

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MARY CELESTE HOLMES,

Plaintiff,

vs.

Civ. No.

JENNIFER M. GARVEY
and ALFRED TRINH,
in their individual capacities,

Defendants.

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This is a civil rights action against two Massachusetts Bay Transportation Authority (MBTA) police officers who unlawfully used force against and arrested Mary Holmes because she spoke out against abusive police conduct in her community. The Defendants' actions violated Ms. Holmes' constitutionally protected right to express her criticism of the police and to be free from excessive force and arrest without probable cause.
2. Ms. Holmes was waiting for a bus at Dudley Square in Roxbury when she saw MBTA Transit Police Officer Jennifer Garvey (who was then known as Jennifer Amyot) screaming at, swearing at, and shoving Delores Williams. Ms. Holmes was worried that Garvey's behavior was both escalating the situation and unlawful. She therefore tried to calm Ms. Williams and asked Defendant Garvey to stop abusing Ms. Williams. When this did not work, she called 9-1-1 for help.
3. In response to this constitutionally protected behavior, Defendant Garvey and her partner,

MBTA Transit Police Officer Alfred Trinh, detained Ms. Holmes, beat her, sprayed her with pepper spray, and placed her under arrest, all without probable cause or any lawful justification.

4. These actions, which were taken in retaliation against Ms. Holmes for objecting to Defendant Garvey's conduct, caused physical injury, property damage, and emotional distress.

5. Defendants Garvey and Trinh violated Ms. Holmes' rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

JURISDICTION

6. 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. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and § 1343. Supplemental jurisdiction over claims arising under state law is authorized by 28 U.S.C. § 1367.

PARTIES

7. Plaintiff Mary Holmes is a citizen of the United States and a resident of Boston, Massachusetts.

8. Defendant Jennifer Garvey was at all times relevant to this complaint a duly appointed police officer of the MBTA Transit Police Department. At the time of this incident, her name was Jennifer Amyot. Her actions alleged in this complaint were taken under the color of law. She is sued in her individual capacity.

9. Defendant Alfred Trinh was at all times relevant to this complaint a duly appointed police officer of the MBTA Transit Police Department. His actions alleged in this complaint were taken under the color of law. He is sued in his individual capacity.

FACTS

10. On March 26, 2014, Ms. Holmes went to the Dudley Square MBTA station.

11. When she arrived, she saw a police officer she now knows to be Defendant Garvey

screaming and swearing at an elderly woman, later identified as Ms. Williams. Ms. Holmes heard Ms. Williams saying that she just wanted to go home. Ms. Holmes thought Ms. Williams seemed inebriated. She also saw a police officer she now knows to be Defendant Trinh standing approximately 10 feet away.

12. Ms. Holmes saw Defendant Garvey suddenly put her hands on Ms. Williams and slam her down on a bench.

13. Ms. Holmes was worried for Ms. Williams' safety. She asked Ms. Williams to cooperate so that she would not get hurt. Neither Defendant Garvey nor Defendant Trinh voiced any objection Ms. Holmes speaking to Ms. Williams. However, Defendant Garvey continued to swear at Ms. Williams.

14. Ms. Holmes was concerned that Defendant Garvey's behavior was escalating the situation and making Ms. Williams more upset. She asked Defendant Garvey to stop screaming and swearing. In response to this request, Defendant Garvey told Ms. Holmes to "shut the fuck up."

15. At this point, Ms. Williams said she was going home and stood up. Defendant Garvey again shoved Ms. Williams back onto the bench, doing so with such force that the plastic window behind the bench shook violently.

16. Defendant Garvey continued to scream at Ms. Williams, who then started to take a drink from a plastic bottle. Defendant Garvey slapped the bottle in Ms. Williams' face, shoved her up against the plastic, slammed her down onto the bench in a prone position, and dragged her across the bench.

17. At this point, Defendant Trinh ran over to join Defendant Garvey.

18. Concerned that Defendant Garvey's behavior was unsafe and unlawful, Ms. Holmes once again asked her to stop using excessive and unnecessary force.

19. When Defendant Garvey did not stop, Ms. Holmes asked for the officer's badge

number and informed her that she was going to call 9-1-1. Ms. Holmes then made the call.

20. Once Ms. Holmes said that she was going to call 9-1-1, Defendant Garvey began advancing towards her, while screaming and swearing at her. Ms. Holmes backed up, but Defendant Garvey continued to pursue her.

21. Ms. Holmes looked at Defendant Trinh. She told him that she was backing away but that his partner continued to pursue her. She repeated this statement several times.

22. While backing away, Ms. Holmes was connected to 9-1-1. She informed the responder that her name was Mary Holmes and that she needed officers to come to Dudley Station.

23. As Ms. Holmes was on the phone to 9-1-1, Defendant Garvey sprayed Ms. Holmes' face with pepper spray.

24. Defendant Trinh then came over to join Defendant Garvey. The Defendants hit the phone out of her hand, which smashed on the ground and disconnected the 9-1-1 call.

25. Defendant Garvey pulled out her metal baton and struck Ms. Holmes' shin three to four times while Defendants Garvey and Trinh grabbed and held both of Ms. Holmes' arms.

