

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Michael Clark,

v.

City of Providence, by and through its Treasurer, James J. Lombardi, Steven Pare, in his official capacity as Public Safety Commissioner for the City of Providence, Major Oscar Perez; Captain Kevin Lanni; Sergeant John J. Kennedy; Sergeant John P. Rimoczy; Detective Jose M. Pineda; Detective Kevin S. Costa; Officer Tracey Miller, each individually and in his or her official capacity

C.A. No. _____

COMPLAINT

Introduction

1. This is an action for equitable and declaratory relief and for damages for discrimination and retaliation in employment on the basis of speech and race and color in violation of state and federal statutory and constitutional law and for violation of laws of the State of Rhode Island. Plaintiff Michael Clark, a former Providence Police Academy Recruit, was forced to endure a hostile work environment culminating in his unlawful discharge. Throughout the course of Plaintiff's brief employment, Defendants subjected Plaintiff to hostile and offensive discriminatory and retaliatory conditions and treatment based upon his prior speech, his race and color and their perceptions of how a black man should and should not behave.

Jurisdiction and Venue

2. This is an action for equitable and declaratory relief and for damages for violation of the First and Fourteenth Amendments to the United States Constitution and the Civil Rights

Act, 42 U.S.C. § 1983, Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq., as amended (“Title VII”), the Rhode Island Fair Employment Practices Act, R.I.G.L. § 28-5-1, *et seq.* (“RI-FEPA”), the Rhode Island Civil Rights Act, R.I.G.L. § 42-112-1, *et seq.*, as amended (“RICRA”).

3. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 2201 and the exercise of its supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
4. Venue is proper within the District of Rhode Island pursuant to 28 U.S.C. § 1391(b) because all parties reside in Rhode Island and the nexus of events giving rise to the cause of action occurred in Rhode Island.
5. Plaintiff has taken the following administrative actions prior to suit:
 - a.. As to the RI-FEPA: Plaintiff filed a claim of race and color discrimination before the Commission for Human Rights of the State of Rhode Island, pursuant to the RI-FEPA, RICHR No. 20 ERA 170-40/06 and has received a Notice of Right to Sue thereon dated July 24, 2020.
 - b. As to Title VII: Plaintiff filed a claim of race and color discrimination before the Equal Employment Opportunity Commission of the United States (“EEOC”), EEOC 16J-2020-00115, pursuant to Title VII and has requested a Notice of Right to Sue thereon.
 - c. As to municipal liability: Plaintiff served a notice of claim upon the City of Providence by and through its City Council in accordance with R.I.G.L. § 45-15-5 and more than forty (40) days have passed from the presentation of the claim to the City Council before any substantive compensatory relief can be provided.

Plaintiff

6. Plaintiff is an individual who resides in West Warwick, Rhode Island.
7. Plaintiff is African-American.
8. Plaintiff is a citizen of the United States within the meaning of 42 USC § 1983.

Defendants

9. The CITY OF PROVIDENCE is sued by and through James J. Lombardi, in his official capacity as City Treasurer, in accordance with R.I.G.L. §45-15-5, in order to commence an action against the City.
 - a. Defendant Lombardi, hereinafter referred to as “the City”, is, upon information and belief, the Treasurer of the City of Providence, and the City, upon information and belief, is a municipal corporation and government within the State of Rhode Island.
 - b. Upon information and belief, the City is liable to plaintiff for the actions of its agents and servants acting within the scope of their authority, including but not limited to the individual defendants named herein with respect to claims, under Title VII, RI FEPA and RICRA and is directly liable for its actions under the First and Fourteenth Amendments and 42 U.S.C. § 1983.
10. The City of Providence, upon information and belief is:
 - a. an “employer,” within the meaning of Title VII;
 - b. an “employer,” within the meaning of the RI-FEPA, R.I.G.L. §28-5-6(7)(i);
 - c. a person acting under color of state law within the meaning of 42 U.S.C. §1983.
11. Defendant Steven Pare is the Commissioner of Public Safety for the City of Providence and, as such, the ranking official in charge of the Police Department of the City of

Providence. He is sued in his official capacity. Commissioner Pare, at all times relevant thereto, acted under color of state law.

