

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

State of Ohio)	Case No. CR-17-623861-A
Plaintiff,)	
vs.)	Judge Joseph D. Russo
)	Defendant's Motion to Withdraw
Christie Elko)	No-Contest Plea
Defendant.)	

I. Introduction

Defendant Christie Elko hereby moves to withdraw the no-contest plea that she entered in this case on February 2, 2018. Ms. Elko seeks to withdraw her plea because she recently learned that the State deliberately withheld material exculpatory evidence from the arresting officer's disciplinary file that would have had a material impact on her decision to enter her plea, and based on which Ms. Elko now seeks to contest the criminal charges that were wrongly brought against her in this action. It is well within the Court's discretion to allow Ms. Elko to withdraw her plea under Crim.R. 32.1, and the Court should do so to avoid manifest injustice. Moreover, denial of Ms. Elko's motion to withdraw her no-contest plea where the State has withheld material evidence would violate Ms. Elko's due process right to a fair trial under the Fourteenth Amendment. For these reasons, explained fully below, the Court should vacate Ms. Elko's no-contest plea and allow this matter to proceed to resolution based on a complete picture of the relevant evidence.

II. Factual Background

This matter arises from an incident that occurred on September 24, 2016, where Olmsted Falls police officer Floyd Takacs, responding to an unsubstantiated report of alleged domestic-

violence, physically attacked Ms. Elko, tackling her to the ground, handcuffing her, striking her, and tasing her, with no legal justification for doing so. This incident has given rise to three separate criminal cases against Ms. Elko and a civil case by Ms. Elko against the arresting officers alleging battery, malicious prosecution, and violation of Ms. Elko's constitutional rights:

A. The criminal and civil cases at issue

1. Case No. 1: Criminal case in Berea (16-CRB-06134)

The State arrested Elko on September 24, 2016 and indicted her on September 26, 2016, for allegedly resisting arrest in violation of R.C. 2921.33, a first-degree misdemeanor, and domestic violence in violation of R.C. 2919.25, a first-degree misdemeanor, in the Berea Municipal Court (Case 1). Elko pleaded not guilty to the indictment. The resisting arrest charge was eventually transferred to Cuyahoga County and the domestic violence charge was dropped to disorderly conduct, to which Ms. Elko pleaded no contest on May 16, 2018.

2. Case No. 2: Criminal case in Cuyahoga County (CR-16-610322-A)

The State also indicted Ms. Elko for alleged assault on a police officer in violation of R.C. 2903.13(A), a fourth-degree felony. The State sent this charge to the Cuyahoga County Court of Common Pleas. Elko pleaded not guilty to the indictment.

On September 21, 2017, The Honorable Joseph D. Russo ordered the Defendants to provide Floyd Takacs' personnel file to the Court for an in-camera inspection. See 09/21/17 Order attached as Exhibit 1.

In November 2017, based on Ms. Elko's request to proceed to trial, the Cuyahoga County Prosecutor threatened that the State would re-indict the case, and add charges with even more severe consequences if Ms. Elko rejected the plea offer. Ms. Elko declined the plea.

3. Case No. 3: Re-indictment in Cuyahoga County (CR-17-623861-A)

After Ms. Elko refused to accept the plea offer, the State dismissed the assault on a police officer charge, and on December 19, 2017, *re-indicted* Elko, charging her with resisting arrest in violation of R.C. 2921.33(A), a second-degree misdemeanor, and assault on a police officer in violation of R.C. 2903.13(A), a fourth-degree felony in the Cuyahoga County Court of Common Pleas. Ms. Elko pleaded not guilty to the indictment.

On October 3, 2018, in chambers, Judge Russo directly and unequivocally ordered the prosecution to produce to defense counsel copies of Officer Takacs' entire personnel file. Prosecutor Geoffrey Minter nevertheless stated that his office would withhold portions of Floyd Takacs' personnel file. In a portion of the file presented to defense counsel titled "Performance: evaluations, commendations, active discipline, complaints," **the State produced exactly 3 pages involving Takacs' disciplinary history**, a referral for a Fitness for Duty Evaluation. In this Performance section, comprising 55 pages, there were *no* other disciplinary records, complaints, grievances, or reports in Floyd Takacs' personnel file.

On February 2, 2018, based on the limited evidence available to her, Ms. Elko pled no contest to resisting arrest, a second-degree misdemeanor.

4. Case No. 4: Elko sues Olmsted Falls police officers for damages

On September 23, 2017, Ms. Elko filed her civil suit against the involved Olmsted Falls police officers in the Cuyahoga County Court of Common Pleas . The defendants removed the case to Federal Court, where it is currently pending as Case No. 1:17-cv-02247-PAG. **On May 5, 2018, based on federal discovery rules and requests, the defendants provided Ms. Elko's attorneys with Floyd Takacs's personnel file. This file contained 278 pages of records relating to numerous complaints of misconduct by Officer Takacs and related disciplinary actions taken against him, 275 of which were not produced by the State in the criminal**

matter. These records reflect on Takacs's credibility, as well as his propensity for violence, and misogyny and general hostility toward women.

By this time, it was too late for Ms. Elko to consider this exculpatory evidence in deciding how to proceed in her criminal cases in Cuyahoga County, including the instant matter. For example, by May 5, 2018, the State had dismissed Case No. 2 to re-indict her, and had closed Case No. 3 with a no-contest plea to resisting arrest.

