

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

LAURIE GILLESPIE, JENNIFER McCAUGHNA
and SHAWN O'BRYANT.

Plaintiffs,

v.

Case No.

Hon.

Magistrate Judge

THE CITY OF BATTLE CREEK, a Michigan
Municipal Corporation, POLICE CHIEF JACKIE HAMPTON,
DEPUTY CHIEF JAMES SAYLOR, INSPECTOR
MARIA ALONSO, DEPUTY INSPECTOR RANDY REINSTEIN,
SGT. FICKLE and LT. STEPHEN BUSH,
in their individual and official capacities, jointly and severally.

Defendants.

CONSTITUTIONAL LITIGATION

ASSOCIATES P.C.

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COMPLAINT AND JURY DEMAND

Plaintiffs, Laura Gillespie, Jennifer McCaughna and Shawn O'Bryant, through their attorneys Hugh M. Davis and Cynthia Heenan of Constitutional Litigation Associates, P.C. and Stephen R. Drew and Adam C. Sturdivant of Drew, Cooper and Anding, for their Complaint show:

JURISDICTION AND VENUE

1. This is a Complaint for violation of civil rights pursuant to the Fourth Amendments arising out of the surreptitious taping of the women's locker/shower/toilet room of the Battle Creek Police Department over certain dates, the extent of which are unknown to Plaintiffs, in January, 2013.
2. The case arises under 42 U.S.C. 1983.
3. Plaintiffs' claims also arise from the interception of their oral communications contrary to the Electronic Communications Privacy Act of 1986, 18 U.S.C. 2511 *et seq* and 18 U.S.C. 2520(a).
4. Jurisdiction is conferred by 28 U.S.C. 1331 (federal question) and 28 U.S.C. 1343 (civil rights).
5. Supplemental jurisdiction over cognate state claims is provided by 28 U.S.C. 1367.
6. The interception and recording of Plaintiffs' conversations violates MCL 750.539c, MCL 750.539d, MCL 750.539j, made actionable by MCL 750.539h.
7. Jurisdiction is proper in the Western District of Michigan because the events complained of occurred there and all of the parties reside there, pursuant to 28 U.S.C. 1391.

PARTIES

8. Plaintiff Laurie Gillespie (GILLESPIE) was a patrol officer for the City of Battle Creek (BATTLE CREEK), having been hired on April 10, 1989.

9. Plaintiff Jennifer McCaughna (McCAUGHNA) is an officer with the BATTLE CREEK police department having been hired on June 19,1989.
10. Plaintiff Shawn O'Bryant (O'BRYANT) is an officer with the BATTLE CREEK police department having been hired in October, 2008.
11. Defendant City of Battle Creek (BATTLE CREEK) is a municipal corporation organized under the laws of the State of Michigan.
12. Chief Jackie Hampton (HAMPTON) is the chief law enforcement officer of BATTLE CREEK, is the highest ranking law enforcement officer of the City of Battle Creek and the decision maker with regard to the operation of the Department. His knowledge and approval of the actions of the other Defendants herein is binding upon Battle Creek and creates municipal liability.
13. Deputy Chief James Saylor (SAYLOR) is the coordinator of the patrol division as well as second in command of the Battle Creek Police Department.
14. Inspector Maria Alonso (ALONSO) is the head of the Internal Affairs Division for the Battle Creek Police Department (Office of Professional Standards).
15. Deputy Inspector Randy Reinstein (REINSTEIN) is the chief assistant in the Internal Affairs Division of the Battle Creek Police Department (Office of Professional Standards).
16. Sgt. Fickle (FICKLE) is an officer with the Battle Creek Police Department Special Investigations Unit.
17. Lt. Stephen Bush (BUSH) is a patrol lieutenant of the Battle Creek Police Department.

COMMON ALLEGATIONS

18. On information and belief, in November and December of 2012, Defendant ALONSO received information at the Professional Standards Section that there was some theft of money and property on various occasions in the womens' locker room of the Battle Creek Police Department.
19. Thereafter, ALONSO, after consultation with and receiving the agreement/approval of Defendants HAMPTON, BUSH and REINSTEIN, decided to install a camera and a concomitant audio recording device in the womens' locker room, a task which was accomplished at some point not later than January 15, 2013, the exact date being unknown to Plaintiffs, by Defendant FICKLE.
20. Defendants acted in concert in undertaking this activity which, insofar as it violated the rights of Plaintiffs, constituted a conspiracy.
21. Allegedly, on January 16, 2013, the camera recorded Plaintiff GILLESPIE improperly going through the lockers/property of other officers.
22. It is unknown to Plaintiffs how long the camera remained installed. On information and belief, Defendants claim that there are only 2 still existing videos, involving Plaintiff GILLESPIE.
23. It is unknown when and under what authority any other video or audio recordings were destroyed.
24. In response to an FOIA request from Plaintiff McCAUGHNA, made May 31, 2013, on July 21, 2013, BATTLE CREEK denied the request for copies of the videotapes, including those of McCAUGHNA, without indicating that either no such tapes existed or that they had once existed and then been destroyed.