12. Major Oscar Perez is currently a major in the Providence Police Department and the immediate supervisor of defendants Captain Lanni and Sergeant Kennedy. He is sued in his individual and official capacity. Major Perez, at all relevant times hereto, acted under color of state law.
13. Defendant Captain Kevin M. Lanni is currently a captain in the Providence Police Department. He was the Director of Training in the 69th Providence Police Academy. He is sued in his individual and official capacity. Captain Lanni, at all relevant times hereto, acted under color of state law.
14. Defendant Sergeant John J. Kennedy is currently a sergeant in the Providence Police Department. He was the Deputy Director of Training for the 69th Providence Police Academy. He is sued in his individual and official capacity. Sergeant Kennedy, at all times relevant thereto, acted under color of state law.
15. Defendants Major Perez, Captain Lanni and Sergeant Kennedy are hereinafter referred to collectively as “the Command”.
16. Defendant Detective Jose Pineda is currently a Detective with the Providence Police Department and was the lead Training Officer in the 69th Providence Police Academy. He is sued in his individual and official capacity. Detective Pineda, at all times relevant hereto, acted under color of state law.
17. Defendant Detective Kevin S. Costa is currently a Detective with the Providence Police Department and was a Training Officer in the 69th Providence Police Academy. He is sued

in his individual and official capacity. Detective Costa, at all times relevant hereto, acted under color of state law.

18. Defendant Sergeant John P. Rimoczy is currently a sergeant in the Providence Police Department. He was a Training Officer in the Providence Police Academy. He is sued in his individual and official capacity. Sergeant Rimoczy, at all times relevant hereto, acted under color of state law.
19. Officer Tracey Miller is currently a police officer in the Providence Police Department. She was a junior Training Officer in the 69th Providence Police Academy. She is sued in her individual and official capacity and at all times relevant hereto, acted under color of state law.
20. Detective Costa, Detective Pineda, Sergeant Rimoczy and Officer Miller are hereinafter collectively referred to as the “Training Officers.”
21. Each Defendant is a “person” within the meaning of 42 USC § 1983.
22. Upon information and belief, in undertaking the actions set forth hereinafter, the individual Defendants purported to exercise and exercised authority conferred upon them such that their actions are fairly treated as the actions of the City itself.

Statement of Facts

23. In 2018, Plaintiff applied to enter the 69th Providence Police Academy (“the Academy”).
24. After Plaintiff’s application, but prior to his acceptance, the Providence Police Department conducted physical and psychological testing of the Plaintiff as well as a background investigation into the Plaintiff’s family, work history, schooling, neighbors, finances and social media.

25. The background investigation was conducted by Detective Daniel O'Connell. Detective O'Connell requested access to Plaintiff's social media account, which Plaintiff provided.
26. During the time of the background investigation, Plaintiff's social media contained music videos, one of which was a rap song, in the genre of Christian rap, written and performed by the Plaintiff. This music was posted by the Plaintiff in 2017, prior to the Plaintiff's application to the Academy. These songs reference black men being killed by police, requests to the police of "Don't shoot," calls for unity among all people, and a cry out to God performed in the spirit of the Black Lives Matter movement. There are no violent references to actions that should be taken against police.
27. Plaintiff was forthcoming with Detective O'Connell during the background check, answering all questions and providing any requested authorizations.
28. Plaintiff passed all of the pre-Academy screening and was accepted as a Recruit into the 69th Academy. Detective O'Connell's Background Investigation Summary concluded that the Plaintiff has "a strong yearning to be a police officer and has lived a clean life... Candidate Clark has good character[,] is very friendly and has high level of energy."
29. Plaintiff was excited to start the Academy and terminated his studies at Johnson & Wales University, where he was a senior, with one semester remaining, to participate in the Academy.
30. The first day of the Academy was on January 7, 2019.
31. On the first day, Plaintiff was taunted by the Training Officers about the music video and the rap song. The Training Officers told Plaintiff he did not belong in the Academy. Plaintiff was told, "You hate all cops." Plaintiff was directed by the Training Officers to the front of the classroom, a durag (a head covering unmistakably associated with African-

American culture, also spelled do-rag or doo rag) was thrown at Plaintiff by one of the Training Officers, and Plaintiff was directed to place it on his head. Plaintiff laid the durag over the top of his head. Plaintiff was then directed to sing a song. Plaintiff replied he had no songs to sing. He was then required to do calisthenics in the front of the classroom and remain standing in front of the class until shortly before the class was dismissed.