B. Summary of documents withheld from Ms. Elko in the criminal proceedings

In Ms. Elko's 3 criminal cases, the State produced a total of 3 sheets of paper regarding Floyd Takacs' disciplinary history despite that this Court ordered the State to produce his entire disciplinary file. In contrast, in the civil case, the defendants produced 278 pages of documentation regarding Officer Takacs' disciplinary history. The documents that the State wrongfully withheld from defense counsel in the criminal cases include the following (attached as **Exhibit 2**):

- A written report by Olmsted Falls Police Chief Dan Gilles finding that Officer Takacs's "actions and demeanor presented a threatening and hostile environment towards the Safety Director/Mayor [Ann Marie Donegan]" which "can be construed as work place violence." OLMSTED FALLS-000001.
- A written report by Mayor Donegan stating that Takacs came to her residence "in an effort to intimidate and provoke an incident" "purposeful[ly]" and with "inten[t] to harass, intimidate." OLMSTED FALLS-000003.
- A written report by Olmsted Falls Finance Director Steven J. Presley stating that, "Law Director Sponseller argued that the actions by Sgt. Takacs show a pattern of continued inappropriate behavior," "that the Mayor was well within her rights to immediately suspend [Takacs]" for conduct that she claimed "was threatening towards her," and "that there are several incidents in Sgt. Takacs's personnel file that would show this pattern of inappropriate behavior," and further finding that Takacs's suspension for this threatening behavior "is called for and should be upheld." OLMSTED FALLS-000015-16.
- A written report by Chief Gilles detailing an incident where Olmsted Falls Lieutenant Ms. Carmen Battaglia reported that Takacs "became irate, vulgar and loud and made derogatory remarks to Lt. Battaglia in the presence of other

- officers” in response to Battaglia’s instruction that Takacs put his body armor on as required during a training session. OLMSTED FALLS-000218.
- A written report by Lieutenant Battaglia issuing written discipline to Takacs for an incident where he walked into a citizen’s bedroom in responding to a call and shouted at the citizen to “screw off!” OLMSTED FALLS-000224–228.
 - A written report by Olmsted Falls Lieutenant Larry T. Meluch finding, 1) that Takacs “verbally exploded” on a female dispatcher “by screaming at her in a hostile way that reflects that he was obviously very angry and has completely lost his temper,” 2) that “when [Takacs] gets into this state of anger, he seems to be attacking her or other employees on personal issues that should not be revealed or brought up to that individual or even mentioned,” and 3) that Takacs “felt he is not going to alter his approach on employees and that he doesn’t care if he receives complaints.” OLMSTED FALLS-000239-240.
 - A report by Olmsted Falls police officer Kim Flood stating that Takacs “bull[ies], berate[s] and talk[s] down to fellow workers, including [her],” and that “this is a well known fact regarding Sgt. Takacs [that has] produced many negative incidents within the police department workplace, with several different employees” that “create[s] a hostile work environment.” OLMSTED FALLS-000246–247.
 - The underlying report by the aforementioned dispatcher discussing Takacs’s “escalating” and “explosive” behavior, his “long history of bizarre, harassing and borderline violent treatment, of not only me, but of other co-workers as well,” including an incident where Takacs “shot [the dispatcher] three times with a pellet gun,” as well as his habit of “refer[ring] to his fellow co-workers and city employees as ‘fucking idiots and assholes’ on a “daily basis” as well as multiple occasions on which he has “refer[red] to a female as a cunt.” In this report, the dispatcher states that, “Sgt. Takacs is causing a hostile work environment for me and my fellow dispatchers,” that “we feel bullied and intimidated by Sgt. Takacs,” that “I now fear for my safety if I were to be left alone with Sgt. Takacs,” and that “Sgt. Takacs has anger issues in dealing with women.” OLMSTED FALLS-000242–244.

This information—which is only a partial sampling of the evidence withheld—bears directly and probatively on Officer Takac’s well-known and well-documented habit of engaging in precisely the type of hostility and unwarranted violence against women in which he engaged against Ms. Elko in using excessive force to arrest her in the incident at issue.¹ It would be available as impeachment evidence at trial regarding his credibility under Evid.R. 608(B), and

¹ Ms. Elko is a member of the LGBTQ community. While tackling her to the ground during the incident at issue, Takacs shouted at her, “you’re under arrest you stupid fucking dyke.”

would be directly admissible to show his bias against women under Evid.R. 616(A). It would also be admissible as direct exculpatory evidence under Evid.R. 404(B) to show his intent, plan, and absence of mistake in turning off his body camera during the incident at issue and engaging in excessive force against Ms. Elko; as well as under Evid.R. 406 to show his habit of bullying and exploding in anger at women who question his behavior, as Elko did in the underlying incident at issue. Moreover, underscoring the importance of granting the requested relief, the State has taken the position in the federal civil case as of today that if Takacs is found to have engaged in the excessive force as alleged by Elko, it would establish a defense to the State's charges against Ms. Elko in these proceedings. See **Exhibit 3**, excerpt from Officer Takacs's and Olmsted Falls's motion for judgment on the pleadings filed 06/21/18 (“[A] criminal conviction for resisting arrest in Ohio cannot stand where a criminal defendant successfully asserts the affirmative defense of pre-arrest excessive force.”).

III. Law and Argument

A. The Court would be well within its discretion to permit Ms. Elko's withdrawal of her no-contest plea and should do so because the prosecution withheld material exculpatory evidence.

