

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

True Blue Auctions, LLC  
and

Wayne A. Dreibelbis, Jr.  
Plaintiffs

: Civil Action  
: No. 11-cv-

v.

John Doe #1  
and John Doe #2,  
Officers of the Police Department  
Of the City of Franklin,  
Defendants

**COMPLAINT**

**Parties**

1. Plaintiff True Blue Auctions, LLC is a Pennsylvania LLC with a principal place of business located at 1607 E. Branch Road, State College, Centre County PA 16801-6924.
2. Plaintiff Wayne A. Dreibelbis, Jr. (hereinafter Dreibelbis) is an adult citizen and resident of Pennsylvania who resides at 1607 E. Branch Road, State College, Centre County PA 16801-6924 who is President and CEO of True Blue Auctions, LLC.
3. Defendant John Doe #1 is an adult citizen and resident of Pennsylvania who at all times relevant to this matter was employed as a police officer by the City of Franklin Police Department, whose address is 430 13<sup>th</sup> Street, B-2, Franklin, PA 16323.
4. Defendant John Doe #2 is an adult citizen and resident of Pennsylvania who at all times relevant to this matter was employed as a

police officer, by the City of Franklin Police Department, whose address is 430 13<sup>th</sup> Street, B-2, Franklin, PA 16323 .

**JURISDICTION AND VENUE**

5. Jurisdiction is based on 28 U.S.C. §§ 1331 & 1343 and the doctrine of pendant jurisdiction, for redress for rights secured by the U. S. Constitution and the 1st & 14<sup>th</sup> Amendments and arising under 42 U.S.C § 1983.

6. Venue is proper in the Western District of Pennsylvania under 28 U.S.C. §1391(b) as all the events herein took place in, the parties and witnesses reside in and the physical evidence is located within the district.

**FACTS**

7. All times relevant to this matter Defendants John Doe #1 and John Doe #2 acted as uniformed law enforcement officers under color of state law within the course and scope of their duties as members of the Franklin Police Department and pursuant to the policies, practices and customs of the Town of Franklin.

8. On October 16, 2009 at about 4 p.m. Plaintiff True Blue Auctions, LLC (hereinafter True Blue) by and through its agent Dreibelbis was on the premises located at 928 Liberty Street, Franklin, PA 16323 owned by Clare O'Brien to conduct an auction scheduled for October 16 and 17, 2009. It had a contract to provide auction services and the right to be on

the premises at the time. The notices posted on the property states that the proceedings will be videotaped.

9. As part of its normal routine, True Blue puts up auction signs at an auction site and often videotapes the auction so it has a record of bids, amounts bid, and other details of the auction. The videotaping is always done in the open, at a location to which the public is invited, with permission of the owner of the premises and/or in a public forum area.

10. Videotaping includes both a video and audio recording using a videocamera.

11. Videotaping is never done in an area or of a matter as to which there is a reasonable expectation of privacy.

12. True Blue does not audiotape auction proceedings.

13. That day Dreibelbis put up auction signs at the site and began videotaping the auction from the premises where the auction was taking place and from an adjacent public sidewalk.

14. No one complained about the signs or videotaping or that their privacy interests were being violated by the videotaping.

15. At around 4:35 p.m. Defendants John Doe #1 and #2 (hereinafter #1 and #2), police officers whose names are not known, approached Dreibelbis and asked him to go to where there were auction signs, about 75 yards from the premises.

16. #1 and/or #2 told Dereibelbis while he was on a public sidewalk stated the signs would have to be taken down.

17. #1 and/or #2 told Dreibelbis while he was on a public sidewalk it was illegal for him to videotape, or words to that effect, and that doing so was a violation of the wiretapping law.

18. #1 and/or #2 told Dreibelbis he had to stop videotaping and ordered him to do so while he was on a public sidewalk.

19. #1 and/or #2 told Dreibelbis he would be arrested if he did not stop videotaping as he did so from a public sidewalk. From this a reasonable person would infer the videotaping had to stop immediately or he would be handcuffed and arrested. The conversation was captured on videotape.

20. Dreibelbis stopped videotaping only to avoid arrest and so he could continue to work at the auction.

21. Dreibelbis curtailed some of his videotaping the rest of the auction that day and the next day because he was concerned he would be arrested for doing so.

22. At no time did Dreibelbis makes threats of physical injury, attempt to escape, punch, kick or use quick movements with his arms, legs or torso toward, or take any action that created a reasonable risk to the safety of, Defendants.

23. Plaintiff Dreibelbis fully cooperated with Defendants that day and stopped videotaping only as a result of Defendant's threat to arrest him if he did not stop videotaping.

24. Plaintiff Dreibelbis never committed any acts in the presence of Defendants that to a reasonable person would be considered criminal activity.

