

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LIYAH KAPRICE BROWN)	
4415 6 th Place, N.E.)	
Washington, D.C. 20017)	
Plaintiff,)	Civil Action No. 08-1509 (RMC)
)	
v.)	
)	
HILDA SHORT ¹)	
)	
and)	
)	
UNITED STATES OF AMERICA)	
)	
serve: Attorney General Eric Holder)	
U.S. Department of Justice)	
950 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20530)	
)	
United States Attorney)	
for the District of Columbia)	
555 4th St., N.W.)	
Washington, D.C. 20530)	
)	
Defendants.)	

**THIRD AMENDED COMPLAINT FOR
DAMAGES AND DECLARATORY RELIEF**

NATURE OF ACTION

1. Liyah Brown (“Plaintiff”) is an attorney with the Public Defender Service for the District of Columbia (“PDS”). She brings this action to redress injuries she suffered and continues to suffer as a result of the unconstitutional partial strip search of her at the H. Carl

¹ Address information for Defendant Short is not provided pursuant to ¶ 4(e) of the Protective Order signed by Judge Collyer on April 20, 2009 (Docket No. 11).

Moultrie Courthouse of the Superior Court of the District of Columbia conducted by United States Marshals Service Detention Security Officer Hilda Short (“Defendant Short”).

2. On August 29, 2007, Ms. Brown was representing a client before Judge John H. Bayly, Jr., Associate Judge of the Superior Court. Judge Bayly ordered that Ms. Brown be “stepped back” by employees of the United States Marshals Service, who were providing security in the courtroom, and taken into custody. The District of Columbia Commission on Judicial Disabilities and Tenure has since determined that Judge Bayly’s directive was unjustified and in violation of the Code of Judicial Conduct. Judge Bayly has apologized to Ms. Brown in writing.

3. Defendant Short and a male Deputy Marshal took Ms. Brown to a holding area where Defendant Short searched her. The search included a partial strip search, despite the absence of any legitimate justification or basis for suspecting that Ms. Brown possessed contraband, a weapon, or evidence of a crime. Defendant Short exposed Ms. Brown’s breasts by raising her jacket, shirt, and bra. The search was conducted in plain view of the male Deputy Marshal and male and female detainees.

4. Defendant Short’s actions violated Ms. Brown’s right under the Fourth Amendment to the United States Constitution to be secure against an unreasonable search and constitute the tort of intrusion upon seclusion under District of Columbia common law.

5. At all times during the search, Defendant Short was acting within her official capacity as a federal employee of the United States Marshals Service (“USMS”).

6. Ms. Brown seeks a declaratory judgment and compensatory damages to remedy the pain, suffering, and humiliation she has been caused by Defendants' actions. Ms. Brown also seeks punitive damages against Defendant Short.

PARTIES

7. Liyah Kaprice Brown is a resident of the District of Columbia residing at 4415 6th Place, N.E., Washington, D.C. 20017. She is employed by PDS, and regularly appears on behalf of her clients before the judges of the Superior Court of the District of Columbia in the Moultrie Courthouse. The courthouse is located at 500 Indiana Avenue, N.W., Washington, D.C. 20001.

8. Hilda Short is, or at the time of events at issue was, a United States Marshals Service Detention Security Officer assigned to the Moultrie Courthouse in Washington, D.C. Ms. Short is or was an employee, agent, and/or representative of the USMS. Short was acting within the scope of her official duties as a federal employee by performing security functions in the courtroom of Judge John H. Bayly, Jr., on August 29, 2007.

9. The United States Marshals Service is an agency of the United States of America. It is the enforcement arm of the federal courts. Through Deputy United States Marshals, Detention Security Officers, and other employees, agents, or other representatives, the USMS provides judicial security at federal courthouses throughout the country, including the Moultrie Courthouse.

10. Upon information and belief, Defendant Short and the USMS derive their authority to provide judicial security at the Moultrie Courthouse from cooperative agreements between the USMS and the District of Columbia and from District of Columbia law. Upon

information and belief, the judicial security provided by Short and the USMS at the Moultrie Courthouse is funded in part by the District of Columbia.

JURISDICTION AND VENUE

11. This action arises under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80.

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1346(b)(1), and 2201.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (e) because the events giving rise to the claim occurred in the District of Columbia and Plaintiff is a resident of the District of Columbia.

FACTUAL BACKGROUND

14. Liyah Brown has been a Trial Attorney with PDS since October 2005. In that capacity, Brown represents adult and juvenile indigent criminal defendants in felony and misdemeanor cases in adult and family court. She appears before the judges of the Superior Court of the District of Columbia in the Moultrie Courthouse virtually every week, often several times a week.