26. Defendants Garvey and Trinh kicked her legs out from under her.

27. Defendants Garvey and Trinh forced Ms. Holmes onto the ground and slammed her head on the curb.

28. Defendants Garvey and Trinh handcuffed Ms. Holmes' arms behind her back and continued to press her head into the curb until other officers arrived.

29. Once the other officers arrived, Ms. Holmes was thrown into the back of a police car.

30. She was pulled out of the car several minutes later and pushed up against the back of the car. At this point, she was placed in a second set of handcuffs and her backpack was cut off of her.

31. Ms. Holmes was then placed in a second police car and transported to the Boston MBTA police station for booking.

32. Throughout the booking process, Ms. Holmes repeatedly stated that she needed to call someone to pick up her children at school. The officers promised her that she would be able to make a phone call. Nevertheless, it took several hours before she was allowed to make a phone call to make arrangements for her children.

33. Ms. Holmes had visible injuries all over her body including bruising on her arms and legs and an open wound on her leg with tissue damage. She was eventually transported to the hospital, where she remained for several hours and ultimately received stitches in her leg.

34. Ms. Holmes was then transported back to the police station. She could not afford the bail commissioner fee and was held overnight.

35. Even though Ms. Holmes was able to make arrangements for her children as soon as she was finally allowed to make a phone call, employees of the Massachusetts Department of Children and Families (DCF) visited her in the hospital and then twice went to her home to interview her children while she was being held at the police station.

36. After subjecting her children to this questioning, DCF closed her case as baseless.

37. On March 26, 2014, Defendant Garvey filed an MBTA Transit Police Affidavit against Ms. Holmes listing charges of assault and battery on a public employee (Mass. Gen. Laws. ch. 265 § 13D), resisting arrest (Mass. Gen. Laws. ch. 268, § 32B), and disorderly conduct (Mass. Gen. Laws. ch. 272, § 53).

38. Based on Garvey's affidavit, Detective Ursula Humes filed an application for a criminal complaint against Ms. Holmes on these same three charges on March 27, 2014.

39. The Roxbury Division of the Boston Municipal Court issued a complaint on March 27, 2014, charging Ms. Holmes with these three offenses.

40. The incident was recorded by cameras at the MBTA station. More than four months later, after the prosecutors viewed these videos (see here: [Video 1](#), [Video 2](#), [Video 3](#), [Video 4](#)), the Commonwealth filed a *nolle prosequi* on all charges against Ms. Holmes, stating that it was

“in the best interests of justice.”

41. Defendants’ actions were taken willfully, maliciously, and with reckless disregard for Ms. Holmes’ constitutional rights.

42. Ms. Holmes acted lawfully in verbally protesting and reporting police misconduct.

43. Ms. Holmes suffered physical and emotional harm as well as financial loss as a result of the Defendants’ use of excessive force against her and her unlawful arrest.

44. As a result of the blows by the metal baton, Ms. Holmes had an open wound nearly one and one-half inches in diameter on her right shin that required several stitches.

45. Defendants also damaged Ms. Holmes’ property, breaking her phone and cutting the straps on her backpack.

46. Ms. Holmes was worried throughout the four months that the baseless charges were pending against her. She knew that she had not violated the law, but she nevertheless was concerned about the outcome of the case.

47. Moreover, the entire incident has caused Ms. Holmes severe anxiety and depression. Because of the incident, Ms. Holmes suffered panic attacks where she had difficulty breathing. She fell into a depression and was afraid to go outside or interact with people. She lost trust in people because she was mistreated and hurt by the very people she thought were meant to protect her and her community. This situation has changed her very way of interacting with the world around her.

COUNT I: 42 U.S.C. Section 1983 – Fourth Amendment Claim

48. The above paragraphs are incorporated by reference.

49. Defendants Garvey and Trinh, acting in concert, arrested Ms. Holmes without probable cause and used unreasonable force on Ms. Holmes during the arrest.

50. Defendants Garvey and Trinh deprived Ms. Holmes of her clearly established rights to freedom from the use of unreasonable and excessive force, and freedom from arrest

without probable cause, under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment.

51. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the injuries described above.

COUNT II: 42 U.S.C. Section 1983 – First Amendment Claim

52. The above paragraphs are incorporated by reference.

53. Defendants Garvey and Trinh, acting in concert, used excessive force to arrest Ms. Holmes in retaliation for her verbal opposition to police conduct.

54. Defendants Garvey and Trinh deprived Ms. Holmes of her clearly established right to freedom of speech under the First Amendment to the United States Constitution as applied under the Fourteenth Amendment.

55. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the injuries described above.

COUNT III: State Claim – False Arrest

56. The above paragraphs are incorporated by reference.

57. Defendants Garvey and Trinh arrested Ms. Holmes without probable cause.

58. Defendants' arrest of Ms. Holmes was unwarranted, malicious, and was in retaliation for, and to punish Ms. Holmes for, exercising her right to freedom of speech.

59. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the emotional distress and financial expense described above.

RELIEF REQUESTED

WHEREFORE, the plaintiff requests that this Court:

1. Award compensatory damages;
2. Award the costs of this action, including reasonable attorney's fees; and

3. Award such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMAND

The Plaintiff demands a jury trial on all counts so triable.

Respectfully submitted,
Plaintiff, MARY HOLMES

By her attorneys,

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