

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

MICHAEL GRATTERI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. _____
)	
COUNTY OF ARMSTRONG,)	
PENNSYLVANIA; SCOTT ANDREASSI,)	
Armstrong County District Attorney;)	
and JOSHUA WILFORD, Ford City)	
Police Officer,)	
)	
<i>Defendants.</i>)	

COMPLAINT

INTRODUCTION

Documenting police officers’ official duties by audio and video recording is expressive activity protected by the First Amendment to the U.S. Constitution. This conduct is essential to monitoring the interactions between police and citizens and does not violate Pennsylvania’s Wiretap Act. Nevertheless, law enforcement officers in the Commonwealth routinely misapply the Wiretap Act to punish civilians who audio-record official police activity. This case involves just such a misapplication of the Wiretap Act by a Borough of Ford City police officer and the Armstrong County District Attorney.

In September 2014, Plaintiff Michael Gratteri used his cell phone to record his interaction with a Ford City High School teacher and Defendant Ford City Police Officer Joshua Wilford over a parking dispute in front of his home. One month later – after he learned that Mr. Gratteri had posted the recording of the interaction on Facebook – Officer Wilford returned to Mr.

Gratteri 's home and arrested him for violating the Wiretap Act and for disorderly conduct. Officer Wilford placed Mr. Gratteri in handcuffs and put him in a police cruiser in front of Mr. Gratteri's young son, who ran down the street with tears streaming down his face as the police car drove away with his father inside. Officer Wilford then drove Mr. Gratteri – handcuffed – to the Armstrong County Jail, ignoring Mr. Gratteri's requests to buckle his seatbelt as Mr. Gratteri's body was knocked around the back of the police cruiser. Mr. Gratteri spent more than seven hours in jail until he was able to post bond and be released.

Defendant District Attorney Andreassi ultimately decided to withdraw the Wiretap Act and disorderly conduct charges against Mr. Gratteri – but only after incorrectly advising Officer Wilford that he could file Wiretap Act charges against Mr. Gratteri for the recording posted on Facebook. DA Andreassi's advice to Officer Wilford and his statements to the media about the case demonstrate that Armstrong County has a custom, practice, or policy of advising law enforcement officers that they can file Wiretap Act charges against individuals who record police activity in public places, resulting in the violation of Mr. Gratteri's First and Fourth Amendment rights.

Mr. Gratteri brings this action under 42 U.S.C. § 1983 against Officer Wilford, DA Andreassi, and Armstrong County seeking declaratory relief and damages.

JURISDICTION AND VENUE

1. This action to vindicate Plaintiff's rights protected by the First, Fourth, and Fourteenth Amendments to the U.S. Constitution is brought under 42 U.S.C. § 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

2. This Court has personal jurisdiction over the Defendants, who are located in the Western District of Pennsylvania.

3. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendants are subject to personal jurisdiction within the Western District of Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

PARTIES

4. Plaintiff Michael Gratteri is an adult citizen of the United States and is a resident of the Borough of Ford City in Armstrong County in the Commonwealth of Pennsylvania.

5. Defendant County of Armstrong is a political subdivision of the Commonwealth of Pennsylvania existing and operating pursuant to the laws of the Commonwealth. The County of Armstrong, and specifically the Armstrong County District Attorney's Office, has a legal responsibility to operate according to the laws of the United States and the Commonwealth of Pennsylvania, including, but not limited to, the United States Constitution.

6. Defendant Scott Andreassi is, and at all relevant times here mentioned was, the District Attorney for Armstrong County in the Commonwealth of Pennsylvania. In his capacity as District Attorney, Defendant Andreassi is a policy-maker for the County and has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Andreassi is named herein in his individual capacity. Defendant Andreassi is a "person" as that term is defined in 42 U.S.C. § 1983, and at all relevant times was acting under color of state law.

7. Defendant Joshua Wilford is and at all relevant times here mentioned was, a police officer with the Borough of Ford City Police Department. In his capacity as a police officer with

the Borough of Ford City Police Department, Defendant Wilford had a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Wilford is named herein in his individual capacity. Defendant Wilford is a “person” as defined in 42 U.S.C. § 1983, and at all relevant times was acting under the color of state law.

FACTUAL ALLEGATIONS

Plaintiff Gratteri Uses His Cell Phone to Record Defendant Wilford

8. Plaintiff Michael Gratteri resides with his wife, Kim Gratteri, and their nine-year-old son, Michael, in a home adjacent to Ford City High School.

