

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSHUA LUCIANO, MICHAEL MELLEN,)
and JOHN MICHAUD,)

Plaintiffs,)

v.)

Civil Action No. 2:07-cv-25-DBH

MICHAEL VITIELLO, Superintendent of York)
County Jail, in his individual and official)
capacities, JOHN ANGIS, in his)
individual and former official capacities as)
Operations Captain, York County Jail,)
STEVEN A. FOGGIO,)
Facilities Manager for York County,)
in his individual and official capacities,)
and COUNTY OF YORK)

Defendants)

**THIRD AMENDED COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)
AND DEMAND FOR JURY TRIAL**

Plaintiffs Joshua Luciano, Michael Mellen, and John Michaud, through counsel, bring this civil action for injunctive and declaratory relief and damages, and complain as follows:

INTRODUCTION

1. While serving jail sentences at the York County Jail, Plaintiffs were ordered to clean up a large quantity of human blood without proper protective clothing or hazardous material training. At the time of the incident, the blood was presumed to be contaminated with pathogens. As a result of the forced exposure to the infected blood, Plaintiffs have been forced to undergo painful tests for infection. Plaintiffs additionally have experienced severe anxiety about their medical conditions and concern about infecting loved ones. Defendants knew that exposure to blood could lead to dangerous or even deadly infection, but they did not take proper steps to ensure

that Plaintiffs were kept safe. Defendants' action violated the right to freedom from cruel and unusual punishment guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. This action seeks to vindicate rights guaranteed by the Eighth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 and seeks damages under the Maine Tort Claims Act, 14 M.R.S.A. §8101, et seq.

3. The Court has jurisdiction of this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a) (3), (4) and has jurisdiction over the tort claim under 28 U.S.C. § 1367.

4. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201, 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b).

6. To the extent required by 42 U.S.C. § 1997e, Plaintiffs have exhausted their administrative remedies.

PARTIES

7. Plaintiff Joshua Luciano was a convicted prisoner and resident at the York County Jail, 1 Layman Way, Alfred, Maine, 04002, at the time of the incident giving rise to this complaint.

8. Plaintiff John Michaud was a convicted prisoner and resident at the York County Jail, 1 Layman Way, Alfred, Maine, 04002, at the time of the incident giving rise to this complaint.

9. Plaintiff Michael Mellon was a convicted prisoner and resident at the York County Jail, 1 Layman Way, Alfred, Maine, 04002, at the time of the incident giving rise to this complaint.

10. Defendant Michael Vitiello is the Superintendent of the York County Jail. As such, he is the legal custodian of all prisoners housed at York County Jail and is responsible for the safe, secure, and humane treatment of those prisoners. Defendant Vitiello is sued in his individual and official capacities.

11. At the time of the incident giving rise to this suit, Defendant John Angis was Captain of Operations of the York County Jail, who was second in command of the Jail in relation to inmates and who, on information and belief, ordered the blood cleanup by the Plaintiffs and oversaw the blood cleanup.

12. Defendant Steven Foglio is the York County Facilities Manager. As such, he is responsible for overseeing prisoners participating in the Trusty Program while they are working at York County facilities. Defendant Foglio is sued in his individual and official capacities.

13. Defendant County of York is a political subdivision of the State of Maine.

STATEMENT OF FACTS

14. This complaint arises from an incident occurring on or about November 7, 2006 at the York County Jail. Plaintiffs were assigned to a work release program, the York County Jail Trusty Program (“Trusty Program”).

15. The Trusty Program is administered by Defendant Vitiello. Participants in the Trusty Program earn credits toward early release from their sentence.

16. Plaintiffs were allowed to participate in the Trusty Program because of their exemplary behavior.

17. On the day at issue, Defendant Angis told Defendant Foglio that the Jail had a blood spill and he wanted Trustees to clean it up. Plaintiffs were taken to a holding cell in the

classification block of the jail and assigned to perform work as part of the Trusty Program under the personal supervision of Defendant Angis and Defendant Foglio.

18. Plaintiffs were ordered to clean up a pool of blood approximately four feet by four feet, as well as blood splattered on the walls, ceiling and furniture of the cell. The large quantity of blood resulted from another inmate's attempted suicide in the cell.

