

FEB 12 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Judge Robert W. Gettleman
United States District Court

JAVAR CALVIN, et al.,)
)
Plaintiff,)
)
-vs-)
)
SHERIFF OF WILL COUNTY,)
)
Defendant.)

No. 03 CV 3086
(Judge Gettleman)

DOCKETED
FEB 13 2004

SECOND AMENDED COMPLAINT

Plaintiffs, by counsel, alleges as follows:

1. This is a civil action arising under 42 U.S.C. §1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343.
2. Plaintiff Javar Calvin is a resident of the Northern District of Illinois.
3. Plaintiff William Virble Moore is a resident of the Northern District of Illinois.
4. Plaintiff Charles Davis is a resident of the Northern District of Illinois.
5. Defendant Sheriff of Will County is sued in his official capacity.
6. Defendant Will County, Illinois is an Illinois municipal corporation joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947, 948 (7th Cir. 2003).

Javar Calvin

7. In October of 2002, plaintiff Calvin was enlarged on bond in a misdemeanor case pending in the state court in Joliet, Illinois.

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8. On October 19, 2002, a police officer of the City of Bolingbrook, Illinois arrested plaintiff Calvin because records maintained by defendant mistakenly indicated that a warrant had been issued for plaintiff's arrest.
9. Plaintiff Calvin was brought to the Will County Jail on October 20, 2002 at about 4:00 a.m.
10. Upon his arrival at the jail, plaintiff was strip searched in accordance with a policy of the Sheriff of Will County
11. While at the jail, plaintiff repeatedly insisted that he had been arrested by mistake and that he was not sought in any outstanding warrant. Calvin's protestations were ignored by jail personnel.
12. Calvin was scheduled to appear before a judge in the morning of Monday, October 21, 2002. Calvin determined that he was not among the prisoners who were being taken to court and complained to jail officials. The jail officials responded to Calvin's complaint by placing him in disciplinary segregation.
13. Shortly after 9:00 a.m. on October 21, 2002, a judge reviewed Calvin's custody status, concluded that Calvin was being held in error, and ordered his release. Jail personnel ignored this order until 1:00 p.m., when they took Calvin from disciplinary segregation and brought him before the judge.
14. Before being brought before the judge, and in accordance with a policy of the Sheriff of Cook County, Calvin was strip searched.
15. The judge reaffirmed his order that plaintiff should be immediately released.

16. After the judge ordered that Calvin should be immediately released, jail personnel maintained Calvin in handcuffs and shackles and returned him to the jail.
17. At the jail, Calvin was strip searched and returned to disciplinary segregation, where he remained until he was released at about 7:30 p.m. that night.

William Moore

18. On May 18, 2003, a police officer of the City of Chicago Ridge, Illinois arrested plaintiff Moore because records maintained by defendant mistakenly indicated that a warrant had been issued for plaintiff's arrest.
19. Moore was brought to the Will County Jail on May 18, 2003 at about 9:00 a.m.
20. Upon his arrival at the jail, plaintiff was strip searched in accordance with a policy of the Sheriff of Will County
21. While at the jail, Moore repeatedly insisted that he had been arrested by mistake and that he was not sought in any outstanding warrant.
22. Moore's protestations were ignored by jail personnel who, in accordance with the policies of defendant, held plaintiff overnight at the jail.
23. In accordance with the policies of defendant, Moore was strip-searched, handcuffed, shackled and taken before a judge at about 1:30 p.m. on May 19, 2003. The judge ordered that plaintiff was to be released immediately.

Charles Davis

24. On September 21, 2003, a police officer of the City of Joliet, Illinois arrested plaintiff Davis because records maintained by defendant mistakenly indicated that a warrant had been issued for plaintiff's arrest.
25. Davis was brought to the Will County Jail at about 5:00 p.m. on September 21, 2003.
26. Upon his arrival at the jail, plaintiff was strip searched in accordance with a policy of the Sheriff of Will County
27. While at the jail, Davis advised correctional staff that, before his arrest, he had been taking prescribed pain medication, that he had not been provided with any pain medication after his arrest, and that he was in constant pain.
28. Correctional staff informed Davis that it would take a week or two before he could begin to receive his prescribed pain medication.
29. In accordance with the policies of defendant, Davis was strip-searched, handcuffed, shackled and taken before a judge at about 10:00 a.m. on September 22, 2003. The judge concluded that Davis had been arrested in error and ordered his immediate release.
30. After the judge ordered that Davis be released immediately, in accordance with the policies of defendant, Davis was held in handcuffs and shackles and taken back to the jail where he was again strip searched and placed in a cell.
31. Davis was released from the cell after several hours of additional incarceration.