25. Defendants were not aware of any past criminal activity involving Plaintiff Dreibelbis at that time.

26. At no time during the incident was Plaintiff Dreibelbis violent. He never threatened violence, made quick movements, or made statements which could be reasonably considered to be threats, but at all times cooperated fully with police and was peaceful.

27. At all times during the incident Plaintiff Dreibelbis was unarmed. He never stated he was armed and no reasonable person would have believed he was armed. Defendants never suspected he was armed.

28. Plaintiff Dreibelbis was not under the influence of alcohol the day of the incident nor did he take any illegal drugs. No reasonable person would have believed he was under the influence of alcohol or illegal drugs. Defendants never requested he take a breathalyzer or blood alcohol test and never stated or suspected he was under the influence of alcohol or illegal drugs.

29. No criminal charges were ever filed against Plaintiff Dreibelbis, nor did he receive a ticket or summons, as a result of the incident described above. However, Plaintiff Dreibelbis would have been arrested and charged with a criminal offense if he did not comply with Defendants' order that he stop videotaping.

30. Plaintiff Dreibelbis took no actions and said no words which would have led a reasonable person at the scene to believe he posed an immediate threat to the safety of Defendants or any person.

31. Plaintiff Dreibelbis never blocked pedestrian passage on the public sidewalk but left sufficient room for pedestrian passage as he videotaped the brief encounter he had with # 1 and #2.

32. Plaintiff Dreibelbis made no quick movements or movement with his arms, legs or torso while with Defendants that would cause a reasonable person to think he posed a threat of danger or physical injury.

33. Plaintiff Dreibelbis never punched, swung at, kicked or attempted to do these things to anyone that day, nor stated he would do so.

34. Plaintiff Dreibelbis sometimes does not videotape portions of the auctions because, based on his encounter with #1 and #2, of concerns he will be threatened with arrest for doing so.

COUNT I: DREIBELBIS V. JOHN DOES #1 AND #2:

VIOLATION OF THE FIRST AMENDMENT

35. The averments of paragraphs 1-34 are incorporated by reference.

36. Plaintiff Dreibelbis has a right under the 1<sup>st</sup> Amendment to videotape persons, including police officers, in public places. Defendants John Doe #1 and John Doe #2 violated Plaintiff Dreibelbis's right under the 1<sup>st</sup> Amendment when they ordered him to turn off the videocamera, with which he was recording the auction and his encounter with police, and threatened him with immediate arrest if he did not cease videotaping, in

threatened him with immediate arrest if he did not cease videotaping, in a location where he had a right to videotape. This violated the First Amendment right to receive information because far more protected activity was chilled than was reasonably necessary to protect any important government interest.

WHEREFORE, PLAINTIFF WAYNE A. DREIBELBIS, JR. DEMANDS JUDGMENT IN HIS FAVOR AND AGAINST DEFENDANTS JOHN DOE #1 AND #2, jointly and severally in an amount in excess of \$75,000 plus interest, costs and attorneys fees under 42 U.S.C. §1988.

COUNT II: TRUE BLUE AUCTIONS, LLC V. JOHN DOES #1 AND #2:

VIOLATION OF THE FIRST AMENDMENT

37. The averments of paragraphs 1-36 are incorporated by reference.

38. At all times relevant to this matter. Plaintiff was an agent, employee and/or manager of True Blue Auctions, LLC, acting within the course and scope of his employment.

39. Defendants John Doe #1 and John Doe #2 ordered Plaintiff Dreibelbis to turn off the videocamera, which he had a right to use to record the auction, and threatened him with immediate arrest if he did not do so, in a location where True Blue Auctions, LLC had a right to videotape. This violated its First Amendment right to receive information because far more protected activity was chilled than was reasonably necessary to protect any important government interest.

40. The actions of Defendants inhibit an important business practice of True Blue Auctions, LLC. Videotaping helps keep an accurate record of bids, amounts and other details of an auction vital to the business.

41. Sometimes an issue occurs in which a record of these details would help if there is a dispute arising out of an auction.

42. Such disputes have occurred in the past involving True Blue Auctions, LLC, so it has adopted videotaping of auctions as an established business practice.

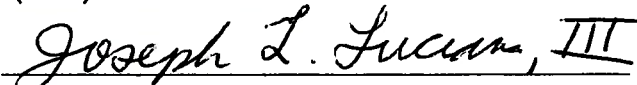
43. Videotaping is an important part of the business.

WHEREFORE, PLAINTIFF TRUE BLUE AUCTIONS, LLC DEMANDS JUDGMENT IN ITS FAVOR AND AGAINST DEFENDANTS JOHN DOE #1 AND #2, jointly and severally in an amount in excess of \$75,000 plus interest, costs and attorneys fees under 42 U.S.C. §1988.

Date: October 12, 2011



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