

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GEORGE THOMPSON,

Plaintiff,

v.

THOMAS BARBOZA,

Defendant.

C.A. No. 14-14355

COMPLAINT

INTRODUCTION

1. This is a civil rights action against a Fall River police officer for falsely arresting George Thompson for exercising his First Amendment right to record the officer in public. Mr. Thompson recorded Defendant Thomas Barboza talking on a cellphone and cursing while on duty at a detail next to Mr. Thompson's house. Mr. Thompson was on his front porch when he video- and audio-recorded Defendant Barboza walking back and forth in the street, loudly and repeatedly swearing into his phone. When Defendant Barboza noticed that Mr. Thompson was recording him with a smartphone, he told Mr. Thompson it was a "federal offense" to record him. He stormed into Mr. Thompson's yard and onto his porch, cursing at Mr. Thompson, threatening him, and placing him under arrest. Defendant Barboza charged Mr. Thompson with unlawful wiretapping for secretly recording Barboza's voice even though the recording was not secret and was, regardless, protected by clearly established First Amendment law. Defendant Barboza seized the phone as "evidence." While it was in police custody, all of the contents of the phone were deleted. Mr. Thompson seeks damages for Defendant's violations of his constitutional rights.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §1983 and § 1988 and the First, Fourth, and Fourteenth Amendments to the United States Constitution. Title 28 U.S.C. § 1331 and § 1343 provide federal question jurisdiction over all federal claims, and 28 U.S.C. § 1367 provides supplemental jurisdiction over state law claims.

PARTIES

3. Plaintiff George Thompson was at all times relevant to this complaint a resident of Massachusetts living in Bristol County.

4. Defendant Thomas Barboza was at all times relevant to this complaint a duly appointed police officer of the Fall River Police Department. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and the City of Fall River. He is sued in his individual capacity.

FACTS

5. On January 6, 2014, at approximately 11 a.m., Mr. Thompson was sitting on the front porch of his house, which is at the intersection of Locust and Linden Streets in Fall River.

6. Defendant Barboza was working a traffic detail at that intersection at that time. He was in uniform and on duty.

7. Mr. Thompson noticed that Defendant Barboza was talking on a cellphone. Defendant Barboza was walking back and forth, loudly and repeatedly cursing into the phone.

8. Mr. Thompson asked Defendant Barboza to watch his language. Defendant Barboza responded by cursing at Mr. Thompson and telling him to mind his own business.

9. Mr. Thompson took out his smartphone and began openly filming Defendant Barboza, who continued to talk on the phone and curse. Mr. Thompson held his smartphone in his outstretched hand in plain view.

10. When Defendant Barboza saw the smartphone, he became incensed. He knew he was being filmed and he did not like it. He was particularly angry because he knew that the phone had captured him acting improperly on duty. He told Mr. Thompson that it was a “federal offense” to record him.

11. Defendant Barboza charged into Mr. Thompson’s fenced-in yard and onto the porch, yelling and cursing at him. Defendant Barboza called Mr. Thompson a “f---ing welfare bum” and told him he was under arrest.

12. Defendant Barboza put Mr. Thompson in handcuffs, then shoved him to the ground. At no point did Mr. Thompson struggle with the officer or resist arrest. During the arrest Defendant Barboza threatened Mr. Thompson, stating he was going to drive by Mr. Thompson’s house every night.

13. Defendant Barboza confiscated Mr. Thompson’s smartphone, as well as another cellphone Mr. Thompson was carrying.

14. Defendant Barboza charged Mr. Thompson with violating the Massachusetts wiretap law, M.G.L. ch. 272, § 99, as well as resisting arrest, M.G.L. ch. 268, § 32B.

15. There was no probable cause to arrest or prosecute Mr. Thompson for either of these charges, or for any other charge. Defendant Barboza arrested Mr. Thompson and initiated baseless criminal charges against him to retaliate against Mr. Thompson for exercising his First Amendment right to record Barboza. Defendant Barboza wrote a false police report to cover up his own misconduct.

16. Defendant Barboza’s report attempted to justify the wiretapping charge against Mr. Thompson. Defendant Barboza’s report admitted, however, that he could see Mr. Thompson’s cellphone while it was recording him and that Mr. Thompson openly and repeatedly acknowledged that he was recording Barboza. Because the Massachusetts wiretap statute prohibits only secret recording, Barboza’s report failed to establish probable cause for that crime.