19. Plaintiffs did not believe they were at liberty to refuse to perform the blood cleanup.

20. At the time of the incident the inmate whose blood was spilled had risk factors for the virus Hepatitis C.

21. Hepatitis C is a liver disease caused by infection from the Hepatitis C Virus ("HCV"). HCV leads to chronic infection in 55%-85% of infected persons; chronic liver disease in 70% of chronically-infected persons; and death from chronic liver disease in 1%-5% of infected persons. HCV is the leading indication for liver transplant. HCV is transmitted through contact with infected blood.

22. In lieu of proper safety equipment, Defendants Angis and Foglio supplied Plaintiffs with three pairs of thin, latex, wrist-length surgical gloves and brushes with stiff plastic bristles. Plaintiffs were ordered to clean the blood spill using the bristle brushes with bleach and water. The supplied bristle brushes caused the blood to spray onto Plaintiffs' skin and into Plaintiffs' eyes, noses, and mouths as they cleaned the cell.

23. On information and belief, Defendants Angis and Foglio have received training in the proper handling of biohazard material. Accordingly, Defendant Foglio knew that the safety equipment supplied to Plaintiffs was grossly inadequate.

24. The York County Jail is equipped with proper biohazard cleanup clothing and

equipment that easily could have been supplied to Plaintiffs to keep them safe from blood-borne pathogens.

25. By requiring Plaintiffs to clean a biohazard site without proper training or equipment, Defendants Angis and Foglio acted with deliberate indifference to the physical and emotional health and safety of the Plaintiffs.

26. Defendants Vitiello and Angis, as policy makers for the Defendant County of York, were responsible for ensuring that inmates at the York County Jail are not subjected to substantial risks to their safety in the course of working at the jail.

27. Defendants Vitiello and Angis, and through them, Defendant County of York, were aware that forcing prisoners to clean blood without proper protective clothing creates an unreasonable risk to the inmates' safety.

28. In fact, prior to the matter complained of herein, Defendant Vitiello had been sued by a prisoner for exposure to blood of an inmate without protective gear in the case of *Scott v. Cote and Vitiello*, 05-81-P-C, reported at 2006 WL 1030119 (D.Me.).

29. Defendants Vitiello and Angis, and through them, Defendant York County, through custom, policy and/or practice, have denied proper training and protective clothing to inmates cleaning biohazards such as blood.

30. By establishing through custom, policy and/or practice that inmates will not be trained or supplied with proper safety equipment when performing biohazard clean-ups, Defendants Vitiello and Angis, and through them, Defendant County of York, actively participated in the needless endangerment of Plaintiffs' lives and health, acted with deliberate indifference to the physical and emotional health and safety of Plaintiffs and are affirmatively linked to the conduct complained about herein.

31. Defendants' actions may have resulted in serious illness for one Plaintiff, John Michaud, and put the other two Plaintiffs at risk of contracting the infection Hepatitis C. Defendants' actions have caused all Plaintiffs physical injury and serious physical pain in the form of mandatory blood tests. Defendants' actions have caused serious emotional pain, anxiety, and suffering in all Plaintiffs. Plaintiffs suffer from severe anxiety and insomnia because they are fearful of the very real danger that they have been infected with HCV and will contract and/or communicate Hepatitis C, a deadly illness.

32. Plaintiffs filed numerous grievances following this incident to complain of the unsafe work conditions and demanded medical testing. In response, Plaintiffs were subjected to retaliation in the form of delayed medical treatment and testing, accusation of smuggling contraband, subjection to body-cavity searches, and threatened removal from the Trusty Program.

33. Plaintiffs' grievances were forwarded to Defendant Foglio, even though the York County Inmate Handbook states that they should be sent to an officer that is not part of the grievance.

34. Plaintiffs have exhausted their administrative remedies as required by 42 U.S.C. § 1997e (a) through the filing of multiple grievance forms and letters of appeal as required by the York County Jail Inmate Handbook.

35. The situation presented in this Complaint is likely to recur unless the Court enters an injunction. Plaintiffs have no adequate remedy at law.

COUNT I
(VIOLATION OF EIGHTH AMENDMENT)

36. Plaintiffs repeat the allegations contained in paragraphs 1-35.

37. Plaintiffs were forcibly and intentionally exposed to blood-borne pathogens by Defendants while being denied adequate safety equipment. This constitutes an inhumane condition of confinement.

