

2000 WL 33671759
United States District Court, D. Rhode Island.

Craig L. ROBERTS, Sr., individually and on behalf of a class of persons similarly situated

v.

The State of Rhode Island, and George A. Vose, Jr., individually and in his capacity as Director of the R.I. Department of Corrections, and Roberta Richmond, individually and in her capacity as the Warden of The Women's Facility at the Adult Correctional Institutions, and Albert Gardiner, individually and as Warden of the Intake Services Center at the Adult Correctional Institution

and

Craig L. ROBERTS, Sr., individually

v.

TWO UNKNOWN RHODE ISLAND STATE TROOPERS whose names will become known in the course of pretrial discovery

No. 99-CV-259. | Jan. 6, 2000.

Opinion

MEMORANDUM AND ORDER

LISI, District J.

*1 On November 3, 1999, the plaintiff, Craig L. Roberts, Sr. ("Roberts"), filed a motion for class certification pursuant to Fed.R.Civ.P. 23(b)(2). *See also* D.R.I. Loc. R. 30. The defendants filed a timely objection and the matter is now in order for decision. For the reasons outlined below, Roberts's motion for class certification is denied.

I. Facts¹

In the late evening or early morning hours of April 19 and 20, 1999, two Rhode Island State Police troopers stopped a vehicle driven by Stephen Rizzo ("Rizzo") because the registration stickers on the vehicle's license plates had expired. Roberts was a passenger in the vehicle. The troopers approached the vehicle and requested identification from both Rizzo and Roberts. The two men complied with the troopers' requests and Rizzo retrieved the appropriate registration stickers from the vehicle's glove compartment. The troopers then concluded the encounter and permitted the vehicle to pull away.

As Rizzo drove away the same troopers again stopped his vehicle. The troopers approached the vehicle and informed Roberts that a computer check had revealed the he was subject to an outstanding body attachment. Roberts produced a copy of an order signed by Rhode Island Family Court Magistrate George DiMuro. The order withdrew the body attachment. Nevertheless, the troopers arrested Roberts and transported him to the Adult Correctional Institutions ("ACI").

The troopers brought Roberts to the ACI's Intake Services Center. At some point in time, Roberts was placed in the center of a cell where he was ordered to disrobe completely. Someone then visually examined his body but did not touch him. He received a prison uniform and was thereafter placed in a segregated cell because he refused to submit to a blood test.

Several hours later, Roberts was transported to the Garrahy Judicial Complex in Providence, where he was released upon showing a sheriff the copy of Magistrate DiMuro's order withdrawing the body attachment. Roberts claims that he was not presented to a judicial officer prior to his release.

II. Discussion

Roberts has moved for certification of a class pursuant to Fed.R.Civ.P. 23(b)(2). According to his formulation, the purported class consists of:

[A]ll persons arrested for misdemeanors, non-criminal offenses or held on civil body attachments who were processed at the Intake Services Center or the Women's [sic] Prison at the Adult Correctional Institution who were strip searched pursuant to the uniform policy, practice and custom of the Department of Corrections of the State of Rhode Island when there was no probable cause to believe the individual was in possession of weapons or contraband.

In this Court's estimation, the proposed class definition does not satisfy the strictures of Rule 23.

Rule 23 provides in pertinent part:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

*2 (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

....

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole

Fed.R.Civ.P. 23. With this legal framework in place, the Court proceeds to a fact-specific application of the Rule 23 criteria.

A. Rule 23(a)

"To obtain class action certification, [Roberts] must establish that all four requisites of Rule 23(a) and at least one part of Rule 23(b) are met." *Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir.1994). Because the plaintiff has not established that each requirement of Rule 23(a) is met, the Court denies his motion for class certification.

1. Rule 23(a)(1) Numerosity

In order to satisfy Rule 23(a)(1), the plaintiff must show that "the class is so numerous that joinder of all members is impracticable." Roberts attempts to satisfy this prong of the Rule 23(a) test by averring in a legal memorandum that approximately 16,000 people are processed by the Intake Services Center each year. From that gross figure, the plaintiff extrapolates that "it is obvious that there are thousands of people affected by the strip search policy." He supplies no evidence to support this assertion.

