

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEPIN ANDREW TUMA
1314 Rhode Island Avenue, N.W.
Washington, DC 20005

Plaintiff,

v.

DISTRICT OF COLUMBIA
Office of the Attorney General
441 4th Street NW
Washington, DC 20001

and

MPD OFFICER JAMES CULP
Second District Station
3320 Idaho Ave, NW
Washington, DC 20016

Defendants.

No. 10-cv-_____

JURY TRIAL DEMANDED

COMPLAINT

(Police misconduct: violation of rights under the Constitution
of the United States and the law of the District of Columbia)

1. This is an action for damages and other relief by Pepin A. Tuma, who was detained, arrested and humiliated by Defendant Officer James Culp without any lawful basis and with the sole and illegitimate purpose of harassing Mr. Tuma because of Mr. Tuma's criticism of the police and Officer Culp's perception that Mr. Tuma is gay. Officer Culp's actions were an intentional and outrageous violation of Mr. Tuma's constitutional and other rights, constituting an unreasonable seizure, false arrest, assault and battery, and intentional infliction of emotional distress. Mr. Tuma accordingly seeks compensatory and punitive damages, expungement of his arrest record, attorneys' fees, costs and other appropriate relief.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331. Mr. Tuma 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. He also seeks relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. His claims under the common law of the District of Columbia arise from the same occurrences 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 Pepin A. Tuma is an adult resident of the District of Columbia.

5. Defendant James I. Culp, Jr. is a sworn officer employed by the District of Columbia Metropolitan Police Department (MPD). He is sued in his individual capacity.

6. Defendant District of Columbia is a municipal corporation, the local government of Washington, D.C. Defendant District of Columbia 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 Defendant Culp.

Facts

7. On July 26, 2009, shortly after midnight, Mr. Tuma and two of his friends, Luke Platzer and David Stetson, were walking eastbound along the south side of U Street N.W., between the 1800 and 1700 blocks. The three men were discussing the then-recent arrest of Harvard Professor Henry Louis Gates, Jr., and how that arrest was indicative of

the excessive use of police powers. No other civilians were on the south side of U Street near Mr. Tuma and his friends.

8. Across the street, on the north side of U Street, several police cruisers were parked with their lights on and several police officers were engaging in what appeared to be a traffic stop of a single civilian. Mr. Tuma noticed the police cruisers and commented to his friends that this seemed to be another example of excessive policing. As Mr. Tuma passed the police cruisers, he said, in a sing-song voice, "I hate the police; I hate the police." Neither Mr. Tuma nor his friends stopped or slowed down as they walked. They did not approach, address or gesture to any of the police officers.

9. Within seconds, as Mr. Tuma reached the intersection of 17th and U Streets, N.W., Officer Culp charged across U Street shouting, in substance, "Who do you think you are? Who do you think you're talking to? You can't talk to me that way!" At no point prior to this did Officer Culp or any other officer interact with, give orders to or otherwise address Mr. Tuma or his companions.

10. When Officer Culp reached Mr. Tuma, he forcefully pushed Mr. Tuma up against a utility box on the southeast corner of 17th and U Streets, handcuffed him, and dragged him across to the north side of U Street to the police cruisers where he was searched and placed under arrest. Mr. Tuma did not resist in any way. When Mr. Tuma asked why he was being arrested, Officer Culp replied, "Just shut up, faggot."

11. Mr. Tuma later learned that he had been arrested for disorderly conduct. Officer Culp had no probable cause to believe that Mr. Tuma had committed the offense of disorderly conduct, or any other any criminal offense.

12. At all times relevant to this complaint, Mr. Tuma never acted with the intent to provoke a breach of the peace, and no reasonable person could have thought that he did so. Mr. Tuma's actions did not annoy or disturb any considerable number of persons. No crowd gathered, and neither vehicular nor pedestrian traffic was disrupted in any way. Mr. Tuma's actions were not likely to, and did not in fact, produce violence or any threat of violence on the part of others, with the exception of Officer Culp.

13. On information and belief, Officer Culp arrested Mr. Tuma in retaliation for Mr. Tuma's statement that he hated the police and because he perceived Mr. Tuma to be gay.

14. Officer Culp filed a sworn report of Mr. Tuma's arrest that contained a blatantly false description of the circumstances surrounding the arrest. On information and belief, Officer Culp knew the arrest was unlawful and was attempting to cover this up.

15. At all times relevant to this complaint, Officer Culp acted under color of law, statute, custom or usage of the District of Columbia.

16. At all times relevant to this complaint, Officer Culp acted within the scope of his employment as an MPD officer and acted on behalf of and in the interests of his employer.

17. Officer Culp acted with malice towards Mr. Tuma and with reckless indifference to and in deliberate disregard of his constitutional and other legal rights.

18. At the time of Mr. Tuma's arrest, it was clearly established as a matter of law that a police officer may not seize or arrest an individual without probable cause to believe that the individual had committed, was committing, or was about to commit a criminal offense.

19. No reasonable police officer in Officer Culp's position could have believed that there was probable cause to arrest Mr. Tuma.

20. Mr. Tuma posted and forfeited collateral and was released at about 4:00 a.m. on July 26, 2009.

21. These events caused Mr. Tuma to suffer physical and emotional distress, including fear, humiliation, anger and outrage. The fact of his arrest has interfered with his search for employment and will continue to do so absent relief from this Court.