15. On August 29, 2007, Brown went to the Moultrie Courthouse to represent a client in a status hearing before Judge John H. Bayly, Jr., Associate Judge of the Superior Court. As usual, she wore a badge identifying her position with PDS, and passed through a metal detector without incident to gain entry to the courthouse.

16. During the course of Ms. Brown's oral presentation on behalf of her client, Judge Bayly repeatedly cut her off while she was trying to answer his question. Brown remained calm and continued to try to answer the question, but Judge Bayly became upset and exclaimed several times, "step her back." This was a directive to the employees of the USMS providing courtroom security to take Brown into custody.

17. Judge Bayly has been admonished for his actions. The District of Columbia Commission on Judicial Disabilities and Tenure ("Commission") conducted an investigation and concluded that "nothing Ms. Brown did warranted that she be 'stepped back' and incarcerated." Determination & Undertaking, D.C. Comm'n on Judicial Disabilities & Tenure (Mar. 12, 2008) at 1 (copy attached as Attachment A). The Commission further determined that Judge Bayly's "conduct in this instance was regrettable and in violation of the applicable provisions of the Code of Judicial Conduct." *Id.* at 2. Judge Bayly has written a letter of apology to Brown. *See* Letter from J. Bayly to L. Brown (Sept. 21, 2007) (copy attached at Attachment B).

18. Upon Judge Bayly's order, Defendant Short and a male Deputy Marshal who were providing security in the courtroom took Brown into custody. They removed Brown from the courtroom and took her to the cell block adjacent to the courtroom.

19. Defendant Short and the male Deputy Marshal remained with Brown in the cell block. The male Deputy Marshal took Brown's personal effects, including her jewelry, shoes, and court identification badge identifying Brown as a PDS employee.

20. Defendant Short then searched Brown twice. The male Deputy Marshal was standing directly beside Defendant Short during both searches.

21. Both searches occurred against the wall directly across from and in full view of the male holding cell. The female holding cell was next to the male holding cell, on a diagonal from Brown's location.

22. The first search entailed what is commonly referred to as a "pat down" or "frisk." Defendant Short performed this search while Brown's back was to the wall. Brown cooperated fully with the search.

23. The search did not reveal anything inappropriate. Nor had Brown acted at the courthouse that day – or on any of her many prior days at the courthouse – in a manner that could reasonably give rise to a suspicion that she might possess contraband, a weapon, evidence of a crime, or anything else inappropriate or threatening. In fact, Defendant Short knew or should have known that Brown had passed through a metal detector without incident to gain entry to the courthouse.

24. Defendant Short nonetheless conducted a second and much more intrusive search. The second search was a partial strip search.

25. To begin the second search, Defendant Short positioned Brown so that she was facing the wall, her hands were against the wall, and her feet were apart. Defendant Short raised Brown's suit jacket and her shirt so that Brown's bare skin was exposed. Defendant Short then pulled Brown's bra away from her breasts and above her shoulders, fully exposing Brown's breasts. Defendant Short was looking directly at Brown's bare breasts during these events.

26. The second search was conducted in plain view of the male Deputy Marshal and detainees in the male holding cell. The male Deputy Marshal, standing next to Brown and Defendant Short, had an unobstructed view of Brown's breasts while Defendant Short exposed

them. Even though Brown was facing the wall, it was apparent from the vantage point of the male holding cell that Defendant Short had exposed Brown's breasts. Upon information and belief, Brown's exposed breasts were visible from at least certain positions in the male holding cell. Upon information and belief, these events and Brown's exposed breasts were also visible from at least certain positions in the female holding cell.

27. Brown was then placed in handcuffs that were attached to a chain around her waist and moved to the female holding cell. While in the cell, a male in the adjoining cell said that he would like to get his hands on Brown like Defendant Short had and that Brown was too sexy to be locked up.

28. Brown was soon released. No further actions were taken against her by Judge Bayly.

29. Defendant Short acted intentionally, maliciously, and with willful, callous, wanton, and reckless disregard for Plaintiff's constitutionally protected rights.

30. Through the actions of federal employee Defendant Short, the United States of America intentionally intruded, both visually and physically, upon a place where Plaintiff had secluded herself, in a manner that would be highly offensive to an ordinary, reasonable person.

31. At all times relevant to the events described above, Defendant Short was acting within the scope of her employment as an employee, agent, and/or representative of the District of Columbia and the USMS, which is an agency of Defendant United States.

