

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TABITHA GENTRY,)	
VINCENT MINTON,)	
MICHAEL HERRON,)	
ADAM WALKER,)	
ANNA CHASTAIN, and)	4:14-cv-00054-RLY-TAB
JANELLE SOUTH,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
FLOYD COUNTY, INDIANA,)	
DARRELL MILLS,)	
TIFFANY FRANS,)	
OFFICER ATHERTON,)	
RYAN RAINEY, and)	
JOHN/JANE DOE,)	
)	
)	
Defendants.)	

**ENTRY ON PLAINTIFFS’ MOTION TO RECONSIDER
DE-CERTIFICATION OF SUBCLASS**

Plaintiffs are a group of detainees who were housed in padded isolation cells of the Floyd County Jail in conditions they claim were unconstitutional. Plaintiffs were placed in isolation because of their behavior during the booking process pursuant to the Combative Subjects Policy which, they allege, gave Jail officers the authority to strip them of their clothing (sometimes forcibly) and replace their clothing with a suicide prevention smock. They were also deprived of a mattress, blanket, or personal hygiene items.

On February 16, 2016, the court granted the Plaintiffs' Motion to Certify the following class for liability issues only pursuant to Rule 23(c)(4):

All inmates confined from June 12, 2013 to present in the Floyd County Jail who were not on a suicide watch, but were housed in a padded cell where they were deprived of clothing, bedding, and hygiene products.

In addition, the court granted Plaintiffs' request to certify the following subclass:

Those class members who were subjected to weapons deployment while confined and secured in the padded cells.

On July 25, 2016, the court granted Defendants' motion to reconsider its certification order with respect to the subclass, finding that the Plaintiffs had not satisfied the numerosity requirement. Plaintiffs now move the court to reconsider its decision. For the reasons set forth below, their motion is **DENIED**.

I. Discussion

Plaintiffs represent that after a thorough review of the voluminous records produced in this case, they grossly understated the size of the subclass, and now represent the subclass consists of 59 individuals. As support, they filed Exhibit 1, a list of class members identified in this case. The members of the subclass are those with an asterisk by his or her name. (*See* Filing No. 89-1, Plaintiffs' Ex. 1, list of class members with asterisks). Fifty-nine members easily surpasses the 40 or so needed to satisfy the numerosity requirement, they argue, and therefore, the court should reconsider its previous order de-certifying the subclass.

Defendants oppose Plaintiffs' motion for several reasons, only one of which need be addressed. They argue that the subclass implicates an officer's decision to use force,

which is an inherently fact-sensitive issue and thus, not amenable to class treatment. Plaintiffs respond that the subclass' claim is not impermissibly fact-dependent. They explain: "The allegation is that the conditions in the padded cell are constitutionally inhumane, and the introduction of weapons into that environment can never be justified." (Filing No. 102, Plaintiffs' Reply at 1). This is because "naked people locked in a cell are, as a matter of law, never a threat to jail staff." (*Id.*). Thus, unlike the main class, the subclass is not based on the *conditions* of the class members' confinement; instead, it is based on the use of force against them. Plaintiffs argue a Jail officer's decision to use force is "allowed" by the Combative Subjects Policy, which reads in relevant part:

Our staff is trained to maintain control of a subject by both verbal and physical means if necessary. If we fail to maintain order and discipline within the facility then we jeopardize the safety of inmates and staff alike. The staff are to take all threats of an inmate's [sic] seriously and react according to the use of force policy and practice.

(Filing No. 43-2, Combative Subjects Policy).

The definition of the subclass begs the question of why weapons were deployed on those class members in the first place. The testimony of Sgt. Ryan Rainey and Officer Meghan Atherton, cited by Plaintiffs, answers this question. They both testified that pepper spray was introduced into the padded cells "to gain compliance." (Filing No. 46-1, Deposition of Ryan Rainey ("Rainey Dep.") at 88; Filing No. 43-1, Deposition of Meghan Atherton ("Atherton Dep.") at 56). Sgt. Rainey explained:

The majority of the time – well, the only time I ever used pepper spray was to deter them from punching, hitting walls because on numerous occasions where we had to take someone to the hospital if they break their hand or hurt their foot. So we would introduce pepper spray to gain their compliance so they don't do that.


(Rainey Dep. at 88; *see also* Atherton Dep. at 55-56 (Q: “For what purpose are they pepper-sprayed while in that cell naked except for the smock?” A: “In attempts to gain compliance. If they’re trying to get other cells, you know, riled up with them, with their outburst, trying to gain compliance. . . . If they’re screaming or kicking and, you know, they won’t stop.”)).

The evidence establishes that Jail officers used pepper spray to subdue unruly inmates who posed a danger to *themselves*, and not, as Plaintiffs’ theorized, for officer safety. Moreover, the Combative Subjects Policy directs Jail officers to react to the misbehavior of inmates according to the Sheriff’s *use of force policy*. The determination to use force, then, is left to the discretion of the officers based on their education, training, and experience. Stated differently, the decision to use force on an inmate in isolation is dependent on the facts presented to an officer at a given time, such as the inmate’s behavior, actions, and/or reactions to the attending Jail staff’s requests to, for example, refrain from screaming or kicking the walls. Such individualized determinations of liability would not be benefited by class certification. *See Brown v. Sec’y, Dep’t of Corr.*, No. 2:03-cv-526-FtM-29DNF, 2005 U.S. Dist. LEXIS 48442, at *26-27 (M.D. Fl. Sept. 20, 2005) (denying class certification because the decision to use chemical agents on inmates is dependent on the facts of each individual situation facing a correctional officer).

II. Conclusion

The subclass implicates an officer's decision to use force, an inherently fact-sensitive inquiry which is not appropriate for class certification. Therefore, the court **DENIES** Plaintiffs' Motion for Reconsideration of De-Certification of Sub-Class (Filing No. 89).

SO ORDERED this 26th day of October 2016.



RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

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