

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

EARL B. STALEY JR.  
3630 Brothers Place, S.E.  
Washington, DC 20032,

Plaintiff,

v.

THE DISTRICT OF COLUMBIA  
Office of the Attorney General  
441 4<sup>th</sup> Street, N.W.  
Washington, DC 20001,

JAMES E. O'BANNON  
MPD Badge No. 2564  
300 Indiana Avenue, N.W.  
Washington, DC 20001,

KENNETH DEAN  
MPD Badge No. 4040  
300 Indiana Avenue, N.W.  
Washington, DC 20001,

Defendants.

No. 12-cv-\_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

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

**INTRODUCTION**

1. On July 19, 2012, the District of Columbia Metropolitan Police Department (“MPD”) issued General Order 304.19, entitled “Video Recording, Photographing, and Audio Recording of Metropolitan Police Department Members by the Public.” This General Order recognizes that members of the public have a First Amendment right to photograph or record MPD members performing their duties in public. It specifically provides that MPD members

“shall not . . . [i]n any way threaten, intimidate or otherwise discourage an individual from recording members’ enforcement activities” (emphasis in original). It instructs MPD members that an “official with supervisory authority over the member, must be present at the scene before a member takes any significant action involving a person’s use of a recording device. This includes warrantless search or seizure of a camera or recording device.” Nonetheless, on July 20, 2012, defendant MPD Officer James O’Bannon seized and refused to return plaintiff Earl Staley Jr.’s smartphone when Mr. Staley took a picture of a police officer who was engaging in aggressive conduct toward members of the public in southeast Washington, D.C. Defendant MPD Officer Kenneth Dean then falsely informed Mr. Staley that he had violated the law by photographing the other officer, and threatened Mr. Staley with arrest unless he shut up and left. Mr. Staley was able to retrieve his phone that evening at the MPD Seventh District station, but its memory card, containing many valuable items, was missing and still has not been returned. He brings this action to recover the wrongly seized memory card and to redress his improper treatment by MPD, and to assure that the law is followed more faithfully in the future.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). Mr. Staley brings this action under 42 U.S.C. § 1983 to vindicate his rights established under the First and Fourth Amendments to the United States Constitution. His claims under the common law of the District of Columbia arise from the same events as his constitutional claims 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 Earl B. Staley Jr. is an adult resident of the District of Columbia.

5. Defendant District of Columbia is a municipal corporation that operates and governs the MPD. In the events involved in this case, the District of Columbia acted through its agents, employees, and servants, including defendants O'Bannon and Dean.

6. Defendant James E. O'Bannon (Badge No. 2564) is a sworn officer employed by MPD. At the time of the events at issue he was acting under color of law. 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 Kenneth Dean (Badge No. 4040) is a sworn officer employed by MPD. At the time of the events at issue he was acting under color of law. At the time of the events at issue he was acting within the scope of his employment. He is sued in his individual capacity.

## **FACTS**

8. On July 20, 2012, shortly after 6:00 p.m., Mr. Staley and a friend were walking to a bus stop near the corner of Raleigh Street, S.E., and Martin Luther King Jr. Avenue, S.E., where Mr. Staley was planning to catch a bus to pick up his daughter from day care.

9. Mr. Staley and his friend saw an MPD cruiser hit a man on a motorbike near the corner of Martin Luther King Jr., Avenue, S.E., and Raleigh Street, S.E.

10. The motorbike rider was thrown to the ground and appeared to be injured. Mr. Staley and other bystanders watched from the other side of Raleigh Street as two MPD officers from the cruiser began punching the man as he lay on the ground bleeding.

11. Mr. Staley took out his smartphone to photograph the incident, but by the time he was ready to take photographs, the officers had stopped punching the man, so Mr. Staley decided

it was not worth taking a photograph of the officers and the motorcyclist.

12. Meanwhile, defendant O'Bannon and another officer ("Officer 2"), in plain clothes but wearing vests identifying themselves as police, had arrived on the scene in an unmarked Chevrolet Impala. Officer 2 began aggressively demanding that bystanders leave the scene, including making physical contact by "chest bumping" some of the bystanders.

13. Believing that Officer 2's conduct was improper, Mr. Staley took a photograph of Officer 2 as he assaulted bystanders.

14. Immediately after Mr. Staley took this photograph, defendant O'Bannon reached over Mr. Staley's shoulder from behind and snatched Mr. Staley's phone from his hands.

15. Thinking he had just been robbed, Mr. Staley turned around only to find himself face to face with defendant O'Bannon holding his phone. Mr. Staley asked for his phone back.

