

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**ADAM MUELLER,**

**Plaintiff**

**v.**

**Civil Action No.**

**TODD M. DODGE and  
OTHER GREENFIELD POLICE OFFICERS,  
all in their individual capacities and  
in their capacities as Police Officers,  
including Officers in Control of the Holding Cell  
at the Town of Greenfield Police Department  
on July 1 to July 2, 2010;  
and Police Officer/s who Issued Retaliatory Citation  
for the Town of Greenfield in about May 2010, and  
the TOWN OF GREENFIELD,**

**Defendants**

**COMPLAINT  
AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. This is a civil rights action for the unlawful arrest and prosecution of Adam Mueller (hereinafter also referred to as Plaintiff-Mueller) for openly recording correctional officers and police officers with a camera. Plaintiff-Mueller and a friend, Peter Eyre (hereinafter also referred to as Mr. Eyre), went to the Franklin County House of Corrections and while in the lobby used their cameras to take video. They were asked by Correctional Officers to stop taking video inside the lobby of the jail or to leave the premises. Plaintiff-Mueller and Mr. Eyre left the lobby of the jail and while outside the front entrance to the jail they were ordered by the Correctional Officer to stop taking video or to leave the premises, which they refused to do. The Greenfield Police

Department was contacted to have Plaintiff-Mueller and Mr. Eyre removed from the premises. Todd M. Dodge, a Greenfield Police Officer (hereinafter also referred to as Officer Dodge), responded to the call from the jail and ordered Plaintiff-Mueller and Mr. Eyre to either shut off their cameras or leave the premises of the jail and if they did not, he threatened to arrest them for trespassing. Plaintiff-Mueller and Mr. Eyre continued to use their cameras to film the Correctional Officer and Officer Dodge. Officer Dodge then arrested Plaintiff-Mueller and Mr. Eyre for wiretapping, trespass and resisting arrest.

2. Plaintiff-Mueller was arrested at approximately 6:30 p.m. He was then transported to the Greenfield Police Station where he was booked and held in a jail cell until he was transported to the Greenfield District Court the next morning. While Plaintiff-Mueller was held in a jail cell at the Greenfield Police Station, he was denied his right to make a telephone call.

3. While Plaintiff-Mueller was held in a jail cell at the Greenfield Police Station, Officer Dodge demanded that Plaintiff-Mueller produce the keys to his mobile home, which was legally parked on a public street, and threatened that if Plaintiff-Mueller did not produce the keys to the mobile home, the police would break a window to get access. Plaintiff-Mueller provided Officer Dodge with a key to his mobile home, which was then subjected to a retaliatory and illegal search by Greenfield police and then towed to an impoundment lot.

4. Officer Dodge charged Plaintiff-Mueller with wiretapping, trespassing and resisting arrest. Plaintiff-Mueller was not released from his jail cell at the Greenfield Police Station until 8:00 a.m. the following morning when he was transported to the Greenfield District Court for his arraignment.

5. Plaintiff-Mueller, who represented himself on the criminal charges in the Greenfield District Court, was tried before a jury and found not guilty of all charges.

6. The Town of Greenfield is sued for failing to properly train Greenfield police officers that they cannot arrest people for openly making video or audio recordings of their conduct in public. The Town also failed to supervise and discipline the Greenfield police officers to assure that they followed the law in making arrests under the state wiretap statute. The Town permitted its police officers to feel that they could commit misconduct without fear of punishment.

### **JURISDICTION**

7. This action is brought pursuant to 42 U.S.C. 1983 and 1988 and the First, Fourth, Eighth 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**

8. Plaintiff Adam Mueller is a resident of Belknap County, New Hampshire and a citizen of the United States.

9. Defendant Todd M. Dodge's residence is unknown and a citizen of the United States. At all times relevant to this Complaint, Defendant Dodge was a duly appointed police officer for the Town of Greenfield, Massachusetts. His actions alleged in this Complaint were taken under color of the laws of the Commonwealth of Massachusetts and the Town of Greenfield. He is sued in his individual and official capacities.