9. There is public, on-street parking available in front of their home, but it is limited due to the number of residents who park their cars on the street as well as the nearby locations of the high school and the Ford City Public Library.

10. On or about August 2014 – the beginning of the 2014 school year – Mr. Gratteri placed notes on vehicles belonging to teachers at the high school who repeatedly parked on the public street in front of his home instead of parking in the staff parking lot at the high school.

11. Despite available parking spaces in the nearby high school, some of these teachers had been parking in front of Mr. Gratteri’s home for approximately eight hours each day for two years.

12. The notes asked the teachers not to park in front of the Gratteris’ home because Mrs. Gratteri’s health issues made it difficult for her to walk.

13. Mrs. Gratteri works at night and returns home shortly after the school day begins.

14. She was often unable to park in front of her home when she returned home from work because the teachers had taken the available spaces.

15. Mrs. Gratteri has a disability parking placard for her car, and the Gratteris had applied to have the space in front of their home designated as physically disabled parking.

16. To preserve a parking space for his wife, Mr. Gratteri had attempted to block the parking spot in front of his home with orange traffic cones, but a police officer told him that was not permissible.

17. Despite Mr. Gratteri's request, one of the teachers continued to park in front of the Gratteris' home on a daily basis.

18. On September 15, 2014, after the teacher once again parked in front of his home, Mr. Gratteri parked his motorcycle directly behind her vehicle and his car directly in front of her vehicle, essentially blocking her in.

19. Upon discovering that her vehicle was blocked in, the teacher called the Borough of Ford City police, and Defendant Officer Joshua Wilford responded to the call.

20. The teacher did not ask Mr. Gratteri to move his vehicles prior to contacting the police.

21. When Officer Wilford arrived, he asked Mr. Gratteri to move his motorcycle so that the teacher would be able to move her vehicle.

22. During the discussion between Officer Wilford, Mr. Gratteri, and the teacher, Mr. Gratteri was recording both audio and video with his cell phone, which was conspicuously clipped to the front of his shirt.

23. Mr. Gratteri had placed a sign on the windshield of his motorcycle that read: "Smile! You're on Camera."

24. Mr. Gratteri had also mounted a “Go Pro” camera in the front window of his home and had posted a sign next to the camera stating that audio and video surveillance were in progress.

25. Mr. Gratteri also posted a photo of the teacher’s car parked in front of his home and a comment on Facebook stating that he would be recording all day.

26. Mr. Gratteri recorded the events in order to have an accurate account of the interaction with the teacher and to ensure that she did not damage his motorcycle or car with her vehicle.

27. Mr. Gratteri referenced the fact that he was recording during his interaction with Officer Wilford and the teacher.

28. At all times during the recording, Officer Gratteri and the teacher were either standing in Mr. Gratteri’s front yard or on the public sidewalk in front of Mr. Gratteri’s home.

29. Approximately eight minutes into the recording, an unidentified woman is seen standing on the public sidewalk next to the teacher.

30. Two of Mr. Gratteri’s friends were also present during the interaction and witnessed it.

31. Officer Wilford told Mr. Gratteri that his vehicle was parked illegally and would be towed if he did not move it.

32. Mr. Gratteri asked which law he had violated, but Officer Wilford did not know.

33. Approximately thirteen minutes after Officer Wilford arrived, Mr. Gratteri moved his motorcycle, and the teacher was able move her vehicle.

34. Officer Wilford did not cite or arrest Mr. Gratteri on that date, threaten to cite or arrest Mr. Gratteri, or indicate at the time that he intended to cite or arrest him for the violation of any law.

Plaintiff Gratteri's Unlawful Arrest

35. Shortly after his interaction with Officer Wilford and the teacher on September 5, 2014, Mr. Gratteri posted the recording of the interaction he made with his cell phone to the social media site Facebook.

36. On September 6, 2014, Officer Wilford received a text message from a police officer in another borough with a link to the recording Mr. Gratteri made of the interaction.

37. Officer Wilford then contacted the Armstrong County District Attorney and inquired about charging Mr. Gratteri with a violation of Pennsylvania's Wiretap Act.

38. Upon information and belief, Officer Wilford spoke with Armstrong County District Attorney Scott Andreassi.

39. Officer Wilford stated that he did not know that Mr. Gratteri was recording him during their interaction on September 5, 2014.

40. Officer Wilford was informed that he could charge Mr. Gratteri with a violation of the Wiretap Act based on Officer Wilford's explanation of events.