17. Even if Mr. Thompson had secretly recorded Defendant Barboza, no reasonable police officer would have believed he could lawfully arrest Mr. Thompson for wiretapping. A reasonable police officer would have known that recording a police officer performing his duties in public is a constitutionally protected right. The First Circuit’s opinion in *Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011), made clear that the right to record public officials in a public space is “a basic, vital, and well-established liberty safeguarded by the First Amendment.”

18. Defendant Barboza’s police report falsely claimed that Mr. Thompson resisted arrest when Barboza attempted to place a handcuff on his right wrist. Mr. Thompson was cooperative when Barboza was handcuffing him. He did not resist arrest.

19. After Mr. Thompson’s criminal defense lawyer filed a motion to dismiss the criminal charges as unsupported by probable cause, the District Attorney’s Office agreed to drop all charges against Mr. Thompson.

20. While Mr. Thompson’s smartphone was in the custody of the Fall River police, all of the data on the phone—including the video he had taken of Defendant Barboza’s belligerent and improper behavior—was deleted.

21. Fall River police tried to blame Mr. Thompson for the deletion. A Fall River police detective issued a report suggesting, without any evidence, that Mr. Thompson had

remotely erased the contents of the phone through the “cloud.” The chief of police publicly insinuated that Mr. Thompson or someone else outside the police department might have deleted the contents.

22. In fact, Fall River police were responsible for deleting the contents of the phone, as an independent forensic investigation later confirmed.

23. As a result of Defendant Barboza’s misconduct, Mr. Thompson suffered loss of property and physical and emotional damages. All of the contents of his smartphone, including personal photographs, were deleted. He was deprived of the use of his smartphone for months while it was improperly held as evidence. Mr. Thompson suffered physical pain when Barboza knocked him to the ground. Mr. Thompson spent the night in jail and faced baseless criminal charges for several months. He is now afraid to go out alone because he fears being harassed by the police.

COUNT I **42 U.S.C. § 1983**

24. The above paragraphs are incorporated by reference.

25. Defendant used unreasonable and excessive force against Plaintiff.

26. Defendant falsely arrested Plaintiff.

27. Defendant assaulted, arrested, and initiated baseless criminal charges against Plaintiff for exercising his right to record police activity in public places and to criticize police officers. Defendant arrested Plaintiff and seized his smartphone to cover up his own misconduct and to prevent dissemination of the video.

28. Defendant’s actions deprived Plaintiff of his well-established rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

29. Defendant’s actions were taken in reckless disregard for Plaintiff’s constitutional rights.

30. As a direct and proximate result of Defendant's actions, Plaintiff suffered the damages described above.

COUNT II Massachusetts Civil Rights Act M.G.L. c. 12, § 11I

31. The above paragraphs are incorporated by reference.

32. Defendant threatened, intimidated, and physically coerced Plaintiff to stop him from recording police officers and from criticizing them, and to serve as a lesson to him and others that videotaping or criticizing police officers could result in arrest, physical harm and/or damage to property.

33. Defendant violated Plaintiff's civil rights under the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11I, by threats, intimidation, and coercion.

34. As a direct and proximate result of Defendant's actions, Plaintiff suffered the damages described above.

COUNT III Massachusetts Tort of Malicious Prosecution

35. The above paragraphs are incorporated by reference.

36. Defendant caused criminal charges to be brought against Plaintiff without probable cause and with malice. The criminal charges were all disposed of favorably Plaintiff.

37. As a direct and proximate result of Defendant's actions, Plaintiff suffered the damages described above.

WHEREFORE, Plaintiff requests that this Court:

1. Award compensatory damages;
2. Award punitive damages;
3. Award the cost of this action, including reasonable attorney's fees; and
4. Award such other further relief as this Court may deem necessary and appropriate.

JURY DEMAND

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,
For the Plaintiffs,
By their attorneys,

/s/ David Milton
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Dated: December 8, 2014

CERTIFICATE OF SERVICE

I certify that on this day a true copy of the above document was served upon the attorney of record for each party via ECF.

Date: December 8, 2014 /s/ David Milton
David Milton