

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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HOLLY GRAHAM,)	
)	
Plaintiff,)	
)	
v.)	
)	
DAVID AYOTTE and JOHN MELANSON, in)	Civil Action No. 14-11930
their individual capacities,)	
)	
Defendants.)	
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COMPLAINT

INTRODUCTION

1. This is a civil rights action against two Bellingham police officers for illegally entering Plaintiff Holly Graham’s home, falsely arresting her, and using excessive force during the arrest. On October 6, 2012, Defendants David Ayotte and John Melanson forced open the door to Ms. Graham’s apartment. Defendants admitted in their police report that they came to the apartment looking for a woman who had an outstanding arrest warrant. The woman they were looking for had never lived at Ms. Graham’s address. Apparently aware that they had no lawful basis to have entered Ms. Graham’s home, Defendants falsely told Ms. Graham they were there because of a complaint about loud music. Ms. Graham protested the police officers’ actions in forcibly entering her home and their false statements about why they were there. Defendant Ayotte searched Ms. Graham’s apartment while Defendant Melanson forced Ms. Graham to remain in her kitchen. When Ms. Graham began to openly video record the encounter and protest the officers’ actions, Defendants arrested her. She was charged with a felony, assault and battery with a dangerous weapon, and three misdemeanors. The criminal charges were dismissed. Ms. Graham is seeking compensation for Defendants’ violations of her civil 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 Holly Graham is a resident of Norfolk County, Massachusetts.

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

5. Defendant John Melanson was at all times relevant to this complaint a duly appointed police officer of the Bellingham Police Department. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and the Town of Bellingham. He is sued in his individual capacity.

FACTS

6. On Saturday, October 6, 2012, Holly Graham lived in an apartment on the second floor of a two-family apartment building in Bellingham, Massachusetts.

7. That evening, she was in her apartment cooking dinner while listening to music when she heard a loud banging on the door to her apartment.

8. Ms. Graham was alone in her apartment. No one else was in the apartment building. The tenant in the downstairs apartment was not at home.

9. Fearing that an abusive ex-boyfriend was banging on her door, Ms. Graham went to a different room.

10. Defendants David Ayotte and John Melanson, both Bellingham police officers, were at the door. They were looking for a woman named Ashley Burns. They had an arrest warrant for Ms. Burns.

11. Ashley Burns is a friend of Ms. Graham's but has never lived in Ms. Graham's apartment.

12. Defendants did not have a search warrant.

13. Defendants had no reason to believe that Ms. Burns lived in Ms. Graham's apartment, nor did they have any reason to believe Ms. Burns was there that Saturday evening, October 6, 2012.

14. There were no exigent circumstances to justify Defendants entering Ms. Graham's apartment to search for Ms. Burns.

15. When Ms. Graham did not open the door, Defendants Ayotte and Melanson forced open the door to the apartment. They used so much force that they broke the lock on the door and caused the door knob to strike the opposite wall, damaging the plaster.

16. In a police report written on behalf of both officers, Defendant Ayotte says they arrived at the building to "locate and arrest Ashley Burns." The police report goes on to say that Defendants entered the apartment because they feared Ms. Burns would flee. According to his report, once they gained access to the apartment, Defendant Ayotte began searching for Ashley Burns.

17. After Ms. Graham determined the people who broke into her apartment were police officers, she came out.

18. Ms. Graham asked Defendant Ayotte if he had a warrant. In response, Defendant Ayotte falsely claimed that the police officers were there due to a noise complaint.

19. While Defendant Ayotte searched the apartment for Ms. Burns, Defendant Melanson informed Ms. Graham that she had to remain in her kitchen while Defendant Ayotte searched her apartment.

20. When Defendant Ayotte returned to the kitchen, Ms. Graham told him that he did not have a right to be in her apartment. Ayotte responded by telling her she should “go back to Boston.”

21. Ms. Graham told Defendant Ayotte that she objected to the police officers forcing their way into her apartment without a search warrant and that she objected to his comment. She began openly video recording him with her cell phone.

22. As Defendant Ayotte began to leave the apartment, Ms. Graham walked behind him and spoke to him. She told him that his claim that the police officers came to the apartment because of a concern about loud music was false.