10. Defendant Other Greenfield Police Officers are currently unidentified and it will require discovery to identify them by name and to determine their places of residence. At

all times relevant to this Complaint, Defendant Other Greenfield Police Officers were duly appointed police officers for the Town of Greenfield, Massachusetts. Their actions alleged in this Complaint were taken under color of the laws of the Commonwealth of Massachusetts and the Town of Greenfield. They are each sued in their individual and official capacities.

11. Defendant Town of Greenfield is a municipality duly organized as such in the Commonwealth of Massachusetts.

### **FACTS**

12. On July 1, 2010, Plaintiff-Mueller went to the Franklin County House of Corrections accompanied by Mr. Eyre to inquire about the amount of the bail that needed to be posted as a condition for the release of one of their acquaintances.

13. While in the lobby of the Franklin County House of Corrections, both Plaintiff-Mueller and Mr. Eyre possessed cameras that were in plain view. The cameras had audio recording capability.

14. When Plaintiff-Mueller and Mr. Eyre approached the correctional officer at the reception desk in the lobby to inquire about the amount of bail that was required to be posted for the release of one of their acquaintances, the correctional officer asked if they were "filming". Both Plaintiff-Mueller and Mr. Eyre stated that they were filming and they were then asked to turn off their cameras.

15. When the correctional officer asked them to turn off their cameras, both Plaintiff-Mueller and Mr. Eyre questioned why they had to turn off their cameras in the lobby of the House of Corrections. A supervising correctional officer, who happened to be passing through the lobby area, engaged in the discussion about filming in the lobby and

before leaving the lobby area instructed the correctional officer at the reception desk to allow Plaintiff-Mueller and Mr. Eyre to film in the lobby area while posting bail for their friend.

16. Neither Plaintiff-Mueller nor Mr. Eyre had sufficient cash to post bail for their acquaintance and neither Plaintiff-Mueller nor Mr. Eyre had their driver's licenses in their possessions, which they were informed would be required as a form of picture identification in order to post bail. So, Plaintiff-Mueller and Mr. Eyre left to retrieve cash from a local ATM and their driver's licenses from Plaintiff-Mueller's mobile home, which was parked a couple miles away on a nearby side street.

17. When Plaintiff-Mueller and Mr. Eyre returned to the reception desk in the lobby of the House of Corrections, the same correctional officer, who was previously instructed by a supervisor to allow Plaintiff-Mueller and Mr. Eyre to use their cameras to film while in the lobby posting bail, now instructed both Plaintiff-Mueller and Mr. Eyre that they could no longer use their cameras to film in the lobby area.

18. More discussion ensued about why filming in the lobby of the House of Corrections was now being prohibited and two additional correctional officers joined in the discussion. At Plaintiff-Mueller's suggestion, the group engaged in discussion about filming stepped outside where they continued their discussion.

19. While they were outside the House of Corrections, the group was joined by Defendant Dodge.

20. While outside the House of Corrections, both Plaintiff-Mueller and Mr. Eyre were ordered by a supervising correctional officer that they would have to shut their cameras off and if they did not, they would be arrested for trespassing.

21. Defendant Dodge then arrived on the scene, told Plaintiff-Mueller and Mr. Eyre that the supervising correctional officer was in charge of the facility, that they needed to follow the supervising correctional officer's instructions and ordered Plaintiff-Mueller and Mr. Eyre to shut off their cameras or to leave the property of the House of Corrections.

22. When Plaintiff-Mueller and Mr. Eyre questioned why they would not be permitted outside the House of Corrections to film "the people who work for them" (meaning the correctional officers and Defendant Dodge), Defendants Dodge and Other Greenfield Police Officers placed Plaintiff-Mueller and Mr. Eyre under arrest for trespassing.