A motion to withdraw a guilty plea is governed by Crim.R. 32.1, which provides that a court may, after a defendant has been sentenced, “set aside the judgment of conviction and permit the defendant to withdraw his or her plea” “to correct manifest injustice.” “The Supreme Court of Ohio has defined ‘manifest injustice’ as a clear or openly unjust act.” *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977) citing *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998 Ohio 271, 699 N.E.2d 83 (1998). Generally, “[w]hether the movant has demonstrated a manifest injustice is addressed to the sound discretion of the trial court” and will not be reversed “absent an abuse of discretion.” *State v. Rittner*, 6th Dist. Fulton No. F-05-003,

2005-Ohio-6526, ¶ 28 citing *Smith*, 49 Ohio St.2d 261, at paragraph two of the syllabus. Thus, the Eighth District has held that where “potentially exculpatory evidence” is withheld from a criminal defendant, “it cannot be said that [the defendant] entered his plea knowingly, intelligently, and voluntarily,” and a trial court therefore “d[oes] not abuse its discretion in granting [a] motion to withdraw [a related] guilty plea” even where “the withholding of the [evidence] was inadvertent.” *State v. Hale*, 8th Dist. Cuyahoga No. 100447, 2014-Ohio-3322, ¶ 6-10.

Here, it is clear that material exculpatory evidence, and evidence that would have been used to impeach the State’s key witness at trial, was withheld from Ms. Elko, who made her plea without access to this evidence. Thus, as made clear by *State v. Hale* and related precedent, the Court is well within its discretion to allow Ms. Elko to withdraw her plea. The Court should exercise its discretion in this manner here to avoid working a manifest injustice on Ms. Elko by allowing her the opportunity to proceed to resolution of this matter based on a complete picture of the relevant evidence that was available to the Prosecution. By exercising its unquestionable discretion in this manner, the Court will also avoid violating Ms. Elko’s constitutional right to due process as explained immediately below.

B. Denial of Ms. Elko’s motion to withdraw her no-contest plea would violate due process.

While a trial court’s discretion in deciding on a Crim.R. 32.1 motion ordinarily cuts both ways, the Fourth District has observed, in the context of a motion for a new trial, that, “when evidence available to the prosecution is withheld from the defense, the issue on review is different than if the evidence had been discovered from a neutral source.” *State v. Ogle*, 4th Dist. Hocking Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, 12CA19, 2013-Ohio-3420, ¶ 62. “When material, exculpatory evidence is withheld by the prosecution in a criminal proceeding, a

defendant's due process right to a fair trial under the Fourteenth Amendment is violated.” *Id.*

As The Supreme Court of Ohio has affirmed, “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Ohio v. Johnston*, 39 Ohio St.3d 48, 60-61, 529 N.E.2d 898 (1988) citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The Supreme Court of Ohio has further affirmed that suppressed evidence “shall be deemed material” when “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* at 61 citing *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). “A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.” *Id.*

Here, there can be no question that confidence in the outcome of these proceedings would be undermined if Ms. Elko were to be held to a plea that she made without access to the disciplinary records that the prosecution has withheld from her. *See also State v. Engle* (1996), 74 Ohio St.3d 525, 660 N.E.2d 450. (“To comply with due process requirements, a defendant who enters a plea in a criminal case must enter the plea knowingly, intelligently, and voluntarily.”). Due process requires that Ms. Elko be permitted to consider the voluminous exculpatory and impeachment evidence that was available to the Prosecution regarding Officer Takacs’s disciplinary history before she decides whether to enter a plea to the charges in this case.

IV. Conclusion

While due process requires that Ms. Elko be permitted to withdraw her plea due to the prosecution’s withholding of exculpatory evidence, the Court may avoid the due process analysis

altogether by exercising its broad discretion to permit the same under Crim.R. 31.1. *See State v. Hale*, 8th Dist. Cuyahoga No. 100447, 2014-Ohio-3322, ¶ 6-10.

Respectfully Submitted,

/s/ Gina M. Crawford
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Phone: (440) 570-9653
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/s/ Peter Pattakos
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peter@pattakoslaw.com

Attorneys for Defendant

Certificate of Service

I served the foregoing Motion to Vacate via the Court's electronic filing system on June 21, 2018.

/s/ Peter Pattakos
Peter Pattakos
Attorney for Defendant



100618010

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

CHRISTIE L ELKO
Defendant

Case No: CR-16-610322-A

Judge: JOSEPH D RUSSO

INDICT: 2903.13 ASSAULT (PEACE OFFICER)

JOURNAL ENTRY

COURT ORDERS OLMSTED FALLS POLICE DEPARTMENT AND MUNICIPALITY TO PROVIDE THE COURT WITH EMPLOYMENT JACKET AND PERSONEL FILE FOR OFFICER TAKACS, FOR IN- CAMERA INSPECTION.

09/21/2017
CPLD1 09/21/2017 12:38:05

A handwritten signature in black ink, appearing to read "Joseph D. Russo". The signature is fluid and cursive, written over a horizontal line.

Judge Signature

09/21/2017

HEAR
09/21/2017

RECEIVED FOR FILING
09/21/2017 16:13:11
NAILAH K. BYRD, CLERK

EXHIBIT 1



Olmsted Falls Police Department

"Committed to Excellence"
Daniel R. Gilles, Chief of Police
26100 Bagley Road
Olmsted Falls, Ohio 44138-1897
police@olmstedfalls.org



Phone: 440-235-1234

Facsimile: 440-235-5455

May, 22. 2014 *10/5*

Sergeant Floyd Takacs
Olmsted Falls Police Department
26100 Bagley Road
Olmsted Falls, Ohio 44138

Sergeant Takacs,

On Thursday, May 21, 2015, you engaged in conduct directed towards Safety Director/Mayor Donegan, that is in violation of the Olmsted Falls Police Department Standards of Conduct. Specifically, Standard #19 Courteous and Respectful Behavior Toward Positions of Authority.