25. In response, McCAUGHNA agreed that she had no desire to violate the privacy rights of any other female Battle Creek officers, including her co-Plaintiffs GILLESPIE and O'BRYANT.
26. Thus, McCAUGHNA agreed, through counsel, to have her videos preserved until a further appropriate proceeding or order of a court.
27. If the Defendants, or any of them, caused or allowed video and audio tapes of Plaintiffs, individually or collectively, including videos of other female officers who are not Plaintiffs herein, then they committed the torts of spoliation of evidence and potentially a denial of the First Amendment right of access to the courts.
28. Plaintiff GILLESPIE believes that the only access to the locker room for female officers provided by BATTLE CREEK police department was by having card access. She had an expectation of privacy in this locker room. She believed the locker room was for females only. She had no knowledge of a camera ever being installed in the locker room.
29. The locker room had a security door. The shower area was to the right with no door. The toilet area had a door.
30. Plaintiff GILLESPIE was unaware of any taping until she viewed some of the tape in a "Garrity hearing" on or about January 24, 2013.
31. Defendants SAYLOR, ALONSO, REINSTEIN, as well as union representatives Brad Duck and Scott Eager, were present during the January 24, 2013 hearing.
32. The video was intentionally shown on a large projection screen. It appeared that the tape had been edited, showing GILLESPIE in her uniform going through at least 2 open lockers.

33. Defendant ALONSO stated, “Gentlemen, I would suggest that you turn around because officer Davis [her maiden name] would be removing her clothing.” Defendants continued to play the tape showing her removing all of her clothing except her underwear. She had no bra on and it did show her breasts.
34. During this screening, Plaintiff GILLESPIE was extremely embarrassed and started crying. Defendants continued the tape showing her putting street clothes on and leaving the locker room.
35. All of the males in the room saw the tape.
36. Defendant ALONSO was running the tape machine.
37. Plaintiff GILLESPIE was told not to say anything about this or she would be fired.
38. Plaintiff GILLESPIE was fired on March 18, 2013.
39. Plaintiff McCAUGHNA is an officer in good standing with the BATTLE CREEK police department and was on active duty throughout the months of November and December, 2012, as well as January, 2013.
40. McCAUGHNA regularly used the womens’ locker room and could have at various times been seen in states of undress.
41. Like the other Plaintiffs, she had no knowledge of the video and audio recordings of the locker rooms by Defendants and would not have consented had she been consulted regarding the same.
42. Plaintiff O’BRYANT is an officer in good standing with the BATTLE CREEK police department and was on leave of absence but available and accessible for contact and notifications until she returned in January, 2013.

43. Plaintiff O'BRYANT, when working regularly uses said women's locker room and believes she was taped on Sunday, January 20, 2013, when she returned from a leave of absence.
44. Plaintiff O'BRYANT, like the other Plaintiffs had no knowledge of the video and audio recordings of the locker rooms by Defendants and would not have consented had she been made aware or consulted regarding the same.
45. The acts of Defendants, and each of them, were undertaken intentionally, maliciously, recklessly and with callous disregard for Plaintiffs' rights and welfare, entitling Plaintiffs to punitive damages, except against Defendant BATTLE CREEK and the individual Defendants in their official capacities.
46. As a result the Plaintiffs, and each of them, suffered:
- a. A loss of personal privacy and self-esteem;
 - b. Mental anguish and emotional distress;
 - c. Mortification;
 - d. Shame and shock;
 - e. Loss of enjoyment of life.

COUNT I
Violation of Civil Rights, Fourth Amendment

47. Plaintiffs reallege and incorporate Paragraphs 1 through 46 as if fully set forth herein.
48. The actions of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH violates the Fourth Amendment protection of "people from unreasonable governmental intrusions and to their legitimate expectations of privacy", United States v Place, 462 US 696, 706-07 (1983).

49. “Searches and seizures by government employers or supervisors of the private property of their employees . . . are subject to the restraints of the Fourth Amendment.”, O’Connor v Ortega, 480 US 709, 715 (1987).

50. Defendants BATTLE CREEK and HAMPTON had published no regulations or policies which indicated that the womens’ locker room could be entered or surveilled for any reason by other than female officers and it was in no way open to non-female personnel.

51. No permission or consent was obtained from Plaintiffs regarding any surveillance in the locker room. Thus, the covert video and audio surveillance violated the Fourth Amendment, made actionable by 42 U.S.C. 1983.

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages, both compensatory and punitive, suffered by Plaintiffs as a result of the violation of their civil rights along with their attorney’s fees, costs and interest, pursuant to 42 U.S.C. § 1988.

COUNT II
Violation of Civil Rights, Municipal Liability

52. Plaintiffs reallege and incorporate Paragraphs 1 through 51 as if fully set forth herein.

53. The actions of the individual Defendants described above, acting in their official capacity, represented the custom, policy or practice of Defendant BATTLE CREEK in this matter.

