

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. 3:05CV130-C

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US DISTRICT COURT CLERK
WESTERN DISTRICT OF KY
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KIMBERLY MIRACLE, Individually
and on behalf of all others similarly situated

PLAINTIFF

v.

COMPLAINT

BULLITT COUNTY, KENTUCKY

DEFENDANTS

SERVE: County Judge/Executive
Kenneth Rigdon
214 Frank E. Simon
P.O. Box 216
Shepherdsville, Kentucky 40165

SERVE: Walt Sholar
129 Highway 44W
Shepherdsville, Kentucky 40165

and

DANNY FACKLER, in his capacity
as the BULLITT COUNTY JAILER
1671 South Preston Highway
P.O. Box 216
Shepherdsville, Kentucky 40165

* * * * *

I. Introduction

1. Kimberly Miracle files this action in her individual capacity and on behalf of all persons arrested for minor offenses who were required by the Defendants in the Bullitt County Jail (hereinafter "Jail") to remove their clothing for

a visual inspection on admission to the Jail despite the absence of any reasonable suspicion that they were carrying or concealing weapons or contraband. This class of people includes all individuals who were so treated from March 3, 2004 to the present.

2. Such searches have been and continue to be regularly conducted by the Defendants and there are hundreds of members of this class. There are questions of law and fact in this case that are common to all members of this class. Plaintiff's claims are typical of those of this respective class, and they will fairly and adequately protect the interests of this class.

II. Jurisdiction and Venue

3. Plaintiff, and all other similarly situated, seek actual and punitive damages from Defendants under the Civil Rights Act of 1871, 42 U.S.C. §1983, for gross and unconscionable violations of the rights, privileges and immunities guaranteed them by the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States. Accordingly, this Court has jurisdiction of this case pursuant to the provisions of 28 U.S.C. §1331 and §1343. Plaintiff and the other members of her class also seek declaratory and injunctive relief, as well as damages under the pendent jurisdiction of this Court for negligence, gross negligence and intentional infliction of emotional distress. As Bullitt County, Kentucky is the residence of all defendant parties to this action and location of all acts pertinent to this suit, venue is proper in this Court.

III. Class Action

4. Plaintiff brings this action as a class action pursuant to Rules 23(b)(1), (2) and (3) of the Federal Rules of Civil Procedure. The class consists of all individuals arrested for minor offenses who were required to remove their clothing for a visual inspection on admission to the Jail despite the absence of any reasonable suspicion that they were carrying or concealing weapons or contraband.

5. Plaintiff will fairly and adequately protect the interests of all class members. She is a member of the class and her claims are typical of the claims of all class members. Plaintiff was offended at the treatment accorded her and the class members and will aggressively pursue the interests of the entire class. Plaintiff's interest in obtaining injunctive relief and actual and punitive damages for the violations of her constitutional rights and privileges are consistent with and not antagonistic of those of any other person within her class.

6. Given the circumstances of her search, as detailed below, Plaintiff alleges, on information and belief, that Defendants regularly require all persons arrested for nonviolent minor offenses to remove their clothing for a visual inspection of their bodies on admission to the Jail, even though there exists no reasonable grounds for believing that weapons or contraband have been concealed upon their persons. Such searches violate the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States, Title 42 U.S.C. §1983, *Bell v. Wolfish*, 441 U.S. 520 (1979) and the clearly established law of this circuit, as set forth in *Masters v. Crouch*, 872 F.2d. 1248 (6th Cir.), *cert denied*,

493 U.S. 977, 110 S.Ct. 503 (1989). The only question that remains to be resolved is whether Plaintiff and the members of the class are entitled to declaratory and injunctive relief, or to award of compensatory and punitive damages and, if so, the extent of such an award.

7. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

- a. A multiplicity of suits with consequent burden on the courts and Defendants should be avoided.
- b. It would be virtually impossible for all class members to intervene as parties-plaintiff in this action.
- c. Upon adjudication of Defendants' liability, claims of the class members can be determined by this Court.

8. Plaintiff is a resident of Jefferson County within the Commonwealth of Kentucky.

9. The Defendant, Bullitt County, at all times mentioned herein, employed, was responsible for the establishment of policies either formally or by custom for, and was responsible for the employment, training, supervision and conduct of the officers and employees of the Bullitt County Jail.

10. The Defendant, Danny Fackler, is Jailer of Bullitt County, and as such, established policies formally or by custom for, and was responsible for the employment, training, supervision and conduct of, the officers and employees of the Bullitt County Jail.

V. Nature of Defendants' Conduct

11. Defendants, individually and in conspiracy with one another, engaged in the conduct described below under color of the law of the Commonwealth of Kentucky and Bullitt County. The offenses described below resulted from the failure of the state and county agencies and individuals to employ qualified persons for positions of authority, and/or to properly or conscientiously train and supervise the conduct of such persons after their employment, and/or to promulgate appropriate operating policies and procedures either formally or by custom to protect the constitutional rights of the citizens of the Commonwealth of Kentucky. Defendants' conduct was intentional or grossly negligent, or indicated active malice toward Plaintiff and the class or at least a total and reckless disregard for and indifference to their constitutional and common law rights, justifying an award of punitive damages in addition to the actual damages which Plaintiff and the class are entitled to recover.