The United States Court of Appeals for the First Circuit has affirmed a denial of class certification where the plaintiff's claims as to numerosity of the class were purely speculative. *See Makuc v. Am. Honda Motor Co.*, 835 F.2d 389, 394-95 (1st Cir.1987); *cf. Yaffe v. Powers*, 454 F.2d 1362, 1366 (1st Cir.1972) (noting that where claimant seeks certification of class pursuant to Rule 23(b)(2), number of actual class members is often "incapable of specific enumeration."). As one federal district court in this circuit has recognized, the policies underlying Rule 23(a) "do not require certifying a class of unknown size, location, or character. The Court may properly deny a motion for class certification when the plaintiff's contention as to the size of the class is purely speculative." *Vigue v. Ives*, 138 F.R.D. 6, 8 (D.Me.1991) (citing *Makuc*, 835 F.2d at 394). Because Roberts has failed to provide any evidence concerning the numerosity of the purported class, his motion for class certification fails the Rule 23(a)(1) test.

2. Rule 23(a)(3) Typicality

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Although the plaintiff's failure to satisfy the Rule 23(a)(1) numerosity criterion is sufficient to defeat the motion for class certification, the Court will address another, independently sufficient reason for denying the motion—the typicality requirement of Rule 23(a)(3).

In *Baby Neal*, 43 F.3d at 57, the United States Court of Appeals for the Third Circuit defined the parameters of the typicality requirement: “The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees.” In other words, the “named representatives’ claims must have the same essential characteristics as the claims of the class at large.” *Retired Chicago Police Ass’n v. City of Chicago*, 7 F.3d 584, 597 (7th Cir.1993) (quotations omitted).

*3 Applying these legal standards, it is evident that Roberts’s definition of the purported class is self-defeating. The proffered class would be comprised of “thousands” of persons who were strip-searched “when there was no probable cause to believe the individual was in possession of weapons or contraband.” The plaintiff’s reference to a “probable cause” standard does not accurately portray the fact-intensive inquiry that the Court would have to undertake with respect to each purported class member.

In *Bell v. Wolfish*, 441 U.S. 520, 560 (1979), the Supreme Court of the United States rejected an argument that the existence of probable cause was the *sine qua non* to a finding that a visual body-cavity search of a pre-trial detainee was constitutional for purposes of the Fourth Amendment. Instead, the Court concluded that the test governing such searches was a test of reasonableness. *Id.* at 559. In assessing a particular search under that standard, the Supreme Court instructed lower courts to “consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.” *Id.* The inquiry is both subject-specific and fact-intensive. In fact, the *Bell* Court stated: “The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. *In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.*” *Id.* In light of this analysis, absent some affirmative showing that Roberts and the other purported class claimants enjoy nearly identical factual circumstances, the Court cannot apply *Bell* precisely to the purported class without undertaking myriad individual hearings as to the reasonableness of the particular intrusion. This fact alone subverts the salutary designs of both the Rule 23 typicality requirement and the class action device.

Because there is no indication that Roberts’s claims have the “same essential characteristics as the claims of the class at large,” *Retired Chicago Police Ass’n*, 7 F.3d at 597 (quotations omitted), and because *Bell* provides an inherently case-specific standard, the Court denies the plaintiff’s motion for class certification.

B. Rule 23(b)(2)

Because the Court has determined that the plaintiff has not satisfied at least two of the four requirements of Rule 23(a), an analysis of Rule 23(b)(2) is unnecessary. *See Baby Neal*, 43 F.3d at 55 (“To obtain class action certification, [Roberts] must establish that all four requisites of Rule 23(a) and at least one part of Rule 23(b) are met.”).

III. Conclusion

For the reasons outlined above, the plaintiff’s motion to certify a class of plaintiffs pursuant to Fed.R.Civ.P. 23(b)(2) is denied.

SO ORDERED.

Parallel Citations

45 Fed.R.Serv.3d 1072

Footnotes

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¹ For purposes of this decision, the Court draws the relevant facts from the plaintiff's complaint.