32. During the first week of the Academy, Plaintiff was assigned to a squad and his squad adviser was Kevin Costa, one of the Training Officers (Costa was an Officer at the start of the Academy and promoted to Detective during the Academy.)
33. During the first week of the Academy, Costa rated Plaintiff's attitude as 2 on a scale of 1-7 in the Weekly Observation Report, 1 being the lowest, 4 considered minimum and 7 the highest. Costa's weekly report documents that during the first week of the Academy Plaintiff "had a poor attituded [sic] toward training." Plaintiff was not aware of this documentation.
34. Costa approached Plaintiff during the second or third week of the Academy and told Plaintiff that Plaintiff had a "fucking attitude." Costa told Plaintiff he did not like him and that he, Costa, did not think Plaintiff should be in the Academy. Costa told Plaintiff he could build "a case full of demerits to get you thrown out" of the Academy. Costa then twice repeated to Plaintiff, "You know I have the power to do that, right?"
35. Every day of the Academy the Recruits did physical training (PT). Each day, when the recruits did their shuffle/stretching drill, Plaintiff was singled out and required by the Training Officers to keep his hands up and repeat the chorus of his song, "Don't shoot, don't shoot, don't shoot." The gesture of "hands up" while stating "don't shoot" is also

unmistakably associated with organized protests of police brutality or lethality towards African-Americans.

36. Multiple times per week, the Training Officers would reference the Plaintiff's rap songs. On one day, Detective Pineda insisted that Plaintiff stand up and sing his songs and Plaintiff stated he did not recall the words. Detective Pineda was infuriated by this and yelled at Plaintiff that Plaintiff had written the words and sung them in the video without looking at any lyrics and that Plaintiff should be able to sing the songs for the class.
37. During the third or fourth week of the Academy, after being approached by Costa about his "attitude," the Training Officers, led by Detective Pineda, played the Plaintiff's songs for the entire Academy class on both TV monitors in the classroom. Detective Pineda questioned the Plaintiff as to whether he had noticed an increase in viewership of the video on his social media as the whole police department was watching the video.
38. At no time during his attendance at the Academy did the Plaintiff ever initiate in conversation or attempt to introduce, in any way, his prior musical efforts into the Academy's scheduled educational plans.
39. After the videos of the Plaintiff's music were played for the class, Detective Pineda gave Plaintiff homework to write a positive song about the police and Plaintiff was told he would perform this song for the class by the end of the week. Plaintiff wrote a song. At the end of the week, the Training Officers dismissed the class, and told Plaintiff to stay. The Training Officers then had the Plaintiff perform his song in front of the Training Officers in the instructor's office. No other recruits were assigned this task or any similar task.

40. During the first week of February 2019, Plaintiff was given a homework assignment to write a paper about the number of black people shot by police. No other recruit was assigned this task or a similar task.
41. Plaintiff wrote his paper and turned it in. Plaintiff was questioned by Detective Pineda about the length of time he spent on the paper. Plaintiff answered that he spent a couple of hours on the paper. Detective Pineda deemed this answer to be a lie based on the appearance and content of the paper and Plaintiff was given 5 demerits for lying and required to write a letter stating that he, Plaintiff, lied about the amount of time he spent on the paper. In fact, Plaintiff did spend a couple of hours on the paper because he did not know what to write in response to the “assignment” and after a full day at the Academy, Plaintiff did online research and wrote a two-page essay.
42. On February 7, 2019, Plaintiff was required to write a letter to the Providence Police Department apologizing for his music videos, at least one of which was performed in the spirit of the Black Lives Matter movement, and explaining that he now understood the sacrifice made by police officers. Plaintiff wrote this letter. No other recruit was assigned this task or a similar task.
43. On Monday, March 18, 2019, Plaintiff returned from the weekend. Plaintiff did not have a front license plate on his vehicle as he had been instructed to obtain. When Plaintiff stated that he forgot to obtain the license plate, he was instructed to write an essay about Alzheimer’s Disease. No other recruit was assigned this task or a similar task.
44. On Thursday, March 21, 2019, Plaintiff was questioned by Academy staff about where he went and what he did after leaving the Academy on Friday, March 15. The questioning occurred in front of the entire class and went on for an hour and forty-five minutes, with a