23. Defendants Dodge and Other Greenfield Police Officers transported Plaintiff-Mueller and Mr. Eyre to the Greenfield Police Station where they were both searched. Their pants were removed and they were placed in holding concrete holding cells. Although there were steel toilets in the cells, there was no toilet paper. The cells were freezing cold. Although Plaintiff-Mueller and Mr. Eyre requested blankets, none were provided. The Town of Greenfield had an obligation to train the officers in charge of the holding cell to ensure that occupants' basic physical needs were met. If the officers were trained, their actions shock the conscience in violation of US Const. Amend IV.

24. Defendants Dodge and Other Greenfield Police Officers placed Plaintiff-Mueller and Mr. Eyre into police custody in the concrete holding cell at approximately 6:30 p.m. on the date in question and did not release them until approximately 8:00 a.m. the next morning whereupon they were transported to the Greenfield District Court.

25. During the entire time that Plaintiff-Mueller and Mr. Eyre were held in custody by Defendants Dodge and Other Greenfield Police Officers, neither Plaintiff-Mueller nor Mr. Eyre were given the opportunity to be released on bail (no bail bondsman called).

26. During the entire time that Plaintiff-Mueller and Mr. Eyre were held in custody by Defendants Dodge and Other Greenfield Police Officers, neither Plaintiff-Mueller nor Mr. Eyre were given the opportunity to make a telephone call.

27. While Plaintiff-Mueller and Mr. Eyre were being held in custody by Defendants Dodge and Other Greenfield Police Officers, Plaintiff-Mueller's mobile home was towed to the Greenfield Police Department parking lot where the vehicle was then searched by Defendant Other Greenfield Police Officers and after being searched the vehicle was then towed to a private towing company lot.

28. On July 2, 2010, Plaintiff-Mueller was arraigned in the Greenfield District Court on charges of wiretapping, trespassing and resisting arrest and released without bail.

29. Violation of the wiretap statute is a felony.

30. Plaintiff-Mueller and Mr. Eyre returned to the Greenfield Police Department and retrieve their personal belongings, except for their cell phones and cameras, which were held as evidence.

31. Any properly trained police officer would have known that the wiretap statute by its terms only applies to those who secretly record conversations and that it could not apply to Plaintiff-Mueller and Mr. Eyre, who were openly filming and recording the police officers and correctional officers. Such a police officer would also have known that photography is a form of expression protected by the First Amendment.

32. On July 18 and 19, 2011, Plaintiff-Mueller and Mr. Eyre were tried of the aforesaid criminal charges before a jury and found not guilty on all charges.

33. The Town of Greenfield had an obligation to properly train its police officers on the elements of criminal charges including the state wiretap statute and First Amendment rights. The Town of Greenfield failed to train its officers that only secret audio recordings of a police officer, or other government official, are unlawful under the wiretap statute. The Town of Greenfield failed to train its officers that a basic, vital and well-established liberty safeguarded by the First Amendment is a citizen's right to film a police officer, or other government official, in the discharge of his duties in a public space. As a result of this failure, it was highly likely that the Greenfield police officers would unconstitutionally arrest people for openly recording police conduct or conduct of other governmental officials.

34. The Town of Greenfield had an obligation to supervise its police officers to assure that they complied with the state wiretap statute and First Amendment when making arrests. The Town of Greenfield did not properly supervise police officers to assure that they complied with this statute or the First Amendment.

35. The Town of Greenfield had a policy or custom of indifference to misconduct by Greenfield police officers by failing to properly investigate complaints of misconduct and to discipline officers. The Town of Greenfield also had a policy or custom of tolerating a code of silence or a blue wall in which the Greenfield police officers understood that they were not to report misconduct by fellow police officers.

36. Although Plaintiff-Mueller and Mr. Eyre complained to the Mayor and members of its Town Council about the conduct of Defendants Dodge and Other Greenfield Police



Officers, despite these complaints, the Town of Greenfield neither investigated nor disciplined the arresting officers.

