

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ELVIS WARE,

Plaintiff,

vs.

Case No.

Hon.

CITY OF DETROIT, a Municipal Corporation,  
POLICE OFFICER MICHAEL PARISH, in his  
Individual Capacity, and OFFICER MICHAEL  
OSMAN, in his individual capacity,

Defendants.

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**COMPLAINT AND JURY DEMAND**

## **INTRODUCTION**

This civil rights action arises out of Plaintiff Elvis Ware's arrest and search by Defendants Parish and Osman, who are police officers employed by Defendant City of Detroit. During the encounter at issue, Defendants Parish and Osman forced Mr. Ware to submit to a humiliating search and seizure, in which Defendant Parish sexually assaulted Plaintiff by reaching into Plaintiff's pants with his bare hands, fondling, grabbing, and squeezing Ware's penis and testicles, inserting his finger into Ware's gluteal cleft, and attempting to insert a finger into Ware's anus. Numerous Detroit residents had complained about Officers Parish and Osman conducting similar strip searches and/or body cavity searches of other African Americans on the street without search warrants or probable cause, yet the City did nothing to stop the practice.

Plaintiff Elvis Ware files this complaint seeking a declaration that Defendants violated his rights under the U.S. Constitutional and Michigan law. He also seeks compensatory and punitive damages for the callous disregard of these rights.

## **PARTIES**

1. Plaintiff Elvis Ware is a resident of Wayne County, Michigan.
2. Defendant City of Detroit is a municipal corporation and is a resident of Wayne County, Michigan, and is subject to the laws and constitutions of the State of Michigan and the United States. Defendant City of Detroit is, and at all times referenced in this complaint was, responsible for assuring that the actions, omissions, policies, practices and customs of the Detroit Police Department and its employees complied with the United States Constitution and the laws of the State of Michigan.
3. On information and belief, Defendant Michael Osman is a resident of Wayne County,

Michigan, and is employed as a police officer by the City of Detroit.

4. On information and belief, Defendant Michael Parish is a resident of Wayne County, Michigan, and is employed as a police officer by the City of Detroit.

### **JURISDICTION AND VENUE**

5. Plaintiff brings this action pursuant to the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983, seeking declaratory and injunctive relief and an award of damages to redress the deprivation of rights guaranteed to Plaintiff by the Constitution and laws of the United States, as well as the laws of the State of Michigan. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1343 (original jurisdiction over civil rights claims); and 28 U.S.C. §§ 2201 and 2202 (declaratory relief).
6. Plaintiff also brings this action pursuant to Michigan law. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff's state law claims because they form part of the same case or controversy as Plaintiff's § 1983 claims.
7. This Court has general personal jurisdiction over Defendant City of Detroit because it is a Michigan governmental agency with its principal place of business in Michigan.
8. This Court has general personal jurisdiction over Defendants Osman and Parish because they are residents of Michigan and are domiciled in Michigan.
9. Venue is proper in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. § 1391(b) because Defendants reside in the District and a substantial part of the events or omissions giving rise to the claim occurred in the District.

## FACTS

10. Plaintiff Elvis Ware is an African American veteran who served his country in Operation Desert Storm.
11. The following events occurred at approximately 8:00 PM on a Saturday evening in June of 2006.
12. Ware drove to the BP gas station located at the northwest corner of Schaefer Highway and Fort Street in Detroit, Michigan.
13. Before he could exit his car to pump gas, Ware was approached by a man who walked toward his car from the entrance of the BP.
14. Ware recognized the man who approached him as "Gino," whom Ware knew from around the neighborhood.
15. Gino approached the driver's side window of Ware's car and asked Ware for a cigarette. Ware handed Gino a cigarette from the pack of cigarettes on the front seat of his car. After accepting the cigarette, Gino walked away.
16. Defendants Osman and Parish quickly pulled into the BP station and parked their cruiser behind Ware's car in a perpendicular fashion, facing south.
17. Defendants Osman and Parish exited their police cruiser. Parish approached the driver's side window of Ware's car and Officer Osman approached Gino, who had left the BP parking lot and was walking south along Schaefer Highway.
18. An unmarked four door sedan pulled into the BP lot. Two officers wearing black police uniforms with stitched badges exited the sedan. Officer Parish approached the officers and engaged in a brief conversation with them. After the conversation, the unidentified

officers entered their car and drove away.

