



**Public Report**  
**Pittsburgh Police**  
**Pagans MC**  
**October 11-12, 2018**



**Independent**  
**CITIZEN POLICE REVIEW BOARD**  
**Dr Emma Lucas-Darby, Chair**  
**Ms. Elizabeth C. Pittinger, Executive Director**

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# Public Report

Pittsburgh Police  
Pagans MC Club  
Kopy's Bar

October 11-12, 2018

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This report was compiled by staff to memorialize the event and to supply the Members of the Independent Citizen Police Review Board with details and impressions gleaned from staff review of video, court filings, media reports, best practices, social media observations, witness interviews and internal material.

The Board intended to conduct a public hearing to review police policies and procedures guiding consumption of alcohol and accountability of undercover and/or plainclothes activities of Pittsburgh Police officers. Staff became aware of significant policy revisions that were implemented in the Winter of 2019 and of the continued review of policies and practices that were recognized as deficient in the context of undercover/plainclothes details. Additionally, civil lawsuits were filed in Federal Court alleging civil rights violations committed by the four Pittsburgh detectives and the City. As respondents to the civil rights suits, continued cooperation with our inquiry by the Bureau of Police would be limited. Further, as described in this report, the Detectives had been disciplined finally and re-assigned.

The executive director advised the Board that the public hearing was to be limited to policy review but that the subject policies had been revised. The Board received the Chief and Assistant Chief of Police at their October 27, 2020 regularly scheduled meeting. Discussion of the incident was limited though the Chief and Assistant Chief addressed policy and procedural changes intended to guide accountable practices by undercover/plainclothes activities.

This report is offered to the public as an account of the incident as assessed by staff. Unless adopted by the Independent Citizen Police Review Board, this report is not an official Board endorsement of the contents or conclusions contained within the report.

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## Investigative Observations

Information and reconstruction of events reported here were obtained through witness interviews, sworn witness statements, court documents, media reports and observation of video of the incident taken from the facility's surveillance system.

### The Incident

Kopy's is a small one room neighborhood establishment with a long bar running along the left wall and a set of tables, an ATM and electronic game along the right wall. At the rear of the room there is a small alcove with a pool table and restrooms on the right at the rear of the alcove. It is located on 12th St. in the City's Southside neighborhood.

Ten days after the Bureau received a complaint about drug activity at Kopy's, Officer David Honick recruited three fellow officers to join him in conducting drug-related surveillance at the bar: Detectives Brian Burgunder, David Lincoln, and Brian Martin. The men ate pizza and wings before arriving because they anticipated drinking while surveilling. The officers did not prepare an operational plan.

The officers arrived at Kopy's at approximately 7:30 PM in plainclothes, posing as construction workers. Over the next four to five hours, all four plainclothes officers consumed both beer and liquor. The video documented the following:

- Detective Honick consuming 13 to 15 drinks (doubles and "on the rocks")
- Detective Burgunder consuming approximately 19 drinks
- Detective Martin appeared to consume at least 14 drinks
- Detective Lincoln observed as drinking approximately 7 drinks.



Official funds, all cash, were used to pay for the drinks consumed on the night of October 11, 2018 into the early morning of October 12, 2018. Any personal funds expended to purchase alcohol were reimbursed by the City.

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During the course of their surveillance, the officers visually identified the target of their investigation. They did not follow him outside, but they observed him enter and exit the bar multiple times. From their observation, the officers were unsure whether the target was working alone or with a partner. The target and his female friend left the bar at around 11:00 PM. About twenty minutes later, the officers concluded that the target would not be returning and decided to get ready to leave the bar. This decision to leave was never communicated to their off-site supervising detective.

Shortly after 11:40 p.m., the video shows two men enter the establishment. Both were wearing vests identifying them as members of the Pagans Motorcycle Club. They came to be known as Mr. Deluca and Mr. Zokaite. Detective Honick is observed in the video as leaning back in his seat and looking at the back of the vests worn by Mr. Deluca and Mr. Zokaite. Detective Honick said something casual to the men as they bought drinks then walked back into the pool table alcove.



Shortly after, Mr. Heitzenrater and two other men entered the bar, bought drinks, and appeared to be gathering their drinks to move when Detective Honick got up, tapped the left arm of an unknown member of the Pagans party. Detective Honick then bought the two a shot and the three toasted to each other. While these three were conversing at the bar, Mr. Thomas arrived to join the Pagans group. After the alcohol shots, conversation, and handshakes, the two unknown members of the group moved on to join Mr. Thomas and visit their friends at the other end of the bar. It is about 11:47 p.m.



From 11:47 p.m. until 12:21 a.m. Detective Honick appears agitated, rubbing his face and head, standing up, sitting down, and gesturing at Mr. Kopy, the proprietor. At approximately 12:21 a.m., Detective Honick reached over the bar and grabbed Mr. Kopy's head, disclosed that he and his companions were police and he reiterated that he wanted the Pagans to be removed. Mr. Kopy replied that the Pagans weren't doing anything wrong to which Detective responded that they (Pagans) kept "looking" and "staring" at the Detectives. Mr. Kopy reassured Detective Honick that the group would be leaving soon. But Detective Honick was insistent that they should be told to leave. Detective Honick is observed again texting someone. At about 12:33 the video shows Detective Honick standing with his back against the bar, obviously looking and watching the Pagans' movements.



There were only two or three other people in the bar other than the officers and the Pagans. For reasons known only to them, the officers feared that their identities had been compromised. At approximately 12:22 Detective Martin and Detective Lincoln went to the restroom. After exiting the restroom, Detective Martin lingered around the alcove entrance and initiated a conversation with the Pagans. While engaged in the conversation, Detective Martin is observed to gesture and wave his arms, palms up, out from his body and above his head in an exaggerated manner. Detective Martin disclosed to the Pagans that he and his companions were police officers and were not looking for



trouble or to ruin anyone's night. Detective Lincoln looked on, then both returned to the front of the bar where the Detectives had been seated during the evening. It is about 12:24 and Detective Honick is observed texting someone believed to be an offsite colleague to advise that the Pagans were in the establishment. It is believed to be around this same time that Detective Burgunder called Sgt. Turko, Zone 3, and informed Sgt. Turko that the Detectives were engaged in an undercover operation and might need help extracting themselves from Kopy's Bar. (It is noted that the reported disclosure by Martin that he and his companions were police officers is disputed and denied by documents filed in Federal District Court for Western PA, Civil Action 18-1567.)

When Mr. Deluca and Mr. Zokaite stepped outside of the bar briefly, the Detectives became apprehensive that the Pagans could be calling others to set up and ambush the Detectives as they left the premises. Detective Burgunder called Sergeant Turko again, requesting back-up to assist with a safe exit. Detective Lincoln left the building and returned with equipment that he retrieved from the City vehicle which he drove to the location. Detective Lincoln covertly passed to Detective Burgunder what appeared to be a handgun magazine.

At about 12:33 a.m., Mr. Deluca and Mr. Zokaite returned from outside. Detective stood with his back to the bar and was obviously looking at the two when Detective Martin approached them and extended his hand to shake with Mr. Zokaite. Mr.



Deluca and Mr. Zokaite approached the bar near Detective David Honick. Mr.

Deluca and Detective Honick engaged in conversation. During that conversation Detective Honick shifted to display to Mr. Deluca and Mr. Zokaite a firearm secreted in his pocket or waistband. Tensions were rising and the proprietor, Mr. Kopy, assessed the situation as escalating and at 12:40 he phoned



911 for assistance as he anticipated trouble was about to erupt. The conversation between Mr. Deluca and Detective Honick intensified. Detectives Burgunder, Martin and Lincoln were positioned

behind Detective Honick and in front of the exit door, blocking egress. The interaction between Detective Honick and Mr. Deluca was animated. Detective Honick is observed pushing back Detective Martin as though to keep Detective Martin from engaging. At 12:40:49 a.m., using the backside of his left hand Detective Honick makes physical contact with Mr. Deluca's midsection. Detective Honick then said something to Mr. Deluca who confronted Detective Honick and told him to get out of the bar. At 12:42 a.m., at the moment Mr. Deluca pushed



Detective Honick, the uniformed officers summoned to extract the Detectives arrived and entered the establishment. The contact between Mr. Deluca and Detective Honick quickly devolved into a fight involving all four plain-clothes officers, responding uniformed officers, and the Pagans.

Detective Honick is observed as animated and gesturing with his hands until Mr. Deluca placed his hands high on the Detective's chest/shoulders and shoved him. Detective Honick fell back into Detective Lincoln and immediately came back at Mr. Deluca. The two of them began to punch and shove each other, which spilled over to affect arriving uniformed officers. Detective Martin moved to the right of the bar near the tables where Mr. Heitzenrater and Mr. Thomas were still sitting and not involved in the fracas. Detective Martin punched Mr. Zokaite and pulled Mr. Thomas to the floor. Detective Honick staggered toward Mr. Deluca who was restrained against the bar by Detective Burgunder and punched Mr. Deluca seven (7) times in the face until a uniformed officer pulled Detective Honick away by his waistband. Detective Honick turned and grabbed Detective Burgunder who was restraining Mr. Deluca. Sgt. Turko intervened by spraying OC into the faces of Detectives Honick, Lincoln and Burgunder. Mr. Kopy was in the line of the OC spray and was hit with secondary spray. Detective Burgunder then punched Mr. Deluca nineteen (19) times, focusing on the left orbital area of his face. Detective Honick reacted to Sgt. Turko, stumbled to the floor and was escorted outside by a uniformed officer. Mr. Deluca was taken to the floor and handcuffed by uniformed officers. The melee started at 12:42:17 and was under control by 12:44:52.



Detectives Lincoln and Burgunder restrained Mr. Deluca and pressed him to the bar. Mr. Deluca



planted his right hand on the bar and struggled to gain control of his left hand as his arms were being tugged and pulled by Detectives Burgunder and Lincoln. Mr. Deluca's head was immobilized by Detective Burgunder who had Mr. Deluca's hair in his right hand and his left hand was on Mr. Deluca's neck. At no time was Mr. Deluca observed in the video to be reaching toward his waist.