PRESENTMENT REQUIREMENT

32. Pursuant to 28 U.S.C. § 2675(a), the tort claim set forth herein was presented to the USMS and received on November 24, 2008. Plaintiff filed an administrative complaint

detailing the events described above and requesting a specific amount of damages. More than six months have elapsed and the USMS has failed to make a final determination. Plaintiff deems such failure to be a denial of her claim. *See GAF Corp. v. U.S.*, 818 F.2d 901 (D.C. Cir. 1987).

INJURY TO PLAINTIFF

33. As a direct and proximate result of Defendants' actions, Plaintiff has suffered, and in the future will continue to suffer, humiliation, economic loss, embarrassment, and mental and emotional distress.

34. Ms. Brown's injuries were significantly exacerbated because the search was conducted in plain view of a male Deputy Marshal and male detainees.

35. Defendants' actions would be highly offensive to an ordinary, reasonable person.

36. Defendants' actions have made Ms. Brown fearful of being subjected in the future to another unconstitutional and humiliating search while representing indigent defendants in the Moultrie Courthouse.

COUNT I

FOURTH AMENDMENT

37. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 36 above.

38. The foregoing actions by Defendant Short constitute a violation of Plaintiff's right to be secure in her person against unreasonable searches, guaranteed by the Fourth Amendment to the United States Constitution.

COUNT II

42 U.S.C. § 1983

39. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 38 above.

40. At all times relevant to the events described herein, Defendant Short was acting under color of statute, ordinance, regulation, custom, and/or usage of the District of Columbia, in addition to the United States.

41. Through the foregoing actions, Defendant Short subjected Plaintiff to the deprivation of the right to be secure in her person against unreasonable searches, guaranteed by the Fourth Amendment to the United States Constitution.

COUNT III

FEDERAL TORT CLAIMS ACT, 28 U.S.C. §§ 1346(b), 2671-80
INTRUSION UPON SECLUSION

42. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 41 above.

43. At all times relevant to the events described herein, Defendant Short was acting within the scope of her federal employment by the USMS.

44. Through the foregoing actions of a federal employee, Plaintiff was subjected to invasion or interference, by visual and physical intrusion, into a place where Plaintiff had secluded herself, in a manner that would be highly offensive to an ordinary, reasonable person.

45. If Defendant United States of America were a private person, it would be liable to Plaintiff in accordance with the common law of the District of Columbia.

PRAYER FOR RELIEF

46. WHEREFORE, Plaintiff prays that this Court grant her the following relief:

(a) enter a declaratory judgment finding that the foregoing actions violate the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983 and that they constitute intrusion upon seclusion under District of Columbia common law;

(b) award compensatory damages in an amount to be determined by the jury that would fully compensate Plaintiff for the economic loss, humiliation, embarrassment, and mental and emotional distress caused by the conduct of the Defendants alleged herein;

(c) award punitive damages to Plaintiff in an amount to be determined by the jury that would punish Defendant Short for her willful, wanton, and reckless conduct alleged herein and that would effectively deter Defendant Short from engaging in similar conduct in the future;

(d) award Plaintiff her reasonable attorneys' fees and costs; and

(e) order such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a trial by jury as to all issues so triable.

Date: August 7, 2009

Respectfully submitted,

/s/ Jennifer I. Klar
John P. Relman (D.C. Bar No. 405500)
Jennifer I. Klar (D.C. Bar No. 479629)
RELMAN & DANE PLLC

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Attorneys for Plaintiff

Attachment A

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**
515 FIFTH STREET, N.W. BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

DETERMINATION AND UNDERTAKING

Re: The Honorable John H. Bayly, Jr., Associate Judge of the Superior Court of the District of Columbia

The Commission has investigated the circumstances surrounding the detention of Liyah K. Brown at the direction of Judge John Bayly on August 29, 2007. Ms. Brown is an attorney for the Public Defender Service who was appearing before Judge Bayly on behalf of a detained client. During the hearing, Ms. Brown attempted to make an argument on behalf of her client. Judge Bayly indicated that he did not believe that Ms. Brown's arguments were pertinent to the issue before him. He then repeatedly ordered Ms. Brown to "be quiet," indicated that he would "call the case later," and warned that if she continued, she was "going to be in contempt in a minute." Notwithstanding Judge Bayly's repeated admonitions, Ms. Brown continued to make her argument. At that point, Judge Bayly became angry and ordered that Ms. Brown be "stepped back." She was thereafter detained by court Marshals, shackled, subjected to an intrusive patdown search, and incarcerated for approximately forty-five minutes.

The Commission has met with Judge Bayly, discussed the facts with him, and heard his explanation and account of the aforementioned incident. Judge Bayly agrees that his actions were grossly disproportionate to Ms. Brown's conduct. He has also expressed his regret for his actions and has issued Ms. Brown a written apology. The Commission has also met and discussed this matter with Ms. Brown, who provided a detailed account of the in-court hearing and her post-hearing detention. In addition, the Commission has reviewed the transcript and audiotape of this proceeding.