Additionally, your actions and demeanor presented a threatening and hostile environment towards the Safety Director/Mayor. This can be construed as work place violence.

Consequently you were relieved of duty, by me, for the remainder of your shift on May 21, 2015.

You have been notified of the scheduled hearing on Wednesday, May 27th, at 3:00PM, where you have the opportunity to respond to above listed charges.

Chief Daniel R. Gilles
Olmsted Falls Police

Cc: Olmsted Falls Civil Service Commission
Sergeant Odis Rogers, OPBA Representative
Mayor Donegan
Chief Gilles

EXHIBIT 2

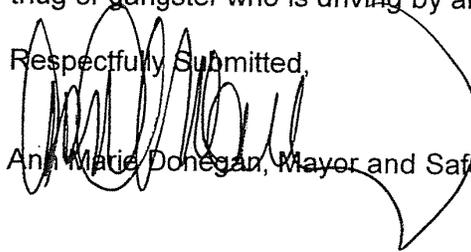
OLMSTED FALLS-000001

10

5/23/15

On or about 3:30/3:45- 4:15/4:30, I was leaf blowing my driveway and I was positioned at my mailbox directly on Columbia Road. Sgt Takacs heading southbound drove by my residence in an Olmsted Falls police cruiser and in an intended, purposeful, manner leered at me in an effort to intimidate and provoke an incident. His behavior and mannerism were purposeful and intended to harass, intimidate only in my mind akin to a thug or gangster who is driving by an adversary in an attempt to intimidate.

Respectfully Submitted,


Ann Marie Donegan, Mayor and Safety Director – City of Olmsted Falls



City of Olmsted Falls

Celebrating 200 years

26100 Bagley Road • Olmsted Falls, Ohio 44138 • (440) 235-5550 • Fax (440) 235-8900 • www.olmstedfalls.org

Ann Marie Donegan
Mayor

Steve Presley
Finance Director

Mike DeSan
Asst. Finance Director

Terry Veloski
Asst. Finance Director

30

July 29, 2015

On July 21, 2015 a step 3 grievance hearing was held in the matter of police Sgt. Floyd Takacs' appeal of the 1-day (7 hours) suspension by Chief Gilles related to certain actions of Sgt. Takacs on May 21, 2015.

Attending the hearing were the following individuals; Mayor Donegan, Law Director Sponseller, Police Chief Gilles, Floyd Takacs and OPBA Attorney Dan Leffler.

During the hearing Sgt. Takacs confirmed that there was a discussion between himself and the Mayor regarding the proposed hiring of P/T Office Swope. Sgt. Takacs was adamant in his opinion that the hiring of Officer Swope would be "the worst thing to happen to the department." He also indicated to the Mayor that he was not concerned with what actions the Mayor would take as a result of him indicating such opinion to her. Sgt. Takacs stated that it was a civil conversation and that he did not lose his composure nor was he disrespectful towards the Mayor.

The Mayor however painted a much different picture of the incident. She indicated that Sgt. Takacs was completely disrespectful and threatening towards her. On several occasions the Mayor told Sgt. Takacs that he "was out of line" only to have Sgt. Takacs respond "I don't care what you do to me because of what I am saying" and then would continue.

The OPBA indicated that the Chief's immediate suspension was in violation of the Collective Bargaining Agreement (CBA) as an "emergency" suspension and the OPBA believed the actions of Sgt. Takacs did not violate the "Just Cause Provision" of the CBA.

Law Director Sponseller argued that the actions by Sgt. Takacs show a pattern of continued inappropriate behavior and that the Mayor was well within her rights to immediately suspend the individual. Mr. Sponseller continued that there are several incidents in Sgt. Takacs' personnel file that would show this pattern of inappropriate behavior and that the Officer has been reprimanded previously. Therefore the suspension is called for and should be upheld.

Page -2-
July 29, 2015

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Police Chief Gilles was asked if in fact the references to previous incidents being noted in Sgt. Takacs' file was correct. He confirmed that there are previous situations of discipline in Sergeant Takacs' file.

Sgt. Takacs did not deny the existence of such items in his personnel file. At issue is whether or not the immediate suspension of Sgt. Takacs as a result of his behavior toward the Mayor on May 21, 2015 is to be affirmed.

It is clear to me that the Officer does in fact have a history of inappropriate behavior during his tenure with the City and has been disciplined as a result of said behavior. Furthermore I do find that the Officer was out of line during the incident which took place on May 21, 2015 and for which disciplinary action is fair and appropriate. He was warned several times by the Mayor and repeatedly asked to stop, but he continued anyway, which demonstrates his failure to obey a direct order by a superior. If nothing else his actions are certainly unbecoming of an officer.

However the CBA is clear on what procedures apply to an "emergency" immediate suspension. Article 7, Section 4 "prior to a disciplinary suspension that does not require emergency relief from duty, the City shall conduct a pre-suspension hearing for the purpose of affording the employee an opportunity to respond to the charges".

While I find the officer was deserving of a suspension and it was for cause, I do not find an "emergency" existed. The process contained in the CBA for a straight non-emergency suspension was not followed and therefore I must find for the Officer and rescind the emergency suspension imposed.