VI. Facts

12. The Plaintiff, Kimberly Miracle, was arrested on March 3, 2004 and charged with violations of various motor vehicle statutes, including failure to wear a seatbelt, improper registration plates, no insurance, giving a false name to police, and driving under the influence of alcohol, all misdemeanor offenses. She was arrested and was taken to the Bullitt County Jail. There, she was taken into a room where she was told to remove her clothes, bend over, and spread apart her buttocks and cough.

VII. The Law and Defendants' Policy

13. In 1979, the United States Supreme Court held that a pretrial detainee has the right not to be searched unless the reasonableness of such a search is established by "balancing...the need for the particular search against the invasion of personal rights that the search entails." *Bell v. Wolfish, supra* at 559 (emphasis added). On April 18, 1989, the Sixth Circuit issued its opinion in *Masters v. Crouch, supra*, in which it held:

It was clearly established on October 21, 1986... that a person charged with only a traffic violation or nonviolent minor offense may not be subjected to a strip-search unless there are reasonable grounds for believing that the particular person might be carrying or concealing weapons or other contraband.

Id. at 1257. In this case, Plaintiff was arrested for nonviolent minor offenses. Neither her behavior nor her background gave Defendants any reasonable grounds for believing that she might be carrying or concealing weapons or other contraband. Under such circumstances, Defendants' requirement that Plaintiff expose the most private part of her physical person for a visual inspection was unconscionable, was an illegal strip-search by any definition and was a flagrant violation of the balancing requirement of *Bell v. Wolfish, supra*.

VIII. Causes of Action

A. Count I

14. Paragraphs 1-13 above are incorporated herein by reference and made this Paragraph 14.

15. Plaintiff's search, described above, was part of a continuing pattern of misconduct and is the result of statutes, ordinances, regulations, policies, procedures, customs and practices of the Commonwealth of Kentucky and Bullitt County, either written or unwritten, that are systematically applied whenever an arrestee is admitted to or released from the Bullitt County Jail. Such practices constitute an arbitrary use of government power, and evince a total, intentional and unreasonable disregard for the constitutional and common law rights of the citizens of Kentucky, including Plaintiff and the members of the class, and the wholesale violations of those rights likely to result from the systematic pursuit of such practices.

16. As a result of the foregoing, Plaintiff and her class, through Defendants' intentional or grossly negligent conduct, were deprived without due process of law of the following rights and immunities guaranteed them by the Constitution of the United States in violation of the Civil Rights Act of 1871, 42 U.S.C. §1983:

- a. Their right to be secure in their person against unreasonable searches and seizures under the Fourth and Fourteenth Amendments;

- b. Their right to privacy in their person against unreasonable intrusions under the Fourth, Fifth, Ninth and Fourteenth Amendments;
- c. Their right to the equal protection of the law secured by the Fourteenth Amendment; and
- d. Their right not to be subjected to cruel and unusual punishment under the Eighth and Fourteenth Amendments.

17. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' searches of Plaintiff and the members of her class were intentional, wanton and malicious, and were indicative of Defendants' total and reckless disregard of, indifference to the rights of, and rise of harm to, Plaintiff and the other members of the class.

B. Count II

18. Paragraphs 1-17 above are incorporated herein by reference and made this Paragraph 18.

19. By virtue of the foregoing, Defendants, without justification, negligently or intentionally inflicted upon Plaintiff and the class severe mental and emotional distress.

C. Count III

20. Paragraphs 1-19 above are incorporated herein by reference and made this Paragraph 20.

21. By virtue of the foregoing, Defendants were negligent, and grossly negligent, all to the damage of the Plaintiff and the class.

IX. Damages

22. Paragraphs 1-21 above are incorporated herein by reference and made this Paragraph 22.

23. Plaintiff and the members of the class were unjustifiably and unconstitutionally searched in a manner that generated tremendous and overwhelming embarrassment, humiliation, and mental and emotional distress. As a result, they have suffered, and are entitled to recover, actual damages. Furthermore, Defendants' violations of the constitutional and common law rights of the Plaintiff and the class were cruel, malicious and evinced a total and reckless disregard for and indifference to those rights, entitling Plaintiff and the class to recover punitive damages from Defendants in order to deter such conduct in the future.

X. Declaratory Judgment and Permanent Injunction

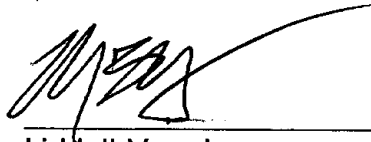
24. Paragraphs 1-23 above are incorporated herein by reference and made this Paragraph 24.

25. In addition to the foregoing, Plaintiff and the class request that this Court issue a declaratory judgment deeming unconstitutional any and all statutes, ordinances, regulations, policies, procedures, customs or practices under which they were forced to expose their genitalia for visual inspection, and further request that this Court permanently enjoin the Defendants from following or enforcing such statutes, ordinances, regulations, policies, procedures, customs or usages.

WHEREFORE, Plaintiff and the class she represents requests (a) that this action proceed as a class action under Fed. R. Civ. P. 23 and (b) a trial by jury, and further request that they and all members of the class (c) be awarded actual and punitive damages, (d) be granted the declaratory and injunctive relief requested herein, and (e) be awarded their costs, attorney fees, pre- and post-judgment interest and all other relief to which they are entitled under law or in equity.

Respectfully Submitted,

WALKER, VAUGHN & WALLACE, PLLC

A handwritten signature in black ink, appearing to be 'M. Wallace', written over a horizontal line.

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