16. Defendant O'Bannon told Mr. Staley that he was confiscating the phone as evidence of crime. Mr. Staley explained that he had taken only a photograph of Officer 2 interacting with bystanders, but defendant O'Bannon refused to return Mr. Staley's phone to him and threatened to "lock [him] up right now."

17. As Mr. Staley continued to ask for the return of his phone, defendant Dean took Mr. Staley aside, falsely informed him that he had broken the law by photographing Officer 2, and threatened to arrest him if he did not "chill out" and leave the scene. Defendant Dean made no effort to get Defendant O'Bannon to obey the law and MPD policy by returning Mr. Staley's phone to Mr. Staley. Defendant Dean made no effort to summon an MPD official with supervisory authority to the scene. Defendant Dean told Mr. Staley he could go to the MPD Seventh District station to get his phone later that evening.

18. Mr. Staley requested the names and badge numbers of all involved officers.

Defendant Dean told Mr. Staley that he could not have the names of defendant O'Bannon or Officer 2 because they were vice officers. Mr. Staley was not able to see defendant Dean's name tag but noted that his badge number was 4040. Mr. Staley then left the scene. Mr. Staley subsequently saw Officer O'Bannon on the street, in uniform, and was able to observe that his badge number was 2564. With these two badge numbers, Mr. Staley's attorneys were able to obtain Officer Dean's and Officer O'Bannon's names.

19. About an hour after his cell phone had been taken by Officer O'Bannon, Mr. Staley went to the MPD Seventh District station to try to get his phone back. After he waited for more than an hour, watch commander Lieutenant Larson appeared and apologized for the inconvenience but falsely told Mr. Staley that he must be "discreet" when photographing police. He returned Mr. Staley's phone. Hurrying to catch his bus to go home, Mr. Staley did not check the phone's condition.

20. Upon arriving home where his mother and his young daughter waited, he took out his phone to take his daughter's picture, as he had many times before. But the phone instead displayed the message, "please insert memory card." There had been a memory card in the phone when defendant O'Bannon seized it.

21. Mr. Staley had acquired that memory card in 2008 and had been using it since that time. It contained Mr. Staley's photographs of his daughter since her birth, that year, and many other irreplaceable photographs of his friends and family events, as well as music, ringtones, and games for which he had paid. The memory card also stored Mr. Staley's banking, credit card and other sensitive and important information such as passwords and contact lists. Mr. Staley's smartphone functioned as his computer, as he does not have a desktop or laptop computer.

22. Mr. Staley called the MPD Seventh District station to try to get his memory card back. He was told that no one there knew anything about any memory card.

23. Mr. Staley made several attempts to obtain the return of his memory card by speaking with Lieutenant Larson again and by speaking with Detective Sergeant James Duke from the MPD Internal Affairs Division, who promised an investigation. On August 28, 2012, Mr. Staley called Detective Sergeant Duke to inquire about the results of the investigation. On August 29, 2012, Detective Sergeant Duke returned the call and told Mr. Staley that the investigation remained “ongoing.” It has now been more than six weeks since Mr. Staley’s memory card disappeared.

24. On information and belief, defendant O’Bannon and/or other members of the MPD searched the contents of Mr. Staley’s memory card without a warrant or other lawful basis.

25. On information and belief, defendant O’Bannon and/or other members of the MPD continue to have possession of Mr. Staley’s memory card.

26. Alternatively, on information and belief, defendant O’Bannon and/or other members of the MPD have unlawfully destroyed or disposed of Mr. Staley’s memory card.

27. At the time of the events described above, it was clearly established as a matter of law in the District of Columbia that a member of the public has the right to photograph or make audio or visual recordings of the actions of law enforcement officials in public places, so long as the individual does not interfere with police operations.

28. At the time of the events described above, it was clearly established as a matter of law in the District of Columbia that an officer may not arrest or threaten to arrest a person for expressing objections to officers’ behavior or exercising the person’s First Amendment rights in any other manner unless the person interferes with law enforcement operations.

29. Mr. Staley's activities on July 20, 2012, did not interfere in any way with police operations.

30. No reasonable police officer in the position of defendant O'Bannon could have believed that he had a lawful basis to seize Mr. Staley's phone or to threaten to arrest him.

31. No reasonable police officer in the position of defendant Dean could have believed that he had a lawful basis for telling Mr. Staley that he had committed a crime or to threaten Mr. Staley with arrest.

32. Mr. Staley submitted a timely notice of claim to the Mayor of the District of Columbia pursuant to D.C. Code § 12-309. That notice was received on August 3, 2012, and assigned claim number 1200575-000.

