UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RICKY McCOMB 1406 Sheridan Street, N.W. Washington, D.C. 20060,

Plaintiff,

V.

OFFICER J.P. ("GOOFY") ROSS (Badge No. 3316) MPD Third District Station 1620 V Street, N.W. Washington, D.C. 20009,

LIEUTENANT CHRISTOPHER AVERY (Badge No. L-320) MPD Third District Station 1620 V Street, N.W. Washington, D.C. 20009,

OFFICER BARRY PARKER (Badge No. 4081) MPD Third District Station 1620 V Street, N.W. Washington, D.C. 20009,

OFFICER CHARLES CULVER (Badge No. 2753) MPD Third District Station 1620 V Street, N.W. Washington, D.C. 20009,

and

DISTRICT OF COLUMBIA c/o Office of the Attorney General 441 4th Street, N.W. Washington, D.C. 20001,

Defendants.

No. 14-cv-157 (JDB)

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Seeking damages for police misconduct: violation of rights under the Constitution of the United States and the law of the District of Columbia

INTRODUCTION

1. On February 1, 2013, Plaintiff Ricky McComb was arrested on a D.C. street corner pursuant to a warrant. At a police station, a group of Metropolitan Police Department (MPD) officers surrounded Mr. McComb as one told him to drop his pants and then probed repeatedly in his rectum, without probable cause or reasonable suspicion to believe that contraband was hidden there. No contraband was found. The officers' actions violated Mr. McComb's rights under the Fourth Amendment to the Constitution of the United States and constitute assault, battery, and intentional infliction of emotional distress under the laws of the District of Columbia. Mr. McComb accordingly seeks compensatory and punitive damages from the officers and the District, as well as attorneys' fees, costs and other appropriate relief.

JURISDICTION AND VENUE

- 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). Mr. McComb brings this action under 42 U.S.C. § 1983 to vindicate his rights under the Fourth Amendment to the United States Constitution. His claims under the common law of the District of Columbia arise from the same events as his constitutional claim and are within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
- 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). The events giving rise to plaintiff's claims occurred in the District of Columbia.

PARTIES

4. Plaintiff Ricky McComb is an adult resident of the District of Columbia.

- 5. Defendant Officer J.P. Ross, also known as "Goofy," Badge No. 3316, is a sworn officer employed by the MPD. At the time of the events at issue he was acting within the scope of his employment. He is sued in his individual capacity.
- 6. Defendant Lieutenant Christopher Avery, Badge No. L-320, is a sworn officer employed by the MPD. At the time of the events at issue he was acting within the scope of his employment. He is sued in his individual capacity.
- 7. Defendant Officer Barry Parker, Badge No. 4081, is a sworn officer employed by the MPD. At the time of the events at issue he was acting within the scope of his employment. He is sued in his individual capacity.
- 8. Defendant Officer Charles Culver, Badge No. 2753, is a sworn officer employed by the MPD. At the time of the events at issue he was acting within the scope of his employment. He is sued in his individual capacity.
- 9. Defendant District of Columbia is a municipal corporation, the local government of Washington, D.C., and operates and governs the MPD pursuant to the laws of the District of Columbia. In this case, the District of Columbia acted through its agents, employees and servants, including Defendants Ross, Avery, Parker, and Culver.

FACTS

- 10. On February 1, 2013, at approximately 4:00 p.m., an MPD officer arrested Mr. McComb in the vicinity of 1730 7th Street, N.W., on an outstanding arrest warrant.
- 11. Shortly thereafter, Officer Ross arrived. Officer Ross parked his squad car on the street and searched Mr. McComb for weapons and contraband. No weapons or contraband were found.

- 12. Mr. McComb was transported to the Third District police station. At the station, Officer Ross informed Mr. McComb that he was going to be strip-searched. Mr. McComb objected.
- 13. Officer Ross went to get a Lieutenant's approval for the strip search. Officer Ross returned with Lt. Avery, and together with Officer Culver they escorted Mr. McComb into a room with a desk. Officer Parker was already in the room. Events in that room are recorded by a video camera.
 - 14. Lt. Avery specifically approved the infliction of a strip search on Mr. McComb.
- 15. Once in the room, Officer Culver held Mr. McComb's arms (which were handcuffed behind his back) while Lt. Avery stood nearby. Officer Ross, crouching behind Mr. McComb, pulled Mr. McComb's pants and underwear down, exposing Mr. McComb's genitalia and buttocks. One officer then said, "You can do it or we can do it."
- 16. Mr. McComb replied, "Man, I'll do it myself." He then spread his buttocks cheeks and said, "See, I told y'all there was nothing there!"
- 17. Officer Ross, wearing a latex glove, then stuck his index finger through Mr. McComb's anus and into Mr. McComb's rectum, thrusting his finger back and forth several times and wiggling it around. Mr. McComb protested and cried out. When Officer Ross removed his finger, Mr. McComb began weeping. No contraband or weapon was found in Mr. McComb's rectum or anywhere else on Mr. McComb's person or clothing.
- 18. Officer Parker escorted Mr. McComb to a holding cell, with Officer Culver following behind. Officers Ross and Culver laughed at Mr. McComb's emotional distress.