The Commission has determined that Judge Bayly's actions were grossly disproportionate to Ms. Brown's conduct. Based on its careful review of the evidence, it is clear to the Commission that nothing Ms. Brown did warranted that she be "stepped back" and incarcerated. In this regard, the Commission notes that it has been informed that many judges go their entire career without ordering the detention of an attorney appearing before them. The facts surrounding the August 29, 2007 incident with Ms. Brown do not approach the rare circumstances in which this extraordinary exercise of judicial power would be warranted.

The Commission therefore concludes that Judge Bayly's conduct violated Canon 3B(4) of the Code of Judicial Conduct as adopted by the Joint Committee on Judicial Administration of the District of Columbia Courts, which provides that "[a] judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with

whom the judge deals in an official capacity....” The Commentary to that Canon aptly observes:

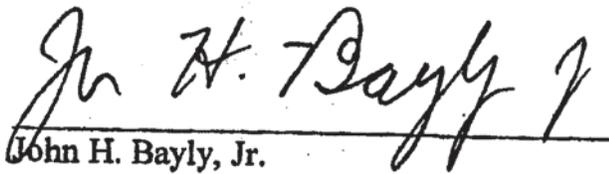
“The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.”

Judge Bayly accepts the Commission’s determinations and conclusions expressed above and recognizes that his conduct in this instance was regrettable and in violation of the applicable provisions of the Code of Judicial Conduct. Judge Bayly hereby undertakes to avoid any such conduct in the future and to conform his conduct to the standards prescribed by the Code.

In view of Judge Bayly’s record on behalf of the people of the District of Columbia over some eighteen years, the Commission further concludes that no additional sanctions are warranted.

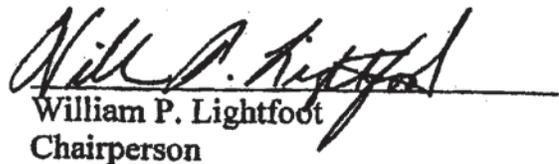
The Commission makes this document public with the agreement of Judge Bayly.

For The Commission:



John H. Bayly, Jr.
Associate Judge
Superior Court of the District of Columbia

March 11, 2008
Date



William P. Lightfoot
Chairperson

3/12/08
Date

Attachment B

Superior Court of the District of Columbia
Washington, D.C. 20001

Chambers of
John H. Bayly, Jr.
Judge

September 21, 2007

Liyah Brown, Esq.
Public Defender Service
633 Indiana Ave., N.W.
Washington, D.C. 20004

Dear Ms. Brown:

At the outset may I apologize for any anguish or embarrassment you may have experienced as a result of being detained behind the courtroom on August 29, 2007. I do not know first-hand what you may have experienced, but it was never my intention or my expectation that your detention should be made punitive. I now recognize that even a brief period of detention would have caused you distress out of proportion to what had occurred.

I would also like to express my regret that the events of August 29 came to such an unfortunate conclusion. Like my colleagues, I often struggle to ensure the fair and efficient administration of justice on a crowded criminal calendar. My purpose at the status call was not to deprive your client of your help or representation. Nor was my purpose to express personal pique or animus. Rather, my aim was to address what I saw as a situation that prevented me from reaching the remaining cases on the calendar in an orderly and expeditious fashion. You will recall, I hope, that I rescinded my action as soon as remaining cases could be called, the courtroom had been substantially emptied, and you had conferred with your colleagues. I did not adjudicate you in contempt and it was never my intention to pursue contempt proceedings once order had been reestablished.

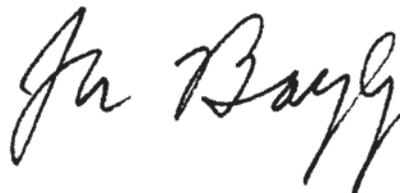
I recognize fully that I share the courtroom with litigants, lawyers, witnesses, staff, and spectators. I recognize also that the judge's role is properly focused on

overseeing the pace, scope, and fairness of the proceedings. I apologize to you if, in haste, I did not make clear that my sole interest was to discharge my obligation in this respect.

Upon reflection, I also acknowledge that placing you in custody was too severe a measure for accomplishing what I had hoped to achieve. I apologize for proceeding in so summary a fashion as I see, in retrospect, that it caused you distress I never intended.

I hope that by expressing these thoughts I have to some extent allayed your concerns and that we will be able to pursue a professional relationship that is both positive and productive.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ju Bayly". The signature is written in black ink and is positioned to the right of the typed closing "Very truly yours,".