

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CASE NO.: 4:03CV-3-M

EDWARD LEE SUTTON, LESTER H. TURNER,
LINDA JOYCE FORD, TIMOTHY D. MAY,
LADONIA W. NELSON, ROBIN LITTLEPAGE,
ROBERT R. TEAGUE, TABITHA NANCE, TONY WARD
AND DANIEL TODD, INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED

ELECTRONICALLY FILED

PLAINTIFFS

v.

HOPKINS COUNTY, KENTUCKY

AND

JIM LANTRIP, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS JAILER
OF HOPKINS COUNTY, KENTUCKY

DEFENDANTS

THIRD AMENDED COMPLAINT

I. Introduction

1. Plaintiffs Edward Lee Sutton, Lester H. Turner, Linda Joyce Ford, Timothy D. May, Ladonia W. Nelson, Robin Littlepage, Robert Teague, Tabitha Nance, Tony Ward and Daniel Todd file this action individually and on behalf of all persons subjected to unconstitutional strip-searches on admission and/or release from the Hopkins County Jail since January 9, 2002.

2. Edward Lee Sutton, Lester H. Turner, Ladonia W. Nelson, Robin Littlepage, Robert R. Teague, Tabitha Nance, Timothy May and Linda Ford file this action in their individual capacity and on behalf of all persons arrested for minor offenses who were required by Defendants in the Hopkins County Jail ("Jail"), after becoming entitled to release, to remove

their clothing for a visual inspection despite the absence of any reasonable grounds for doing so ("the Release Class"). This class of individuals includes individuals who were strip searched just prior to their release from the Jail after they were ordered released on their own recognizance; individuals who were strip searched just prior to release from the Jail after they were ordered released on bond and subsequent to posting of bond; and individuals who were strip searched just prior to their release from the Jail for any other reason without reasonable grounds for doing so. This subclass of people includes all individuals who were so treated since January 9, 2002.

3. Linda Joyce Ford, Timothy D. May, Ladonia W. Nelson, Robin Littlepage, Robert R. Teague, Tabitha Nance, Daniel Todd and Tony Ward file this action in their individual capacity and on behalf of all persons arrested for non-violent, non-drug related minor offenses who were required by Defendants in the Jail to remove their clothing for a visual inspection on admission to the Jail despite the absence of any individualized reasonable suspicion that they were carrying or concealing weapons or contraband. This subclass of people includes all individuals who were so treated from January 9, 2002 to the present.

4. Such searches have been and continue to be regularly conducted by Defendants and there are hundreds of members of each subclass. There are questions of law and fact in this case that are common to all members of each subclass. Plaintiffs' claims are typical of those of their respective subclass, and they will fairly and adequately protect the interests of such subclasses.

II. Jurisdiction and Venue

5. Plaintiffs, and all others 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 their 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 Hopkins 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

6. Plaintiffs bring this action as a class action pursuant to Rules 23(b)(1), (2) and (3) of the Federal Rules of Civil Procedure. There are two subclasses before the Court.

7. The first subclass consists of all individuals arrested for minor non-violent and non-drug related offenses who were required to remove their clothing for a visual inspection on admission to the Jail despite the absence of any individualized reasonable suspicion that they were carrying or concealing weapons or contraband.

8. The second subclass consists of all persons who were required by Defendants in the Jail, after becoming entitled to release, to remove all of their clothing for a visual inspection despite the absence of any reasonable grounds for doing so.

9. Plaintiffs will fairly and adequately protect the interests of all class members. They are members of the subclasses and their claims are typical of the claims of all class members. Plaintiffs are 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 their subclass.

10. Given the circumstances of their search, as detailed below, Plaintiffs allege, on information and belief, that Defendants regularly require persons arrested for nonviolent, non-drug related minor offenses to remove their clothing for a visual inspection of their bodies on admission to the jail even though the Jail has not determined any individualized suspicion for doing so and regularly require persons to remove their clothing for a visual inspection of their bodies prior to their release from the Hopkins County Jail even though (a) there exists no reasonable grounds for doing so, and (b) such persons have been ordered released. Such searches violate the Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, 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 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.