19. Officer Parish returned to the driver's side door of Ware's car.
20. Without saying anything, Parish opened the door of Ware's car, grabbed Ware with two hands, and pulled Ware from the car. Parish held Ware with two hands so that Parish and Ware were standing face to face.
21. From his vantage point in the BP lot, Ware saw that Officer Osman had stopped Gino and was talking to him. After a brief conversation, Osman released Gino, who then walked away.
22. Officer Parish held Ware close to him and asked Ware, "Where are the drugs?"
23. Ware immediately told Parish that he did not carry or deal drugs.
24. Officer Parish repeated his question. Ware repeated his denial and told Parish to search his car if he liked. Parish did not respond to Ware's denial or to Ware's offer to search his car.
25. Officer Parish spun Ware around and pushed him towards the hood of Defendants' police cruiser.
26. Parish pulled Ware's arms behind his back, leaned his face against the hood of the police cruiser, and handcuffed him.
27. Parish forced his leg between Ware's leg and used his leg to spread Ware's legs apart.
28. Parish jammed his knee into the back of Ware's knee, immobilizing Ware.
29. By this time, Osman had approached Parish and Ware and was standing near Defendants' police cruiser.
30. Parish began to "pat down" Ware. Parish began the pat down at Ware's shoulders and

proceeded from the top of his shirt to the bottom. Parish reached into Ware's rear pants pocket and removed Ware's wallet. Parish removed Ware's license from the wallet, held on to the license, and returned the wallet to Ware's pocket.

31. Parish patted the area around Ware's waist band.
32. There was no indication that Parish felt anything suspicious from his patting of the area around Ware's waist band.
33. Nonetheless, Parish abruptly stuck his bare hand down the front of Ware's pants and underneath the front of Ware's boxer shorts.
34. Parish grabbed Ware's penis and testicles with his bare hand and squeezed Ware's penis and testicles with his bare hand.
35. After he released his grip from Ware's penis and testicles, Parish reached his hand around Ware's hips and across his buttocks.
36. Parish inserted his bare finger into Ware's gluteal cleft and attempted to insert his finger into Ware's anus.
37. Ware immediately yelled and squirmed, trying to move his body away from Parish.
38. When Ware squirmed, Parish withdrew his hand from Ware's underwear.
39. Officer Parish grabbed Ware, moved him to the back seat of the police cruiser on the driver's side, and pushed him partially into the police cruiser such that his feet were still outside the cruiser
40. Parish removed both of Ware's boots, shook them, and inspected them. After finding nothing inside Ware's boots, Parish closed the door of the cruiser.
41. During the course of Parish's pat down of Ware, Osman had been looking into Ware's car

through the windows.

42. After Parish placed Ware inside the police cruiser and closed the door, Parish approached Osman, who was standing near Ware's car.
43. Osman and Parish opened all of the doors to Ware's car.
44. Osman and Parish leaned into Ware's car and searched the interior of the car.
45. Parish opened the trunk of Ware's car using the button inside the car.
46. Osman searched the trunk of Ware's car.
47. Despite their extensive search of Ware's car and trunk, the Defendant officers did not find any evidence of illegal activity and did not find anything illegal inside the car.
48. Parish returned to the police cruiser and sat in the driver's seat.
49. Parish entered the information from Ware's license into the computer in the front seat of the police cruiser.
50. Parish turned towards Ware and asked Ware if he knew that his driver's license was suspended. Ware replied that he was aware of this fact. Parish told Ware that he was going to "cut [him] a break" and would let him go without any punishment.
51. Parish opened the back door of the cruiser, removed Ware from the back seat, removed the handcuffs from Ware's wrists, and told Ware that he could leave.
52. Ware got into his car, started the engine, and drove away from the BP station.
53. Numerous citizens of the City of Detroit have complained about the conduct of Defendants Osman and Parish. For example:
  - A. Victims and witnesses have testified before the Detroit City Council that Osman and Parish have frequently stopped African American male drivers for traffic violations and have conducted strip searches and/or body cavity

searches without warrants, without probable cause, and without reasonable suspicion.

- B. Criminal charges have been dismissed on the grounds that evidence obtained as a result of unlawful body cavity searches performed by Defendants Osman and Parish violated the Fourth Amendment and state law.