I do, however, find that the appropriate disciplinary action in this particular set of circumstances is a Written Reprimand of Sgt. Takacs and the same shall be placed in his personnel file.

Sgt. Takacs shall be paid for the 1-day (7 hours) of suspension.

Sincerely,



Steven J. Presley

cc: Mayor Donegan,
Law Director Sponseller
Chief Gilles
Sgt. Takacs
OPBA Attorney Dan Leffler



OLMSTED FALLS POLICE



TO: Mayor Donegan

FROM: Chief Gilles

DATE: June 1, 2015

RE: Prior Grievance- Sergeant Takacs Documents

Listed below is the chain of events, to the best of my recollection, concerning the events that occurred at the Select Fire range between Lieutenant Battaglia and Sergeant Takacs and the grievance filed as a result. I cannot specify or verify the dates of the events presented in this document.

During October 2013 we had rented range space at the Select Fire indoor firearms range to conduct firearms training and qualifications for the department. Sergeant Takacs was the firearms instructor assigned to conduct this training session.

I received a phone call from Lt. Battaglia and he advised me that he had been involved in a verbal dispute with Sgt. Takacs when he arrived at the range for his training session. Lt. Battaglia advised when he arrived, Sgt. Takacs had his body armor removed and he instructed Sgt. Takacs to put his body armor back on. Body armor is mandatory for all range sessions. Lt. Battaglia then advised that Sgt. Takacs then became irate, vulgar and loud and made derogatory remarks directed towards Lt. Battaglia in the presence of other officers. Lt. Battaglia advised me he was going to write up Sgt. Takacs and requested a suspension due to this occurring in the presence of other officers.

Lt. Battaglia then issued a notice to Sgt. Takacs reference his violation of several of the department's Standards of Conduct. Sgt. Takacs then filed a grievance, disputing the notice issued by Lt. Battaglia.

The grievance was not satisfied at the first step of the grievance process and was forwarded to my office for the second step of the process. I scheduled and held a second step grievance hearing with Sgt. Takacs and denied modifying or reducing the discipline. Sergeant Takacs explained during this meeting that he was to the point of passing out due the heat inside the indoor range and had removed his body armor only during the period when no active firing of weapons was taking place. He explained he had taken his body armor off just prior to the arrival of Lt. Battaglia. He admitted he had acted out and said things to and directed at Lt. Battaglia due to Lt. Battaglia constantly second guessing Sgt. Takacs' actions. Sgt. Takacs felt Lt. Battaglia did not give him a chance to explain why his vest was removed and Lt. Battaglia started the incident by his negative behavior towards him upon his arrival at the range. I do not remember who else was present at the second step discipline hearing.

Sgt. Takacs then filed with the Mayor a third step grievance. Mayor Blomquist then scheduled and held the third step grievance hearing. Attending at this hearing for the city was Lt. Battaglia and Chief Gilles. Sgt. Takacs was represented at this hearing by Sgt. Rogers, OPBA representative for the

City of Olmsted Falls

FOUNDED IN 1814
DIVISION OF POLICE
26100 BAGLEY ROAD
OLMSTED FALLS, OHIO 44138-1897
DANIEL R. GILLES, CHIEF OF POLICE

OFFICE OF THE CHIEF
(440-235-3145)

EMERGENCY 911

June 4, 2014,

Sergeant Floyd Takacs
Olmsted Falls Police Department
Olmsted Falls, Ohio 44138

RE: Written Verbal Warning / Failure to obey Policy (insubordination)

Sergeant Takacs,

This letter will serve as a written verbal warning for your verbal metaphor directed at Ms. Michele Carson.

You are in violation of Standards of Conduct 1 Exercising Common Sense and Affirmatively Promoting The Organization Values.

Please, in the future refrain from stating to anyone to "screw off!".

This letter is documentation of you receiving a written verbal warning.

A more severe discipline may be encompassed should further violations occur.

Lt. Carmen A. [REDACTED]

Cc: Chief Daniel R. Gilles, file

Signature: _____

Witness: _____

Olmsted Falls Police Department
Employee Infraction/Conduct Complaint

Your Name: Michelle M. Carson

Address: [REDACTED], Olmsted Falls, OH 44138

Phone: [REDACTED]

Date incident occurred: 6/2/14 Time occurred: 10:50 pm approx.

Location of incident: [REDACTED]

Name or badge number of employee(s) involved: 41, Officer Jakacs

Nature of Complaint: Verbal and physical disturbance

Names and contact numbers of witnesses:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. _____
5. _____

Please continue to page 3.

For Internal use Only.

Date Received: 6/3/14 Received By: CHIEF GILLES

Investigator Assigned: BATTAGLIA & MIELCCH

0940 NEFT INVOICE
0945 LEFT MESSAGE ON CELL PHONE

0940 NEFT INVOICE
0945 LEFT MESSAGE ON CELL PHONE

Olmsted Falls Police Department
Employee Infraction/Conduct Complaint

Note: Ohio Revised Code Section 2921.15(B) states: No person shall knowingly file a complaint against a peace officer that alleges that the peace officer engaged in misconduct in the performance of his duties if the person know that the allegation is false. (C) Whoever violates division (B) of this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.

I, Michelle McCarson, do hereby give the following voluntary statement this 3rd day of June, 2014.