37. The Town of Greenfield had an obligation to discipline its police officers when they failed to comply with the state wiretap statute and the First Amendment when making arrests. The Town of Greenfield did not discipline its police officers for making illegal arrests of people for openly filming and recording police conduct or conduct of governmental officials. This made Greenfield Police Officers, including Defendants Dodge and Other Greenfield Police Officers, feel free to unconstitutionally arrest people for openly filming and recording police conduct and conduct of governmental officials.

38. The individual Defendants' actions were taken with reckless disregard for Plaintiff-Mueller's constitutional rights.

39. Plaintiff-Mueller acted lawfully in openly filming and recording police conduct and governmental official conduct. Plaintiff-Mueller was harmed as a result of this incident. He was shocked that Defendants arrested him. While the charges were pending, Plaintiff-Mueller suffered emotional distress; he was preoccupied with the case. He was upset and had trouble sleeping, among other symptoms of emotional distress. Plaintiff-Mueller knew he had not violated the law, but he worried that a felony conviction would result in a substantial jail term.

**COUNT I 42 U.S.C. 1983 First Amendment Claims  
Against Individual Defendants Dodge  
and Other Greenfield Police Officers**

40. The above paragraphs are incorporated herein by reference.

41. Defendants Dodge and Other Greenfield Police Officers, acting in concert, arrested Plaintiff-Mueller.

42. Defendants Dodge and Other Greenfield Police Officers deprived Plaintiff-Mueller of his well-established rights to freedom of speech under the First Amendment to the United States Constitution, and to freedom from arrest without probable cause under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment, and to freedom from unreasonable searches under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment.

43. Defendants Dodge and Other Greenfield Officers deprived Plaintiff-Mueller of his right to free speech as guaranteed by Article 14 of the Massachusetts Declaration of Rights.

44. As a direct and proximate result of Defendants' actions, Plaintiff suffered the damages described above.

**COUNT II Massachusetts Civil Rights Act,  
M.G.L. c.12, 11I Against Defendants  
Dodge and Other Greenfield Police Officers**

45. The above paragraphs are incorporated herein by reference.

46. Defendants Dodge and Other Greenfield Police Officers arrested Plaintiff to intimidate him and to serve as a lesson to Plaintiff and others that attempting to openly record police officers in Greenfield could result in arrest.

47. Acting jointly and in concert, Defendants Dodge and Other Greenfield Police Officers violated the Plaintiff's civil rights under the Massachusetts Civil Rights Act, M.G.L. c.12, 11I, by threats, intimidation and coercion.

48. As a direct and proximate result of Defendants actions, Plaintiff suffered the damages described above.

**COUNT III Massachusetts Tort of**

**Malicious Prosecution Against Defendants  
Dodge and Other Greenfield Police Officers**

49. The above paragraphs are incorporated herein by reference.

50. Acting jointly, Defendants Dodge and Other Greenfield Police Officers caused criminal charges to be brought against Plaintiff without probable cause and with malice. The Plaintiff was found not guilty of all criminal charges.

51. As a direct and proximate result of Defendants' actions, Plaintiff suffered the damages described above.

**COUNT IV Abuse of Process Against  
Defendants Dodge and Other  
Greenfield Police Officers**

52. The above paragraphs are incorporated herein by reference.

53. Acting jointly, Defendants Dodge and Other Greenfield Police Officers caused criminal charges to be brought against Plaintiff and in so doing used the legal process for an ulterior or illegitimate purpose which resulted in damage to the plaintiff.

**COUNT V: Intentional Infliction  
of Emotional Distress Against  
Plaintiff-Mueller By Defendants Dodge  
and Other Greenfield Police Officers**

54. The above paragraphs are incorporated herein by reference.

55. Defendants Dodge and other Greenfield police officers intentionally or recklessly caused infliction of emotional distress when arresting Plaintiff Mueller without probable cause for a felony and locked him in a freezing cold cell with no pants and no toilet paper for several hours overnight, and deprived him of a phone call to counsel.

56. Defendant Dodge and other Greenfield officers either intended to inflict emotional distress, or knew or should have known that emotional distress was likely to

result from [his/her] conduct.