short break for cleaning. During this time Detective Pineda told the Plaintiff that he would be a terrible officer and that he doubted the Plaintiff would make it through the Academy. During this time Sergeant Rimoczy told the Plaintiff he was going to be in jail in three years because he did not remember things well and claimed that Plaintiff would be a liar.

45. The Training Officers sought to ostracize Plaintiff from his fellow recruits by requiring that fellow recruits write up Plaintiff for his alleged infractions. A lunch table of recruits was required to write a letter giving the circumstances of a fist bump gesture the Training Officers observed the Plaintiff make with another recruit. Two recruits were required to write Plaintiff up for having a stain on his uniform. The male recruits were required to write the Plaintiff up for singing in the shower and for denying that he sang in the shower. The entire class was required to write the Plaintiff up for failing to accurately account for weekend activities and failing to provide an original report on Alzheimer's disease.
46. The attempts to ostracize Plaintiff from his fellow recruits were particularly successful with white/Caucasian recruits already associated with the Providence Police Department via family or friend networks who were encouraged by those with in the Providence Police Department to complain about Plaintiff. For example, by February 8, 2019, Week 5 of the Academy, Recruit Anderson wrote to Detective Pineda, "I do not appreciate Recruit Clark's views towards police, lack of honesty and the bad impression that he is labling [sic] this Academy that I am proud to be a part of."
47. At the start of the Academy, the Recruits were given a Student Handbook. The Student Handbook contains no academic guidelines or academic honor code. The Student Handbook includes no instructions on how essays should be researched, formatted or

- written. Plaintiff was never verbally given any guidelines on how his essays should be written or how they would be assessed.
48. Plaintiff was given extracurricular assignments other recruits were not given and then given demerits based on the Training Officers' judgment that Plaintiff had poorly executed these assignments.
 49. During the first weeks of the Academy, Detective Pineda questioned Plaintiff to see if Plaintiff realized that Detective Pineda followed him prior to the start of the Academy. Plaintiff stated that he did recognize the Detective and had realized the Detective followed him prior to the start of the Academy. This occurred on a day that the Plaintiff was working at the Warwick Mall. Detective Pineda followed the Plaintiff after work, around the mall and then watched Plaintiff catch the bus home. Upon information and belief, no other recruits were followed by Training Officers prior to the start of the Academy.
 50. Upon information and belief, Detective Pineda had no official duties assigned to him that related to participating in the background investigation of the Plaintiff.
 51. In May 2019, on a weekend, outside of Academy hours, Officer Miller, in her own car, followed the Plaintiff while he was driving. Officer Miller chastised the Plaintiff for the speed of his driving when the Academy resumed on Monday and Squad Adviser Costa wrote Plaintiff up for his driving in a report to the Command. Upon information and belief, no other recruits were followed by Training Officers, during the tenure of the Academy and outside of Academy hours.
 52. Throughout the Academy the Training Officers continued to single out and harass the Plaintiff. During Taser training, the Training Officers selected Plaintiff as the only recruit to demonstrate that a suspect could move while being Tased. Plaintiff was continuously

Tased until he crawled across the floor and reached a set goal. At the conclusion of the exercise, the Plaintiff's skin was burned, he was bleeding and his shirt was torn. Plaintiff had to be assisted to his feet by two people and then assisted to the bathroom. The other recruits were Tased as follows: three volunteer recruits were shot with the Taser and had the probe penetrate their skin and received a shock. The remainder of the recruits had the Taser taped to their skin and received a shock. Plaintiff was singled out to be the only recruit to be continuously Tased while having to crawl across the floor.