- 19. Once in the cell, Mr. McComb asked to be taken to a hospital, telling a Sergeant that an officer had molested him and that his stomach and ass were hurting. He told a second Sergeant that an officer had raped him.
- 20. Officer Ross returned to the holding cell with a property sheet for Mr. McComb to sign. Officer Ross was smirking at Mr. McComb's continued distress.
- 21. An officer at the Third District police station filled out an "Arrestee's Injury/Illness Report" (PD 313). Mr. McComb was then taken to Howard University Hospital, where he was treated for rectal bleeding and abdominal and rectal pain. Hospital records show that Mr. McComb was given 30 mg. of Toradol, a nonsteroidal anti-inflammatory drug, and four mg. of Zofran, which prevents nausea and vomiting. Mr. McComb was also given a prescription for 20 Anusol HC 25 mg. suppositories (Rectal), a medication used to treat itching and swelling in the rectum. He was discharged at about 2:30 a.m. on February 2, 2013, and transported to the MPD Central Cell Block.
- 22. On February 2, 2013, Mr. McComb was presented before a judicial officer at D.C. Superior Court and released on his own recognizance.
- 23. Shortly after the incident, Mr. McComb filed a written complaint with the Internal Affairs Bureau of the Metropolitan Police Department. His report was also audio recorded.
- 24. On or about February 13, 2013, Mr. McComb submitted a complaint regarding his treatment to the District of Columbia Office of Police Complaints. His complaint is indexed as OPC Complaint No. 13-0166. The Office of Police Complaints referred the

complaint to the United States Attorney's Office for possible prosecution of the officer(s) involved in the incident.

- 25. On or about May 22, 2013, Mr. McComb responded to a grand jury subpoena and testified before a Superior Court grand jury about the events described above. Mr. McComb and the grand jury were shown one or more video recordings of the incident at the police station.
- 26. Officers Ross, Parker, Doe, and Lieutenant Avery acted intentionally or recklessly and with deliberate disregard of Mr. McComb's constitutional and common law rights, and in intentional or reckless disobedience of MPD regulations.
- 27. At the time of these events, MPD General Order PCA-502.01 and MPD Circular 03-15 strictly prohibited officers from conducting physical body cavity searches like the one inflicted upon Mr. McComb. Under MPD regulations, such searches may be conducted only when there is probable cause to believe that a prisoner has weapons, contraband or evidence secreted in a body cavity, must be authorized by an Assistant District Commander or higher, and may be performed only by a physician in a private area at a hospital.
- 28. At the time of these events, the law was clearly established that a police officer must have probable cause and a search warrant to perform a physical body cavity search, absent exigent circumstances.
- 29. No reasonable police officer could have believed that there was probable cause to perform a physical body cavity search of Mr. McComb at the time Mr. McComb was searched.

- 30. No reasonable police officer could have believed that there were exigent circumstances justifying a physical body cavity search of Mr. McComb at the time Mr. McComb was searched.
- 31. Police officers have a duty to intercede when they witness a deprivation of rights by other officers in progress. Officers Parker and Culver and Lieutenant Avery knowingly and intentionally failed to intercede to prevent the violation of Mr. McComb's rights, and failed to take action afterward to report the violation of Mr. McComb's rights.
- 32. Officers Ross and Culver have an extensive history of complaints involving similar conduct in the 33 months prior to the incident involving plaintiff McComb:
- a) In May, 2010, a civilian complained that Officers Ross and Culver "went in my ass . . . and now his buttocks hurts."
- b) In September, 2010, a civilian complained that Officers Ross and Culver "conducted a search of his cousin's genitals and buttocks area" and that Officer Ross "touched his anus hole."
- c) In December, 2010, a civilian complained that Officer Ross or Culver "put his hand inside of the compl. underwear and touched compl. anus with his middle finger."
- d) In December, 2010, a civilian complained that Officer Culver searched him "by unzipping his pants and grabbing his private parts," and "then turned him around and entered his hand into his ass to search him."
- e) In May, 2011, a civilian complained that Officers Ross and Culver "searched his boxers."
- f) In August, 2011, a civilian complained that her son "was handcuffed, illegally searched, and touched in a sexual manner" by Officer Culver.

- g) In September, 2011, a civilian complained that Officer Ross "placed gloves on his hands and attempted to search his anus."
- h) In November, 2011, a civilian complained that Officer Ross searched his genitals and rectal area.
- i) In November, 2011, a civilian complained that Officer Ross "put his hand inside the front of his undergarment, grabbed his genitals and moved them up and down while touching his rectal area in the process."
- j) In November, 2011, a civilian complained that Officers Ross and Culver "pulled down his ants to search his buttocks and groin area in view of the public."
 - k) In May, 2012, a civilian complained that Officer Ross attempted to search his anus.
- 33. With respect to many of these complaints, Officers Ross and Culver have no recollection that any MPD internal investigation was conducted.
- 34. Only two of these incidents appear in the records of the Metropolitan Police Department's Personnel Performance Management System (PPMS), which is intended to track complaints against officers so that appropriate supervisory measures can be taken.
- 35. When MPD does investigate civilian complaints, if the civilian's account conflicts with an officer's account, and there are no third-party witnesses, the MPD's internal affairs investigator automatically determines that there are "insufficient facts" to sustain the complaint.
- 36. The Metropolitan Police Department's internal management, complaints, and/or disciplinary systems are designer and/or operated in a manner that is inadequate to identify and/or correct officers whose conduct violates or is likely to violate the constitutional rights of civilians.

