

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT FRANKFORT  
CASE NO.: 05cv18JMH

Eastern District of Kentucky  
FILED

MAR 28 2005

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK U.S. DISTRICT COURT  
PLAINTIFFS

**TINA MICHELLE BLACK,  
MAUREEN O. MITCHELL, and  
BRITTNEY CREECH**

**V.**

**FRANKLIN COUNTY, KENTUCKY**

**SERVE: Hon. Robert Roach  
Franklin County Judge Executive  
313 West Main Street  
Frankfort, Kentucky 40601**

**AND**

**FRANKLIN COUNTY CORRECTIONAL COMPLEX**

**SERVE: James Kemper, Jr. (Former Jailer)  
Jailer/Director  
400 Coffee Tree Road  
Frankfort, Kentucky 40601**

**Ted Hammermeister (Current Jailer)  
Jailer/Director  
400 Coffee Tree Road  
Frankfort, Kentucky 40601**

**AND**

**JAMES KEMPER, JR. And TED HAMMERMEISTER,  
INDIVIDUALLY, AND  
IN HIS CAPACITY AS DIRECTOR OF  
FRANKLIN COUNTY CORRECTIONAL COMPLEX**

**SERVE: James Kemper, Jr.  
Jailer/Director  
400 Coffee Tree Road  
Frankfort, Kentucky 40601**

**Ted Hammermeister  
Jailer/Director  
400 Coffee Tree Road  
Frankfort, Kentucky 40601**

**DEFENDANTS**

\*\* \*\* \*\* \*\* \*\* \*\* \*\* \*\* \*\* \*\* \*\*

**COMPLAINT**

**I. INTRODUCTION**

Tina Michelle Black, Maureen O. Mitchell and Brittney Creech, Plaintiffs, file this action complaining of the egregious and unjustifiable conduct of the Defendants named in the caption above. As more specifically set forth below, Plaintiffs, after arrests for minor offenses, were unlawfully and unjustifiably strip-searched by Defendants. It is the purpose of this action to recover the actual damages Plaintiffs sustained as a result of Defendants' conduct, as well as any punitive damages to which Plaintiffs are entitled, and to insure that no citizen is ever again victimized by the blatant and malicious violation of constitutional and common law rights that were endured by Plaintiffs.

**II. JURISDICTION AND VENUE**

2. Plaintiffs seek damages from Defendants under the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983, for gross and unconscionable violations of the rights, privileges and immunities guaranteed them by the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States. Accordingly, this Court has jurisdiction of this case pursuant to the provisions of 28 U.S.C. Sec. 1331 and 1343. Plaintiffs also seek declaratory and injunctive relief, as well as damages under the pendant jurisdiction of this Court for negligence, gross negligence and intentional infliction of emotional distress. As Franklin County, Kentucky, is the location of all

Defendant parties to this action and the location of all acts pertinent to this suit, venue is proper in this Court.

### ***III. PARTIES***

3. Plaintiff, Tina Michelle Black, is a resident of Lawrenceburg, Anderson County, Kentucky. She is an unmarried female, age 32 years, at the time of the offense.

4. Plaintiff, Maureen O. Mitchell, is a resident of Lawrenceburg, Anderson County, Kentucky, who is an unmarried female, and who was 41 years of age at the time of the offense.

5. Plaintiff Brittney Creech, is a resident of Frankfort, Franklin County, Kentucky, and who is an unmarried female, 18 years of age at the time of the offense.

6. Defendant, Franklin County, at all times mentioned herein, employed, was responsible for the establishment of policies either formally or by custom for, and was responsible for the employment, training, supervision and conduct of, the officers and employees of the Franklin County Correctional Complex.

7. Defendant, Franklin County Correctional Complex, at all times mentioned herein, employed, was responsible for the establishment of policies either formally or by custom for, and was responsible for the employment, training, supervision and conduct of the officers and employees of the Franklin County Correctional Complex.

8. Defendant, James Kemper, Jr., was Director of the Franklin County Correctional Complex at the time of the acts complained of, and as such established policies formally or by custom for, and was responsible for the employment, training, supervision and conduct of the officers and employees of the Franklin County

Correctional Complex. Ted Hammermeister is the current Director of the Franklin County Correctional Complex.