At 12:48 Detective Martin grabbed the phones of two

female patrons and appeared to be trying to locate the video of the melee captured by the patrons. ([Martin Conduct](#) (<https://youtu.be/u32j7iUZN50>))



## The Criminal Complaint

The criminal complaint and affidavit of probable cause attested and sworn to by Detective Burgunder on the night of the incident is inconsistent with the extensive video evidence depicting the event. It was this sworn statement that resulted in the arrest and detention of Frank Deluca, Michael Zokaite,



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Erik Heitzenrater and Bruce Thomas in the Allegheny County Jail for at least eleven hours awaiting to be charged

The Criminal Complaint states that Detective Honick heard/saw a patron of the bar (Witness #1) tell the Pagans “those guys are cops.” The Criminal Complaint then describes the Pagans looking in the Detectives’ direction and “staring” at them. The narrative then states that Detective Martin approached the Pagans and informed them that he and the other three were police officers. There was no evidence that Detective Martin or any other Detective produced a badge or ID to confirm Detective Martin’s disclosure. In contrast, the CPRB Investigator observed in the surveillance video no indication that Witness #1 had any interaction or exchange with Detective Honick to substantiate the claim that the detectives were “made”, and their cover blown. Mr. Kopy, the proprietor, refutes the Detectives’ version of events and in contrast recalls the Detectives “staring and glaring” at the Pagans. Mr. Kopy describes being pressured by the Detectives to tell the bikers to leave despite the fact that the bikers weren’t doing anything wrong. Statements from Mr. Kopy and Witness #1 are consistent with the video evidence from the establishment’s surveillance system.

The Criminal Complaint leads the reader to interpret the actions of Detective Martin as an attempt to de-escalate tensions between the groups. The video suggests that Detective Martin instigated suspicion, if there was any, when he approached the Pagans (strangers to him) and waving his arms. The Criminal Complaint then attributes to Detective Martin the disclosure of the Detectives’ status to the Pagans. (At no time during this incident did any of the Detectives display a badge.)

The Criminal Complaint and the video evidence further diverge as events unfolded. The Pagans do begin to move casually toward the Detectives’ end of the bar. The Criminal Complaint states that after one unidentified Pagan and the Pagan wearing the striped shirt left, the others began relocating within the bar. This is consistent with the video. The Criminal Complaint states that the Pagans all engaged in conversation with the Detectives and that what began as cordial quickly progressed into Mr. Deluca yelling “Get the Fuck Out of My Bar.” While Mr. Deluca may well have yelled this there is



an important event depicted on the video evidence that occurred before, not after as the Criminal Complaint alleges. Mr. Deluca and Detective Honick were engaged in conversation, and while this was happening Detectives Lincoln and Burgunder positioned themselves between Detective Honick’s back and Detective Martin who was increasingly aggressive. Detective Martin was waving hands in the air gesturing toward the Pagans, he appeared to be laughing at some points and yelling at

others. (Not de-escalating as reported in the Criminal Complaint.) Detective Honick is seen in the video evidence from an angle opposite the bar brandishing/showing a handgun that he had tucked in his waistband. He lifted the side of his shirt at least two, possibly as many as four times, and turned his entire torso toward Mr. Deluca in a manner seemingly intended to display his weapon to Mr. Deluca

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and Mr. Zokaite. (The Criminal Complaint does not report Detective Honick exposing a concealed firearm.) At this point, Mr. Deluca was already gesturing and moving his head in a manner leading CPRB investigators to believe he was irritated by the exchange with Detective Honick. (Various versions have been offered regarding the content of this conversation. The substance is irrelevant beyond noting that it enraged Mr. Deluca.)

Detective Lincoln and Detective Burgunder physically restrained Mr. Deluca and pressed him to the bar. In the Criminal Complaint it was alleged that Mr. Deluca was reaching stridently for a gun that was in the rear of his waistband. The video does not reveal that Mr. Deluca was struggling to reach his waistband. Mr. Deluca's arms, neck and head were restrained and immobilized by Detectives Burgunder and Lincoln. The video shows Mr. Deluca grabbing the back edge of the bar after being beat about his head by Lincoln, Burgunder and Honick. Mr. Deluca did have a firearm on his person. The weapon was registered, and Mr. Deluca was licensed to carry a concealed firearm. At no point did he reach for it when he was on the bar. The Criminal Complaint falsely states that Mr. Deluca was kicking and struggling with the PBP officers who were working to hold him. This is evidenced by the video. Kicking and struggling is clearly a justification for the use of force and restraint, however it is not a certain indication that Deluca was intent on reaching his weapon. Mr. Deluca states in his affidavit to the Federal Court that he was struggling to keep his hands on the bar so that his actions were not misconstrued as attacking the officers and be charged with assault on an officer. While Mr. Deluca's intent, the officers' perceptions cannot be objectively determined, highly detailed video and document evidence allow investigators to infer that Mr. Deluca was in fact struggling, but that the use of deadly force, i.e., the 19 strikes to Deluca's face, were absolutely necessary as a last resort, nor should the detectives have reasonably feared for their, or bystanders' lives. Once restrained and immobilized, handcuffs should have been applied by the uniformed officers on-scene. In fact, the Detectives had never displayed badges so the uniformed officers should have intervened upon arrival and not permitted the beating of Mr. Deluca.

The Criminal Complaint reports that Detective Martin disclosed to the Pagans that he and his companions were police officers. This is against the PBP policy [16-01 3.38.01 Jeopardizing Undercover Operations](#) which states that officers may not undertake an activity which would expose an undercover investigation. Additionally, the Detectives did not conclude their detail when it was apparent that the subject of interest was not returning to the site. Instead upon arrival of a group they recognized as members of the Pagans Motorcycle Club the Detectives engaged in a self-assigned investigation into the activities of the Pagans in violation of PBP General Order #[16-01 3.43.01 Conducting Self Assigned Investigations](#). A major deficiency illuminated by this incident is the absence of controls on this kind of a detail. An operational plan would have outlined the parameters of the detail, the subject, purpose, communication protocols, including precautions for the safety of the officers and others, but there was no plan. Additionally, there was no cause to surveil the Pagans.

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## Analysis

### Public Trust & Officer Issues

The events and actions laid out above appear to undermine public trust in law enforcement. The behavior appears lawless and conveys a lack of supervision/direction for officers engaged undercover activities or a lack of concern for the public and officer safety.

The public expects certain behavior of on-duty police: that they uphold the Code of Ethics, that they follow procedure, and that they are sober and clear-headed while on the job or doing work in the capacity as an officer. Specifically, under section 2.3 of the **Law Enforcement Code of Ethics**, an officer takes an oath to “[...]maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. ...”

The behavior and actions taken by officers on October 11, 2018 into October 12, 2018 call into question the Bureau’s enforcement of the values expressed in the Law Enforcement Code of Ethics and adherence to Pittsburgh Bureau of Police Policies, Procedures and General Orders. To the public, what has been recorded and reported shows a lack of courageous calm, insofar as the officers involved exhibited aggressive, reactive, and fearful behavior. There appears to have been uncertainty regarding what procedure actually was, as well as whether officers did in fact follow any procedure at all. As there were a handful of patrons in the bar unaffiliated with either the Pagans or the Bureau, there also appears to have been a disregard for the welfare of others on the part of the officers. Further, it is well known that alcohol effects inhibitory control; with the officers’ heavy drinking, it seems that their actions likely were influenced by the heavy alcohol consumption observed in the evidence video.

The documented pugilistic behavior of the Detectives, their posturing and baiting of the Pagans, their consumption of alcohol, inaccurate reporting, and subsequent efforts to revoke a citizen’s lawfully issued and possessed license to carry a firearm all conspire to undermine trust and confidence in the operations of the Pittsburgh Bureau of Police. The District Attorney’s refusal to permit these Detectives to testify without corroboration of another police witness further repudiates the worthiness of these Detectives to be trusted as police officers.

### Areas of Specific Concern

After reviewing the records pertaining to the events at Kopy’s and corresponding Bureau Policy, we have identified seven (9) areas of concern: officer conduct, unplanned investigations, undercover work, operational plans, use of force, use of equipment, alcohol consumption, and reports.

The officers attest to being on-duty in a plainclothes or undercover fashion on the night in question. The evening began as an overtime assignment to surveille Kopy’s for the sole, male target of drug-related activity. According to the **Standards of Conduct** in effect at the time, a member of the Bureau must adhere to the following rules:

A member will conduct her/himself at all times, whether on- or off- duty, in a manner that is not detrimental to the reputation or good name of the Bureau of Police. (3.6.1)

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Conduct unbecoming a member or employee of the Bureau of Police is any conduct which adversely affects the morale, effectiveness, or efficiency of the Bureau, or which tends to destroy public respect for its members and employees and to diminish confidence in the operations of the Bureau of Police. (3.6.3) By definition, conduct contrary to this is unbecoming conduct.

In the performance of his/her duties, a PBP member or employee shall be professional, polite, and civil. Members will maintain decorum and command of temper and refrain from the inappropriate use of harsh, coarse, profane, or uncivil language. (3.7.2) By definition, conduct contrary to this is unbecoming conduct toward the public.

A member will be considered in neglect of duty when he/she creates a situation that is detrimental to the safe and/or efficient operation of the PBP through their failure to give suitable attention to the performance of duty or failure to perform the duties prescribed in Bureau rules, regulations, orders, procedures, or other Bureau directives. (3.13.2)

As evidenced by oral and video reports, the officers used harsh, coarse, profane, and uncivil language in performance of their duties at Kopy's. By consuming excessive amounts of alcohol, instigating identification of themselves as police officers to the Pagans, and by engaging in confrontational behavior with Pagans members, the officers neglected their duty; such conduct created a situation that was detrimental to the safety and efficiency of Bureau operations.

Further, if the actions taken toward the Pagans were in fact not official Bureau business, or if they were improperly taken up as Bureau business, then the officers' conduct was harmful to the reputation of the Bureau regardless of whether they were off- or on-duty.