- 37. Only after the United States Attorney's Office began looking into the incident involving plaintiff McComb and called MPD's attention to the pattern of complaints against officers Ross and Culver did MPD recognize the need for additional training and conduct a special training on strip-searches of prisoners at the unit to which officers Ross and Culver had been assigned.
- 38. The District of Columbia failed adequately to train, supervise, and discipline these defendant officers, when the need for better training, supervision, and discipline of these officers was obvious, as was the likelihood that their conduct would result in violations of civilians' constitutional rights.
- 39. Mr. McComb suffered physical injury and pain as a result of Defendants' conduct.
- 40. Mr. McComb's relationship with his girlfriend suffered as a result of Defendants' conduct.
- 41. Mr. McComb suffered extreme and severe emotional distress as a result of Defendants' conduct. Mr. McComb continues to suffer emotional distress as a result of Defendants' conduct.
- 42. Mr. McComb has been subjected to ridicule and disparagement of his manhood by people he thought were his friends, as a result of his having been subjected to the physical body cavity search described above.
- 43. On January 5, 2016, the District of Columbia Office of Police Complaints determined that the conduct of Officers Ross and Culver and Lieutenant Avery were, "at a minimum, recklessly contrary to MPD General Order 502.01," which is the General Order governing searches of prisoners. Those conclusions were transmitted to the Chief

of Police for the imposition of appropriate discipline. As of the date of this complaint, Plaintiff does not know what discipline, if any, was imposed.

44. Written reports prepared by the Metropolitan Police Department in the regular course of duty, including, but not limited to, the "Arrestee's Injury/Illness Report" (PD 313), and reports made to and by the MPD Internal Affairs Bureau, provided the District of Columbia with notice sufficient to satisfy the requirements of D.C. Code § 12-309.

CLAIMS FOR RELIEF

Claim I: Violation of Fourth Amendment Rights (Defendants Ross, Avery, Parker, and Culver)

- 45. The actions of Defendants Ross, Avery, Parker, and Culver, described above, violated Mr. McComb's right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches.
- 46. Defendants Ross, Avery, Parker, and Culver are jointly and severally liable to Mr. McComb for this violation of his rights, pursuant to 42 U.S.C. § 1983.

Claim II: Violation of Fourth Amendment Rights (Defendant District of Columbia)

47. Defendant District of Columbia is liable for Mr. McComb's damages under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), due to the MPD's deliberately indifferent failure adequately to train, supervise, and discipline Defendants Ross and Culver.

Claim III: Assault and Battery (Defendants Ross, Avery, Parker, and Culver)

48. Defendants' actions, described above, constituted assault and battery under the law of the District of Columbia.

49. Defendants Ross, Avery, Parker, and Culver are jointly and severally liable to Mr. McComb for this violation of his rights under the law of the District of Columbia.

Claim IV: Assault and Battery (Defendant District of Columbia)

50. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted upon Mr. McComb by the assault and battery committed by its agents Ross, Avery, Parker, and Culver while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

Claim V: Intentional Infliction of Emotional Distress (Defendants Ross, Avery, Parker, and Culver)

- 51. The actions of Defendants Ross, Avery, Parker, and Culver towards Mr.

 McComb, described above, were so extreme and outrageous as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.
- 52. Defendants' actions towards Mr. McComb, described above, constituted intentional infliction of emotional distress under the law of the District of Columbia.
- 53. Defendants Ross, Avery, Parker, and Culver are jointly and severally liable to Mr. McComb for this violation of his rights under the law of the District of Columbia.

Claim VI: Intentional Infliction of Emotional Distress (Defendant District of Columbia)

54. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the intentional infliction of emotional distress upon Mr. McComb committed by its agents Ross, Avery, Parker, and Culver while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- (a) RULE that the actions of Ross, Avery, Parker, and Culver violated Plaintiff's rights under the Fourth Amendment to the United States Constitution and the laws of the District of Columbia;
- (b) RULE that the District of Columbia is liable to Plaintiff for its failure adequately to train, supervise, and discipline defendants Ross and Culver;
- (c) ENTER JUDGMENT awarding Plaintiff compensatory damages against all defendants in an amount appropriate to the evidence adduced at trial;
- (d) ENTER JUDGMENT awarding Plaintiff punitive damages against defendants Ross, Avery, Parker, and Culver in an amount appropriate to the evidence adduced at trial;
- (e) ENTER JUDGMENT awarding Plaintiff his costs and reasonable attorneys' fees in this action as provided in 42 U.S.C. § 1988; and
- (f) GRANT Plaintiff such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff requests a trial by jury.

Respectfully submitted,

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar No. 235960)

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June 30, 2016 Counsel for Plaintiff