- 54. At all times relevant to this complaint, Defendant City of Detroit was on notice of Defendants Osman and Parish's frequent use of warrantless strip searches and/or body cavity searches, but did nothing to address the situation.
- 55. It is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the permissible scope of arrests and searches.
- 56. It is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the use of strip searches and/or body cavity searches.
- 57. It is the policy, practice, and/or custom of the City of Detroit to ignore and/or fail to respond to citizen complaints regarding the violation of constitutional rights by its officers, specifically the actions of Officers Osman and Parish.
- 58. It is the policy, practice and/or custom of the City of Detroit to tolerate or acquiescence in its officers' constitutional violations, specifically the actions of Officers Osman and Parish.
- 59. At the time of Plaintiff's arrest and search by the Defendant officers in June 2006, it was clearly established that under the Fourth Amendment to the United States Constitution:
  - A. Police officers may only use reasonable force in the course of a search and seizure;
  - B. Barehanded searches of a citizen's penis, testicles, gluteal cleft and anus constitute unreasonable excessive force;

- C. Police officers cannot arrest citizens without a warrant or probable cause that a crime has been committed in their presence;
- D. Police officers cannot stop and search citizens without particularized reasonable suspicion that a crime is afoot;
- E. If police officers arrest and search a citizen in the absence of a warrant, probable cause, and reasonable suspicion, then any further non-consensual physical contact between the officers and the citizen is unconstitutional;
- F. Police officers may stop a citizen and conduct a cursory external “frisk” of the citizen’s clothing only if the officers maintain particularized reasonable suspicion that a crime is being committed and that the citizen is armed; and
- G. During the course of a “stop and frisk” supported by particularized reasonable suspicion to believe that the citizen is armed and dangerous, police officers may conduct a search of the interior of a citizen’s clothing only if it is plain from the exterior search that illegal contraband is contained inside the clothing; however, Police officers may not conduct such an interior search in the absence of particularized suspicion supported by “plain feel.”

60. At the time Defendants Osman and Parish arrested and searched Plaintiff Ware in June 2006, reasonable police officers were aware of the clearly established principles described in the previous paragraph.

61. Under Michigan law, specifically M.C.L. § 764.25b, body cavity searches are presumptively illegal, and may not be conducted without a valid search warrant. Further, if a search warrant is obtained, a body cavity search may only be conducted by a licensed physician or physician’s assistant, licensed practical nurse, or registered professional acting with the approval of a licensed physician. Any law enforcement officer who conducts or authorizes a body cavity search in violation of M.C.L. § 764.25b is guilty of a misdemeanor.

62. At all relevant times, Defendants Osman and Parish were acting under color of state law.

**COUNT I**  
**VIOLATION OF FOURTH AMENDMENT AND 42 U.S.C. § 1983**  
**UNLAWFUL SEARCH AS TO ALL DEFENDANTS**

63. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
64. Defendants Osman and Parish violated Ware's right to be free from unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution and actionable under 42 U.S.C. § 1983 by searching Ware's person without reasonable suspicion or probable cause.
65. Defendant Parish performed a search of Ware's person when he patted down Ware, removed Ware's wallet from his pants pocket, reached into Ware's pants, grabbed and squeezed Ware's penis and testicles, partially inserted his finger into Ware's gluteal cleft, attempted to insert a finger into Ware's anus, and removed Ware's boots to search inside them.
66. Parish's search of Ware was not supported by probable cause.
67. Parish's search of Ware was not supported by reasonable suspicion.
68. Even if Defendants Osman and Parish did possess reasonable suspicion or probable cause, the search performed on Ware was unlawful because Defendants Osman and Parish could not constitutionally go beyond performing a pat down search of Ware under the circumstances; that is, they could not reach into Ware's pants with bare hands to grab Ware's penis and testicles, nor partially insert a finger into Plaintiff's gluteal cleft, nor attempt to insert a finger into Ware's anus.
69. Ware had not been subjected to a lawful arrest when he was searched.

