

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

BOYD GREEN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.:
)	
SCOTT CHITWOOD, in his individual)	
and official capacity as Sheriff of)	
Whitfield County,)	
)	
DEPUTY WES GIBSON,)	
in his individual capacity,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff Boyd Green (hereinafter “Green”) hereby brings this Complaint seeking damages, declaratory and injunctive relief for the violations of his First, Fourth, and Fourteenth Amendment rights under the United States Constitution and corollary rights under the Georgia Constitution, and for false imprisonment and malicious prosecution by the Whitfield County Sheriff’s Office after he was prosecuted and jailed under O.C.G.A. § 16-11-39.2(b)(1) for using the phrases “sorry damn asshole” and “damn bullshit” in the course of registering a verbal complaint about a police officer through the Whitfield County 911 operator.

JURISDICTION AND VENUE

1. This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367 (pendant jurisdiction). Venue is proper in this Court.

PARTIES

2. Plaintiff Boyd Green is a resident of Whitfield County, Georgia, who was unlawfully arrested for making a call complaining about police misconduct.

3. Defendant Sheriff Scott Chitwood is the Sheriff of Whitfield County, Georgia. He is sued in his official capacity for declaratory and injunctive relief, and in his individual capacity for damages for his supervisory and policymaking role. He was acting under color of state law during the relevant acts and omissions alleged herein.

4. Defendant Deputy Wes Gibson was at all times herein mentioned a Sheriff's Deputy for the Whitfield County Sheriff's Office. He was acting under color of state law during the relevant acts and omissions alleged herein. He is being sued in his individual capacity for damages.

FACTUAL ALLEGATIONS

5. Boyd Green is a 58-year-old, disabled veteran of the United States Marine Corps. In June 2013, Green lived in Rocky Face, Georgia, with his ailing 83-year-old, disabled mother, Ada Green. Ada Green had a history of congestive heart failure, and she used a portable oxygen tank for her chronic obstructive pulmonary disease. Boyd Green was his mother's sole caretaker.

6. On June 20, 2013, a City of Dalton police officer arrested Green for driving under the influence. Green told the arresting officer that his mother was ill and alone. He implored the officer to have someone check on her. No one checked on Ada Green.

7. Once incarcerated, Green again notified officials about his mother's condition. He asked jail staff to send someone to ensure that she was safe. No one checked on Ada Green despite Green's pleas. Green was still in custody, five days later, when Ada Green was found in her home by a friend, deceased. Devastated, Green was subsequently released from jail and placed on probation for the DUI conviction.

8. Nearly a year later, on June 2, 2014, Green dialed 911 and was connected to a 911 dispatcher. Green told the 911 dispatcher that he wanted to see the Dalton police officer who arrested him for DUI in 2013. The 911 operator

asked Green “What’s the problem?” Green responded: “The problem is he let my momma lay up here and die. That’s the problem.”

9. During the 82-second 911 phone call, Green did not raise his voice, threaten the 911 dispatcher, or insult her in any way. He used expletives two times, in passing. First, he said, “[t]he sorry damn asshole knows me,” referring to the Dalton police officer who had arrested him in 2013. Later in the conversation he used the words “damn bullshit.”

10. The dispatcher did not advise Green that his conversation was in any way inappropriate for the 911 line, and the expletives were not directed at the dispatcher. At the end of the conversation, Green complied with the dispatcher’s direction to provide his name, address, and telephone number. The dispatcher told Green “All right. I’ll have someone give you a call.”

11. Shortly after Green’s 911 call, a Whitfield County Sheriff’s deputy contacted the 911 dispatcher and asked her: “[W]as [Green] using a bunch of profanity and stuff like that?” The dispatcher replied: “He didn’t use a whole lot, no.” She continued: “He did say a couple of cuss words, but it wasn’t like complete cusswords.”

12. About thirty minutes later, Defendant Gibson and assisting officers B.S. Chastain, J.A. Davis, and C.R. Meadors, arrived at Green's home, arrested him, and took him to the Whitfield County Jail. The reason for Green's arrest was "Unlawful Conduct During 911 Call Vulgar Language 16-11-39.2 (B)(1)." Incident/Investigation Report, Case No. 201403276, June 2, 2014. (A true and correct copy of O.C.G.A. § 16-11-39.2 is attached hereto and incorporated herein as Exhibit A.)

13. Green was jailed for about five hours until he posted a \$500 bond.

14. On June 2, 2014, Green's probation officer in Case No. 13-CR-1652 (DUI conviction) sought a warrant to arrest Green again on the ground that he had violated probation by committing a new crime. On June 11, 2014, Green was re-arrested and jailed for this alleged probation violation.

15. On June 13, 2014, the Superior Court of Whitfield County revoked Green's probation and sentenced him to four days in jail due to Green's alleged "unlawful conduct during a 911 call."