53. Throughout the Academy, Plaintiff was treated as a suspect, a criminal and a defendant and not like a recruit. Other recruits were not treated in this manner.
54. When other recruits were punished for an infraction, the Training Officers would send the recruits to stand by the Plaintiff or to work out with the Plaintiff or to pair up with the Plaintiff, thus deliberately associating them with the Plaintiff in an attempt to further undermine the Plaintiff, his standing at the academy, and his relationships with his fellow classmates by tying Plaintiff to other recruits who committed infractions.
55. In the final weeks of the Academy, during physical training, at the start of the work day, Plaintiff was running in the middle of the recruit pack. Sergeant Rimoczy saw the Plaintiff and screamed at the Plaintiff to get in the back, that he did not want to see the Plaintiff's "fucking face" and that he wanted to "knock that fucking smirk off" the Plaintiff's face. Plaintiff went to the back of the pack and continued to run.
56. Despite the pervasive harassment, Recruit Clark continued to pass all of the academic and physical fitness requirements. He attended every day of class. He also passed the field training units. He was in the elite running squad.

57. Based on the Student Handbook, given the Plaintiff's academic and physical fitness performance, the only mechanism to justify his dismissal was to charge him with conduct requiring dismissal from the Academy.

Involvement of the Command

58. The Command staff was aware of the ongoing harassment of the Plaintiff and that it was based on Defendants' hostility toward and retaliation against Plaintiff for his prior speech and Defendants' racial stereotyping. Sergeant Kennedy and Captain Lanni signed off on the 42 demerits issued to the Plaintiff before he was terminated from the Academy.

59. Captain Lanni, in a meeting with the Plaintiff held in Captain Lanni's office, told the Plaintiff that he knew the Plaintiff was having a tough time in the classroom. Captain Lanni told the Plaintiff he thought the Training Officers just wanted an explanation as to why the Plaintiff made the music video he was asked about his first day of the academy. Captain Lanni repeatedly reassured the Plaintiff that demerits could not get him dismissed from the Academy.

60. Sergeant Kennedy had the Plaintiff sign the demerit forms for all of the demerits that the Plaintiff received. Weeks prior to the Plaintiff's dismissal, Sergeant Kennedy told the Plaintiff, "You know you're not going to be here."

61. In or around the beginning of May 2019, a meeting was held with Major Perez, Captain Lanni and the Plaintiff. Plaintiff was questioned by Perez and asked if he thought he was smarter than everyone here. Plaintiff said no but that he was trying to protect himself from attacks by the Training Officers. At the conclusion of the meeting the Plaintiff agreed that he would work hard to finish the Academy and meet expectations.

62. Plaintiff was provided with a Student Handbook. The Handbook contains no instructions to recruits on where or how any civil rights violations including discrimination and hostile work environments may be reported by him.
63. Despite having actual knowledge of the on-going hostile environment, harassment and discriminatory conditions of Plaintiff's employment, the Command took no remedial action to limit the illegal conduct that Plaintiff suffered throughout his time at the Academy.

Discharge from Employment

64. In the evening of May 30, 2019, Detective Costa telephoned the Plaintiff and told him not to report to Camp Varnum with the other recruits but to report to the Academy location. Costa told Plaintiff he would be meeting Captain Lanni. Costa told Plaintiff to "bring all your shit, your gun belt, uniforms, everything." Plaintiff said okay and Costa hung up.
65. On May 31, 2019, Plaintiff met with Captain Lanni and was dismissed from the Academy and terminated from employment. Detective Costa and Sargent Kennedy were also present. Captain Lanni indicated the decision was based on the number of demerits issued to Plaintiff. Captain Lanni stated to Plaintiff that the Training Officers had gone over his head and the decision was not made by him.
66. Upon information and belief, other recruits asked the Training Officers the reason for the Plaintiff's termination and were told the termination was based on the Plaintiff's failure to conform.
67. The actions of the individual defendants as aforesaid warrant the imposition of punitive damages upon each of them as allowable by law as follows:

a. as to claims under Rhode Island law: the conduct and actions of each individual Defendant were taken in a gross abuse of the Defendants' exercise of their individual and/or corporate powers, were motivated by malice or in bad faith and present "evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amounts to criminality, which for the good of society and warning to the individual, ought to be punished." Felkner v. RI College, 203.A.3d 433, 461 (R.I. 2019).

