly drove by in a University City police car with the windows rolled up.

18. Officer Becton was driving in the neighborhood in response to an anonymous complaint that a suspicious person -- a black male wearing a black shirt and dark jeans -- was walking up to houses and looking through the front doors in the 6200 block of Pershing.

19. Other than indicating, at most, that a suspicious person might allegedly be trespassing, there was no information in the police dispatch to suggest that this presented a dangerous situation.

20. Contrary to the individual described in the police dispatch, at the time when Officer Becton drove by, Graham was not wearing a black shirt and dark jeans. Instead, Graham was wearing a grey t-shirt with the word “San Francisco” in the front and blue jeans.

21. Contrary to the individual described in the police dispatch, at the time when Officer Becton drove by, Graham was not in the 6200 block of Pershing. Instead, Graham was in the 6300 block of Westminster.

22. Contrary to the individual described in the police dispatch, at the time when Officer Becton drove by, Graham was not walking up to houses or looking through the front doors. Instead, Graham was sitting down casually talking to Dr. Johnston, while playing with his dog, Liam.

23. Officer Becton did not lower the window of the police car in order to initiate a casual conversation with Graham and/or Dr. Johnston to determine if everything was okay or whether they had noticed any suspicious activity in the neighborhood.

24. Instead, Officer Becton drove past Graham and Dr. Johnston and parked the police car a short distance away from them, where he observed them for approximately 5-10 minutes.

25. Graham and Dr. Johnston then parted ways, with Dr. Johnston walking towards the police car and Graham walking in the opposite direction.

26. Officer Becton then rapidly accelerated the police car towards Graham.

27. Officer Becton confronted Graham at 6326 McPherson Avenue.

28. Officer Becton told Graham that he needed to talk to him.

29. In response, Graham told Officer Becton: "You don't need to say nothing to me."

30. At no time did Graham tell Officer Becton: "Fuck you, I ain't telling you nothing."

31. Officer Becton advised Graham that he had received a call regarding a suspicious person and questioned Graham: "Do you live over here?"

32. Graham was upset that Officer Becton assumed that Graham did not belong in the neighborhood because Graham had done odd jobs for many of the residents of the Parkview

subdivision over the years and Officer Becton had just seen Graham casually interacting with Dr. Johnston and his dog, Liam.

33. Moreover, Graham was scared for his life. As a result, Graham started screaming for someone to help him.

34. With assistance from Officer Timothy Vallee, who had arrived at the scene, Officer Becton proceeded to place handcuffs on Graham to restrain him.

35. Officer Becton then asked Graham to identify himself, namely his name and where he lives.

36. In response, Graham refused to respond to Officer Becton's inquiry, telling him that it was none of his business.

37. At the same time, Graham advised Officer Becton that he had done work in the neighborhood for many years and noted that Officer Becton had just seen Graham talking to Dr. Johnston.

38. Nevertheless, Officer Becton proceeded to arrest Graham for an alleged failure to comply, in purported violation of University City Ordinance § 215.385.

39. Graham was then taken to the University City police department where he was booked and placed in jail for approximately seven hours.

40. Subsequently, Graham was released from jail after David Keynon, a former University City Commissioner who lives in the Parkview subdivision neighborhood and knows Graham, bailed Graham out by paying the \$100 bond.

41. The charge against Graham was dismissed.

**COUNT I: UNLAWFUL SEIZURE**

**Unlawful Seizure in Violation of Fourth Amendment to the United States  
Constitution against Defendant Officer Becton**

42. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

43. The Fourth Amendment protects against unreasonable searches and seizures.

44. When a police officer has a reasonable suspicion that criminal activity may be afoot, the officer may briefly stop an individual (known as a “*Terry* stop”) and make reasonable inquiries aimed at confirming or dispelling the suspicion.

45. To determine whether a stop is constitutional, courts balance the nature and quality of the intrusion on personal security against the importance of governmental interests alleged to justify the intrusion.

