

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Michael J. Elli,	)	
individually and on behalf of those	)	
similarly situated,	)	
Plaintiff,	)	No. 4:13-cv- 711
v.	)	
City of Ellisville, Missouri;	)	JURY TRIAL DEMANDED
John Doe, individually and in his official	)	
capacity as a police officer for City of	)	
Ellisville, Missouri;	)	
Defendants.	)	

**VERIFIED CLASS-ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND INDIVIDUAL COMPLAINT FOR DAMAGES**

Introduction

1. This is a civil rights action filed by Michael J. Elli challenging the policy and custom of the City of Ellisville, Missouri, of having police officers pull over, detain, and cite individuals who are perceived as having communicated to oncoming traffic that a speed trap is ahead by flashing their headlamps and then prosecuting and imposing fines upon those individuals.

2. The policy or custom includes citing and prosecuting individuals for violation of an ordinance that no reasonable officer would believe the individuals had violated, without reasonable suspicion or probable cause to believe they had violated any law, and in retaliation for the individuals having engaged in expressive conduct protected by the First Amendment.

3. In this action, brought pursuant to 42 U.S.C. § 1983, Plaintiff seeks damages on his individual claims. In addition, he seeks declaratory and prospective relief on behalf of a class of similarly situated individuals.

Jurisdiction and Venue

4. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a), and pursuant to 42 U.S.C. § 1983.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) because all defendants reside in Saint Louis County and a substantial part of the events or omissions giving rise to the claims occurred in Saint Louis County.

6. Venue is proper in the Eastern Division pursuant to E.D.Mo. L.R. 2.07 (A)(1) and (B)(2).

Parties

7. Plaintiff, Michael J. Elli, is a resident of the City of Ellisville and the State of Missouri.

8. Defendant City of Ellisville, Missouri, is a municipal corporation and political subdivision of the State of Missouri.

9. Defendant John Doe is a police officer of City of Ellisville, Missouri, whose name is not known to Plaintiff. On or about November 17, 2012, Doe pulled Plaintiff's vehicle over and issued to Plaintiff Ellisville Police Department Uniform Citation No. 09-00046459 for allegedly "[f]lashing lights on certain vehicles prohibited. warning of RADAR ahead." Doe is sued in his individual and official capacities.

10. All defendants have acted, and continue to act, under color of state law at all times relevant to this Complaint.

Facts

11. Plaintiff is a resident of the City of Ellisville, Missouri.

12. Prior to the incident at issue in this case, Plaintiff had not been alleged to have committed any moving violation or other infraction for more than thirty-five years.

13. At or about 2:50 in the afternoon of November 17, 2012, Plaintiff drove his vehicle northbound on Kiefer Creek Road within the City of Ellisville, Missouri.

14. Plaintiff observed a speed-trap.

15. Plaintiff communicated by flashing his headlamps to drivers approaching in the opposite direction –none of whom Plaintiff suspected of violating any law– that they should proceed with caution.

16. The flashing of headlamps is commonly understood as conveying the message to slow down and proceed with caution.

17. The Missouri Department of Revenue, which is responsible for the licensing of drivers within the State of Missouri, recommends drivers flash their headlamps to warn other drivers of emergencies.

18. Plaintiff did not violate any law.

19. Doe did not have reasonable suspicion to believe that Plaintiff had violated any law.

20. Doe, who was traveling in traffic in a marked police vehicle, activated his flashing lights to signal to Plaintiff that he must pull over to the side of the road.

21. Plaintiff complied.

22. Plaintiff was not free to leave the stop until after he was issued a citation.

23. Plaintiff was required to remain for approximately 15 minutes.

24. Doe issued to Plaintiff Ellisville Police Department Uniform Citation No. 09-00046459 for allegedly “[f]lashing lights on certain vehicles prohibited. warning of RADAR ahead.”