b. as to claims under federal law: the conduct of each individual Defendant was motivated by evil motive or intent or undertaken in reckless or callous indifference to federally protected rights of the Plaintiff.

Injury to Plaintiff

68. At all times material hereto, plaintiff was subjected to retaliatory, punitive, discriminatory, threatening, demeaning and humiliating treatment by the City and the individual defendants.
69. As a direct result of the actions of the Defendants, Plaintiff has been denied his opportunity to pursue a career in law enforcement, has been subjected to sustained and outrageous humiliation, has lost and continues to lose substantial economic and non-economic compensation and benefits, and has suffered personal injuries, including personal humiliation, embarrassment and distress.
70. Plaintiff has no adequate remedy at law.

Count I

42 U.S.C. sec 1983 (First and Fourteenth Amendments) as to all defendants

71. Plaintiff incorporates the allegations contained within the above paragraphs as though fully set forth herein.
72. By the foregoing acts and omissions, Defendants, and each of them, denied Plaintiff rights protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983 on the basis of his past speech and on the basis of his race and racial stereotyping.
73. The severe, pervasive and intentional conduct of the Command and the Training Officers constitutes a knowing violation of the Plaintiff's protected federal rights.

Count II
42 U.S.C. §2000e (Title VII) as to defendant City

74. Plaintiff incorporates the allegations contained within the above paragraphs as though fully set forth herein.
75. The hostile, retaliatory, and discriminatory treatment of the plaintiff by the City by and through the individual defendants as aforesaid constitutes discrimination against plaintiff in employment on the basis of his race and color in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.

Count III
R.I.G.L. §28-5-7 (RI-FEPA) as to defendant City

76. Plaintiff incorporates the allegations contained within the above paragraphs as though fully set forth herein.
77. The hostile, retaliatory, and discriminatory treatment of the plaintiff by the City by and through the individual defendants as aforesaid constitutes discrimination against plaintiff in employment on the basis of his race and color in violation of the Fair Employment Practices Act of the State of Rhode Island, R.I.G.L. §28-5-7, et seq.

Count IV
R.I.G.L. §42-112 (RICRA) as to all defendants

78. Plaintiff incorporates the allegations contained within the above paragraphs as though fully set forth herein.
79. The hostile, retaliatory, and discriminatory treatment of the plaintiff by the City by and through the individual defendants as aforesaid constitute discrimination against plaintiff in employment on the basis of his race and color in violation of the Rhode Island Civil Rights Act, R.I.G.L. §42-112-1, et seq.

Prayer for Relief

Wherefore, Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendants and provide corresponding declaratory and injunctive relief, as well as compensatory and punitive relief, as follows:

- (1) Order that the Defendants cease all discriminatory practices and undergo appropriate training in order to ensure the eradication of all unlawful discriminatory conduct;
- (2) Order that all members of the 69th Providence Police Academy be re-trained in First Amendment rights of citizens and unlawful racial stereotyping;
- (3) Order that Michael Clark's training file and any demerits issued that are found to be motivated by bias and animus based on prior speech and/or race and color or racial stereotyping be purged;
- (4) Award Plaintiff compensatory damages against all defendants and punitive damages against all defendants in their individual capacity;
- (5) Award Plaintiff his costs, including attorneys' fees and recoverable expenses, and interest, including prejudgment interest on all allowable amounts;

(6) Grant such other and further relief as the Court deems just and proper.

Plaintiff hereby demands a trial by Jury and designates Sonja L. Deyoe and Georgi J. Vogel-Rosen as trial counsel.

Plaintiff Michael Clark.
By his attorney,

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