

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

[Filed Electronically]

KIMBERLY MIRACLE, JEFFREY)
FLEENOR, RICHARD DAILY,)
APRIL GRIFFITH, KEITH WILSON)
and EARL TAYLOR, Individually)
and on behalf of all others)
similarly situated,)

PLAINTIFFS)

CIVIL ACTION NO. 3:05CV-130-C

v.)

BULLITT COUNTY, KENTUCKY, et al.,)

DEFENDANTS.)

FIRST AMENDED COMPLAINT

I. Introduction

1. Kimberly Miracle, Jeffrey Fleenor, Richard Daily, April Griffith, Keith Wilson and Earl Taylor, Plaintiffs, file this action in their individual capacity and on behalf of all persons arrested for non-violent minor offenses who were required by Defendants to remove their clothing for a visual body cavity search on admission to the Bullitt County Detention Center (hereinafter "the Jail") despite the absence of any reasonable, individualized 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 regularly conducted by 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. Plaintiffs' claims are typical of those of their class, and they will fairly and adequately protect the interests of this class.

II. Jurisdiction and Venue

3. Plaintiffs, 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. Plaintiffs 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 the location of all acts pertinent to this suit, venue is proper in this Court.

III. Class Action

4. Plaintiffs bring 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 non-violent minor offenses who, since March 3, 2004, were required to remove their clothing for a visual inspection of their naked bodies on admission to the Jail despite the absence of any reasonable, individualized suspicion that they were carrying or concealing weapons or contraband.

5. Plaintiffs will fairly and adequately protect the interests of all class members. They are members of the class and their claims are typical of the claims of all class members. Plaintiffs were offended at the treatment accorded them and the class members

and will aggressively pursue the interests of the entire class. Plaintiffs' interest in obtaining injunctive relief and actual and punitive damages for the violations of their constitutional rights and privileges are consistent with and not antagonistic of those of any other person within her class.

6. Given the circumstances of their search, as detailed below, Plaintiffs allege, on information and belief, that Defendants regularly require all persons arrested for nonviolent minor offenses to remove their clothing for at least a visual inspection of their naked bodies -- and in most instances for a visual body cavity search -- on admission to the Jail, even though there exists no reasonable grounds for believing that such individuals are carrying or concealing weapons or contraband. Such searches violate the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States, 42 U.S.C. §1983 and the clearly established law of this circuit 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 Plaintiffs and the members of the class are entitled to declaratory and injunctive relief, or to an 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.

IV. Parties

8. Plaintiffs are all residents of the Commonwealth of Kentucky.

9. 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 Jail.

10. 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 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 Plaintiffs 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 Plaintiffs and the class are entitled to recover.

VI. Facts

12. Plaintiff Kimberly Miracle was arrested on or about March 3, 2004 for non-violent misdemeanor offenses. She was taken to the Jail where she was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that she was carrying or concealing weapons or contraband.

13. Plaintiff Earl Taylor was arrested on or about March 15, 2004 for a non-violent misdemeanor offense. He was taken to the Jail where he was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that he was carrying or concealing weapons or contraband.

14. Plaintiff Jeffrey Fleener was arrested on or about May 30, 2004 for a non-violent misdemeanor offense. He was taken to the Jail where he was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that he was carrying or concealing weapons or contraband.

15. Plaintiff Richard Dailey was arrested on or about September 6, 2004 for non-violent misdemeanor offenses. He was taken to the Jail where he was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that he was carrying or concealing weapons or contraband.

16. Plaintiff April Griffith was arrested on or about February 22, 2005 and July 13, 2005 for non-violent misdemeanor offense. On both occasions, she was taken to the Jail where she was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that she was carrying or concealing weapons or contraband.

17. Plaintiff Keith Wilson was arrested on or about January 27, 2006 for a non-violent misdemeanor offense. He was taken to the Jail where he was subjected to a visual body cavity search when Defendants had no reasonable, individualized suspicion that he was carrying or concealing weapons or contraband.

VII. The Law and Defendants' Policy

18. 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. Like the Sixth Circuit, the courts have consistently held that a non-violent minor offense, in and of itself, does not give rise to sufficient institutional security concerns to justify strip-searches that have been described as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission." *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983). In this case, Plaintiffs were arrested for non-violent minor offenses. Neither their behavior nor their background gave Defendants any reasonable grounds for believing that they might be carrying or concealing weapons or other contraband. Under such circumstances, Defendants' requirement that Plaintiffs expose the most private parts of their physical person for a visual inspection was unconscionable, was an illegal strip/visual body cavity search by any definition, and was a flagrant violation of the clearly-established law.

VIII. Causes of Action

A. Count I

19. Paragraphs 1-18 above are incorporated herein by reference and made this Paragraph 19.

20. Plaintiffs' searches, described above, were part of a continuing pattern of misconduct and were 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 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 Plaintiffs and the members of the class, and the wholesale violations of those rights likely to result from the systematic pursuit of such practices.

21. As a result of the foregoing, Plaintiffs and their 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.

22. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' searches of Plaintiffs and the members of their 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, Plaintiffs and the other members of the class.

B. Count II

23. Paragraphs 1-22 above are incorporated herein by reference and made this Paragraph 23.

24. Defendants have blatantly violated the provisions of KRS 441.025 and 441.055, and 501 KAR 3:120(3)(1)(b) and (c).

C. Count III

25. Paragraphs 1-24 above are incorporated herein by reference and made this Paragraph 25.

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

D. Count IV

27. Paragraphs 1-26 above are incorporated herein by reference and made this Paragraph 26.

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

IX. Damages

29. Paragraphs 1-28 above are incorporated herein by reference and made this Paragraph 28.

30. Plaintiffs and the members of the class were unjustifiably and unconstitutionally strip-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 Plaintiffs and the class were cruel, malicious and evinced a total and reckless disregard for and indifference to those rights, entitling Plaintiffs and the class to recover punitive damages from Defendants in order to deter such conduct in the future.

X. Declaratory Judgment and Permanent Injunction

31. Paragraphs 1-30 above are incorporated herein by reference and made this Paragraph 30.

32. In addition to the foregoing, Plaintiffs 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 bodies 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, Plaintiffs and the class they represent request (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,

s/ Gregory A. Belzley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' First Amended Complaint was served this 11th day of October 2007, via CM/ECF, on the following:

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