70. Ware had not been subjected to a lawful investigative detention when he was searched.
71. Ware did not voluntarily consent to the search.
72. At all relevant times, Defendants Osman and Parish acted with full knowledge of Ware's rights under the Fourth Amendment, which were clearly established and known to all reasonable police officers.
73. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the use of strip searches and/or body cavity searches.
74. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to ignore and/or fail to respond to citizen complaints regarding the violation of constitutional rights by its officers, specifically the actions of Officers Osman and Parish.
75. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice and/or custom of the City of Detroit to tolerate or acquiesce in its officers' constitutional violations, specifically the actions of Officers Osman and Parish.
76. The City's policies, practices, and/or customs amounted to deliberate indifference to the rights of persons with whom Detroit Police Officers come into contact and were a motivating force behind the actions of Defendants Osman and Parish.
77. As a direct and proximate result of Defendant Osman and Parish's unlawful conduct as well as Defendant City of Detroit's policies, practices, customs, and actions, Ware

suffered the following injuries and damages:

- A. Anxiety, fear, intimidation and embarrassment;
- B. Loss of liberty interest;
- C. Unlawful search; and
- D. Unlawful detention.

**COUNT II**

**VIOLATION OF FOURTH AMENDMENT AND 42 U.S.C. § 1983  
EXCESSIVE AND UNREASONABLE FORCE AS TO ALL DEFENDANTS**

- 78. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
- 79. Defendants Osman and Parish violated Ware's right to be free from unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution and actionable under 42 U.S.C. § 1983 by using excessive and unreasonable force upon Plaintiff.
- 80. Plaintiff never resisted Defendants Osman and Parish's use of force upon him and did not provide Defendants Osman and Parish with any reason to use force upon him.
- 81. Defendants Osman and Parish used excessive and unreasonable force upon Plaintiff by:
  - A. Touching Ware;
  - B. Forcibly removing Ware from his car;
  - C. Shoving Ware face first against the police cruiser;
  - D. Forcibly handcuffing Ware;
  - E. Using their authority as police officers to force Ware to submit to an invasive search of his person;
  - F. Reaching into Ware's underwear;

G. Grabbing and squeezing Ware's penis and testicles with bare hands; and

H. Partially inserting a finger in Ware's anus.

82. At all relevant times, Defendants Osman and Parish acted with full knowledge of Ware's rights under the Fourth Amendment, which were clearly established and known to all reasonable police officers

83. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the use of strip searches and/or body cavity searches.

84. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to ignore and/or fail to respond to citizen complaints regarding the violation of constitutional rights by its officers, specifically the actions of Officers Osman and Parish.

85. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice and/or custom of the City of Detroit to tolerate or acquiesce in its officers' constitutional violations, specifically the actions of Officers Osman and Parish.

86. The City's policies, practices, and/or customs amounted to deliberate indifference to the rights of persons with whom Detroit Police Officers come into contact and were a motivating force behind the actions of Defendants Osman and Parish.

87. As a direct and proximate result of Defendants Osman and Parish's unlawful conduct as well as Defendant City of Detroit's policies, practices, customs, and actions, Plaintiff

suffered the injuries and damages described in paragraph 77, above.

**COUNT III**  
**VIOLATION OF 42 U.S.C. § 1983 AND THE FOURTH AMENDMENT**  
**UNLAWFUL SEIZURE AS TO ALL DEFENDANTS**

88. Ware incorporates all prior paragraphs by reference as if stated in full herein.
89. Defendants Osman and Parish violated Ware's right to be free from unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution and actionable under 42 U.S.C. § 1983 by detaining Ware without probable cause.
90. Defendants Osman and Parish seized Ware by forcibly removing Ware from his car, handcuffing Ware, and forcibly placing Ware inside their police cruiser.
91. The exception to the probable cause requirement for investigative detentions established in Terry v. Ohio, 392 U.S. 1 (1968), does not apply because Defendants Osman and Parish did not have specific and articulable facts reasonably justifying the detention of Ware.
92. At all relevant times, Ware's right to be free from unreasonable seizure was clearly established as a matter of constitutional law.
93. At all relevant times, Defendants Osman and Parish acted with full knowledge of Ware's rights under the Fourth Amendment, which were clearly established and known to all reasonable police officers.
94. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the permissible scope of searches and seizures.
95. Defendant City of Detroit violated Ware's right to be free from unlawful search and

seizure because it is the policy, practice, and/or custom of the City of Detroit to not properly train and supervise its officers in the use of strip searches and/or body cavity searches.

96. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice, and/or custom of the City of Detroit to ignore and/or fail to respond to citizen complaints regarding the violation of constitutional rights by its officers, specifically the actions of Officers Osman and Parish.
97. Defendant City of Detroit violated Ware's right to be free from unlawful search and seizure because it is the policy, practice and/or custom of the City of Detroit to tolerate or acquiesce in its officers' constitutional violations, specifically the actions of Officers Osman and Parish.
98. The Defendant City of Detroit's policies, practices, and/or customs amounted to deliberate indifference to the rights of persons with whom Detroit Police Officers come into contact and were a motivating force behind the actions of Defendants Osman and Parish.
99. As a direct and proximate result of Defendants Osman and Parish's unlawful conduct as well as Defendant City of Detroit's policies, practices, customs, and actions, Ware suffered the injuries and damages described in paragraph 77, above.

**COUNT IV**  
**UNLAWFUL BODY CAVITY SEARCH UNDER MCL 764.25b**  
**AS TO DEFENDANTS OSMAN AND PARISH ONLY**

100. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
101. Michigan law, specifically MCL 764.25b, prohibits police officers such as Defendants

Osman and Parish from performing body cavity searches. The statute further provides that no body cavity searches may be performed without a valid search warrant. If a valid warrant is obtained, a body cavity search must be performed by a licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician.

102. A law enforcement officer who conducts or authorizes a body cavity search in violation of MCL 764.25b is guilty of a misdemeanor.
103. There are no statutory exceptions which authorized the body cavity search of Ware.
104. The areas inside of Ware's gluteal cleft and anus are parts of the interior of the human body not visible by normal observation.
105. Defendants Osman and Parish violated MCL 764.25b by authorizing a body cavity search of Ware, forcing Ware to submit to an unlawful body cavity search, and engaging in a physical intrusion of Ware's body cavity, to wit, by inserting a bare finger into Ware's gluteal cleft and attempting to insert a finger into Ware's anus.
106. Defendants Osman and Parish are not entitled to governmental immunity for their tortious conduct because:
  - A. Defendants Osman and Parish's conduct amounted to gross negligence in that it was so reckless as to demonstrate a substantial lack of concern for whether an injury would result; and
  - B. Defendants Osman and Parish's conduct was intentional.
107. Defendants Osman and Parish's intentional and/or grossly negligent conduct was the proximate cause of injury and damage to Ware.
108. As a direct and proximate result of Defendants Osman and Parish's unlawful actions,

Plaintiff suffered the injuries and damages described in paragraph 77, above.

**COUNT V**  
**ASSAULT AS TO DEFENDANTS OSMAN AND PARISH ONLY**

109. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
110. At all relevant times, Defendants Osman and Parish owed Ware a duty to refrain from intentionally offering corporal injury to Ware by force, and from directing unlawful force toward Ware's person.
111. Notwithstanding the duties described in the previous paragraph, and in direct violation thereof, Defendants Osman and Parrish assaulted Ware by inflicting corporal injury, by directing unlawful force toward Ware's person, and by using their authority as police officers to force Ware to submit to violent and offensive physical contact.
112. Defendants Osman and Parish are not entitled to governmental immunity for their tortious conduct because:
  - A. Defendants Osman and Parish's conduct amounted to gross negligence in that it was so reckless as to demonstrate a substantial lack of concern for whether an injury would result; and
  - B. Defendants Osman and Parish's conduct was intentional.
113. Defendants Osman and Parish's intentional and/or grossly negligent conduct was the proximate cause of injury and damage to Ware.
114. As a direct and proximate result of Defendants Osman and Parish's intentional and/or grossly negligent unlawful conduct, Plaintiff suffered the injuries and damages described in paragraph 77, above.