46. Officer Becton did not have probable cause to seize Graham in connection with the *Terry* stop.

47. The *Terry* stop conducted by Officer Becton was not justified because the governmental interest in investigating a prior alleged trespass based on an anonymous tip did not outweigh Graham’s personal interest to be free from arbitrary interference by the police, especially since there were no facts indicating that there was a threat to public safety.

48. Rather than aggressively confront and seize Graham based solely on the anonymous tip, Officer Becton could have continued to observe Graham for a considerable length of time, watching for any indications of incipient criminality that would give Officer Becton reasonable suspicion to make an investigatory stop.

49. Rather than aggressively confront and seize Graham based solely on the anonymous tip, Officer Becton could have also initiated a simple consensual interview of Graham and/or Dr. Johnston.

50. As of March 17, 2016, it was clearly established that it is unlawful for a police officer investigating a prior alleged trespass based on an anonymous tip to conduct a *Terry* stop, especially if there are no facts indicating that there is a threat to public safety.

51. Defendant Officer Becton was acting under color of law in subjecting Graham to the violation of his rights as secured by the Fourth Amendment.

52. By unlawfully seizing Graham, Defendant Officer Becton acted with reckless and callous indifference to Graham's Fourth Amendment rights.

53. Graham suffered damages as a result of Defendant Officer Becton's acts.

WHEREFORE, Graham prays this Court:

- A. Enter judgment in favor of Graham and against Defendant Officer Becton;
- B. Award Graham nominal, compensatory, and punitive damages against Defendant Officer Becton;
- C. Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D. Grant such other and further relief as the Court deems just and proper.

**COUNT II: UNLAWFUL SEIZURE**

**Unlawful Seizure in Violation of Missouri Constitution, Art. I, § 15  
against Defendant Officer Becton**

54. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

55. Defendant Officer Becton conducted an unlawful seizure of Graham in violation of Article I, section 15 of the Missouri Constitution.

WHEREFORE, Graham prays this Court:

- A) Enter judgment in favor of Graham and against Defendant Officer Becton;
- B) Award Graham nominal, compensatory, and punitive damages against Defendant Officer Becton;
- C) Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D) Grant such other and further relief as the Court deems just and proper.

### **COUNT III: UNLAWFUL ARREST**

#### **Unlawful Arrest in Violation of Fourth Amendment to the United States Constitution against Defendant Officer Becton**

56. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

57. Even assuming, *arguendo*, that the initial *Terry* stop was valid, Officer Becton unlawfully arrested Graham for failing to respond to Officer Becton's inquiry, allegedly in violation of University City Ordinance § 215.385.

58. Graham had the right to decline to answer Officer Becton's inquiry without subjecting himself to being arrested.

59. Officer Becton's inquiry to Graham was not reasonably related to the circumstances allegedly justifying the initial stop.

60. As of March 17, 2016, it was clearly established that a warrantless arrest without probable cause violates an individual's constitutional rights under the Fourth and Fourteenth Amendments.



61. As of March 17, 2016, it was clearly established that an individual has a right to decline to identify himself where a police officer does not have a reasonable basis to believe that the individual had engaged in criminal activity.

62. As of March 17, 2016, it was clearly established that a police officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop.

63. Defendant Officer Becton was acting under color of law in subjecting Graham to the violation of his rights as secured by the Fourth Amendment.

64. By unlawfully arresting Graham, Defendant Officer Becton acted with reckless and callous indifference to Graham's Fourth Amendment rights.

65. Graham suffered damages as a result of Defendant Officer Becton's acts.

WHEREFORE, Graham prays this Court:

- A) Enter judgment in favor of Graham and against Defendant Officer Becton;
- B) Award Graham nominal, compensatory, and punitive damages against Defendant Officer Becton;
- C) Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D) Grant such other and further relief as the Court deems just and proper.

#### **COUNT IV: UNLAWFUL ARREST**

##### **Unlawful Arrest in Violation of Missouri Constitution, Art. I, § 15 against Defendant Officer Becton**

66. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

67. Defendant Officer Becton conducted an unlawful arrest of Graham in violation of Article I, section 15 of the Missouri Constitution.