54. Further, the actions of Defendant HAMPTON, the chief law enforcement officer and the decision maker for the City in the running of the police department and establishing its policies and practice constitutes the policies, customs, practice of the City of Battle Creek in this instance and creates municipal liability.

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages, both compensatory and punitive, suffered by Plaintiffs as a result of the violation of their civil rights along with their attorney's fees, costs and interest, pursuant to 42 U.S.C. § 1988.

COUNT III
Violation of Civil Rights, Conspiracy

55. Plaintiffs reallege and incorporate Paragraphs 1 through 54 as if fully set forth herein.

56. Defendants HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH consulted with each other and acted in concert in determining to install video and audio recording devices without notice in the womens' locker/shower/toilet room of the police department.

57. At the time that they did so, they knew or should have known that such an action was a violation of the Fourth Amendment and the Plaintiffs' rights in the matter had been clearly established at least since the 1980s.

58. Defendants undertook no effort to consult with the City Attorney or any other legal authority prior to undertaking their concerted acts.

59. Therefore, insofar as their acts resulted in a violation of Plaintiffs' civil and constitutional rights, it constituted a conspiracy to violate those rights.

60. It further constituted a conspiracy to violate the Federal Privacy and Telecommunications Act, the Michigan Eavesdropping Statute and various common law torts arising under the jurisprudence of the State of Michigan.

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the

Court shall find just for their damages, compensatory, punitive and exemplary, suffered by Plaintiffs as a result of the violation of their civil rights along with their attorney's fees, costs and interest, pursuant to 42 U.S.C. § 1988.

COUNT IV

Violation of the Federal Privacy and Telecommunications Act of 1986, 18 U.S.C. 2511 et seq and 18 U.S.C. 2520(a)

61. Plaintiffs reallege and incorporate Paragraphs 1 through 60 as if fully set forth herein.

62. 18 U.S.C. 2511(1)(a),(c) and (d), limit the intentional interception, disclosure or use of any oral communication by electronic means.

63. 18 U.S.C. 2520(a) provides for a civil action from those persons wrongfully intercepted for "such relief as may be appropriate."

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages for the "violation of the Federal Privacy and Telecommunications Act as may be allowed by 18 U.S.C. 2520(a) as well as their interest, attorney's fees and costs.

COUNT V

Violation of MCL 750.539c, MCL 750.539d and MCL 7650.539j

64. Plaintiffs reallege and incorporate Paragraphs 1 through 63 as if fully set forth herein.

65. The recording devices surreptitiously placed in Plaintiffs' locker room at the police department recorded both video and audio communications.

66. MCL 750.539c prohibits eavesdropping.

67. MCL 750.539d prohibits secretly installing recording instruments in a private location.

68. MCL 750.539j prohibits recording images of an individual's unclothed body.

69. MCL 750.539h provides for a damage action for actual damages against the violator of the statute, as well as punitive damages.

70. After the recordings took place and became known, the Defendants attempted to justify their action, particularly through Defendant BUSH by referring to MCL 750.539g(a) which exempts from liability “eavesdropping or surveillance not otherwise prohibited by law by a police officer of this state while in performance . . . of the officer’s duty.”

71. Because the warrantless and unreasonable intrusion on the Plaintiffs’ privacy was unlawful under the Fourth Amendment and under the Federal Privacy and Telecommunications Act, this exception does not apply.

WHEREFORE, Plaintiffs demand judgment of Defendants HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages, both compensatory and punitive, along with their attorney’s fees, costs and interest.

COUNT VI
Common Law Invasion of Privacy

72. Plaintiffs reallege and incorporate Paragraphs 1 through 71 as if fully set forth herein.

73. The act of surreptitiously recording and videotaping Plaintiffs in the locker/shower/toilet rooms of the Battle Creek police department constituted invasion of privacy under Michigan common law, DeMay v Roberts, 46 Mich 160 (1881).

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages, both compensatory and exemplary, along with their attorney’s fees, costs and interest.

COUNT VII
Common Law Negligent and Intentional Infliction of Emotional Distress

74. Plaintiffs reallege and incorporate Paragraphs 1 through 73 as if fully set forth herein.

75. The acts of the Defendants described above in the surreptitious video and audio recording of Plaintiffs in their locker/shower/toilet rooms at the police department and the subsequent revelation of that activity constituted extreme and outrageous conduct intentionally or recklessly undertaken by Defendants.

76. The showing of the videos of Plaintiff GILLESPIE in a state of undress to a crowd of men in her presence was particularly egregious and caused her great emotional shock and harm.

77. The actions of the Defendants in allowing the knowledge of their actions to become public constituted intentional and negligent infliction of emotional distress on all Plaintiffs, particularly Plaintiffs McCAUGHNA and O'BRYANT.

WHEREFORE, Plaintiffs demand judgment of Defendants BATTLE CREEK, HAMPTON, SAYLOR, ALONSO, REINSTEIN, FICKLE and BUSH in such amount as the Court shall find just for their damages, both compensatory and exemplary, along with their attorney's fees, costs and interest.

Respectfully submitted,
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DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, hereby demand a trial by jury.

Respectfully submitted,
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