**COUNT VI**  
**BATTERY AS TO DEFENDANTS OSMAN AND PARISH ONLY**

115. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
116. At all relevant times, Defendants Osman and Parish owed Ware a duty to refrain from committing any willful and harmful or offensive touching of Ware which resulted from an act intended to cause such a contact.
117. Notwithstanding their duties described in the previous paragraph, Defendants Osman and Parish committed a battery against Ware by intentionally touching Ware in a wilfully harmful and offensive fashion and by using their authority as police officers to force Ware to submit to willfully harmful and offensive physical contact.
118. Defendants Osman and Parish are not entitled to governmental immunity for their tortious conduct because:
- A. Defendants Osman and Parish's conduct amounted to gross negligence in that it was so reckless as to demonstrate a substantial lack of concern for whether an injury would result; and
  - B. Defendants Osman and Parish's conduct was intentional.
119. Defendants Osman and Parish's intentional and/or grossly negligent conduct was the proximate cause of injury and damage to Ware.
120. As a direct and proximate result of Defendants Osman and Parish's intentional tortious conduct, Plaintiff suffered the injuries and damages described in paragraph 77, above.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**AS TO DEFENDANTS OSMAN AND PARISH ONLY**

121. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.

118. Defendants Osman and Parish are not entitled to governmental immunity for their tortious conduct because:
- A. Defendants Osman and Parish's conduct amounted to gross negligence in that it was so reckless as to demonstrate a substantial lack of concern for whether an injury would result; and
  - B. Defendants Osman and Parish's conduct was intentional.
119. Defendants Osman and Parish's intentional and/or grossly negligent conduct was the proximate cause of injury and damage to Ware.
120. As a direct and proximate result of Defendants Osman and Parish's intentional tortious conduct, Plaintiff suffered the injuries and damages described in paragraph 77, above.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**AS TO DEFENDANTS OSMAN AND PARISH ONLY**

121. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
122. At all relevant times, Michigan law prohibited Defendants Osman and Parish from intentionally engaging in extreme or outrageous conduct causing severe emotional distress to Plaintiff.
123. Notwithstanding their duties under the law, and in direct violation thereof, Defendants Osman and Parish subjected Ware to extreme or outrageous conduct causing severe emotional distress by using their authority as police officers to force Ware to submit to a humiliating and offensive arrest, search, and seizure which involved reaching into Ware's underpants with bare hands, fondling, grabbing and squeezing Ware's penis and testicles, and partially inserting a finger into Ware's gluteal cleft and attempting to insert a finger into Ware's anus.

124. The extreme and outrageous nature of Defendants Osman and Parish's conduct was worsened by the fact that Defendants Osman and Parish abused their authority as police officers in forcing Ware to submit to such treatment.
125. Defendants Osman and Parish are not entitled to governmental immunity for their tortious conduct because:
  - A. Defendants Osman and Parish's conduct amounted to gross negligence in that it was so reckless as to demonstrate a substantial lack of concern for whether an injury would result; and
  - B. Defendants Osman and Parish's conduct was intentional.
126. Defendants Osman and Parish's intentional and/or grossly negligent conduct was the proximate cause of injury and damage to Ware.
127. As a direct and proximate result of Defendants Osman and Parish's tortious conduct, Plaintiff suffered the injuries and damages described in paragraph 77, above.

**COUNT VIII**  
**VIOLATION OF THE MICHIGAN CIVIL RIGHTS ACT**  
**SEXUAL HARASSMENT AS TO ALL DEFENDANTS**

128. Plaintiff incorporates all prior paragraphs by reference as if stated in full herein.
129. At all relevant times, the Michigan Civil Rights Act, specifically M.C.L. 37.2103(i)-(iii), prohibited Defendants Osman and Parish from engaging in physical conduct or communication of a sexual nature where such conduct or communication had the purpose or effect of substantially interfering with a person's public accommodations or public services or creating an intimidating, hostile, or offensive public accommodations or public services environment.
130. Defendants Osman and Parish's actions as police officers providing police services as

well as the Defendant City of Detroit's provision of police services fall within the Michigan Civil Rights Act as public services and/or accommodations.