WHEREFORE, Graham prays this Court:

- A) Enter judgment in favor of Graham and against Defendant Officer Becton;
- B) Award Graham nominal, compensatory, and punitive damages against Defendant Officer Becton;
- C) Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D) Grant such other and further relief as the Court deems just and proper.

**COUNT V: MUNICIPAL LIABILITY**

**Section 1983 Unlawful Seizure and Arrest  
against Defendant University City**

68. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

69. The University City Municipal Code identifies the responsibility of the University City Police Department as the protection of rights of persons, the enforcement of ordinances and regulations, and the preservation of peace, order, and safety.

70. Among other things, the Mission of the University City Police Department is to “protect individual constitutional rights.”

71. The University City Police Department has embraced the “Community Policing Philosophy” in an effort to provide the highest level of service to all its citizens.

72. In connection with the Community Policing Philosophy, the Chief of Police has stated that “[p]rofessionalism and competence are barometers in determining our success.”

73. Defendant Officer Becton's seizure and arrest of Graham were conducted pursuant to an ordinance, policy or custom of University City.

74. Defendant University City failed to train and supervise Officer Becton on the requirements of the Fourth Amendment.

75. As set forth in Count VI below (which is incorporated by reference herein), University City Ordinance § 215.385 is unconstitutionally vague on its face and was unlawfully applied as to Graham.

76. As a direct and proximate result of Defendant University City's Ordinance § 215.385, customs, policies, and failure to train or supervise, Graham sustained damages.

WHEREFORE, Graham prays this Court:

- A) Enter judgment in favor of Graham and against Defendant University City;
- B) Award Graham nominal, compensatory, and punitive damages against Defendant University City;
- C) Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D) Grant such other and further relief as the Court deems just and proper.

**COUNT VI: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**Void-for-Vagueness in Violation of Due Process Clause of Fifth and Fourteenth Amendments to United States Constitution against Defendant University City**

77. Graham incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

78. Pursuant to Section 1983, Graham seeks a declaratory judgment and injunctive relief with respect to the enforcement of University City Ordinance § 215.385.

79. University City Ordinance § 215.385 is titled “Failure to Comply” and states: “It is unlawful for any person to fail or refuse to obey any reasonable order or direction of a Police Officer.”

80. The Due Process Clause of the Fifth and Fourteenth Amendments provides the constitutional foundation for the void-for-vagueness doctrine.

81. The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

82. An important aspect of the void-for-vagueness doctrine is the requirement that the legislature establish minimal guidelines to govern law enforcement. Otherwise, a criminal statute may permit a standardless sweep that allows policemen to pursue their personal predilections.

83. University City Ordinance § 215.385 does not include any guidelines to govern law enforcement.

84. In particular, University City Ordinance § 215.385 does not make any attempt to define or delimit the words “any reasonable order or direction” of a police officer.

85. What may be a reasonable request in the mind of a police officer may be unreasonable to the person of whom the request is made.

86. Moreover, what may be a reasonable request in the mind of one police officer may be unreasonable to another police officer.

87. As a result, conduct which may cause one police officer to issue an order may be disregarded as innocuous by another police officer.

88. University City Ordinance § 215.385 requires the police to determine what conduct is proper or improper not by reference to a legislative standard, but rather, to the police officer's own concept of reasonability, and to enforce that determination through an order or direction. The ordinance thus allows the police to make the law as well as enforce it.

89. University City Ordinance § 215.385 confers virtually unrestrained authority upon the police. As a result, the ordinance lends itself to discriminatory and harsh enforcement.

90. For these reasons, University City Ordinance § 215.385 is unconstitutionally vague on its face.

WHEREFORE, Graham prays this Court:

- A) Enter judgment in favor of Graham and against Defendant University City declaring that University City Ordinance § 215.385 is unconstitutionally vague on its face and was unlawfully applied as to Graham;
- B) Enter a preliminary and permanent injunction prohibiting the enforcement of University City Ordinance § 215.385;
- C) Award Graham reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable provisions of law; and
- D) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert

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