Procedurally, this infatuation with the Pagans became an unplanned investigation and puts the Bureau in a precarious situation. It is Bureau Policy that "[m]embers shall not undertake any self-assigned investigations at any time. Investigations shall only be conducted at the request, direction or instruction of a supervisor." 3.45 Conducting Self-Assigned Investigations. As stated above, however, the four officers were on assignment to surveil a potential drug situation involving a single, male target. The officers only began surveillance of the Pagans upon seeing members of the motorcycle gang enter the bar as the officers were getting ready to leave. The Pagans were, therefore, unrelated to the assignment the officers had that evening. The nature of this surveillance of the Pagans was self-appointed, directly in conflict with Bureau policy.

If, in the alternative, this was not an investigation, the decision to remain on premises upon arrival of the Pagans demonstrates poor judgement and a questionable exercise of discretion. A decision point occurred here where the Detectives might have avoided the incident all together by just leaving and if they felt it necessary, meeting any available backup to assure safe transport away from the site. Detectives did leave the bar and return unhindered and demonstrating no fear. Detective Lincoln was able to reach a vehicle, obtain weapons and return. For the safety of the public, they could have simply left, locked themselves in their vehicle(s) and wait a few minutes for Zone 3 officers to arrive.

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Zone 3 station is nearby, and Saturation Patrols were nearby on East Carson Street. They could have simply driven away, called their location in to Zone 3 and had a patrol unit meet them with backup. There is no reasonable scenario investigators could come up with that the Detectives had to remain inside Kopy's Bar, inviting a confrontation with the Pagans, and placing those inside in harm's way. While all of this is inferred from evidence and all facts may not be available, these investigative impressions are informed by the investigators' military and civilian law enforcement. There had at this point been at least 3 decision points where extraction might have occurred. First: when it was determined that the actual subject of the initial surveillance was not coming back, second: when Detective Martin went back to the pool table alcove and was gesturing apparently under the belief that the Detectives cover had been compromised, and third: when the Pagans casually and non-aggressively began moving up the bar toward the Detectives.

A second procedural concern is the undercover nature of these events. It is official Bureau policy that "no member shall engage in any course of action that may disclose or jeopardize an ongoing undercover investigation. This can include, but is not limited to, divulging any knowledge or facts of an ongoing undercover investigation to unauthorized persons or publicly acknowledging the identity, position or responsibilities of an undercover detective if encountered in public." (3.40 Jeopardizing Undercover Operations, Subsection 1). Under the same policy provision, an officer is further in violation of his undercover duties and will be subject to discipline if he takes any law enforcement action while in an undercover capacity, such that it would expose them and damage the integrity of the operation. The officers may instead "report the activity and details to their supervising officer at a later time for follow up." By admission, Detective Martin informed the Pagans that the group of four were police officers and that they didn't want any trouble. Detective Honick, after being pepper sprayed and pulled by his waistband from assaulting Mr. Deluca by a responding uniformed officer, yelled "I'm a cop, I'm a cop." Detective Martin also farcically peered and stated into the camera of a female patron that he "loved being a cop". By telling the Pagans while in their plainclothes that they were officers, and then identifying themselves as cops when the uniformed officers arrived, the four officers were in breach of the policies outlined by the Bureau. Never once was any of the four Detectives observed displaying their badge to confirm their identity as police officers.

The third procedural issue is the operational plan, or lack thereof. Bureau policy at the time of the incident regarding operational plans is unclear. As of November 5, 2019, however, "an operation cannot proceed in any manner other than written.". Since this incident, the Bureau requires that all undercover operations include a written operational plan. Further, the operational plan must be followed as written unless approval of a change has been received from the Criminal/Undercover Operations Review Committee. It is the responsibility of supervisors to monitor "an operation and the officers involved for impairment or injury in all ways deemed safe in the operational plan. These measures must be included in the plan prior to submission to the Committee for approval." Here, it was the officers' independent decision to initiate surveillance of the Pagans, without instruction or consultation of a supervisor. If this was not an official activity, the Detectives should have departed the site upon the departure of the original subject suspected of involvement in illicit drug activity.

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In fact, when a supervisor was contacted, it was to inform of their decision, not to solicit supervisory guidance or approval. Further, because of the lack of an operational plan, both for the initial surveillance of drug activity and for the spontaneous Pagans surveillance, the officers placed themselves in peril. Given these facts and policies, it is unclear whether the events of October 12, 2018 followed Bureau operational plan protocol, as casual as it seemed to be at that time.

The Detectives' use of force and use of equipment both call into question the adequacy of Bureau policy. According to official Bureau policy in effect at the time ([12-06 Use of Force](#)), the use of excessive force is forbidden, meaning "force which exceeds the level that a reasonable officer might reasonably believe, at the time of the incident, is necessary under the circumstances of a particular incident" (3.1); an officer must "determine the physical condition of the party" after any use of non-deadly force and render first aid when appropriate, in addition to immediately requesting medical assistance (6.1); and while "in the performance of his/her duties, a PBP member ... will maintain decorum and command of temper and refrain from the inappropriate use of harsh, coarse, profane or uncivil language" (3.7.2). Here, however, officers directed verbal insults at Pagans members after identifying themselves as police officers; one officer, Detective Lincoln, administered nineteen (19) and Detective Honick delivered 7 blows to Mr. Deluca's head, who was physically restrained against the bar by Detective Burgunder; and the bar owner was not offered any medical assistance after being pepper sprayed. Such displays of force appear to be excessive and violative of Bureau policy. The multiple closed-fisted punches to Mr. Deluca's head elevated the level of force to deadly force because of the potential of serious injury, including death, that repeated strikes to the head can cause. Once Mr. Deluca was restrained the force was no longer justifiable let alone reasonable. If Mr. Deluca were to remain in the officers' custody, he should have been handcuffed, not subjected to continued blows to his head.



Detective Martin's confiscation of the personal phones of the female patrons and subsequent effort to locate the video of the incident was *a violation of PBP policy* **PICTURES, VIDEOS, AND AUDIO RECORDINGS OF POLICE OFFICERS WHILE PERFORMING OFFICIAL FUNCTIONS IN PUBLIC SPACES 69-5-4.3 and 69.5-4.3.1:**

4.3 Under no circumstances shall any recording device being used to record police personnel be intentionally damaged or destroyed or may any media, such as memory cards or sticks, within such recording devices be damaged, destroyed, or deleted. If accidental damages occur to such property by police personnel during the course of official duties, the procedures shall be documented in a 3.0- Investigative report.

*4..3.1. Officers should be aware that the **seizure** or destruction of such recording devices or media without a search warrant or due process is a constitutional violation and officers may be sued and subjected to both compensatory and punitive damages.*

*Detective Martin's conduct as seen in a publicly posted video was unbecoming: (**Martin Conduct**)*



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In regard to equipment, each of the four plainclothes officers arrived in a separate vehicle; some used personal vehicles, others used city vehicles. Similarly, the officers were using personal cell phones, not City-issued cell phones. When surveilling for the drug target, two of the Detectives were armed and none equipped with handcuffs; yet upon observing the Pagans enter the bar, two of the Detectives acquired firearms and magazines from one of the vehicles. They did not equip themselves with handcuffs or display ID. Bureau policy is unclear on these matters, in context of the detail's nature, but these inconsistencies among officers give the perception that there should be standards and policies that clarify when personal effects may be used in lieu of city property, and when it is appropriate or inappropriate to be armed, have handcuffs, have and display ID badges. The Detectives did not display any ID and were not equipped to take anyone into custody. (Another reason why an operational plan should be required and include a protective unit to be nearby and authorized to exercise law enforcement powers as necessary)

Lastly, the alcohol consumption by these plain-clothes Detectives is also of concern. According to section 3.1 of the Bureau's Drug & Alcohol Policy, effective June 25, 2017, "members are prohibited from being under the influence of any alcohol whatsoever while on duty." The officers attested that there is no Bureau policy on alcohol consumption and that their specific unit allows alcohol consumption while on duty in a plainclothes capacity. In fact, the policy did not offer a qualified exclusion or re-direction for managing alcohol consumption when engaged in plainclothes or undercover operations. There was also no accountability measure to manage assessment of potential intoxication, suspension of law enforcement power when consuming alcohol, prohibition on vehicle operation or post-detail assessment of alcohol levels.

On the night of the incident, due to their alcohol consumption, the four Detectives were returned to Headquarters in vehicles driven by other officers. Upon arrival, they were not subjected to a breathalyzer to establish their alcohol levels which could affect the credibility of their reporting and accountability for the actions at Kopy's Bar. Supervisors were empowered by policy to have the Detectives screened for intoxication but did not do so. As a result, there was no mechanism by which the Bureau could "prove" the Detectives were "under the influence of alcohol" or intoxicated as they performed their official duties. Absent such proof, the incident which they instigated and participated would avoid accountability scrutiny by Bureau supervisors. Common sense interpretation of the video and observation therein of the amount of alcohol consumed by the Detectives in plain view, leads to a reasonable conclusion that the encounter was fueled by intoxicated participants abusing their power as police officers. Unbelievably, the conduct documented by the video of the incident, while unbecoming, could not be attributed officially to the Detectives intoxication because there was no objective proof of intoxication, i.e., breathalyzer, field sobriety or blood alcohol draw. It was an abysmal failure of individual judgment and organizational accountability.

The Detectives should not have been allowed to utilize law enforcement powers of force and arrest when they were complicit in the activity that led to the physical affray in Kopy's Bar. At best, the Detectives were witnesses, at worst, assailants. A conflict emerged as they were principals in the incident, had consumed a significant amount of alcohol and were not on an assigned detail at the time

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of the incident. The responding uniformed officers had a duty to take control, secure the parties and determine what criminal culpability existed for all involved.

The resulting Affidavit of Probable Cause and Criminal Complaint written and affirmed by Detective Burgunder reflected a self-serving rendition of facts as contrived by a principal in the incident whose interests included protecting his colleagues as well as himself.

