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DL
JUN 29 2004

LUTHER D. THOMAS, Clerk
[Signature]
Deputy Clerk

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, individually and on)
 behalf of all present and future inmates in the)
 Fulton County Jail in Atlanta, Georgia,)
)
 Plaintiff,)
)
 v.)
)
 DEPUTY TYRONE BENNETT, individually;)
 and FULTON COUNTY, GEORGIA; FULTON)
 COUNTY BOARD OF COMMISSIONERS,)
 KAREN HANDEL, Chairperson, ROB PITTS,)
 EMMA I. DARNELL, WILLIAM EDWARDS,)
 TOM LOWE, NANCY BOXILL, members;)
 JACQUELYN BARRETT, Fulton County Sheriff,)
 in their official capacities)
)
 Defendants.)

CIVIL ACTION

NO. 04-CV-1416-MHS

**PLAINTIFFS' MOTION FOR AN INSPECTION
OF THE FULTON COUNTY JAIL BY THIS COURT**

Plaintiff, by counsel, moves the Court to conduct an inspection of the Fulton County Jail to make observations regarding the Jail for consideration with regard to the hearing scheduled herein for July 8 and with regard to plaintiff's request for injunctive relief.

(11)

In support of his Motion, plaintiff states as follows:

1. The Plaintiff has brought this action on behalf of all inmates, who are now or will be in the future, confined at the Fulton County Jail located on Rice Street, seeking relief from dangerously overcrowded and substandard living conditions at the Jail. Plaintiff has asserted that the Defendants' treatment of inmates at the Jail violates their rights under the Eighth Amendment as applied through the Fourteenth Amendment to the United States Constitution as well as applicable state law.

3. This Court has set a hearing on this matter for July 8 to take evidence regarding conditions at the Jail. In addition to testimony received in Court, the Court's first hand observation of conditions at the Jail will be immensely valuable to the Court in assessing the he gravity and extent of these conditions and determining the legal issues before the Court, including the need for a receiver to operate the Jail until a new sheriff has taken office and whether any other injunctive relief is appropriate.

WHEREFORE, for the foregoing and such other reasons as may appear to the Court, Plaintiff requests that this Court conduct an inspection of the Fulton County Jail at a time convenient to the Court.

Respectfully submitted this 29th day of June, 2004.

STEPHEN B. BRIGHT
GA Bar No. 082075
JOSHUA R. LIPMAN
MS Bar No. 101399
VANESSA M. BUCH
GA Bar. No. 092122
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Counsel for Plaintiff

By: 

CERTIFICATE OF COMPLIANCE

I, Stephen B. Bright, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with LR 5.1B.

A handwritten signature in black ink, appearing to read 'S. B. Bright', written over a horizontal line.

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Counsel for the plaintiff

CERTIFICATE OF SERVICE

I, Stephen B. Bright, do hereby certify that on this day I served a copy of the foregoing *Motion for an Inspection of the Fulton County Jail by this* by first class United States mail, upon counsel for the defendants:

The Honorable Overtis Hicks Brantley
Fulton County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303

This 29th day of June, 2004.



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Counsel for the plaintiff

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 in their official capacities)
)
 Defendants.)

CIVIL ACTION
NO. 04-CV-1416 -MHS

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR INSPECTION OF THE JAIL**

Plaintiff, who challenges conditions at the Fulton County Jail on behalf of himself and all inmates who are or will be housed there, has moved this Court to conduct an inspection of the Jail for consideration in determining whether to

appoint a receiver for the Jail and whether to order any injunctive relief with regard to conditions at the Jail.

It is well established that the district court can visit a jail or the scene of an alleged constitutional violation. *See, e.g., Block v. Rutherford*, 468 U.S. 576 (1984) (pretrial detainees brought a class action against county jail officials alleging violations of their constitutional rights, district court judge visited the jail); *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003) (district court judge visited the scene of a Ten Commandments monument in the Alabama State Judicial Building, the placing of which Plaintiff alleged violated the First Amendment); *Patchette v. Nix*, 952 F.2d 158 (8th Cir. 1991) (noting that the district court visited a prison in which inmates brought an action challenging the overcrowded conditions of the facility); *Metropolitan Life Insurance Co. V. Popescu*, 172 B.R. 691 (N.D.Ga. 1994) (court made an on-site visit to the property at issue in the case to assist its decision addressing preliminary injunction); *Young v. Ballis*, 762 F.Supp. 823 (S.D. Ind.1990) (district court conducted an unannounced inspection of the jail in Perry County, Indiana where inmates challenged conditions of the facility).

Plaintiffs' claims are based on factual allegations addressing specific physical conditions at the Jail. "Whether conditions at a specific prison are unconstitutional necessitates a factual inquiry about the specific conditions at that facility," and often requires inspection by the court. Patchette v. Nix, 952 F.2d 158, at 163 (8th Cir. 1991).

For these reasons, Plaintiffs request that this Court conduct an inspection of the Fulton County Jail.

Respectfully submitted this 28th day of June, 2004.

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Counsel for the plaintiff

By: 

CERTIFICATE OF COMPLIANCE

I, Stephen B. Bright, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with LR 5.1B.



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Counsel for the plaintiff

CERTIFICATE OF SERVICE

I, Stephen B. Bright, do hereby certify that on this day I served a copy of the foregoing *Memorandum in Support of Motion for an Inspection of the Fulton County Jail by this Court* by first class United States mail, upon counsel for the defendants:

The Honorable Overtis Hicks Brantley
Fulton County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303

This 29th day of June, 2004.



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