Officer Tavares and Officer Sauter came to my home for a call of Domestic Disturbance. My son was [REDACTED] and was yelling. After speaking to my son in the garage officer Tavares came up 2 flights of stairs to my bedroom where I was watching TV. I walked out of my bedroom as I felt very violated that he was walking to a private area of my home and said "excuse me can I help you and that he did not have a reason to enter my bedroom" the officer told me to "screw off". This is inappropriate and unwarranted. I went downstairs when officer Tavares kept taunting my son. Me, my husband which escalated the whole situation. This could have remained a calm situation but his demeanor and taunting escalated. Later on in the evening I was speaking to another officer he had me leaning on the front of the cop car. Officer Tavares started the car saw that I was leaning

I have read this statement and the facts and allegations therein contained are true to my best knowledge and belief.

Signature: _____ Date: _____

Continue on back of this page or add additional pages as needed.

Car. I stumbled and almost fell which
escalated the situation again my father
became upset and he then started taunting
him. This is not the first situation where
this officer has had a complaint about
10 years ago he had a complaint filed
against him where he had to take a
course on how to deal with people. He
is not a good role model for our city
and does not handle any situation
appropriately and I am requesting that
he be disciplined for his inappropriate
handling of this situation.

City of Olmsted Falls

FOUNDED IN 1814

DIVISION OF POLICE

26100 BAGLEY ROAD

OLMSTED FALLS, OHIO 44138-1897

DANIEL R. GILLES, CHIEF OF POLICE

OFFICE OF THE CHIEF
(440) 235-3145

EMERGENCY
(440) 235-1234

TO: Chief Gilles
FROM Lt. Meluch
SUBJECT Sgt. Takacs investigation
DATE: 11-18-09

On 11-17, I conducted an investigation into the complaint filed by Dispatcher Pam Nicholson that occurred on October 27. Dispatcher Nicholson's complaint at first was an oral complaint then became a written complaint on November 4.

After reviewing the complaint it was determined that there were only two subjects who may have witnessed this incident. Ironically, both subjects that I interviewed had no knowledge of my probing into this incident on this day that I spoke with them nor did they have time to collaborate with one another prior to my speaking with them on this issue.

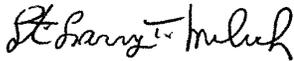
Interestingly, what I learned that both stories were very consistent and unfortunately supportive of Nicholson's written complaint.

I learned that there are three issues that need addressing. The first concern that I have is when Takacs needs to discipline or correct Dispatcher Nicholson, as in this incident, he verbally exploded on her by screaming at her in a hostile way that reflects that he was obviously very angry and has completely lost his temper.

The second issue that seems to be a problem, is the fact when he gets into this state of anger, he seems to be attacking her or other employees on personal issues that should not be revealed or brought up to that individual or even mentioned. A first line supervisor has the privilege of correcting an employee and if needed may discipline through written form or verbal, but in this case above, it is apparent that he completely over stepped this authority by his behavior that he displayed.

The third concern that I have is the fact that I believe that Nicholson obviously had contributed to this, however, after reviewing the facts that were given to me; I feel that his behavior was completely disproportioned with Nicholson's conduct and that he needs to display a calmer, professional approach when dealing with employees with discipline problems or issues.

On October 29, a counseling session with him on this subject took place in my office informing him of this incident. It is in my opinion that he felt that he is not going to alter his approach on employees and that he doesn't care if he receives complaints. I did however; suggest that he should care, and that he does need to change his approach on dealing with employees. It is unknown if he was receptive to this or not, however, for this police department, I hope that this type of incident or behavior could be put behind us so that we can go forward as an agency serving the public and treating employees on a professional level.



Lt. Larry T. Meluch

M E M O

Date: March, 4, 2011
To: Lt. Battaglia
From: Sgt. Flood
RE: Sgt. Takacs conflict

This memo is to follow up on my conversation with you regarding the continuing conflict between me and Sgt. Takacs.

On March 1, 2011 Sgt. Takacs questioned me about why I had left my cruiser running in the parking lot. I understood the reason for the questioning was because of the bulletin Sgt. Takacs had written regarding leaving cruisers running in the parking lot. Sgt. Takacs asked me if Sgt. Rogers had talked to me about leaving my cruiser running. I advised Sgt. Takacs I had no such conversation with Sgt. Rogers. I calmly explained to Sgt. Takacs why I had left my cruiser running. I knew there was an accident on Columbia Rd., and the roadway had been blocked by Sgt. Takacs and another officer. I was just coming in for duty and noticed my assigned cruiser was full of frost. I started my cruiser to get the vehicle defrosted. I was expecting to go relieve one of the officers on scene at the accident. However, when I asked Sgt. Takacs over the radio (at about 2115 hrs) if he would like me to relieve him, he stated he did not. I did remain in dispatch for about 45 minutes after that. I do understand it was longer than I should have left my cruiser running. However, this is the first time I have done this and I have always followed Sgt. Takacs' bulletin (regarding this issue) without any question or reserve.

Sgt. Takacs continued to question me as to why I left my cruiser running. I explained to him the same reason. Sgt. Takacs asked me if I was going to totally "...disregard the fucking bulletin and just do what I want?" I advised Sgt. Takacs I did not have a negative intention when I started my cruiser and that it was not a personal affront to his bulletin. At this point I knew the conversation was going to a possibly volatile disposition, and I turned to leave the room. Sgt. Takacs continued to follow me down the hall, stating, "I wouldn't do that to you." I advised you on March 1, 2011 of the conversation between Sgt. Takacs and me. I produced a copy of the letter I wrote to you on March 2, 2009 regarding similar negative interactions with Sgt. Takacs. I did not receive any written response to that letter. I was informed that Sgt. Takacs was talked to regarding his behavior.