Mr. Deluca, Mr. Zokaite, Mr. Heitzenrater and Mr. Thomas were held at the Allegheny County Jail (ACJ). The Affidavit of Probable Cause and Criminal Complaint written and affirmed by Detective Burgunder was approved by the District Attorney's office at approximately 11:00 a.m. on October 12, 2018 but not filed until approximately 1:00 p.m. on October 12, 2018. Individuals detained at the ACJ cannot be processed and arraigned until those documents are filed. The Detectives returned to Kopy's and reviewed video before completing the Affidavit and Criminal Complaint. Detective Burgunder's delay in composing the Affidavit and Complaint resulted in the four detainees being held for close to 11 hours before being charged.

## External Effects

As public interest, outrage and perplexity grew over the media reports of the event, the District Attorney of Allegheny County, Steven Zappala, and the US Attorney for the Western District of Pennsylvania, Scott Brady, evaluated the circumstances leading to the arrest of Deluca, Heitzenrater, Zokaite and Thomas.

The District Attorney withdrew charges against the Pagans on November 14, 2018. The DA's office referenced evidentiary issues and reserved the right to re-file at a future time. On February 27, 2019, the US Attorney declined to charge the four Detectives, Honick, Burgunder, Lincoln and Martin, with criminal violations of the arrestees' civil rights. The following day, the District Attorney announced that he too would decline charging the Detectives with criminal acts related to the brawl.

Subsequently, on August 12, 2019, the District Attorney informed the City of Pittsburgh that the Detectives involved (Burgunder, Honick, Lincoln and Martin) would not be allowed to testify without corroboration of other officers. Police are expected by policy, and the public, to be honest and truthful at all times. To have such limitations on an officer's ability to testify undermines public confidence in the operations of the Pittsburgh Bureau of Police and reflects a public renunciation of the Detectives' unbecoming conduct. It should also disqualify them to be police officers.

The following lawsuits were filed, as noted, and have been consolidated under Lead Case 18-cv-01567-CB:

Mr. Deluca filed a federal civil rights lawsuit on November 20, 2018 (2:2018-cv-01567).

Mr. Heitzenrater filed a civil rights lawsuit on November 26, 2018 (2:2018-cv-01587)

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Mr. Zokaite filed a civil rights lawsuit on February 27, 2019 (2:2019-cv-00216)

Mr. Thomas filed a civil rights lawsuit on May 2, 2019 (2:2019-cv-00617)

Detective Lincoln countersued on August 16, 2019.

Mr. Kopy, proprietor, filed a civil rights lawsuit on April 16, 2020 (2:2020-cv-00558)

In the aftermath of the incident at Kopy's Bar the Bureau of Police reassigned supervisory personnel and initiated revised guidance and procedures for undercover and plainclothes investigations, including restrictions on alcohol consumption. The revisions from the winter of 2019 were not publicly disclosed but were reviewed by the CPRB executive director and found to be reasonable and effective in remedying the deficiencies observed in the Kopy's incident. In June 2019, the Board voted to conduct a public policy review through a public hearing. The Detectives had been on administrative leave and on July 9, 2019 it was announced that the Detectives would not be terminated but would be re-assigned.

CPRB Investigators were aware that the internal policy review for undercover/plainclothes operations was underway and expected the interim guidance from the Winter to be expanded. It was on the public record that the Detectives would not be terminated. The result was to contemplate the efficacy of the Board conducting a public hearing into the policies governing operations such as the Kopy's Bar detail since they were recognized by the Bureau as deficient and already substituted with interim guidelines. The dispute over whether the Detectives violated the civil rights of Mr. Deluca, Mr. Zokaite, Mr. Heitzenrater and Mr. Thomas was a matter before the Federal Court where civil liability would be assessed. Both the State and Federal governments declined to pursue criminal charges against anybody involved in the incident.

As means to inform the Board and the public, the executive director invited Chief of Police Schubert and Assistant Chief of Police Bickerstaff to describe the changes to policy made and those under consideration for undercover/plainclothes details. The Chief and Assistant Chief attended the regular public Board meeting on October 27, 2020 and described in a general manner the changes they were undertaking to prevent incidents and violence like that observed in the Kopy's Bar incident from recurring. Among revised orders, policies, and procedures:

1. Continuum of Control ([Now Matrix of Control](#))
2. [Use of Force](#)
3. [Consumption of Alcohol in Narcotics and Vice Operations added to PBP Policy 17-10 Drug and Alcohol Policy](#)
4. Planning of Undercover Operations (Remains under development)

The Chief noted that due to ongoing litigation related to the Kopy's Bar incident, their comments must be limited in scope and detail. The Assistant Chief stated that the policy on consumption of alcohol during undercover operations remains under review. The Chief and Assistant Chief reported that they had suspended undercover operations like that at Kopy's until they settle on an accountability

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procedure. They were ambivalent about establishing a before/after baseline level of alcohol present in undercover officers on an assigned detail.

Assistant Chief Bickerstaff described the role of plainclothes officers as observers and witnesses with the capacity to determine if probable cause exists at which point other officers would execute any warrant or law enforcement action necessitated by the circumstances. This is a desirable role distinction and will be the standard for such operations.

## Conclusion

The determination of the Executive Director and Investigative Staff of the Board is that many of the actions taken by the Detectives and other patrol officers were in violation of Bureau policy, but that many more were not because there was not a policy in place at the time of the incident. This Catch-22 presented significant challenges for investigative and Board review processes. It would be futile to recommend any disciplinary or remedial action for any officer as those decisions were made and officially announced. The Bureau has also made significant changes and additions to general orders and policies which were lacking at the time of the incident. Common policing sense, best practices and standards of conduct were clearly not applied in this incident.

Since 2016, guiding principles issued by the Police Executive Forum (PERF) have promoted a Critical Decision Making (CDM) model for law enforcement. The model emphasizes the importance of continual assessment of information and adapting responses as appropriate to changing factors in the situation. Similarly, the OODA loop (observe, orient, decide, act) is most commonly recognized by specialized police units that have integrated constant scanning and awareness of situational nuances that influence the unit's reaction. The CDM model offers a comprehensive restructuring of an individual's observation, assessment, and action options. Research has shown the model is effective at patrol levels and shows promise for the wide variety of police patrol engagements. Information on the CDM is attached. These Detectives either disregarded, or failed entirely to maintain, any situational awareness to recognize and leverage any of the opportunities presented to quietly get up and leave the premises before any interaction with the Pagans could occur.

The conduct of these four Detectives betrayed their oath, badge, and the confidence of the public and members of the Bureau of Police. Cultural change must continue to evolve and lead all members of the Pittsburgh Bureau of Police to hold each other accountable to the noble purpose and expectations of their profession. This is necessary for the safety of the Citizens of the City of Pittsburgh, the good order and discipline of the Bureau of Police, and the safety and reputation of the hundreds of Bureau officers who regularly conduct themselves to the highest standards and with respect for the weight of their responsibilities.

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## Media Reports

10/23/2018 Law & Crime: [DA Refuses Testimony from Undercover Detectives involved in Bar Brawl](#)

10/23/2018 KDKA: [Attys claim new video shows officers started bar brawl with Pagans MC](#) (KDKA)

10/24/2018 WPXI: [Kopy Statement Obtained](#)

10/25/2018 KDKA: [DA Weighs in on Bar Brawl Incident](#)

11/14/2018 Post-Gazette: [DA drops charges in bar brawl](#)

12/17/2018 Tribune-Review: [All 4-cops involved in bar brawl removed from narcotics unit](#)

12/19/2018 WTAE: [Pittsburgh Police on paid leave after South Side bar brawl with Pagans](#)

2/27/2019 WESA: [No Federal Charges to be Filed against officers in bar brawl](#)

2/28/2019 Post-Gazette: ['How is that not aggravated assault?' DA won't charge Pittsburgh cops; Pagans' lawyers stunned](#)

3/4/2019 Post-Gazette: [Legal experts analyze lack of charges in bar brawl between Pittsburgh police, Pagans](#)

6/24/2019 Tribune-Review: [Peduto Concerned about narcotics, vice squads in wake of South Side bar brawl](#)

6/25/2019 KDKA: [CPRB approves motion to hold hearing on alcohol consumption](#)

7/9/2019 Biker Trash Network: [Cops in Pagan's bar fight keep their jobs](#)

4/17/2020 Post-Gazette: [Owner of bar in Pagans v. Police brawl sues cops, city, mayor on excessive force claims](#)

10/27/2020 WTAE: [Pittsburgh Police Discuss Policy Changes Following 2018 Undercover Incident at Kopy's Bar](#)

10/27/2020 Post-Gazette: [Pittsburgh Police rules for drinking while undercover revealed at meeting](#)

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## Attachments

1. 8/12/2019 Letter District Attorney's Office to Chief of Police
2. 10/12/2018 Criminal Complaint: Michael Zokaite
3. 11/20/2018 Civil Complaint, 18-cv-01567CB, filed in the US District Court for Western Pennsylvania  
Frank Deluca, Plaintiff v. City of Pittsburgh, Brian Burgunder, David Honick, David Lincoln, Defendants
4. Background on PERF's Critical Decision-Making Model





STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY

# COUNTY OF ALLEGHENY

## OFFICE OF THE DISTRICT ATTORNEY

303 COURTHOUSE  
PITTSBURGH, PENNSYLVANIA 15219-2489  
PHONE (412) 350-4400 • FAX (412) 350-4414

August 12, 2019

Scott Schubert, Chief of Police  
Pittsburgh Bureau of Police  
1203 Western Avenue  
Pittsburgh, PA 15233

RE: Reinstatement of Detectives Honick, Burgunder, Martin and Lincoln

Dear Chief Schubert:

On Wednesday 7/31/19 we learned that the above detectives were reinstated to active duty in the Violent Crimes Unit. I have been asked to provide notice that this office cannot accept statements/testimony of the above without corroboration from a separate officer who can testify to what occurred in all cases. We cannot put them on the stand in court as the lead witness. Further, it must be determined on a case by case basis whether we would use them to corroborate another police witness.

If you have any additional questions, feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rebecca D. Spangler", with a long, sweeping flourish extending to the right.