25. The citation notified Plaintiff that he must appear in court on December 20, 2012.

26. The citation notified Plaintiff: “YOUR FAILURE TO APPEAR IN COURT AT THE TIME SPECIFIED ON THIS CITATION AS DIRECTED MAY RESULT IN THE SUSPENSION OF YOUR DRIVER’S LICENSE AND DRIVING PRIVILEGE AND MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.”

27. The offense with which Plaintiff was charged required a court appearance.

28. A reasonable officer would have known that Plaintiff had violated no law.

29. Plaintiff was charged with violating City of Ellisville Code of Ordinances § 375.100.

30. Doe initiated the prosecution of Plaintiff.

31. Section 375.100, entitled “Limitations on Lamps Other than Headlamps – Flashing Signals Prohibited Except on Specified Vehicles,” provides:

Any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spotlamps, front direction signals or auxiliary lamps which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle. Alternately flashing warning signals may be used on school buses when used for school purposes and on motor vehicles when used to transport United States mail from post offices to boxes of addressees thereof and on emergency vehicles as defined in Section 300.010 of this Title and on buses owned or operated by churches, mosques, synagogues, temples or other houses of worship and on commercial passenger transport vehicles that are stopped to load or unload passengers, but are prohibited on other motor vehicles, motorcycles and motor-drawn vehicles except as a means for indicating a right or left turn.

32. No reasonable officer would believe that Plaintiff had violated § 375.100.

33. Prior to his court appearance, Plaintiff corresponded with City of Ellisville Chief of Police Tom Felgate about the citation.

34. In the course of the correspondence, Felgate advised Plaintiff that a violation of § 375.100 is a moving violation, unlike an equipment violation, and if Plaintiff were found guilty, points would be assessed.

35. When Plaintiff appeared in municipal court, as directed on the citation, he was advised by the municipal judge that the standard punishment imposed in the City of Ellisville for using headlamps to communicate the presence of a speed-trap is a \$1,000.00 fine.

36. When Plaintiff asserted to the municipal judge that he wanted to plead not guilty because he did not believe flashing headlamps violated § 375.100, the judge became agitated and asked Plaintiff if he had ever heard of “obstruction of justice.”

37. After Plaintiff entered a plea of not guilty, he was ordered to return to municipal court on February 21, 2013.

38. On or about February 12, 2013, the prosecution of Plaintiff was terminated in his favor when the charge was dismissed.

39. Defendants caused Plaintiff to be pulled over, detained, cited, and prosecuted in retaliation for Plaintiff’s communication of the message that approaching drivers should proceed with caution.

40. Defendants caused Plaintiff to be pulled over, detained, cited, and prosecuted without reasonable suspicion or probable cause to believe that he had committed any crime.

41. Upon information and belief, it is a widespread practice of the City of Ellisville to pull over, detain, and cite individuals who are perceived as having communicated to oncoming

traffic that a speed-trap is ahead by flashing their headlamps, and then prosecute and impose fines upon those individuals.

42. In addition, the widespread practice includes citing and prosecuting individuals for violation of an ordinance that no reasonable officer would believe the individuals had violated, without reasonable suspicion or probable cause to believe they had violated any law, and in retaliation for the individuals having engaged in conduct protected by the First Amendment.

43. City officials, including Felgate, are aware of the widespread practice of citing and prosecuting individuals for violation of an ordinance that no reasonable officer would believe the individuals had violated, without reasonable suspicion or probable cause to believe they had violated any law, and in retaliation for the individuals having engaged in conduct protected by the First Amendment.

44. As the direct and proximate result of the Defendants' actions and inactions, Plaintiff suffered the following injuries and damages:

- a) Violation of his rights under the First Amendment applicable through the Fourteenth Amendment, to be free from detention, prosecution, or both for constitutionally protected acts of expression;
- b) Unreasonable seizure of his person without a warrant, reasonable suspicion, or probable cause in violation of the Fourth Amendment, applicable through the Fourteenth Amendment;
- c) Unlawful deprivation of his liberty without due process in violation of the Fifth Amendment, applicable through the Fourteenth Amendment;
- d) Deprivation of his liberty for 15 minutes;

- e) Deprivation of his liberty during the time he was required to appear in municipal court; and
- f) Objectively reasonable chill in communicating by flashing headlamps for fear of detention, citation, prosecution, and punishment.