CLASS ALLEGATIONS

32. Plaintiffs bring this case on behalf of the following three subclasses, consisting of all persons who from May 8, 2001 to the date of entry of judgment have been, is, or will be
- I. Arrested on an erroneous computer indication that a warrant has been issued for his (or her) arrest for failure to appear in court in a misdemeanor or traffic case and is held overnight at the Will County Jail;
 - II. Arrested on a warrant issued for failure to appear in court in a misdemeanor or traffic case and, following arrival at the Will County Jail, is or was strip searched without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons.
 - III. In the custody of the Sheriff of Will County on a traffic or misdemeanor charge, taken to court from the Will County Jail, ordered released by the Court or became entitled to release because the charge on which he (or she) was being held was no longer pending or was dismissed at the hearing, was ordered released on his (or her) own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release, was not the subject of any other pending case or cases which imposed any condition of release other than personal recognizance, was not the subject of any detainer or warrant, was returned in shackles to the Will County Jail to be processed out of the custody of the Sheriff of Will County, and was strip searched without any individualized finding of reasonable suspicion that he (or she) was concealing contraband or weapons.
33. Plaintiffs Calvin, Moore, and Davis will adequately represent the claims of Subclass I and contend that the Sheriff's refusal to have adopted a system to check the correctness of "failure to appear warrants" amounts to deliberate indifference and results in unreasonable detention.

34. Plaintiffs Calvin, Moore, and Davis will adequately represent the claims of Subclass II and contend that Sheriff's policy of strip searching (both upon arrival at the jail and before being taken to court) persons arrested on "failure to appear warrants" that had been issued in traffic or misdemeanor cases without any individualized finding of reasonable suspicion that the arrestee was concealing contraband or weapons results in deprivations of Fourth Amendment rights;
35. Plaintiffs Calvin and Davis, who were each entitled to immediate release after their respective court appearances, will adequately represent the claims of Subclass III and contend that the Sheriff's policy of shackling and then strip searching persons upon their return from court when the person is entitled to immediate release results in deprivations of Fourth Amendment rights.
36. Each proposed subclass consists of more than one hundred persons and satisfies the numerosity requirement of Rule 23(a).
37. The claims asserted for each subclass present common questions of fact and law, and plaintiffs' individual claims are typical of those asserted for each subclass.
38. Plaintiffs are represented by competent counsel and will fully and adequately represent each subclass.
39. Certification of each subclass is appropriate under Rule 23(b)(3) because common questions predominate over individual issues and a class action is superior to other methods for the fair and effective adjudication of the

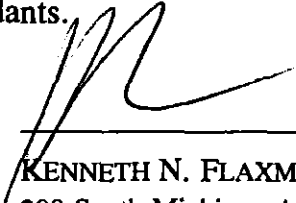
controversy.

DAMAGES

40. The above described policies of defendant, and the actions of defendant's agents and employees taken because of those policies, caused, or will cause, each plaintiff and each member of each proposed subclass to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States, to be deprived of their liberty, incur personal injuries, and lose wages.

41. Plaintiffs demand trial by jury.

WHEREFORE, plaintiffs pray that the Court order that this case may proceed as a class action on behalf of the three identified subclasses and that judgment be entered in favor of plaintiffs and each member of the plaintiff class for appropriate damages in an amount in excess of twenty five thousand dollars as compensatory damages and that the costs of this action, including reasonable attorneys' fees, be taxed against defendants.



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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing to be served on Jeffrey S. Pavlovich, Esq., Leahy, Eisenberg & Frankel, Ltd., 161 N Clark St., Ste 1325, Chicago, IL 60601-3288, by delivery this 12th day of February, 2004.



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