57. The conduct of Defendant Dodge and other Greenfield police officers was extreme and outrageous, was beyond all possible bounds of decency and was utterly intolerable in a civilized society;

58. The conduct of Defendant Dodge and other Greenfield Police Officers caused the plaintiff's emotional distress; and

59. The emotional distress suffered by the plaintiff was severe and of a nature that no reasonable person could be expected to endure it.

60. Plaintiff suffered damages as a result of his emotional distress.

**COUNT VI 42 U.S.C. 1983 Monell Claim  
Against Defendant Town of Greenfield  
Under US Const. Amend I**

61. The above paragraphs are incorporated herein by reference.

62. The violations of Plaintiff's constitutional rights by Defendants Dodge and Other Greenfield Police Officers were caused by the policies and customs of the Town of Greenfield as described above.

63. As a direct and proximate result of Defendants' actions, Plaintiff suffered the damages described above.

**COUNT VII Violation Of Fourth Amendment  
Right to be Free From Cruel Conditions of Pretrial  
Jail Confinement Against John Doe/S Town of  
Greenfield Holding Cell Personnel**

64. The above paragraphs are incorporated herein by reference.

65. The Defendants JOHN DOE/S Greenfield jail personnel violated the rights of Plaintiff Mueller to substantive due process when he/she/they wantonly inflicted upon

him unnecessary pain and suffering, without legitimate penological purpose, in causing him to be housed in an extremely cold cell without adequate clothing to protect his body, that is, without his pants, from 6 pm on July 1, 2010 to the next morning.

66. As a result of these actions, Plaintiff-Mueller suffered damages including, but not limited to, cold and shivering for several hours, and emotional distress.

**COUNT VIII FIRST AMENMENT RETALIATION  
CLAIMS UNDER SECTION 1983 AND  
MASSACHUSETTS DECLARATION OF RIGHTS  
AGAINST JOHN DOE TOWN OF  
GREENFIELD POLICE OFFICERS**

67. The above paragraphs are incorporated herein by reference.

68. After July 1, 2010, in or about May 2011, Plaintiff Mueller was handing out leaflets in a public place; the leaflets Plaintiff-Mueller was distributing described to members of the public of his impending trial and the actions of the community's police department.

69. On or about May 2011, John Doe/s acting under color of state law in their official capacities issued to Plaintiff-Mueller a citation for jay walking when he was in the process of handing out leaflets in a public place (the leaflets described above).

70. The issuance of the citation for jay walking was in retaliation for Plaintiff-Mueller's exercise of free speech and violated his rights under US Const. Amend. I, and the Massachusetts Declaration of Rights.

71. As a result of the retaliatory citation, Plaintiff-Mueller suffered, among other damages, emotional distress.

**COUNT IX VIOLATION OF SIXTH  
AMENDMENT RIGHT TO COUNSEL**

72. The above paragraphs are incorporated herein by reference.

73. The right of a pretrial detainee to make a telephone call for the assistance of counsel is guaranteed by US. Const., amend VI.

74. On July 1, 2010, Defendant Town of Greenfield Officers refused to afford Plaintiff-Mueller the right, secured by US Const., amend VI, to make a telephone call for counsel.

75. As a result of the actions of the Defendant Town of Greenfield Officers to afford Plaintiff-Mueller to make a telephone call to obtain the assistance of counsel, Plaintiff-Mueller suffered damages including, but not limited to, emotional distress.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff-Mueller requests that this Court:

76. Award him compensatory damages;

77. Award him punitive damages against Defendants Dodge and Other Greenfield Police Officers;

78. Award him the costs of this action, including reasonable attorneys' fees; and

79. Award such other further relief as this Court may deem just, necessary and appropriate under the circumstances.

#### **JURY DEMAND**

A trial by jury is hereby demanded on all claims triable by a jury.

Respectfully submitted,  
For the Plaintiff  
By his attorneys,

Dated: July 1, 2013

/s/ Elaine Whitfield Sharp  
Elaine Whitfield Sharp, Esquire

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Dated: July 1, 2013

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