On the early morning of March 2, 2011 there was a meeting between Sgt. Takacs, you and me. Sgt. Takacs was given a directive by you stating he is not to address me directly with any critical comments about my job performance. You advised Sgt. Takacs to report to a Lt. with any complaints regarding my job performance. Sgt. Takacs got up out of his chair while we engaged in conversation and stated, "Admit you were wrong Kim! You can't admit you were wrong because of your ego and you are too sensitive. This department is going to go down in flames because you set a poor example and can't get past your ego!" I did respond to Sgt. Takacs by stating that I felt if anyone

in this department set many bad examples it was him. I added that I thought him to be nothing more than a bad rap artist with zero social skills. I also added Sgt. Takacs has frequently verbalized the fact that he is here for a paycheck and nothing more. The meeting was ended shortly after this verbal exchange.

I spoke with you today (March 3, 2011). You informed me there were several problems that have come out of the meeting. The biggest issue was Chief Gilles stated the directive you wrote was in violation of contract language regarding seniority and test scores. I have never disputed that Sgt. Takacs has seniority over me. I have repeatedly, however, brought to management's attention how often Sgt. Takacs feels it necessary to criticize my job performance. To my immediate knowledge there are very few if any negative files in my employee folder. My evaluations have been favorable in the past. Compounding the problem, Sgt. Takacs has extremely poor social/management skills, choosing to bully, berate and talk down to fellow workers, including myself. This is a well known fact regarding Sgt. Takacs and has produced many negative incidents within the police department workplace, with several different employees.

You advised me that Sgt. Takacs wants to file a grievance regarding the directive you wrote. Sgt. Takacs feels he is being disciplined and the directive is a contract violation.

Again, I do not dispute Sgt. Takacs seniority or his 'right' to run his shift the way he feels best. However, I am not in agreement with Sgt. Takacs regular negative critiquing and berating of my job performance, decisions, ideas, etc. Sgt. Takacs behavior goes way beyond 'managing his shift'. Sgt. Takacs behavior continues to create a hostile work environment for me. I want to know what management is going to do about it other than 'talk to him'

Respectfully,
Sgt. Kim Flood

Oct 4th, 2009

LeS,

I am writing this complaint in reference to what I believe is continuing, constant, unfair treatment, by a supervisor of the Olmsted Falls Police Department.

The most recent episode concerned itself with a minor infraction which occurred on October 27th, 2009.

I am a dispatcher for the Olmsted Falls Police Department and received a Notification of Written Reprimand from the Sergeant in charge of my shift.

It started when a female resident of Olmsted Falls arrived at the Police Department to make a verbal statement. She advised me that an elderly black male had come to her home by cab, this being the third time, and asks to speak with Shannon. The resident informed the male that Shannon does not live, nor has she ever lived at that address. Her concern was that the male may have dementia or something similar. I advised her that it was best if she made a written statement, stating same that we could have on file.

Then maybe, I could follow-up with the cab company to locate the male and check his welfare. At this time she sat in the lobby and completed the statement form.

In the interim we received other calls that required my immediate attention. The resident then slid the statement form under the lobby window and waived a friendly good-bye. Approximately fifteen minutes had passed. We completed the prior assignment.

Sgt. Takacs arrived in dispatch, at which time I informed him of the statement I had taken.

As he read the statement he immediately began to question my handling of the resident. I informed Sgt. Takacs that the resident did not wish to speak with an Officer. That she only wanted it documented.

Sgt. Takacs, standing over me, in an intimidating stance, told me that it was not my job to decide whether an Officer should or should not be called in. That it was an Officer's job to follow-up, not mine. At this time he began a public verbal assault, questioning my abilities, my skill level, my health and verbally threatened me, using exceedingly course language. Among those threats was writing me up for insubordination with days off telling me to go home if I could not do my job, and suggesting that I needed a physical and psych evaluation.

During his verbal tirade, I faced my computer and continued to say, "Yes sir, I understand, sir." After the fourth time, I requested that he leave me alone. I proceeded to look up Lt. Battaglia's telephone number to request him to advise Sgt. Takacs to leave dispatch, because despite my plea, he continued to berate me.

At this time, a resident arrived on station to request a key to the city's meeting facility. Again he asked if I was able to do my job, and again I replied that I was fine and proceeded to the window to assist. Sgt. Takacs then left the dispatch area.

I contacted Officer Leanza [REDACTED] via radio; he was working the road. I requested him to respond to station for the above complaint and to follow-up. A short time later, Officer Leanza advised Sgt. Takacs and me that the resident did not wish to speak with an officer, only wanted it to be known and that no follow-up was necessary, since there was not a crime involved. I then continued my duties until the end of shift.

It must be known that this altercation took place in a public area, in front of my dispatch partner, potentially in view of any citizen and other city personnel. Sgt. Takacs made no attempt to handle this matter privately.

After this incident, Sgt. Takacs preceded to prepare a statement that reflected his version of our conflict. His statement is replete with inaccuracy. For example; Sgt. Takacs stated that I became "extremely emotional, violent and unreasonably out of control".

His recollection of my behavior is so thoroughly bizarre, as to make one question his rationalization of his behavior, which is nothing short of harassment.