Rebecca D. Spangler  
First Assistant District Attorney

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: ALLEGHENY

MDJ: PITTSBURGH MUNICIPAL COURT  
Magisterial District Number: 05-0-03  
Address: 660 FIRST AVENUE  
PITTSBURGH, PA 15219  
Phone: 412.350.6715



POLICE CRIMINAL COMPLAINT  
COMMONWEALTH OF PENNSYLVANIA

VS.

DEFENDANT:  
MICHAEL

(NAME and ADDRESS)  
ZOKAITES

First Name

Middle Name

Last Name

Gen.

1034 SOUTH ROAD PITTSBURGH, PA 15209

NCIC Extradition Code Type

Distance: \_\_\_\_\_

DEFENDANT IDENTIFICATION INFORMATION

Docket Number 8589-18	Date Filed 10-12-18	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969	Request Lab Services? <input type="checkbox"/> Yes
GENDER MALE	DOB 08/22/1990	POB	Add'l DOB	Co-Defendant(s) <input checked="" type="checkbox"/>
RACE WHITE	First Name		Middle Name	Last Name
ETHNICITY	AKA			
HAIR COLOR BRO (BROWN)		EYE COLOR HAZ (HAZEL)		

DNA	DNA Location	WEIGHT (lbs.) 280
FBI Number	MNU Number	Ft. HEIGHT In. 6 03
Defendant Fingerprinted		
Fingerprint Classification		

DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat	Registration Sticker (MMYY)	Comm'l Veh. Ind.	School Veh.	Oth. NCIC Veh. Code	Reg. Same as Def.
VIN	Year	Make	Model	Style	Color		<input type="checkbox"/>

Office of the attorney for the Commonwealth ☒ Approved ☐ Disapproved because: \_\_\_\_\_

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

name of the attorney for the Commonwealth

(Signature of the attorney for the Commonwealth)

(Date)

I, BRIAN BURGUNDER	37278
(Name of the Affiant)	(PSP/IMPOETC -Assigned Affiant ID Number & Badge #)
of CITY OF PITTSBURGH	PAPPD0000
(Identify Department or Agency Represented and Political Subdivision)	(Police Agency ORI Number)
do hereby state: (check appropriate box)	
1. X I accuse the above named defendant who lives at the address set forth above	
I accuse the defendant whose name is unknown to me but who is described as _____	
I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have, therefore, designated as John Doe or Jane Doe	
with violating the penal laws of the Commonwealth of Pennsylvania at	
301	PITTSBURGH CITY
(Subdivision Code)	(Place-Political Subdivision)
In Allegheny County	02
(County Code)	on or about 10/11/2018 0:30



# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969
Defendant Name	First: MICHAEL	Middle:	Last: ZOKAITES

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.  
(Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. In addition, social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§213.1 – 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903						
X	1	2702	A2	of the	18	3	F1		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
PennDOT Data (if applicable)		Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description/Acts of the accused associated with this Offense:									
18 2702A2 AGGRAVATED ASSAULT F1 3 COUNTS The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Detective Burgunder while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2). The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Detective Lincoln while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2). The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Sgt. Baker while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input checked="" type="checkbox"/> Conspiracy 18 903						
	2	2702	A2	of the	18	1	F1		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
PennDOT Data (if applicable)		Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description/Acts of the accused associated with this Offense:									
18 903A1 CRIMINAL CONSPIRACY F1 1 COUNT The actor, with the intent of promoting or facilitating the crime of 18:2702:A2 conspired and agreed with Heitzenrater, Thomas & Deluca that they or one or more of them would engage in conduct constituting such crime or an attempt or solicitation to commit such crime, and in furtherance thereof did commit an overt act in violation of 18 Pa. C.S. §903 (a)(1).									



# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969
Defendant Name	First: MICHAEL	Middle:	Last: ZOKAITES

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903						
Lead?	3	5501	1	of the	18	1	F3		
Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code		
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone				
Statute Description/Acts of the accused associated with this Offense:									
18 55011 RIOT F3 1 COUNT The actor participated with two or more other persons, in a course of disorderly conduct, with intent to commit or facilitate the commission of a felony or misdemeanor, or to prevent or coerce official action, or when said actor or any other participant to the knowledge of the actor used or planned to use a firearm or other deadly weapon in violation of 18 Pa. C.S. §5501(1) or (2) or (3).									



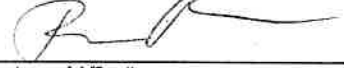
# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969
Defendant Name	First: MICHAEL	Middle:	Last: ZOKAITES

2. I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA.C.S. §4904) relating to unsworn falsification to authorities.
4. This complaint is comprised of the preceding page(s) numbered        through
5. I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

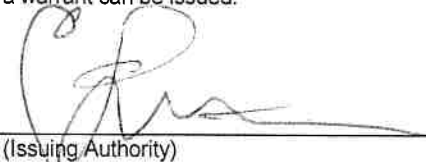
The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.

**(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)**

\_\_\_\_\_  
(Date) 10/12/18          
(Signature of Affiant)

AND NOW, on this date OCTOBER 12, 2018 I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

05-2-22          
(Magisterial District Court Number)        (Issuing Authority)

CRAIG C. STEPHENS,  
MAGISTERIAL DISTRICT JUDGE  
MAGISTERIAL DISTRICT 05-2-22  
MY COMMISSION EXPIRES ON THE  
FIRST MONDAY IN JANUARY, 2022





## POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969
Defendant Name	First: MICHAEL	Middle:	Last: ZOKAITES

On 10/12/2018, Detective Honick, Detective Lincoln, Detective Martin and I, Detective Burgunder, were conducting an undercover investigation inside of Kopy's Bar, located at 80 South 12th Street PGH PA 15203. We have received numerous complaints regarding narcotics sales happening inside of, and adjacent to Kopy's Bar.

During the course of our investigation, multiple members (approx 6) of the Pagan's motorcycle club entered the bar and proceeded to the rear seating area, near the pool table. We were able to identify these individuals as Pagans by their club colors (jean jacket vests w/ Pagan's written across the back). During the course of the evening, Det. Honick overheard a patron of the bar say "those guys are cops" while motioning in our direction. Det. Honick informed us that our undercover capacity may have been compromised. Our attention was further drawn to members of the Pagan motorcycle club because they began to stare in our direction. At one point, Det. Martin approached the group of Pagans and confirmed to them that we were in fact Police Officers, and we were not there to infringe on anyone's good time.

I contacted Sgt. Turko (Zone 3 supervisor) to inform him that we were conducting an undercover operation at Kopy's Bar and our cover had been compromised by members of the Pagan's motorcycle club.

At this time, two club members left, leaving four members inside of the bar. The remaining Pagans were later identified at Frank DELUCA, Bruce THOMAS, Erik HEITZENRATER and Michael ZOKAITES. DELUCA, THOMAS, HEITZENRATER and ZOKAITES left the rear of the establishment and repositioned themselves at a table directly behind where we were seated. Det. Honick, Det. Lincoln and Det. Martin engaged DELUCA and ZOKAITES in conversation, which was cordial at first; detectives shook hands multiple times with DELUCA and ZOKAITES. DELUCA became angry and began screaming obscenities at Det. Martin and telling him to get the fuck out of his bar. Det. Honick stood between DELUCA and Det. Martin in an attempt to de-escalate the situation. DELUCA did not respond to Det. Honick's de-escalation attempts and became even more irate.

At this time, I again contacted Sgt Turko and requested him to send back-up to our location. Sgt. Baker and Officer King were the first uniformed Officers to arrive at our location. As they entered the bar I informed them that the members of the Pagan's were wearing blue jean vests. Sgt. Baker moved behind DELUCA, who was still screaming in Det. Honick's face. DELUCA then pushed Det. Honick, which started a physical confrontation that ZOKAITES immediately entered into.

I attempted to gain control of DELUCA by grabbing his head and upper torso, when I did so, ZOKAITES punched both Det. Lincoln and I in the head/face area. Det. Martin intervened and struck ZOKAITES with a closed fist and tackled him to the ground; Multiple Officers were then able to take ZOKAITES into custody. I grabbed DELUCA by the torso, and immediately felt a handgun in his waistband, I yelled "gun" to alert all officers/detectives on scene that DELUCA was armed. Multiple Officers were ordering DELUCA to stop resisting. DELUCA did not comply and continued to kick and punch officers as we attempted to take him into custody. During the fight, Sgt. Turko deployed his pepper spray which contaminated both actors and officers. I was able to grab DELUCA by his ponytail with my right hand and attempted to control his head/neck with my left hand. DELUCA refused to comply and tried to get out of my grasp while simultaneously reaching for his waistband. DELUCA continued to kick myself, Det. Lincoln and Sgt. Turko in the leg/groin areas and shove Sgt. Baker. Det. Lincoln struck DELUCA in the face multiple times in an attempt to gain control of him and prevent him from reaching his firearm. DELUCA was eventually taken to the ground by multiple officers and forcibly handcuffed. Once in custody, Det. Andrew Robinson secured Ex #1: a Beretta BU 9mm semi auto handgun (Ser # NUO98492) from DELUCA'S waistband.

During the initial altercation with DELUCA and ZOKAITES, THOMAS grabbed and pushed Det. Martin in an attempt to free ZOKAITES from Det. Martin's control. Det. Martin threw THOMAS to the ground by his torso and ordered him to stay on the ground. As Det. Martin was throwing THOMAS to the ground, HEITZENRATER pulled Det. Martin off of THOMAS. HEITZENRATER also pulled Sgt. Baker away from the altercation, to assist in freeing THOMAS. Det. Martin punched HEITZENRATER with a closed fist multiple times and knocked him to the ground. HEITZENRATER was taken into custody by



**POLICE CRIMINAL COMPLAINT**

Docket Number:	Date Filed:	OTN/LiveScan Number G 820978-4	Complaint/Incident Number 18201969
Defendant Name	First: MICHAEL	Middle:	Last: ZOKAITES

assisting Officers; search incident to arrest of HEITZENRATER by Officer King, yielded Ex #2:, a Ruger LCP 9s 9mm semi auto handgun (Ser# 452-34644) from the waistband of HEITZENRATER.