#### **IV. CLASS ACTION**

9. This action is brought, pursuant to FRCP 23, and other applicable law, by Plaintiffs on behalf of themselves and all other persons similarly situated whose joinder in this action is impracticable because the class is so numerous that joinder of all members is impracticable.

10. There are questions of law and fact common to the class, all as set forth hereinbelow.

11. The claims of the representative parties are typical of the claims of the class

12. The representative parties will fairly and adequately protect the interests of the class.

#### **V. NATURE OF DEFENDANT'S CONDUCT**

13. Defendants, individually and in conspiracy with one another, engaged in the conduct described below under color of the law of the Commonwealth of Kentucky and Franklin County. The individual Defendants named above knowingly participated or acquiesced in, contributed to, encouraged, implicitly authorized or approved of the conduct described below individually and in their official capacities with Franklin County and/or the Franklin County Correctional Complex. The offenses described below resulted from the failure of Defendants to employ qualified persons for positions of authority, and/or to properly or conscientiously train and supervise the conduct of such persons after their employment, and/or to promulgate appropriate operating policies and

procedures either formally or by custom to protect the constitutional rights of the citizens of the Commonwealth of Kentucky, including Plaintiffs. Defendants' conduct was intentional or grossly negligent, indicated active malice toward Plaintiffs or a total and reckless disregard for and indifference to each of their constitutional and common law rights, and justifies an award of punitive damages in addition to the actual damages which the Plaintiffs are entitled to recover.

#### **VI. FACTS**

14. There are questions of law and fact common to the class. With respect to the facts, on April 21, 2004, Plaintiff, Tina Michelle Black, was arrested in Franklin County, Kentucky, for a minor, non-violent offense (contempt for failure to pay child support). Plaintiff was taken into custody in the Family Court Division of the Franklin Circuit Court. Plaintiff was then transported to the Franklin County Correctional Complex, where she was subjected to a strip-search when there was no reasonable cause to believe that she was carrying or concealing weapons or contraband. Specifically, Plaintiff was required by a Franklin County Correctional Complex employee to remove all of her clothing so that a visual inspection of her person could be accomplished. Plaintiff was granted work release on May 11, 2004 and was on work release until June 9, 2004. Plaintiff worked six days per week. Plaintiff was strip-searched each day after returning to the jail from work release. Male inmates who are on work release are not strip searched upon their return to the jail.

15. On March 29, 2004, Plaintiff, Maureen O. Mitchell, was stopped for speeding in Lawrenceburg, Anderson County, Kentucky. At the time of her aforesaid stop, said Plaintiff's operator's license was verified by the Officer and determined to

have been suspended, and said Officer proceeded to place said Plaintiff under arrest on the charge of operating a motor vehicle on a suspended license in violation of K.R.S. 186.620. (The said Plaintiff's operator's license should not have been identified as suspended on her driving history record, but improperly did due to a back log of operator's license entries to be made by the Commonwealth of Kentucky's Transportation Cabinet.)

The Officer then proceeded to conduct a search of said Plaintiff's automobile and purse. The Officer found prescription medicine of Plaintiff and her Fiancee which had been placed in the ashtray of her car, and in a pill case in her purse. Plaintiff was then charged with speeding, possession of a controlled substance 1<sup>st</sup>, and possession of a controlled substance 3<sup>rd</sup>. Said Plaintiff was then transported to the Franklin County Correctional Complex, where she was subjected to a strip-search when there was no reasonable cause to believe that she was carrying or concealing weapons or contraband. Specifically, Plaintiff was required by a Franklin County Correctional Complex employee to remove all of her clothing so that a visual inspection of her person could be accomplished. Plaintiff Mitchell was required to spread her legs, stoop, and cough vigorously, all under the direct visual observation of a jail employee.