45. Absent injunctive relief, Plaintiff reasonably fears that he will be harmed if he communicates by flashing his headlamps and, as a result, has refrained from doing so and will refrain from doing so in the future.

COUNT I

Violation of Civil Rights - 42 U.S.C. §1983

*Claim for Declaratory and Injunctive Relief on Behalf of Plaintiff and Putative Class
Against Defendant City of Ellisville, Missouri, and Defendant Doe*

46. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

47. The named Plaintiff is a member of a Class of current and future individuals who drive vehicles within the City of Ellisville, Missouri, and have communicated (or would communicate but for fear of detention, citation, prosecution, and punishment) by flashing their headlamps.

48. There are questions of law and fact that are common to the Class, including, but not limited to, the legal questions of whether Defendants' policies and customs impermissibly infringe the Class members' right to engage in expressive activity as guaranteed by the United States Constitution and whether Defendants' policy of stopping, detaining, citing, prosecuting, and punishing Class members who communicate by flashing their headlamps for violating § 375.100 of the City of Ellisville Code of Ordinances, without reasonable suspicion or probable cause to believe that such activity violates § 375.100 of the City of Ellisville Code of Ordinances, is repugnant to the Fourth and Fifth Amendments of the United States Constitution.

49. The named Plaintiff's claims for prospective relief are typical of the claims of the Class.

50. The named Plaintiff will fairly and adequately protect the interests of the Class.

51. Defendants' policies and customs that are the subject of this suit are generally applicable to the Class, thereby making it appropriate for this Court to grant injunctive and any corresponding declaratory relief to the Class as a whole.

WHEREFORE, Plaintiff requests relief as follows:

- A. Certify a Plaintiff Class consisting of current and future individuals who drive vehicles within the City of Ellisville, Missouri, and have communicated (or would communicate but for fear of detention, citation, prosecution, and punishment) by flashing their headlamps;
- B. Appoint Plaintiff as Class Representative and his counsel as Class Counsel;
- C. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendants' policies and customs violate the Constitution;
- D. Enter preliminary and permanent injunctions prohibiting Defendants and their officers, agents, servants, and employees, from stopping, detaining, citing, prosecuting, or punishing any individual for the act of flashing his or her headlamps;
- E. Award Plaintiff's costs, including reasonable attorneys' fees under 42 U.S.C. § 1988, and under other applicable law; and
- F. Allow such other and further relief for the Plaintiff Class as the Court deems just and equitable.

COUNT II

*Violation of Civil Rights - 42 U.S.C. §1983
Claim for Unlawful Seizure Against Defendant Doe in his Individual Capacity*

52. Plaintiff incorporates herein by reference the allegations made in paragraphs 1-45 as if each were set forth here verbatim.

53. Defendant Doe, acting under color of law, required Plaintiff to pull to the side of the road and to remain on the side of the road for 15 minutes without reasonable suspicion or probable cause to believe that Plaintiff had violated any law.

WHEREFORE, Plaintiff requests relief as follows:

- A. Enter a judgment in favor of Plaintiff against Defendant Doe, in his individual capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Plaintiff compensatory damages against Defendant Doe, in his individual capacity, for his violation of Plaintiff's constitutional rights under the color of state law;
- C. Award Plaintiff's costs and reasonable attorneys' fees; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT III

*Violation of Civil Rights - 42 U.S.C. §1983
Claim for Malicious Prosecution Against Defendant Doe in his Individual Capacity*

54. Plaintiff incorporates herein by reference the allegations made in paragraphs 1-45 and 52-53 as if each were set forth here verbatim.