38. Defendants knew that exposure to a biohazard site without proper equipment created a substantial risk of serious harm, but they failed to take reasonable measures to abate this risk.

39. Defendants Angis and Foglio acted with deliberate indifference to the substantial risk of serious harm to Plaintiffs' health and safety when they ordered Plaintiffs to clean up the biohazard site without proper equipment.

40. Defendant Vitiello and Angis, and through them, Defendant County of York condoned and acquiesced in the denial of proper training and safety equipment for inmates in the Trusty Program, with deliberate indifference to a substantial risk of harm to Plaintiffs, even though Defendants Vitiello, Angis and the County had the power to provide and require the use of appropriate safety equipment.

41. Defendants acted with callous and reckless disregard to Plaintiffs' rights by failing to provide for safe work conditions for inmates and by forcing inmates to clean-up a biohazard site without adequate safety clothing and equipment, even after this safety policy was the subject of similar litigation.

42. At all times relevant hereto Defendants acted under color of state law.

43. Defendants' actions deprived Plaintiffs of rights secured to them by the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, entitling Plaintiffs to redress under 42 U.S.C. § 1983 in the form of both monetary damages and appropriate declaratory and injunctive relief.

44. Defendants acted with implied malice because they knew that Plaintiffs were being exposed to biohazards without adequate safety clothing and equipment that was readily available, exposing Plaintiffs to a substantial risk of harm to their health and welfare.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Issue a judgment declaring that the actions of Defendants as described in this Complaint are unlawful and constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution;

B. Permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them, from exposing prisoners to chemical and/or biological hazards without proper safety equipment and training;

C. Award Plaintiffs compensatory damages for past and future medical bills, and emotional and psychological harm, in an amount determined to be reasonable in the premises;

D. Award Plaintiffs punitive damages;

E. Award Plaintiffs their reasonable attorney fees and costs pursuant to 42 U.S.C. §1988 and other applicable law; and

F. Grant such further relief as the Court considers just and proper.

COUNT II
(MAINE TORT CLAIMS ACT)

45. Plaintiffs repeat the allegations contained in paragraphs 1-44.

46. Defendant County of York is a governmental entity within the meaning of Section 8102.2 of the Maine Tort Claims Act, 14 M.R.S.A. § 8101, et seq. (the “Act”).

47. On May 3, 2007, Plaintiff John Michaud, through his attorney, filed a Notice of Claim on the Clerk of the York County Commissioners in compliance with the provisions of Section 8107 of the Act.

48. The York County Jail is a public building within the meaning of Section 8104-A.2 of the Act.

49. The claim of Plaintiff Michaud herein arises out of the operation and maintenance of the York County Jail for which sovereign immunity has been waived by Section 8104-A of the Act.

50. Defendant County of York and its employees have a non-discretionary duty to prisoners working at the York County Jail to provide adequate protective gear to inmates ordered to clean up blood.

51. Defendants breached this duty.

52. As a direct and proximate cause of the breach of this duty, Plaintiff John Michaud suffered injury.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Award Plaintiff Michaud compensatory damages for past and future medical bills, and emotional and psychological harm, in an amount determined to be reasonable in the premises; and

B. Grant such further relief as the Court considers just and proper.

Dated: September 5, 2007

/s/ Rufus E. Brown

Rufus E. Brown, Esq.
BROWN & BURKE
85 Exchange Street - P.O. Box 7530
Portland, ME 04112-7530
(207) 775-0265
rbrown@brownburkelaw.com

Zachary L. Heiden, Esq.
MCLU FOUNDATION
401 Cumberland Avenue, Suite 105
Portland, ME 04101

(207) 774-5444
heiden@mclu.org

*Attorneys for Plaintiffs Joshua
Luciano, Michael Mellen, and
John Michaud*

John J. Wall, Esq.
MONAGHAN LEAHY LLP
95 Exchange Street
P.O. Box 7046
Portland, Me. 04112

Dated September 5, 2007

Respectfully submitted.

/s/Rufus E. Brown

Rufus E. Brown, Esq.
BROWN & BURKE
85 Exchange Street
P.O. Box 7530
Portland, Maine 04112-7530
(207) 778-0265