THOMAS, HIETZENRATER, and ZOKAITES were transported to the ACJ for processing. DELUCA was taken to Mercy Hospital for medical clearance and then transported to the ACJ for processing. A cell phone, 3 large knives and a wallet were recovered from the bar floor as a result of the confrontation.

Det. Murray, from the Computer Crime Unit, responded to the scene to capture video from the surveillance cameras inside of the bar. Bar owner Stephen Kopy facilitated the transfer of the surveillance video. While the video was downloading, I asked Mr. Kopy if his establishment was a frequent hang out of the Pagans. He informed me that THOMAS was a regular, and knew that he was associated with the Pagans. Mr. Kopy stated that DELUCA would sometimes accompany THOMAS into the bar, but was not a regular patron. Mr. Kopy further stated that he had never seen HEITZENRATER nor ZOKAITES.

-DELUCA and HEITZENRATER did posses concealed weapon permits at the time of their arrest.

I, **BRIAN BURGUNDER**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

  
(Signature of Affiant)

Sworn to me and subscribed before me this 12th day of

October 2018

10/12/2018

Date



, Magisterial District Judge

My commission expires first Monday of January,

2022

CRAIG C. STEPHENS,  
MAGISTERIAL DISTRICT JUDGE  
MAGISTERIAL DISTRICT 05-2-22  
MY COMMISSION EXPIRES ON THE  
FIRST MONDAY IN JANUARY, 2022



IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA

FRANK DeLUCA,	)	
	)	
Plaintiff	)	CIVIL ACTION No.
	)	
vs.	)	
	)	
CITY OF PITTSBURGH,	)	JURY TRIAL DEMANDED
BRIAN BURGUNDER,	)	
DAVID HONICK, and	)	
DAVID LINCOLN,	)	
	)	
	)	
Defendant	)	

**COMPLAINT**

AND NOW, comes the Plaintiff, Frank DeLuca, and by his attorney, James E. DePasquale, Esquire, brings this Complaint against the Defendants, City of Pittsburgh, Brian Burgunder, David Honick, and David Lincoln, upon cause as follows.

**The Parties**

1. Frank Deluca, hereinafter "Plaintiff", is an individual who resides at 846 Kennebec Street, Pittsburgh, Allegheny County, Pennsylvania 15217.

2. City of Pittsburgh, hereinafter "Defendant City", is a Pennsylvania City of the Second Class with principal offices

located at Fifth Floor, City- County Building, 436 Grant Street, Pittsburgh, Allegheny County, Pennsylvania 15219.

3. Brian Burgunder, hereinafter "Defendant Burgunder", is an individual who resides in Allegheny County, Pennsylvania.

4. David Honick, hereinafter "Defendant Honick", is an individual who resides in Allegheny County, Pennsylvania.

5. David Lincoln, hereinafter "Defendant Lincoln", is an individual who resides in Allegheny County, Pennsylvania.

6. On October 11 and 12, 2018, Defendants Burgunder, Honick, and Lincoln were all employed by Defendant City as police officers.

#### **Jurisdiction**

7. Jurisdiction to have these claims, which allege inter alia deprivation of Plaintiff's rights by Defendants under color of state law, heard in the United States District Court is bottomed on 28 U.S.C. § 1343 (a) (3).

#### **Short Statement**

8. On October 12, 2018, while acting within the course and scope of their employment as Defendant City police officers, Defendants Burgunder, Honick, and Lincoln subjected Plaintiff to false imprisonment and excessive force. Defendant Burgunder thereafter subjected Plaintiff to malicious prosecution. All of which deprived Plaintiff under color of state law of his rights

under the United States Constitution and law per 42 U.S.C. §1983. Plaintiff also suffered physical injuries, medical bills, wage loss, disfigurement, pain and suffering, mental anguish, and was required to pay attorney fees. Plaintiff claims compensatory damages against Defendants; attorney fees from all Defendants per 42 U.S.C. §1988; and punitive damages against Defendants Burgunder, Honick, and Lincoln.

**General Averments**

9. On October 11, 2018, at approximately 7:30 P.M., Defendants Burgunder, Honick, and Lincoln, in the company of Brian Martin, while all four men were acting as on duty but plain clothes Defendant City police officers, entered Kopy's Bar, a licensed Pennsylvania liquor establishment located at 80 South 12<sup>th</sup> Street, Pittsburgh, Allegheny County, Pennsylvania 15203.

10. On said date and at said time, Defendants Burgunder, Honick and Lincoln, and Martin, began consuming alcohol at Kopy's Bar, and did so continuously and copiously from 7:30 P. M. until October 12, 2018, at approximately 12:30 A.M.

11. By 11:30 P.M., on October 11, 2018, Defendants Burgunder, Honick, Lincoln, and Martin were all visibly intoxicated due to their consumption of alcohol.

12. At approximately 11:41 P.M., on October 11, 2018, Plaintiff and five companions entered Kopy's Bar.

13. Plaintiff and his companions, all of whom were sober, and acting in a law abiding manner, paid no notice to Defendants Burgunder, Honick, and Lincoln, and Martin, who were all seated at a corner area of the bar off of the entrance to the bar, and Plaintiff and several of his companions went to the rear of Kopy's Bar to drink beer and play pocket billiards.

14. Nevertheless, immediately upon the entrance into Kopy's Bar of Plaintiff and his companions, Defendants Burgunder, Honick, and Lincoln, and Martin -- and especially Defendant Honick, who was extremely intoxicated -- took note of Plaintiff and his companions, and Defendants Burgunder, Honick, and Lincoln, and Martin became fixated on Plaintiff and his companions and agitated towards them.

15. At this point neither Plaintiff nor his companions nor the sole bartender at Kopy's Bar was aware that Defendants Burgunder, Honick, and Lincoln, and Martin were in fact City of Pittsburgh police officers, much less on duty detectives, as Defendants Burgunder, Honick, and Lincoln, and Martin appeared to be only the obvious: four drunks in a saloon who were beginning to become obnoxious in demeanor for no known reason other than their visible intoxication.

16. Defendants Burgunder, Honick, and Lincoln, and Martin then began to point at Plaintiff and his companions and to

repeatedly tell the bartender that Plaintiff and his friends should not be permitted as patrons at Kopy's Bar.

17. At approximately 12:20 A.M., on October 12 2018, Defendants Burgunder, Honick, and Lincoln, and Martin, for the first time, revealed to the bartender, but only to the bartender, that they were in fact on duty City of Pittsburgh Police Officers, and they also stated that the situation was dangerous between Defendants Burgunder, Honick, and Lincoln, and Martin and Plaintiff and his companions, when no such danger was presented by Plaintiff and his companions, all of whom were sober and law abiding.

18. After two of Plaintiff's five companions left Kopy's Bar for the evening, the situation escalated with Defendants Burgunder, Honick, and Lincoln, and Martin positioning themselves off of their seats at the front corner of the bar and on their feet between Plaintiff and one of his companions and the exit door.

19. Defendants Burgunder, Honick, and Lincoln, and Martin acting in conspiratorial concert, began to intimidate Plaintiff, and impede Plaintiff's exit from Kopy's Bar, with Defendant Honick repeatedly showing his loaded handgun, located in the front band of his pants, and gripping its handle, but with no one revealing his identity as a police officer.



20. At approximately 12:40 P.M., Plaintiff was provoked by the intimidation and exit blocking into pushing Defendant Honick.

21. Plaintiff pushing Defendant Honick occurred with no knowledge on Plaintiff's part that any of the Defendants Burgunder, Honick, and Lincoln, and/or Martin was a police officer, much less an on duty officer, and just as uniformed City of Pittsburgh Police Officers, led by two sergeants, entered Kopy's Bar having been summoned both by the bartender and at least one of the police officer Defendants.

22. Once Plaintiff pushed Defendant Honick, a police riot erupted with Defendants Burgunder, Honick, and Lincoln, in conspiratorial concert, violently assaulting Plaintiff, by Defendant Burgunder holding onto and controlling Plaintiff by his hair and arms and Defendants Honick and Lincoln repeatedly punching Plaintiff about the head and face while one of the uniformed sergeants pepper sprayed Plaintiff's face.

23. After their conspiratorial assault upon Plaintiff, Defendant Burgunder arrested Plaintiff, and, in a sworn affidavit, Defendant Burgunder filed a Criminal Complaint in the Court of Common Pleas of Allegheny County at OTN:G820979-5 charging Plaintiff with five counts of felony of the first degree Aggravated Assault --the five alleged victims being Defendants Burgunder, Honick, and Lincoln, and uniformed

Sergeants Baker and Turko-- and, ironically, one count each of felony of the first degree Criminal Conspiracy to Commit Aggravated Assault, and Riot. See "Exhibit A" attached hereto.

24. At all times pertinent Defendants Burgunder, Honick, and Lincoln were acting within the course and scope of their employment with Defendant City.

25. The conduct of Defendants Burgunder, Honick, and Lincoln toward Plaintiff throughout the encounter conformed to the official policy, custom or practice of Defendant City and was further encouraged by Defendant City's failure to investigate and punish prior allegations of consuming alcohol while on duty and/or excessive force and/or malicious prosecution and/or false imprisonment by Defendants Burgunder, Honick, and Lincoln, and Martin and/or other officers.

26. On November 14, 2018, the Commonwealth of Pennsylvania, through the Office of the District Attorney of Allegheny County, withdrew all charges that were filed against Plaintiff at OTN: G820979-5, thus making Plaintiff the prevailing party in that criminal prosecution.