55. Defendant Doe, acting under the color of law, lacked probable cause to initiate proceedings against Plaintiff for an alleged violation of § 375.100 of the City of Ellisville Code of Ordinances.

56. A reasonable officer would have known that there was no probable cause to initiate a proceeding against Plaintiff for an alleged violation of § 375.100 of the City of Ellisville Code of Ordinances.

57. In initiating a proceeding against Plaintiff, Defendant acted maliciously, in retaliation for Plaintiff's message, or for additional purposes other than bringing Plaintiff to justice.

58. As a consequence of the initiation of the prosecution that was ultimately dismissed, Plaintiff suffered harm, including the unlawful deprivation of his liberty during the time he was pulled to the side of the road and the time he was required to appear in municipal court.

WHEREFORE, Plaintiff requests relief as follows:

- A. Enter a judgment in favor of Plaintiff against Defendant Doe, in his individual capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Plaintiff compensatory damages against Defendant Doe, in his individual capacity, for his violation of Plaintiff's constitutional rights under the color of state law;
- C. Award Plaintiff's costs and reasonable attorneys' fees; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT IV

Violation of Civil Rights - 42 U.S.C. §1983

Claim for First Amendment Retaliation Against Defendant Doe in his Individual Capacity

59. Plaintiff incorporates herein by reference the allegations made in paragraphs 1-45 and 52-58 as if each were set forth here verbatim.

60. Plaintiff's conduct of communicating a message by flashing his headlamps is expressive activity protected by the First Amendment.

61. Plaintiff's communication did not violate any law.

62. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication by flashing his headlamps, Defendant Doe would not have compelled Plaintiff to pull over.

63. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication by flashing his headlamps, Defendant Doe would not have detained Plaintiff while preparing a citation.

64. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication by flashing his headlamps, Defendant Doe would not have issued Plaintiff a citation for allegedly violating § 375.100 of the City of Ellisville Code of Ordinances.

65. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication by flashing his headlamps, Defendant Doe would not have initiated a proceeding in municipal court against Plaintiff for allegedly violating § 375.100 of the City of Ellisville Code of Ordinances.

66. But for Defendant Doe's retaliatory animus regarding Plaintiff's communication by flashing his headlamps, Defendant Doe would not have been required to appear in municipal court on December 20, 2012.

WHEREFORE, Plaintiff requests relief as follows:

- A. Enter a judgment in favor of Plaintiff against Defendant Doe, in his individual capacity, pursuant to 42 U.S.C. § 1983;

- B. Award Plaintiff compensatory damages against Defendant Doe, in his individual capacity, for his violation of Plaintiff's constitutional rights under the color of state law;
- C. Award Plaintiff's costs and reasonable attorneys' fees; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT V

Violation of Civil Rights - 42 U.S.C. §1983

Against Defendant City of Ellisville, Missouri, and Defendant Doe in his Official Capacity

67. Plaintiff incorporates herein by reference the allegations made in paragraphs 1-45 and 52-66 as if each were set forth here verbatim.

68. Defendants maintain policies and customs of stopping, detaining, citing, prosecuting, and punishing individuals who communicate by flashing their headlamps for allegedly violating § 375.100 of the City of Ellisville Code of Ordinances without reasonable suspicion or probable cause to believe that such activity violates § 375.100 of the City of Ellisville Code of Ordinances and in retaliation for First-Amendment protected activity.

69. Plaintiff's injuries described herein were proximately caused by Defendants' policies and customs.

WHEREFORE, Plaintiff requests relief as follows:

- A. Enter a judgment in favor of Plaintiff against Defendant City of Ellisville, Missouri, and Defendant Doe, in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Plaintiff compensatory damages against Defendant City of Ellisville, Missouri, and Defendant Doe, in his official capacity, for their violation of his constitutional rights under the color of state law;

- C. Award Plaintiff's costs and reasonable attorneys' fees; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI

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ATTORNEYS FOR PLAINTIFF

Verification

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ Michael J. Elli
Michael J. Elli