16. The District Attorney's office subsequently dismissed the charge against Green for "unlawful conduct during a 911 call" in August 2014.

17. On information and belief, Defendants were trained by and through final policymaker Defendant Chitwood that O.C.G.A. § 16-11-39.2(b)(1) and

similar statutes may be used to arrest citizens for any cursing at an officer. Defendant Chitwood was aware that this training had a high likelihood of causing the arrest of people engaged in protected speech, as Defendant Chitwood knew that an arrest may not constitutionally be predicated on passing use of expletives by a citizen directed at an officer.

18. Facially, and as applied to Mr. Green, O.C.G.A. § 16-11-39.2(b)(1) is unconstitutional. It is the policy of the Whitfield County Sheriff's Office, promulgated and enforced by Defendant Chitwood through his deputies, to arrest people under the authority of O.C.G.A. § 16-11-39.2(b)(1) for using expletives during 911 calls or in the course of criticizing public officials.

19. Mr. Green, having previously been arrested for using an expletive on a 911 call, fears that any future call to 911 might lead to his arrest or that any cursing directed at an officer may lead to arrest. This is particularly true because in Whitfield County, law enforcement officials direct citizens to use the 911 line, not only for emergencies, but also for non-emergent inquiries to the police. Mr. Green, like any citizen, wishes to be able to contact the police when appropriate in the future, but he fears future arrest if he does so. Defendants continue to enforce O.C.G.A. § 16-11-39.2(b)(1). In addition to damages, this lawsuit seeks

declaratory and injunctive relief against enforcement of O.C.G.A. § 16-11-39.2(b)(1), on its face and/or as applied to Mr. Green.

20. As a result of Defendants' actions, Mr. Green was subjected to arrest, search of his person and property, detention, incarceration, and criminal prosecution for simply complaining about a police officer's inaction in checking on his mother's safety. As a direct result of Defendants' actions, Green has suffered emotional distress, humiliation, loss of bond money, and reputational injury for which he seeks damages.

21. On January 2, 2015, Green submitted a demand letter, but claims have not been resolved.

CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
PURSUANT TO 42 U.S.C. § 1983**

(Statute Is Unconstitutional Facially and As-Applied)

22. The allegations herein are incorporated into the First Claim for Relief as though fully set forth herein.

23. O.C.G.A. § 16-11-39.2(b)(1) states:

A person commits the offense of unlawful conduct during a 9-1-1 telephone call if he or she . . . [w]ithout provocation, uses obscene, vulgar, or profane language with the intent to intimidate or harass a 9-1-1 communications officer.

Pursuant to O.C.G.A. § 16-11-39.2 (a)(3), “[h]arass” means to:

knowingly and willingly engage in any conduct directed toward a communications officer that is likely to impede or interfere with such communications officer’s duties, that threatens such communication officer or any member of his or her family, or that places any member of the public served or to be served by 9-1-1 service in danger of injury or delayed assistance.

24. O.C.G.A. § 16-11-39.2(b)(1) violates the First and Fourteenth Amendments because it is impermissibly overbroad on its face. The statute prohibits a substantial amount of constitutionally protected speech including speech: (a) that falls short of fighting words, (b) that is not likely to incite imminent, lawless conduct, (c) that is profane or vulgar but constitutionally protected, (d) that is critical of officer conduct but in no way likely to interfere with 911 operations.

25. O.C.G.A. § 16-11-39.2(b)(1)’s terms fail to give fair warning to a person about when his speech passes from protected to criminal, nor do the terms give adequate guidance to law enforcement of the line between protected and criminal speech. Indeed, here, Green’s speech was a simple, short verbal

complaint about police conduct that happened to include two passing expletives, and was not likely to result in, and did not result in, any interference with 911 operations. As applied, and illustrative of the overbroad and vague scope of O.C.G.A. § 16-11-39.2(b)(1), Boyd was arrested for two passing expletives in the course of a call to 911 where he sought to register a complaint against an officer.

26. Boyd's arrest under O.C.G.A. § 16-11-39.2(b)(1) was predicated on the content or viewpoint of his speech, and any restriction on such speech was not supported by a compelling interest and narrowly tailored to that interest.

27. Defendants lacked a compelling interest for enforcement of O.C.G.A. § 16-11-39.2(b)(1) where two passing expletives were made in Green's 82-second call to 911 complaining about an officer. The 911 operator never indicated that Green was speaking too loudly, too long, or that the content of his speech was interfering with her performance of her 911 functions, was intimidating, was harassing or that anyone was in danger of delayed assistance or injury. In fact, no delay in assistance to others or injury to others occurred or was likely to occur as a result of Green's call.

28. The arrest and prosecution of Green was not a narrowly tailored response to the content or viewpoint of his speech. The overwhelming majority of minor code violations are dealt with by citation and not by arrest. The fact that

Defendants used the most extreme measure – an unlawful detention – in response to Green’s passing use of two curse words shows the speech-chilling and retaliatory motivation of the Defendants in this action and the lack of narrow tailoring to any claimed governmental interest.