27. The assault by Defendants Burgunder, Honick, and Lincoln upon Plaintiff resulted in Plaintiff suffering physical injuries as follows:

- (a) head and facial trauma
- (b) burning in the eyes from  
being pepper sprayed

- (c) fracture of the left elbow coronoid process
- (d) dislocation of the radio-capitellar and ulnohumeral joint of the right elbow, and medial and dorsal displacement of the radius and ulna

**COUNT I**

**Frank DeLuca vs. City of Pittsburgh**

28. Plaintiff hereby incorporates paragraphs 1 through 26 above, as if the same were more fully set forth herein.

29. By curtailing Plaintiff's freedom of movement, even though there was no probable cause to believe that Plaintiff had committed a criminal act, Defendants Burgunder, Honick, and Lincoln, while acting in the course scope of their employment duties as Defendant City's police officers subjected Plaintiff to false imprisonment.

30. Due to the false imprisonment that he was subjected to, Plaintiff was deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as follows:

- (a) deprivation of his civil and constitutional rights,
- (b) the emotional distress caused by the imprisonment,

(c) the physical injury that he suffered while falsely imprisoned which caused:

- (1) pain, suffering, inconvenience and loss of enjoyment of life's pleasures,
- (2) medical bills,
- (3) disfigurement,
- (4) mental anguish and distress, and
- (5) wage loss.

31. Plaintiff also claims reasonable attorney fees and costs from Defendant City as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant City for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

## COUNT II

### **Frank Deluca vs. City of Pittsburgh**

32. Plaintiff hereby incorporates paragraphs 1 through 30 above, as if the same were more fully set forth herein.

33. By violently assaulting Plaintiff by repeatedly punching Plaintiff about the head and face when he was subdued and no threat to them, and by injuring his elbows bi-laterally -- whether or not Plaintiff had committed any criminal act, which Plaintiff had not done -- Defendants Burgunder, Honick, and Lincoln, while acting within the course and scope of their employment duties as police officers of Defendant City, subjected Plaintiff to the use of excessive force.

34. Due to the excessive force that he was subjected to, Plaintiff was deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as follows:

- (a) deprivation of his civil and constitutional rights,
- (b) pain, suffering, inconvenience, and loss of enjoyment of life's pleasures,
- (c) medical bills,
- (d) disfigurement,
- (e) mental anguish and distress, and
- (f) wage loss.

35. Plaintiff also claims reasonable attorney fees and costs from Defendant City as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant City for an amount in excess of Seventy-Five Thousand (75,000.00) Dollars exclusive of costs.

**COUNT III**

**Frank DeLuca vs. City of Pittsburgh**

36. Plaintiff hereby incorporates paragraphs 1 through 34 above, as if the same were more fully set forth herein.

37. Defendant Burgunder, while acting within the course and scope of his employment duties as a police officer of Defendant City, caused Plaintiff to be criminally prosecuted while lacking probable cause that Plaintiff committed any of the seven crimes with which Plaintiff was charged, did so for a purpose other than bringing an offender to justice, and the prosecution terminated in Plaintiff's favor.

38. Thus, Plaintiff was subjected to malicious prosecution which caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. § 1983, and Plaintiff has suffered damages as follows:

- (a) deprivation of his civil  
and constitutional rights,
- (b) the cost of defending against  
the malicious prosecution, and
- (c) the emotional distress  
caused by the malicious  
prosecution.

39. Plaintiff also claims reasonable attorney fees and costs from Defendant City as provided for in 42 U.S.C. § 1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant City for an amount in excess of Seventy-Five Thousand (75,000.00) Dollars exclusive of costs.

**COUNT IV**

**Frank DeLuca vs. Brian Burgunder**

40. Plaintiff hereby incorporates paragraphs 1 through 38 above, as if the same were more fully set forth herein.

41. By subjecting Plaintiff to false imprisonment, Defendant Burgunder caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 29 above.

42. In addition to compensatory damages, Defendant Burgunder's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Burgunder.

43. Plaintiff also claims reasonable attorney fees and costs from Defendant Burgunder as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Burgunder for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

**COUNT V**

**Frank DeLuca vs. Brian Burgunder**

44. Plaintiff hereby incorporates paragraphs 1 through 42 above, as if the same were more fully set forth herein.



45. By subjecting Plaintiff to the use of excessive force, Defendant Burgunder caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 33 above.

46. In addition to compensatory damages, Defendant Burgunder's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Burgunder.

47. Plaintiff also claims reasonable attorney fees and costs from Defendant Burgunder as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Burgunder for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

#### **COUNT VI**

#### **Frank DeLuca vs. Brian Burgunder**

48. Plaintiff hereby incorporates paragraphs 1 through 46 above, as if the same were more fully set forth herein.

49. By subjecting Plaintiff to malicious prosecution, Defendant Burgunder caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 37 above.

50. In addition to compensatory damages, Defendant Burgunder's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Burgunder.

51. Plaintiff also claims reasonable attorney fees and costs from Defendant Burgunder as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Burgunder for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

#### **COUNT VII**

##### **Frank DeLuca vs. David Honick**

52. Plaintiff hereby incorporates paragraphs 1 through 50 above, as if the same were more fully set forth herein.

53. By subjecting Plaintiff to false imprisonment, Defendant Honick caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 29 above.

54. In addition to compensatory damages, Defendant Honick's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Honick.

55. Plaintiff also claims reasonable attorney fees and costs from Defendant Honick as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Honick for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

#### **COUNT VIII**

##### **Frank DeLuca vs. David Honick**

56. Plaintiff hereby incorporates paragraphs 1 through 54 above, as if the same were more fully set forth herein.

57. By subjecting Plaintiff to the use of excessive force, Defendant Honick caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 33 above.

58. In addition to compensatory damages, Defendant Honick's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Honick.

59. Plaintiff also claims reasonable attorney fees and costs from Defendant Honick as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Honick for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

**COUNT IX**

**Frank DeLuca vs. David Lincoln**

60. Plaintiff hereby incorporates paragraphs 1 through 58 above, as if the same were more fully set forth herein.

61. By subjecting Plaintiff to false imprisonment, Defendant Lincoln caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 29 above.

62. In addition to compensatory damages, Defendant Lincoln's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Lincoln.

63. Plaintiff also claims reasonable attorney fees and costs from Defendant Lincoln as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Lincoln for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

**COUNT X**

**Frank DeLuca vs. David Lincoln**

64. Plaintiff hereby incorporates paragraphs 1 through 62 above, as if the same were more fully set forth herein.


65. By subjecting Plaintiff to the use of excessive force, Defendant Lincoln caused Plaintiff to be deprived under color of state law of his rights, privileges, and immunities as secured by the United States Constitution and law, all of which is prohibited by the provisions of 42 U.S.C. §1983, and Plaintiff has suffered compensatory damages as set forth in paragraph 33 above.

66. In addition to compensatory damages, Defendant Lincoln's conduct was outrageous and engaged in with reckless indifference to the rights, safety, and well being of Plaintiff, such that Plaintiff also claims punitive damages from Defendant Lincoln.

67. Plaintiff also claims reasonable attorney fees and costs from Defendant Lincoln as provided for in 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment against Defendant Lincoln for an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs.

Respectfully Submitted,



Attorney James E. DePasquale

1302 Grant Building

310 Grant Street

Pittsburgh, PA 15219

412-471-1415

jim.depasquale@verizon.net

PA ID No. 30223

VS.

MDJ: PITTSBURGH MUNICIPAL COURT

Magisterial District Number: 05-0-03

Address: 660 FIRST AVENUE  
PITTSBURGH, PA 15219

Phone: 412.350.6715

DEFENDANT:

FRANK

(NAME and ADDRESS)

DELUCA

First Name

Middle Name

Last Name

Gen.

846 KENNEBEC STREET PITTSBURGH, PA 15217

NCIC Extradition Code Type

Distance: \_\_\_\_\_

## DEFENDANT IDENTIFICATION INFORMATION

Docket Number 8588-18	Date Filed 10-12-18	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969	Request Lab Services? <input type="checkbox"/> Yes
GENDER MALE	DOB 05/10/1982	POB	Add'l DOB	Co-Defendant(s) <input checked="" type="checkbox"/>
RACE WHITE	First Name Middle Name Last Name Gen.			
ETHNICITY	AKA			
HAIR COLOR BRO (BROWN)		EYE COLOR BRO (BROWN)		
DNA	DNA Location			WEIGHT (lbs.)
FBI Number	MNU Number			175
Defendant Fingerprinted	Fingerprint Classification			FL HEIGHT In.
				5 08

## DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat	Registration Sticker (MMYY)	Comm'l Veh. Ind.	School Veh.	Oth. NCIC Veh. Code	Reg. Same as Def.
VIN	Year	Make	Model	Style	Color		<input type="checkbox"/>

Office of the attorney for the Commonwealth ☒ Approved ☐ Disapproved because: \_\_\_\_\_

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

name of the attorney for the Commonwealth)

(Signature of the attorney for the Commonwealth)

(Date)

I, BRIAN BURGUNDER

(Name of the Affiant)

37278

(PSP/MPD/ETC -Assigned Affiant ID Number &amp; Badge #)

of CITY OF PITTSBURGH

(Identify Department or Agency Represented and Political Subdivision)

PAPPD0000

(Police Agency ORI Number)

do hereby state: (check appropriate box)

1. ☒ I accuse the above named defendant who lives at the address set forth above  
I accuse the defendant whose name is unknown to me but who is described as \_\_\_\_\_

I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have, therefore, designated as John Doe or Jane Doe

with violating the penal laws of the Commonwealth of Pennsylvania at

301

(Subdivision Code)

PITTSBURGH CITY

(Place/Political Subdivision)

In Allegheny County

02

(County Code)

on or about 10/12/2018 0:30

"Exhibit A"

Docket Number:	Date Filed:	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969
Defendant Name	First: FRANK	Middle:	Last: DELUCA

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.  
 (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. In addition, social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§213.1 – 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903						
X	1	2702	A2	of the	18	5	F1		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
PennDOT Data (if applicable)		Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description/Acts of the accused associated with this Offense:									
18 2702A2 AGGRAVATED ASSAULT F1 5 COUNTS									
The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Detective Lincoln while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									
The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Detective Burgunder while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									
The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Detective Honick while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									
The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Sgt. Baker while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									
The actor attempted to cause or intentionally, knowingly or recklessly caused serious bodily injury to Sgt. Turko while in the performance of duty, as defined in section 2702(c) or engaged in public transportation, in violation of 18 Pa. C.S. §2702(a)(2).									