41. On October 13, 2014, approximately one month after Officer Wilford's interaction with Mr. Gratteri, Officer Wilford returned to Mr. Gratteri's home with a Pennsylvania State Trooper to arrest Mr. Gratteri for two felony counts of Interception, Disclosure or Use of Wire, Electronic or Oral Communications [18 Pa.C.S. §5703 (A)(1)] and one count of misdemeanor Disorderly Conduct [18 Pa.C.S. §5503(A)(4)].

42. Mr. Gratteri was handcuffed and placed in a police vehicle while his son, Michael, watched from across the street.

43. Michael was emotionally distraught and chased the police car down the street crying while seeing his father being driven away.

44. Mr. Gratteri was taken to the Magisterial District Court, where the district justice set bail on Mr. Gratteri's case in the amount of \$10,000.

45. Mr. Gratteri was then placed, handcuffed, in the police vehicle for a second time, but Officer Wilford failed to buckle Mr. Gratteri's seatbelt.

46. Officer Wilford drove erratically to the Armstrong County Jail and did not stop to buckle Mr. Gratteri's seatbelt even after Mr. Gratteri voiced several complaints about not being belted in for safety.

47. Upon arrival at the Armstrong County Jail, Mr. Gratteri was taken to the holding area around 4:00 p.m. He was strip-searched, fingerprinted, and had photos taken before being placed in a holding cell.

48. Mr. Gratteri spent approximately seven and a half hours in the Armstrong County Jail on said charges – until about 11:30 p.m. – before his bond was posted and processed and he was released.

49. Mr. Gratteri was forced to post a \$750.00 bond in order to be released.

50. Mr. Gratteri also had to hire and pay an attorney to represent him on the criminal charges.

51. Pennsylvania's Wiretap Act, 18 Pa. C.S. §5703, states in pertinent part:

[A] person is guilty of a felony of the third degree if he:

(1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept wire, electronic or oral communication.

52. As a third-class felony, violation of the Pennsylvania Wiretap Act carries a term of imprisonment of up to seven (7) years.

53. The Pennsylvania Supreme Court has explicitly ruled that a communication or conversation amounts to a protected oral communication under the Pennsylvania Wiretap Act *only* where the speakers possess a reasonable expectation of privacy in that conversation. *Agnew v. Dupler*, 717 A.2d 519, 523-24 (Pa. 1988); *Commonwealth v. Henlen*, 564 A.2d 905, 907 (Pa. 1989). A police officer does not have a reasonable expectation of privacy in the performance of his official duties. *Kelly v. Borough of Carlisle*, 622 F.3d 248, 257 (3d. Cir. 2010) (discussing *Agnew* and *Henlen*).

54. Neither Officer Wilford nor the teacher had a reasonable expectation of privacy in their communications with Mr. Gratteri.

55. Accordingly, Officer Wilford did not have probable cause to arrest Mr. Gratteri for violation of the Wiretap Act.

56. At no time did Mr. Gratteri act in a fashion that provided probable cause to arrest him for disorderly conduct under 18 Pa. Cons. Stat. § 5503 or for any other offense.

57. Officer Wilford arrested Mr. Gratteri and initiated criminal charges against him without probable cause and in retaliation for recording Officer Wilford and posting the recording on Facebook.

58. On October 31, 2014, the Armstrong County District Attorney's Office withdrew the charges against Mr. Gratteri.

Armstrong County's Policy, Practice, or Custom

59. The Armstrong County District Attorney's Office has a custom, pattern, practice, or policy of advising law enforcement officers that persons engaging in constitutionally protected expressive conduct – by recording communications with police officers in public places – can be subject to arrest and prosecution under Pennsylvania's Wiretap Act.

60. On multiple occasions, Armstrong County District Attorney Scott Andreassi made comments to the media supporting the Wiretap Act charges filed against Mr. Gratteri, including stating that: "You don't necessarily cross a line video recording, but you cross a line when you actually record their voice without their permission."

61. Mr. Gratteri's retaliatory arrest is a direct result of the custom, pattern, practice, or policy of Armstrong County, as implemented by DA Andreassi, to advise law enforcement officials that persons engaging in constitutionally protected expressive conduct – by recording communications with police officers in public places – can be subject to arrest and prosecution under Pennsylvania's Wiretap Act.