22. Upon his release, Mr. Tuma submitted a written complaint against Officer Culp at the Second District police station. He also e-mailed Chief of Police Cathy L. Lanier who ordered an investigation into the arrest.

23. On July 30, 2009, Mr. Tuma was interviewed by officers of the MPD Internal Affairs Bureau regarding his complaint.

24. On August 6, 2009, Mr. Tuma filed a complaint against Officer Culp with the District of Columbia Office of Police Complaints.

25. The notice-of-claim requirement of D.C. Code § 12-309 was satisfied by a letter sent by counsel to the District of Columbia Office of Risk Management on August 26, 2009.

26. On March 17, 2010, the Internal Affairs Bureau informed counsel for Mr. Tuma that it had recommended to the MPD that Officer Culp be "brought up on charges."

27. On June 30, 2010, the Office of Police Complaints informed Mr. Tuma that it had determined there were grounds for investigating the misconduct of Officer Culp for wrongful arrest, discrimination on the basis of perceived sexual orientation, and conduct unbecoming an officer.

28. On July 20, 2010, the Office of Police Complaints informed counsel to Mr. Tuma that the MPD “has determined to impose discipline” on Officer Culp regarding Mr. Tuma’s arrest, but that it was not aware of the extent of the discipline.

CLAIMS FOR RELIEF

Claim I: Violation of First Amendment Rights (Officer Culp)

29. Mr. Tuma’s statements on July 26, 2009, regarding his feelings about the police were protected by the First Amendment to the United States Constitution.

30. Officer Culp’s arrest of Mr. Tuma in retaliation for his statements violated Mr. Tuma’s right to freedom of expression under the First Amendment. Violation of that right is made actionable by 42 U.S.C. § 1983, and for that violation Officer Culp is individually liable to Mr. Tuma for compensatory and punitive damages.

31. The relevant law was clearly established at the time of Officer Culp’s action. No reasonable police officer could have believed that Mr. Tuma’s statements provided probable cause for arrest.

Claim II: Violation of Fourth Amendment Rights (Officer Culp)

32. Officer Culp’s arrest of Mr. Tuma without probable cause and Officer Culp’s search of Mr. Tuma’s person violated Mr. Tuma’s right under the Fourth Amendment to the United States Constitution to be free of unreasonable search and seizure. Violation of that right is made actionable by 42 U.S.C. § 1983, and for that violation Officer Culp is individually liable to Mr. Tuma for compensatory and punitive damages.

33. The relevant law was clearly established at the time of Officer Culp's action. No reasonable police officer could have believed that Mr. Tuma's conduct justified a forcible search and seizure.

**Claim III: False Arrest
(Officer Culp)**

34. Officer Culp's arrest of Mr. Tuma without probable cause constitutes false arrest under the law of the District of Columbia, for which Officer Culp is individually liable to Mr. Tuma for compensatory and punitive damages.

**Claim IV: Assault and Battery
(Officer Culp)**

35. Officer Culp's actions of physically seizing Mr. Tuma, handcuffing him, forcefully pushing him against a utility box, searching his person, and dragging him across U Street, all without legal justification, constitute assault and battery under the law of the District of Columbia, for which Officer Culp is individually liable to Mr. Tuma for compensatory and punitive damages.

**Claim V: Intentional Infliction of Emotional Distress
(Officer Culp)**

36. Officer Culp's actions of physically seizing Mr. Tuma, handcuffing him, forcefully pushing him against a utility box, searching his person, dragging him across U Street, and placing him under arrest, all without legal justification, and Officer Culp's action of ordering Mr. Tuma to "Just shut up, faggot," constitute the intentional infliction of emotional distress under the law of the District of Columbia, for which Officer Culp is individually liable to Mr. Tuma for compensatory and punitive damages.

**Claim VI: *Respondeat Superior* Liability
(District of Columbia)**

37. Defendant District of Columbia is liable to Mr. Tuma for damages under the doctrine of *respondeat superior* for the assault and battery, false arrest, and intentional infliction of emotional distress committed by its agent, Officer Culp, while acting within the scope of his employment as an MPD officer and on behalf of and in the interests of his employer.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court:

(a) DECLARE that Officer Culp's actions violated his rights under the First and Fourth Amendments to the United States Constitution, and constituted false arrest, assault and battery, and intentional infliction of emotional distress under the law of the District of Columbia;

(b) ENTER JUDGMENT awarding him compensatory and punitive damages against Officer Culp in an amount appropriate to the evidence adduced at trial;

(c) ENTER JUDGMENT awarding him compensatory damages against defendant District of Columbia in an amount appropriate to the evidence adduced at trial;

(d) ISSUE an injunction directing the District of Columbia to expunge all records of his arrest in its possession or control, and to retrieve and expunge, or cause the expungement of, all such records that are in the hands of other government agencies as a result of having been transmitted or forwarded by the District of Columbia, and authorizing him to deny that he was arrested on July 26, 2009;

(e) ORDER the District of Columbia to reimburse the collateral that he posted and forfeited;

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

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

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully Submitted,

/s/ Bennett Borden

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