23. Defendant Ayotte turned and looked at Ms. Graham while she was recording him.

24. Defendant Ayotte became upset at Ms. Graham’s comments. He stopped, turned around, and grabbed her. He knocked the cell phone from her hand. The cell phone fell on the stairway landing with the camera pointed up. It continued recording the encounter. The video can be viewed here: <http://youtu.be/6Z-qnPEKrkU>.

25. Defendant Ayotte brought Ms. Graham to the ground on the stairway. Defendant Melanson, who had been in front of Defendant Ayotte, came back and assisted Defendant Ayotte in taking Ms. Graham into custody.

26. Defendant Ayotte brought one of Ms. Graham’s hands behind her back for cuffing.

Defendant Melanson had control of Ms. Graham's other hand. While he had control over Ms. Graham, Defendant Ayotte kneed Ms. Graham twice in the head. Then he swore at her.

27. Ms. Graham told Defendant Ayotte that he was hurting her. He responded by saying, "Who the [f---] do you think you are?" He then told Ms. Graham, "You're going to jail now, [a--hole]."

28. Defendant Melanson had the opportunity to protect Ms. Graham but he did not do so. He did not even speak to Defendant Ayotte to prevent further abuse of Ms. Graham.

29. Ms. Graham was arrested and charged criminally with assault and battery with a dangerous weapon, a felony, and the misdemeanors of resisting arrest, disorderly conduct, and assault and battery on a police officer.

30. Ms. Graham's mother came to the police station and obtained her release.

31. On August 16, 2013, the criminal charges against Ms. Graham as a result of this incident were dismissed.

32. Ms. Graham suffered emotional distress and physical harm as a result of this incident. She was upset at the police officers' unlawful entry into her home, then angered as she was held against her will in her kitchen by Defendant Melanson while Defendant Ayotte searched her apartment. She was shocked and fearful when Defendant Ayotte physically attacked and arrested her. After this incident, Ms. Graham was so fearful of further misconduct by the Defendants that she moved from Bellingham.

33. Ms. Graham suffered physical injuries as a result of the actions of the defendants. She had pain in her wrist and shoulder. This was diagnosed as a sprained right wrist and pain and swelling in her left shoulder.

CLAIMS

COUNT I 42 U.S.C. § 1983 Claim

34. The above paragraphs are incorporated by reference.

35. Defendants Ayotte and Melanson, acting under color of law, violated Plaintiff's clearly established constitutional rights under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment by entering her apartment without a search warrant, probable cause, reasonable suspicion, or an exception to the warrant requirement.

36. Defendants Ayotte and Melanson, acting under color of law, violated Plaintiff's clearly established constitutional rights under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment by using unreasonable force on her.

37. Defendants Ayotte and Melanson, acting under color of law, violated Plaintiff's clearly established constitutional rights under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment by arresting her without probable cause.

38. Defendants Ayotte and Melanson, acting under color of law, violated Plaintiff's clearly established constitutional rights under the First Amendment to the United States Constitution as applied under the Fourteenth Amendment by arresting Plaintiff for recording Defendant Ayotte and protesting Defendants' actions.

39. Defendant Ayotte acted with reckless disregard for Plaintiff's constitutional rights.

40. 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

41. The above paragraphs are incorporated by reference.

42. Defendants tried to verbally threaten and intimidate Ms. Graham to stop her from

exercising her First Amendment right to record Defendant Ayotte and protest Defendants' actions. When Defendants' verbal threats and intimidation did not work, they arrested and assaulted Ms. Graham to serve as a lesson to her and others not to videotape Bellingham police officers because they would risk arrest and/or physical harm.

43. Acting jointly and in concert, Defendants violated Ms. Graham's civil rights under the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11I, by threats, intimidation, and coercion.

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

WHEREFORE, Plaintiff requests that this Court:

1. Award compensatory damages;
2. Award punitive damages against Defendant Ayotte;
3. Award the costs 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 trial by jury is hereby demanded.

RESPECTFULLY SUBMITTED,
For the Plaintiff,
By her attorneys,

/s/Howard Friedman
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Dated: April 24, 2014

CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above document to be served upon the attorney of record for all parties via CM/ECF.

Date: April 24, 2014 /s/ Howard Friedman
Howard Friedman