Docket Number:	Date Filed:	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969
Defendant Name	First: FRANK	Middle:	Last: DELUCA

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input checked="" type="checkbox"/> Conspiracy 18 903						
Lead?	2	2702	A2	of the	18	1	F1		
	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
PennDOT Data (if applicable)		Accident Number			<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone		
Statute Description/Acts of the accused associated with this Offense:									
18 903A1 CRIMINAL CONSPIRACY F1 1 COUNT									
The actor, with the intent of promoting or facilitating the crime of 18 2702 A2 conspired and agreed with Thomas, Zokaite & Heitzenrater that they or one or more of them would engage in conduct constituting such crime or an attempt or solicitation to commit such crime, and in furtherance thereof did commit an overt act in violation of 18 Pa. C.S. §903 (a)(1).									

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903						
Lead?	3	5501	1	of the	18	1	F3		
	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
PennDOT Data (if applicable)		Accident Number			<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone		
Statute Description/Acts of the accused associated with this Offense:									
18 55011 RIOT F3 1 COUNT									
The actor participated with two or more other persons, in a course of disorderly conduct, with intent to commit or facilitate the commission of a felony or misdemeanor, or to prevent or coerce official action, or when said actor or any other participant to the knowledge of the actor used or planned to use a firearm or other deadly weapon in violation of 18 Pa. C.S. §5501(1) or (2) or (3).									

POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969
Defendant Name	First: FRANK	Middle:	Last: DELUCA

2. I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA.C.S. §4904) relating to unsworn falsification to authorities.
4. This complaint is comprised of the preceding page(s) numbered        through
5. I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.  
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

\_\_\_\_\_  
(Date)        10/12/18        \_\_\_\_\_  
(Signature of Affiant)

AND NOW, on this date OCTOBER 10, 2018 I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

05-2-22  
(Magisterial District Court Number)

\_\_\_\_\_  
(Issuing Authority)



CRAIG C. STEPHENS,  
MAGISTERIAL DISTRICT JUDGE  
MAGISTERIAL DISTRICT 05-2-22  
MY COMMISSION EXPIRES ON THE  
FIRST MONDAY IN JANUARY, 2022



Docket Number:	Date Filed:	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969
Defendant Name	First FRANK	Middle:	Last DELUCA

## AFFIDAVIT of PROBABLE CAUSE

1. WHEN:

- a) Date when Affiant received information:

10/11/2018

- b) Date when the source of information (Police Officers, Informant, Victim, Co-Defendant, Defendant, etc.) received information:

10/11/2018

2. HOW:

- a) How Affiant knows this particular person committed crime: (personal observation, defendant's admissions, etc.):

Detectives observations.

- b) How the source of information knows this particular person committed the crime:

Detectives observations.

- c) How both Affiant and/or source of information knows that a particular crime has been committed:

Detectives observations.

3. WHAT CRIMES:

18 2702 A2 AGGRAVATED ASSAULT

18 2702 A2 AGGRAVATED ASSAULT

18 2702 A2 AGGRAVATED ASSAULT

18 2702 A2 AGGRAVATED ASSAULT

18 2702 A2 AGGRAVATED ASSAULT

18 5501 1 RIOT

18 903 A1 CRIMINAL CONSPIRACY

4. WHERE CRIME(S) COMMITTED:

80 S. 12TH STREET

5. WHY AFFIANT BELIEVES THE SOURCE OF INFORMATION:

- X Source is presumed reliable, i.e. other Police Officer, Eyewitness, Victim of Crime, etc.

Source has given information in the past which has led to arrest and/or conviction

Defendant's reputation for criminal activity

This source made declaration against his/her penal interest to the above offense

- X Affiant and/or other Police Officers corroborated details of the information

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Docket Number:		Date Filed:	OTN LiveScan Number	POLICE CRIMINAL COMPLAINT	
			G 820979-5	Complaint/Incident Number	
				18201969	
Defendant Name		First	Middle	Last	
		FRANK		DELUCA	

On 10/12/2018, Detective Honick, Detective Lincoln, Detective Martin and I, Detective Burgunder, were conducting an undercover investigation inside of Kopy's Bar, located at 80 South 12th Street PGH PA 15203. We have received numerous complaints regarding narcotics sales happening inside of, and adjacent to Kopy's Bar.

During the course of our investigation, multiple members (approx 6) of the Pagan's motorcycle club entered the bar and proceeded to the rear seating area, near the pool table. We were able to identify these individuals as Pagans by their club colors (jean jacket vests w/ Pagan's written across the back). During the course of the evening, Det. Honick overheard a patron of the bar say "those guys are cops" while motioning in our direction. Det. Honick informed us that our undercover capacity may have been compromised. Our attention was further drawn to members of the Pagan motorcycle club because they began to stare in our direction. At one point, Det. Martin approached the group of Pagans and confirmed to them that we were in fact Police Officers, and we were not there to infringe on anyone's good time.

I contacted Sgt. Turko (Zone 3 supervisor) to inform him that we were conducting an undercover operation at Kopy's Bar and our cover had been compromised by members of the Pagan's motorcycle club.

At this time, two club members left, leaving four members inside of the bar. The remaining Pagans were later identified at Frank DELUCA, Bruce THOMAS, Erik HEITZENRATER and Michael ZOKAITES. DELUCA, THOMAS, HEITZENRATER and ZOKAITES left the rear of the establishment and repositioned themselves at a table directly behind where we were seated. Det. Honick, Det. Lincoln and Det. Martin engaged DELUCA and ZOKAITES in conversation, which was cordial at first; detectives shook hands multiple times with DELUCA and ZOKAITES. DELUCA became angry and began screaming obscenities at Det. Martin and telling him to get the fuck out of his bar. Det. Honick stood between DELUCA and Det. Martin in an attempt to de-escalate the situation. DELUCA did not respond to Det. Honick's de-escalation attempts and became even more irate.

At this time, I again contacted Sgt. Turko and requested him to send back-up to our location. Sgt. Baker and Officer King were the first uniformed Officers to arrive at our location. As they entered the bar I informed them that the members of the Pagan's were wearing blue jean vests. Sgt. Baker moved behind DELUCA, who was still screaming in Det. Honick's face. DELUCA then pushed Det. Honick, which started a physical confrontation that ZOKAITES immediately entered into.

I attempted to gain control of DELUCA by grabbing his head and upper torso, when I did so, ZOKAITES punched both Det. Lincoln and I in the head/face area. Det. Martin intervened and struck ZOKAITES with a closed fist and tackled him to the ground. Multiple Officers were then able to take ZOKAITES into custody. I grabbed DELUCA by the torso, and immediately felt a handgun in his waistband, I yelled "gun" to alert all officers/detectives on scene that DELUCA was armed. Multiple Officers were ordering DELUCA to stop resisting. DELUCA did not comply and continued to kick and punch officers as we attempted to take him into custody. During the fight, Sgt. Turko deployed his pepper spray which contaminated both actors and officers. I was able to grab DELUCA by his ponytail with my right hand and attempted to control his head/neck with my left hand. DELUCA refused to comply and tried to get out of my grasp while simultaneously reaching for his waistband. DELUCA continued to kick myself, Det. Lincoln and Sgt. Turko in the leg/groin areas and shove Sgt. Baker. Det. Lincoln struck DELUCA in the face multiple times in an attempt to gain control of him and prevent him from reaching his firearm. DELUCA was eventually taken to the ground by multiple officers and forcibly handcuffed. Once in custody, Det. Andrew Robinson secured Ex #1: a Beretta BU 9mm semi auto handgun (Ser # NUO98492) from DELUCA'S waistband.

During the initial altercation with DELUCA and ZOKAITES, THOMAS grabbed and pushed Det. Martin in an attempt to free ZOKAITES from Det. Martin's control. Det. Martin threw THOMAS to the ground by his torso and ordered him to stay on the ground. As Det. Martin was throwing THOMAS to the ground, HEITZENRATER pulled Det. Martin off of THOMAS. HEITZENRATER also pulled Sgt. Baker away from the altercation, to assist in freeing THOMAS. Det. Martin punched HEITZENRATER with a closed fist multiple times and knocked him to the ground. HEITZENRATER was taken into custody by

## POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 820979-5	Complaint/Incident Number 18201969
Defendant Name	First: FRANK	Middle:	Last: DELUCA

assisting Officers; search incident to arrest of HEITZENRATER by Officer King, yielded Ex #2, a Ruger LCP 9s 9mm semi auto handgun (Ser# 452-34644) from the waistband of HEITZENRATER.

THOMAS, HIETZENRATER, and ZOKAITES were transported to the ACJ for processing. DELUCA was taken to Mercy Hospital for medical clearance and then transported to the ACJ for processing. A cell phone, 3 large knives and a wallet were recovered from the bar floor as a result of the confrontation.

Det. Murray, from the Computer Crime Unit, responded to the scene to capture video from the surveillance cameras inside of the bar. Bar owner Stephen Kopy facilitated the transfer of the surveillance video. While the video was downloading, I asked Mr. Kopy if his establishment was a frequent hang out of the Pagans. He informed me that THOMAS was a regular, and knew that he was associated with the Pagans. Mr. Kopy stated that DELUCA would sometimes accompany THOMAS into the bar, but was not a regular patron. Mr. Kopy further stated that he had never seen HEITZENRATER nor ZOKAITES.

-DELUCA and HEITZENRATER did posses concealed weapon permits at the time of their arrest.

I, BRIAN BURGUNDER, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

(Signature of Affiant)

Sworn to me and subscribed before me this 12th day of OCTOBER 2018

10/12/2018 Date

[Signature], Magisterial District Judge

My commission expires first Monday of January, 2022

CRAIG C. STEPHENS,  
MAGISTERIAL DISTRICT JUDGE  
MAGISTERIAL DISTRICT 05-2-22  
MY COMMISSION EXPIRES ON THE  
FIRST MONDAY IN JANUARY, 2022

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