This latest behavior towards me has finally become the pinnacle of a long history of bizarre, harassing and borderline violent treatment, of not only me, but of other co-workers as well.

Just a few months ago, during a night shift, Sgt. Takacs arrived in dispatch and asked me "What the hell is your problem?" To which I was surprised and asked him to explain his questioning. He then asked, "Is it your health, your medication that causes you to act like this?" Again, I asked him to explain, to which he replied, "Who the hell do you think you are to question an Officer about what he does on the road".

What Sgt. Takacs accused me of, is that I questioned the officer about a court date, because the infraction should have resulted in an arrest, not a written citation on scene and release.

There was another occasion in which Sgt. Takacs wrote me up for taking in a stray dog and not notifying him that it was in the garage. The dog began to bark. Sgt. Takacs came into dispatch from his office stating, "What the fuck is that, and what the fuck is it doing in the garage"? He began to chastise me for not notifying him immediately when the canine was brought into station. But I took to caring and housing the animal.

I admitted I should have notified him, but his harsh verbally abusive approach to us, as his subordinates is far from professional and immediately causes one to take umbrage to his approach. He ordered me to contact Officer Ovelgonne to come and get the dog and put it in the building behind the fire station, even though there was a directive that stated that stray canines will be kept in the cage located in the police garage during cold weather. The building behind the fire department was not adequately heated, the floor was wet and cages unsecure.

As I attempted to try and explain the directive, Sgt. Takacs stated, "Shut-up that's not what I told you to do, get it the fuck out of here". Again there were witnesses to his abusive statements and treatment.

Almost on a daily basis Sgt. Takacs will refer to his fellow co-workers and city employees as "Fucking idiots and Assholes".

While in dispatch, I have heard Sgt. Takacs twice, refer to a female as a cunt

Prior to Sgt. Takacs's promotion, during mock training exercises, Takacs shot me three times with a pellet gun; twice in dispatch, in the right buttocks area, and in the leg at an abandoned training house. Each time he laughed, even though I chastised him stating that it hurt.

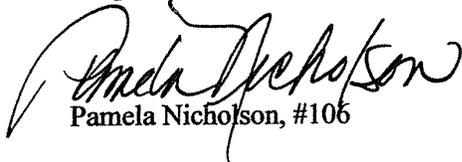
I was a Cleveland Police Officer for 15 years and retired because of three back surgeries. In those years, I had never received a written complaint from any superior Officer. I never typed a complaint against a fellow Officer. There was never a written complaint by a citizen that I was made aware of. Now here in Olmsted Falls, since his promotion I have received two written reprimands from Sergeant Takacs.

I've listed these events because I believe Sgt. Takacs's behavior is escalating. Though some of these events have been addressed by his superior Officers it has not curtailed his explosive behavior. I do believe that Sgt. Takacs is causing a Hostile Work Environment for me and my fellow dispatchers. Four of us have relayed to other superior Officers that we feel bullied and intimidated by Sgt. Takacs. I now fear for my safety if I were to be left alone with Sgt. Takacs.

Based on the above information, I am respectfully requesting that this recent written reprimand be removed from my file.

I also believe that Sgt. Takacs has anger issues in dealing with women. I further request that should Sgt. Takacs believe that I have violated any policies or directives, or that he have a problem with my job performance, that he relay that to another superior officer. I do not believe that Sgt. Takacs can be impartial when it comes to dealing with me.

Respectfully,



Pamela Nicholson, #106

citing *Cummings v. City of Akron*, 418 F.3d 676, 684 (6th Cir. 2005). In these two circumstances, the §1983 suit would “seek a determination of a fact that, if true, would have precluded the conviction.” *Id.* Therefore, in the 6th Circuit, “if a plaintiff asserts a claim that contradicts an element of an underlying criminal offense, or if that claim could have been asserted in criminal court as an affirmative defense, *Heck* applied to bar the §1983 suit.” *Id.*

Under the second circumstance above, “a §1983 excessive force claim might imply the invalidity of an underlying resisting arrest conviction if excessive force constitutes an affirmative defense to the charge.” *Id.* at 610-611. Such an affirmative defense exists in Ohio. Numerous Ohio courts have found that excessive force is an affirmative defense that a criminal defendant must raise in response to a charge of resisting arrest. *Id.* at 611.³ “Therefore, a criminal conviction for resisting arrest in Ohio cannot stand where a criminal defendant successfully asserts the affirmative defense of pre-arrest excessive force; and a §1983 claim of excessive force would necessarily imply the invalidity of an underlying conviction for resisting arrest. *Id.*

While the above is true, the Olmsted Falls Defendants acknowledge that *Heck* does not bar §1983 suits alleging post-arrest excessive force. *Id.*; citing to *Sigley v. Kuhn*, 205 F.3d 1341, 2000 WL 145187 (6th Cir. 2000). However, Plaintiff’s allegations of excessive force all stem from actions taken incident to her actual arrest and not from actions taken by the Olmsted Falls Defendants following that arrest.

Thus, *Heck* clearly applies, and under current Sixth Circuit precedent, pre-arrest excessive force is an affirmative defense to a charge of resisting arrest in Ohio, and would render a conviction for resisting arrest invalid. Because the alleged excessive force occurred during Plaintiff’s

³ As noted in *Hayward* at FN3, “[t]he Ohio Judicial Conference codified this holding in the Ohio Jury Instructions, under which excessive force is an affirmative defense to a resisting arrest charge. See 2 Ohio Jury Instructions §521.33(11) (2009).