131. Notwithstanding their duties under the Michigan Civil Rights Act, and in direct violation thereof, Defendants Osman and Parish engaged in physical conduct or communication of a sexual nature where such conduct had the purpose or effect of interfering with Ware's public accommodations or public services by reaching into Ware's underpants with bare hands, fondling, grabbing and squeezing Ware's penis and testicles, inserting a finger into Ware's gluteal cleft and attempting to insert a finger into Ware's anus.
132. Notwithstanding their duties under the Michigan Civil Rights Act, and in direct violation thereof, Defendants Osman and Parish used their authority as police officers to force Ware to submit to physical contact of a sexual nature, which conduct had the purpose or effect of interfering with Ware's public accommodations or public services.
133. Notwithstanding their duties under the Michigan Civil Rights Act, and in direct violation thereof, Defendants Osman and Parish created intimidating, hostile or offensive public accommodations or public services environment by reaching into Ware's underpants with bare hands, fondling, grabbing and squeezing Ware's penis and testicles, inserting a finger into Ware's gluteal cleft and attempting to insert a finger into Ware's anus.
134. Notwithstanding their duties under the Michigan Civil Rights Act, and in direct violation thereof, Defendants Osman and Parish used their authority as police officers to force Ware to submit to physical contact of a sexual nature, thereby creating an intimidating, hostile or offensive public accommodations or public services environment.
135. Defendant City of Detroit is liable for sexual harassment under the Michigan Civil Rights

Act because it was aware of Defendants Osman and Parish's unlawful sexual conduct which interfered with citizens' enjoyment of public services but failed to take prompt and adequate remedial action after having been reasonably put on notice of the harassment.

136. As a direct and proximate result of Defendants Osman and Parish's conduct as well as Defendant City of Detroit's policies, practices, customs, and actions, Plaintiff suffered the injuries and damages described in paragraph 77, above.

### **RELIEF REQUESTED**

Based on the foregoing, Plaintiff Elvis Ware respectfully requests that this Court enter a judgment against Defendants as follows:

- A. A declaration that Ware's Fourth Amendment rights were violated when he was arrested without a warrant, probable cause, or particularized reasonable suspicion;
- B. A declaration that Ware's Fourth Amendment rights were violated when Defendants Osman and Parish used excessive and unreasonable force in arresting Plaintiff;
- C. A declaration that Ware's Fourth Amendment rights were violated when Officers Osman and Parish forced Ware to submit to a search which involved the fondling, grabbing, and squeezing of Ware's testicles, the insertion of a finger into Ware's gluteal cleft, and an attempt to insert a finger into Ware's anus;
- D. A declaration that Ware's Fourth Amendment rights were violated when Defendants Osman and Parish forced Ware to submit to an unlawful body cavity search;
- E. A declaration that Defendant City of Detroit violated the Fourth Amendment through its policy, practice, and/or custom of failing to train and supervise police officers of the City of Detroit in conducting arrests and searches in compliance with the Fourth Amendment;
- F. A declaration that Defendant City of Detroit violated the Fourth Amendment through its policy, practice, and/or custom of failing to train police officers of the City of Detroit in the lawful use of strip searches and body cavity searches;

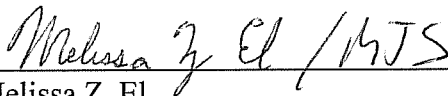
- G. A declaration that Defendant City of Detroit violated the Fourth Amendment through its policy, practice, and/or custom of ignoring and/or failing to respond to citizen complaints regarding the violation of constitutional rights by police officers of the City of Detroit, specifically the unconstitutional actions of Officers Osman and Parish;
- H. A declaration that Defendant City of Detroit violated the Fourth Amendment through its policy, practice, and/or custom of tolerating or acquiescing in the constitutional violations of the police officers of the City of Detroit Officers Osman and Parish;
- I. Compensatory damages to Plaintiff Ware;
- J. Punitive damages to Plaintiff Ware as to Defendants Parish and Osman for their recklessness and callous disregard of his federal constitutional rights;
- K. Costs and attorneys fees pursuant to 42 U.S.C. § 1988; and
- L. Such other relief that this Court deems just and equitable.

Respectfully Submitted,



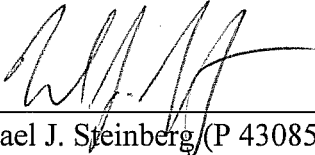
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Attorneys for Plaintiff

DATED: March 28, 2007

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ELVIS WARE,

Plaintiff,

vs.

Case No.

Hon.

CITY OF DETROIT,  
POLICE OFFICER MICHAEL OSMAN, and  
POLICE OFFICER MICHAEL PARISH, in  
their individual and official capacities,

Defendants.

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**JURY DEMAND**

Plaintiff Elvis Ware demands a trial by jury of all issues to the within causes of action.

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