11. 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

12. Plaintiffs are residents of various counties within the Commonwealth of Kentucky.

13. Defendant Hopkins 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 Hopkins County Jail.

14. Defendant Jim Lantrip is Jailer of Hopkins 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 Hopkins County Jail.

V. Nature of Defendants' Conduct

15. Defendants, individually and in conspiracy with one another, engaged in the conduct described herein under color of the law of the Commonwealth of Kentucky and Hopkins 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

16. On June 28, 2002, Plaintiffs Edward Lee Sutton and Lester Turner were arrested for a violation of KRS 222.202 (alcohol intoxication), a misdemeanor offense, and were taken to the Hopkins County Jail. Sutton and Turner were not strip-searched upon admission to the Hopkins County Jail. They were subsequently taken to Court where they were ordered released on their own recognizance. Instead of being released immediately, Sutton and Turner were returned to the Hopkins County Jail and, prior to their release, were strip-searched, apparently because of the requirements of Paragraph 1 (c) of the written policy of the Hopkins County Jail, a copy of which is attached hereto as Exhibit 1.

17. Plaintiff Linda Joyce Ford was arrested in September, 2002, for writing a bad check, a violation of KRS 514.040, a misdemeanor offense, and was taken to the Hopkins County Jail. Upon entry to the Jail, Ford was taken into a room where she was required to take off her clothes, squat on the floor and cough. She was then forced to turn around, bend over, spread her buttocks and cough. Upon release from the Jail, Ford was again subjected to an unconstitutional strip search prior to being allowed to leave the Jail.

18. On October 9, 2002, Timothy May was arrested for speeding ten miles over the speed limit, operating on a suspended license and for failure to pay a ticket. Each of these offenses are a misdemeanor. On entry to the Hopkins County Jail, May was forced to take off all of his clothes, lift his genitals, turn around, bend over, and spread his buttocks. Upon release from the Jail, May was again subjected to an unconstitutional strip search prior to being allowed to leave the Jail.

19. Plaintiff Ladonia Nelson was subject to an unconstitutional strip search on four occasions. In February, 2002 and May 2002, she was arrested for minor non-drug related

offenses. She was pregnant during both incarcerations. She was forced to remove her clothing on a number of occasions, squat, spread her buttocks, and cough. These searches occurred upon entry to the jail and immediately prior to her release.

20. Plaintiff Robin Littlepage was arrested in August, 2002, for charges related to failure to make an appearance. Upon entry to the Jail, Hopkins County officers forced her to remove her clothing, lift her breasts, squat for an inspection, and cough. Immediately prior to her release, Littlepage was forced to remove her clothing in the presence of a Hopkins County officer.

21. Plaintiff Robert Teague was arrested in January, 2003, for writing a bad check, a violation of KRS 514.040, a misdemeanor offense. Upon entry to the Jail, Teague was forced to submit to a physical inspection of his body by removing his clothes and spreading his buttocks. Immediately prior to his release, he was forced to remove his clothing in front of a Hopkins County officer.

22. Plaintiff Tabitha Nance was arrested in May, June, and October, 2003, for theft by deception for writing a bad check. On each occasion, Nance was subjected to an unconstitutional strip search at the Hopkins County Jail upon entry and release. On at least one occasion, Nance, a female, was forced to submit to an unconstitutional strip search by a male guard.

23. Plaintiff Tony Ward was arrested in May 2004 for a non-violent non-drug related minor offense. Upon entry to the Jail, Mr. Ward was forced to submit to an unconstitutional strip search in front of a Hopkins County Jail officer.

24. Plaintiff Daniel Todd was arrested in April 2003 for a non-violent non-drug related minor offense. Upon entry to the Jail, Mr. Ward was forced to submit to an unconstitutional strip search in front of a Hopkins County Jail officer.