29. The United States Supreme Court has held that under the First and Fourteenth Amendments, the government may not criminalize the “simple” communication of a “single... expletive.” *Cohen v. California*, 403 U.S. 15, 26 (1971).

30. As the detention, search, arrest, incarceration and failed prosecution were based upon a statute that on its face and as applied violated Green’s clearly established rights under the First and Fourteenth Amendments, and were wholly lacking in even arguable probable cause, both Defendants violated the First and Fourteenth Amendments and are liable for nominal, actual and presumed damages.

COUNT TWO

**VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENT
PURSUANT TO 42 U.S.C. § 1983**

**(Seizure, Arrest, Detention and Prosecution Without
Arguable Probable Cause)**

31. The allegations herein are incorporated into the Second Claim for Relief as though fully set forth herein.

32. Defendant Whitfield County Sheriff's Deputy Wes Gibson had no arguable probable cause to believe that Green had committed a crime under the facts alleged herein. Green's use of the words "asshole" and "bullshit" did not violate O.C.G.A. § 16-11-39.2(b)(1) or any other law. Nor could a reasonable officer have inferred that Green had any intent to "intimidate" or "harass" the 911 dispatcher. Green said nothing that could have been construed as "intimidating" the 911 dispatcher. He did not raise his voice, call the dispatcher any names, or intimidate her in any way.

33. Neither did Green "harass" the 911 dispatcher. Green's call to 911 lasted 82 seconds and did not impede with the 911 dispatcher's duties. Green did not raise his voice or threaten the 911 dispatcher. And his call did not place any member of the public in danger of injury or delayed assistance. During the 911

call, Green simply expressed displeasure with a Dalton police officer. The 911 officer did not ever indicate to Mr. Green that his call was problematic in any way. No reasonable officer could have believed that Green's conduct violated any law, and the arrest was therefore unlawful.

34. Defendants knew or should have known that police officers cannot arrest a person for uttering two passing expletives while making a verbal complaint about a police officer. As the detention, search, arrest, incarceration and failed prosecution were wholly lacking in even arguable probable cause, Defendant Gibson violated the Fourth and Fourteenth Amendments and is liable for nominal, actual and presumed damages.

COUNT THREE

FALSE IMPRISONMENT

35. The allegations herein are incorporated into the Third Claim for Relief as though fully set forth herein.

36. "False imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty." O.C.G.A. § 51-7-20. Defendant Gibson detained Green when he deprived him of liberty by arresting him, securing him in the back of a police car against his will, and incarcerating him.

37. The detention of Green was unlawful because it occurred pursuant to a statute that, facially and as-applied to him, is unconstitutional. This statute is enforced through a policy and practice of Defendant Chitwood that was a moving force for the constitutional violation. Further, Defendant Gibson had no arguable probable cause to believe that Green had committed a crime.

38. Defendant Gibson therefore falsely imprisoned Green and is liable for nominal, actual and presumed damages.

COUNT FOUR

MALICIOUS PROSECUTION

39. The allegations herein are incorporated into the Fourth Claim for Relief as though fully set forth herein.

40. Defendants, by and through their agents, were a moving force and cause of the failed prosecution of Green for violating O.C.G.A. § 16-11-39.2(b)(1). Defendants' actions caused there to be "an inquiry before a committing court and/or a magistrate court" regarding Green's 911 call. O.C.G.A. § 51-7-42.

41. Said prosecution was done with malice and without any probable cause in violation of O.C.G.A. § 51-7-40, et seq. No reasonable person could have been satisfied that Defendants had any ground for proceeding but their desire to injure Green. Green was damaged as a result.

42. Ultimately, the prosecution against Green was terminated in his favor and charges were dismissed in August 2014. O.C.G.A. § 51-7-41.

43. Defendants, by and through their agents, maliciously prosecuted Green in violation of O.C.G.A. § 51-7-40, et seq., and they are liable for nominal, actual and presumed damages.

PRAYERS FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiff prays that this Court:

- (1) Enter an award of economic, compensatory, general, and special damages in an amount to be determined by the enlightened conscience of the jury against individual Defendants;
- (2) Enter a declaratory judgment or preliminary and/or permanent injunction against Defendants, their officers, agents, successors, employees, attorneys, and those acting in concert with them, from any future, non-pending arrest or prosecution under O.C.G.A. § 16-11-39.2(b)(1), or in the alternative as applied to constitutionally protected passing expletives in the course of a 911 call;
- (3) Grant to Green a jury trial on all issues so triable;
- (4) Award to Green the costs of the action and reasonable attorneys' fees, as provided by 42 U.S.C. § 1988 and federal and state law; and

(5) Grant any and all additional relief as this Court deems just and proper.

DATED: This 17th day of March, 2015.

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