16. On January 15, 2005, Plaintiff, Brittney Creech, age 18 years, was arrested in Lawrenceburg, Anderson County, Kentucky, for a minor, nonviolent offense of driving under the influence (KRS 189A.010). Plaintiff Creech was taken into custody by Lawrenceburg Police. Plaintiff was then transported to the Franklin County Correctional Complex where she was subjected to a strip search when there was no reasonable cause to believe that she was carrying or concealing weapons or contraband. Specifically,

Plaintiff was required by a Franklin County Correctional Complex employee to remove all of her clothing, so that a visual inspection of her person could be accomplished. Plaintiff Creech was required to spread her legs, stoop, and cough vigorously, all under the direct visual observation of a jail employee. Plaintiff Creech was released from the Franklin County Regional Complex, after having never been placed in the general population of the inmates, and approximately five (5) hours after her initial incarceration. Plaintiff Creech submitted to a urine test which indicated that she had no drugs in her system. She was not asked to take an intoxilizer examination.

17. In 1979, the United States Supreme Court held that a pretrial detainee has the right not to be searched unless the reasonableness of such search is established by “balancing ...the need for the particular search against the invasion of personal rights that the search entails. On April 18, 1989, the Sixth Circuit Court of Appeals issued its opinion in Masters v. Crouch, 872 F.2d 1248 (6<sup>th</sup> Cir 1989), cert.denied, 493 U.S. 977, 110 S.Ct. 503 (1989), in which it held:

It was clearly established on October 21, 1986, that a pretrial detainee has the right not to be searched unless the reasonableness of such search is established by “a balancing of the need for the particular search against the invasion of personal rights that the search entails.” (Citations omitted). It was equally clearly established that a person charged only with a traffic violation or nonviolent minor offense may not be subjected to a strip search unless there are reasonable grounds for believing that the particular person might be carrying or concealing weapons or other contraband.

Id. At 1257 (Emphasis in original). Masters specifically involved the strip-search of a person arrested for a nonviolent minor offense by the Jefferson County Department of Corrections. In this case, Plaintiffs were arrested for nonviolent minor offenses. Neither their behavior nor their appearance gave Defendants any reasonable grounds for

believing that they might be carrying or concealing weapons or other contraband. Under such circumstances, Defendants' requirement that Plaintiffs expose the most private part of their physical person for a visual inspection was unconscionable, was an illegal strip-search by any definition, and was a flagrant violation of the balancing requirement of Bell v. Wolfish, supra.

## **VII. CAUSES OF ACTION**

### **A. Count I**

18. Paragraphs 1-17 above are incorporated herein by reference and made this Paragraph 18.

19. Plaintiffs' search, described above, was part of a continuing pattern of misconduct and is the result of statutes, ordinances, regulations, policies, procedures, customs and practices of the Commonwealth of Kentucky and Franklin County, either written or unwritten, that are systematically applied whenever an arrestee is admitted to the Franklin County Correctional Complex. A judgment was recently entered against the Defendants for similar misconduct and the Defendants continue to perform illegal strip-searches. Such practices constitute an arbitrary use of government power, and evince a total, intentional and unreasonable disregard for the constitutional and common law rights of the citizens of Kentucky, including Plaintiffs and the wholesale violations of those rights likely to result from the systematic pursuit of such practices.

20. As the result of the foregoing, Plaintiffs, through Defendants' intentional or grossly negligent conduct, were deprived without due process of law of the following rights, privileges and immunities guaranteed to each of them by the Constitution of the United States in violation of the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983:

- (a) Their right to be secure in their persons against unreasonable searches and seizures under the Fourth and Fourteenth Amendments;
- (b) Their right to privacy in their persons against unreasonable intrusions under the Fourth, Fifth, Ninth and Fourteenth Amendments;
- (c) Their right to the equal protection of the law secured by the Fourteenth Amendment; and
- (d) Their right not to be subjected to cruel and unusual punishment under the Eighth and Fourteenth Amendments.

21. Moreover, given the preexisting law that clearly prohibited Defendants' conduct and the recent entry of a judgment against these same Defendants for this same conduct, Defendants search of Plaintiffs was intentional, wanton and malicious, and was indicative of Defendants' total and reckless disregard of, indifference to the rights of, and risk of harm to, Plaintiffs.