#### **PLAINTIFF'S INJURIES**

33. As a result of defendants' conduct, Mr. Staley was deprived of his property, was prevented from exercising his right to take photographs or otherwise record law enforcement officials performing their duties in public and to object to improper activities on the part of law enforcement officials, was made to fear that exercising those rights in the future could lead to his arrest and/or loss of property, and suffered emotional distress.

#### **CLAIMS FOR RELIEF**

##### **Claim I: Violation of First Amendment Rights (against defendants O'Bannon and Dean)**

34. Mr. Staley's photography on July 20, 2012, was protected by the First Amendment to the United States Constitution.

35. Mr. Staley's spoken objections to the actions of defendant O'Bannon and his requests for the return of his phone on July 20, 2012, were protected by the First Amendment to the United States Constitution.

36. Defendants' actions, described above, violated Mr. Staley's right to freedom of expression under the First Amendment to the United States Constitution by preventing him from taking additional photographs of police activity, by intimidating him from asserting his right to recover his camera and criticize the police, and by destroying the photograph he had taken of Officer 2, as well as many other valuable photographs and expressive material.

37. Defendants O'Bannon and Dean are jointly and severally liable to Mr. Staley for these violations of his rights, pursuant to 42 U.S.C. § 1983.

**Claim II: Violation of Fourth Amendment Rights  
(against defendants O'Bannon and Dean)**

38. Mr. Staley's conduct on July 20, 2012, did not provide probable cause or reasonable suspicion to believe that he had committed, was committing, or was about to commit any crime, and did not provide defendant O'Bannon with any lawful basis on which to seize Mr. Staley's phone or to search, destroy or dispose of Mr. Staley's memory card.

39. Defendant O'Bannon's actions in seizing Mr. Staley's phone and searching, destroying or disposing of Mr. Staley's memory card violated Mr. Staley's right under the Fourth Amendment to the United States Constitution to be free from unreasonable search and seizure.

40. Defendant Dean's actions in falsely informing Mr. Staley that he had broken the law by photographing Officer 2, in threatening to arrest Mr. Staley unless he stopped asking for the return of his phone and left the scene, in failing to take any steps to have defendant O'Bannon return Mr. Staley's phone, and in failing to summon an official with supervisory authority to the scene, violated Mr. Staley's right under the Fourth Amendment to the United States Constitution to be free from unreasonable search and seizure.

41. Defendants O'Bannon and Dean are jointly and severally liable to Mr. Staley for these violations of his rights, pursuant to 42 U.S.C. § 1983.



**Claim III: Assault and Battery  
(against defendants O'Bannon and District of Columbia)**

42. Defendant O'Bannon's actions, described above, constituted assault and battery under the law of the District of Columbia. Defendant O'Bannon is liable to Mr. Staley for this violation of his rights.

43. Defendant District of Columbia is liable to Mr. Staley, under the doctrine of *respondeat superior*, for this violation of his rights.

**Claim IV: Conversion (wrongful taking, possession and/or destruction of property)  
(against Defendants O'Bannon and District of Columbia)**

44. Defendant O'Bannon's actions in wrongfully taking Mr. Staley's valuable property and in refusing to return it and/or destroying it constituted conversion under the law of the District of Columbia. Defendant O'Bannon is liable to Mr. Staley for this violation of his rights.

45. Defendant District of Columbia is liable to Mr. Staley, under the doctrine of *respondeat superior*, for this violation of his rights.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court:

- (a) RULE that the actions of defendants O'Bannon and Dean violated plaintiff Earl Staley's rights under the First and Fourth Amendments to the United States Constitution and the laws of the District of Columbia;
- (b) ORDER defendants O'Bannon and the District of Columbia to return Mr. Staley's memory card to him;
- (c) ENTER JUDGMENT awarding Mr. Staley compensatory damages against all defendants in amounts appropriate to the evidence adduced at trial, and punitive damages against defendants O'Bannon and Dean in amounts appropriate to the evidence adduced at trial;

(d) ENTER JUDGMENT awarding Mr. Staley his costs and reasonable attorneys' fees in this action as provided in 42 U.S.C. § 1988;

(e) ORDER the District of Columbia to train all sworn MPD officers regarding the First and Fourth Amendment rights of photographers, and regarding the provisions of MPD General Order 304.19; and

(f) GRANT plaintiff such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Respectfully submitted,

/s/ Arthur B. Spitzer

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September 5, 2012

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\* Admitted in Maryland, practicing under supervision pending admission to the D.C. Bar.