VII. The Law and Defendants' Policy

25. 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 only with 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, Plaintiffs were arrested for nonviolent minor offenses. At the time of the unconstitutional strip searches, Defendants did not have any individualized reasonable suspicion that Plaintiffs might be carrying or concealing weapons or other contraband. Under such circumstances, Defendants' requirement that Plaintiffs – on admission and after they had been ordered released -- expose the most private part of their physical persons 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

26. Paragraph 1-25 above are incorporated herein by reference and made this Paragraph 26.

27. Plaintiffs' searches, described above, were part of a continuing pattern of misconduct and is the result of policies, procedures, customs and practices of the Commonwealth of Kentucky and Hopkins County, either written or unwritten, that are systematically applied

whenever an arrestee is admitted to or released from the Hopkins 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 Plaintiffs and the members of the class, and the wholesale violations of those rights likely to result from the systematic pursuit of such practices.

28. As a result of the foregoing, Plaintiffs and their subclasses, through Defendants' intentional or grossly negligent conduct, were unconstitutionally detained in an environment that communicated to Plaintiffs that they would be subjected to physical force if they did not comply with the demands to be strip searched. In conducting these unconstitutional strip searches, Plaintiffs were deprived without due process of law of the following rights, privileges 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.

29. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' searches of Plaintiffs and the members of their subclass were intentional, wanton and malicious, and were indicative of Defendants' total and reckless disregard of, indifference to the rights of, and risk of harm to, Plaintiffs and the other members of the class.

B. Count II

30. Paragraphs 1-29 above are incorporated herein by reference and made this Paragraph 30.

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

C. Count III

32. Paragraphs 1-31 above are incorporated herein by reference and made this Paragraph 32.

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

IX. Damages

34. Paragraphs 1-33 above are incorporated herein by reference and made this Paragraph 34.

35. Plaintiffs and the members of the classes 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 Plaintiffs and the classes 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

36. Paragraphs 1-35 above are incorporated herein by reference and made this Paragraph 36.

37. In addition to the foregoing, Plaintiffs and the subclasses 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 Defendants from following or enforcing such statutes, ordinances, regulations, policies, procedures, customs or usages.

WHEREFORE, Plaintiffs and the subclasses 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, attorneys' fees, pre and post judgment interest and all other relief to which they are entitled under law or in equity.

Respectfully Submitted,

s/ Bart L. Greenwald
Bart L. Greenwald
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400 (Telephone)
(502) 581-1087 (Facsimile)
bgreenwald@fbtlaw.com

and

Gregory A. Belzley
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
(502) 540-2300 (Telephone)
(502) 585-2207 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2006, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

John T. Soyars
FOSTER, SOYARS & ASSOCIATES
209 East 14th Street
P.O. Box 24
Hopkinsville, KY 42240

Michael Sullivan
100 St. Ann Building
P.O. Box 727
Owensboro, KY 42302-0727

Stacey A. Blankenship
Denton & Keuler
P.O. Box 929
Paducah, KY 42002-0929

s/ Bart L. Greenwald
Bart L. Greenwald
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400 (Telephone)
(502) 581-1087 (Facsimile)
bgreenwald@fbtlaw.com

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DEFENDANTS

ORDER

On Motion of Plaintiffs, the Court having heard the arguments of counsel and being otherwise sufficiently advised;

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to file a Third Amended Complaint is **GRANTED** and Defendants shall have twenty (20) days from the date of this Order to serve and file their answer to the Complaint.

Tendered by:

s/ Bart L. Greenwald
Bart L. Greenwald
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400 (Telephone)
(502) 581-1087 (Facsimile)
bgreenwald@fbtlaw.com

and

Gregory A. Belzley
Dinsmore & Shohl LLP
1400 PNC Plaza
500 W. Jefferson St.
Louisville, KY 40202

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