**B. Count II**

22. Paragraphs 1-21 above are incorporated herein by reference and made this Paragraph 22.

23. By virtue of the foregoing, Defendants intentionally and unjustifiably inflicted upon Plaintiffs severe mental and emotional distress.

**C. Count III**

24. Paragraphs 1-23 above are incorporated herein by reference and made this Paragraph 24.

25. By virtue of the foregoing, Defendants were negligent, and grossly negligent, all to the damage of Plaintiffs.

### **VIII. DAMAGES**

26. Paragraphs 1-25 above are incorporated herein by reference and made this Paragraph 26.

27. Plaintiffs were unjustifiably and unconstitutionally searched in a manner that generated tremendous and overwhelming embarrassment, humiliation and mental and emotional distress. As a result, Plaintiffs have suffered, and are entitled to recover, actual damages. Furthermore, Defendants' violations of the constitutional and common law rights of Plaintiffs were cruel, malicious, and evinced a total and reckless disregard for and indifference to those rights, entitling Plaintiffs to recover punitive damages from Defendants in order to deter such conduct in the future.

### **IX. DECLARATORY JUDGMENT AND PERMANENT INJUNCTION**

28. Paragraphs 1-27 above are incorporated herein by reference and made this Paragraph 27.

29. In addition to the foregoing, Plaintiffs requests that this Court issue a declaratory judgment deeming unconstitutional any and all statutes, ordinances, regulations, policies, procedures, customs or practices under which they were forced to expose their genitalia for visual inspection, and further request that this Court permanently enjoin Defendants from following or enforcing such statutes, ordinances, regulations, policies, procedures, customs or usages.

**WHEREFORE**, Plaintiffs, on behalf of themselves, and all other members of the class, respectfully demand the following relief: (a) trial by jury, (b) for an award of actual and punitive damages, (c) that they be granted the declaratory and injunctive relief requested herein, and (d) that they be awarded their costs, attorneys' fees and all other

relief to which they are entitled under law or in equity.

**VERIFICATION**

I, Tina Michelle Black, Maureen O. Mitchell, and Brittney Creech, after being duly sworn state that we have each read this complaint and the statements it contains are true and correct to the best of our knowledge.

  
TINA MICHELLE BLACK

  
MAUREEN O. MITCHELL

  
BRITTNEY CREECH

**COMMONWEALTH OF KENTUCKY )**  
**COUNTY OF ANDERSON )**

Subscribed and sworn to before me by Tina Michelle Black on this 28th day of March, 2005.

  
NOTARY PUBLIC, STATE AT LARGE

My commission expires: 8/16/08

**COMMONWEALTH OF KENTUCKY** )  
 )  
**COUNTY OF ANDERSON** )

Subscribed and sworn to before me by Maureen O. Mitchell on this 28<sup>th</sup> day  
of March, 2005.

Dotty M. Watts  
NOTARY PUBLIC, STATE AT LARGE

My commission expires: 4/7/2008

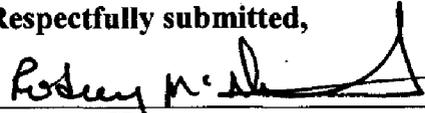
**COMMONWEALTH OF KENTUCKY** )  
 )  
**COUNTY OF ANDERSON** )

Subscribed and sworn to before me by Brittney Creech, on this 28<sup>th</sup> day of  
March, 2005.

Marie Hallard  
NOTARY PUBLIC, STATE AT LARGE

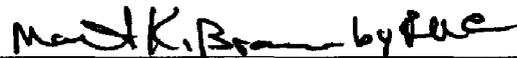
My commission expires: 8/16/08

Respectfully submitted,



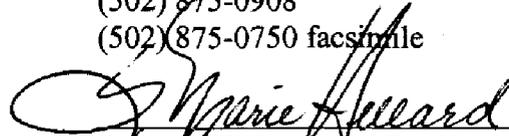
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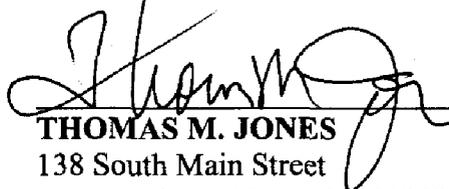
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