62. As a direct and proximate result of Defendants' actions, Mr. Gratteri suffered the following injuries and damages:

- a. Violation of his rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from criminal prosecution or to be retaliated against for engaging in constitutionally protected expressive activity;
- b. Violation of his rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from malicious prosecution, false arrest, and false imprisonment;

- c. Loss of his physical liberty;
- d. Monetary losses;
- e. Emotional trauma, humiliation, and distress; and
- f. Damage to reputation.

CAUSES OF ACTION

Count I – First Amendment Retaliation (Against All Defendants)

63. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

64. Observing and recording public police activities, without interfering with those duties, is a legitimate means of gathering information for public dissemination and is expressive conduct protected by the First Amendment to the U.S. Constitution.

65. The arrest and prosecution of Plaintiff in the absence of probable cause that he had committed a crime constituted unlawful retaliation against Plaintiff by Officer Wilford for engaging in activity protected by the First Amendment to the U.S. Constitution.

66. Officer Wilford's arrest and prosecution of Plaintiff was motivated by Plaintiff's exercise of his First Amendment rights, including both recording the interaction with Officer Wilford and posting the recording on his Facebook page.

67. Defendant Andreassi's legal advice to Officer Wilford that Plaintiff had violated the Wiretap Act by recording his communications with Officer Wilford in a public place caused Plaintiff to be arrested in violation of his First Amendment rights,

68. Defendant County of Armstrong is responsible for the violation of Plaintiff's constitutional rights because it has a custom, practice, or policy of advising law enforcement

officials that persons engaging in constitutionally protected expressive conduct can be subject to arrest and prosecution under Pennsylvania's Wiretap Act.

**Count II – False Arrest and False Imprisonment
(Against All Defendants)**

69. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

70. Plaintiff has a clearly established right under the Fourth and Fourteenth Amendments to the U.S. Constitution to be free from unreasonable seizure of his person, a right that was violated when Officer Wilford arrested Plaintiff without any probable cause or reasonable basis for believing that Plaintiff had committed a crime.

71. Defendant Andreassi's legal advice to Officer Wilford that Plaintiff had violated the Wiretap Law by recording his communications with Officer Wilford in a public place caused Plaintiff to be arrested in violation of his Fourth Amendment rights.

72. Defendant County of Armstrong is responsible for the violation of Plaintiff's constitutional rights because it has a custom, practice, or policy of advising law enforcement officials that persons engaging in constitutionally protected expressive conduct can be subject to arrest and prosecution under Pennsylvania's Wiretap Act.

**Count III – Malicious Prosecution
(Against Defendants Wilford and Armstrong County)**

73. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

74. Plaintiff has a clearly established right under the Fourth and Fourteenth Amendments to the U.S. Constitution to be free from unreasonable seizure of his person, a right Officer

Wilford violated by handcuffing, arresting, and criminally charging Plaintiff without probable cause or reasonable belief that Plaintiff was committing any crime.

75. The criminal charges against Plaintiff were terminated in his favor.

76. Officer Wilford pursued this prosecution of the Plaintiff with malice in retaliation for Plaintiff engaging in constitutionally protected activity, and without any probable cause or reasonable basis for believing that Plaintiff violated Pennsylvania's Wiretap Act or committed any other crime in the Commonwealth of Pennsylvania.

77. Defendant Armstrong County is responsible for these constitutional violations because of a custom, practice, or policy of advising law enforcement officials to detain and arrest persons engaging in this constitutionally protected conduct even though no probable cause existed under the Pennsylvania Wiretap Act or any other state statute.

PRAYER FOR RELIEF

Wherefore, in light of the foregoing, Plaintiff respectfully requests the following:

- a. Enter a declaratory judgment that the Defendants violated Plaintiff's First Amendment right to record police activity;
- b. Enter a declaratory judgment that Defendants Wilford and Armstrong County violated Plaintiff's Fourth Amendment right to be free from unreasonable seizure and malicious prosecution;
- c. Enter a declaratory judgment that Defendant Andreassi violated Plaintiff's Fourth Amendment right to be free from unreasonable seizure;
- d. Award compensatory damages against all Defendants, joint and severally, in an amount to be determined at trial;
- e. Award punitive damages against Defendant Wilford;

- f. Enter an award for costs, expenses, and counsel fees pursuant to 42 U.S.C. § 1988;
and
- g. Enter such other relief as this Honorable Court may deem just and deserving.

Plaintiff hereby demands a jury trial.

May 3, 2016

Respectfully submitted,

/s/ Sara J. Rose, Esquire

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/s/ Witold J. Walczak, Esquire

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