1999 WL 20855
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Coralyn GRUBBS, Lewis Smith, Ali Rivera and Sean Miller, individually and on behalf of all other persons similarly situated, Plaintiffs,
v.
Howard SAFIR, in his official capacity as Police Commissioner of the City of New York, et al., Defendants.

No. 92 Civ. 2132(DC).
|
Jan. 15, 1999.

Attorneys and Law Firms

The Legal Aid Society, Criminal Defense Division, By: Michele S. Maxian, Laura R. Johnson, Susan L. Hendricks, New York, New York, Lankler, Siffert, and Wohl, By: Lisa A. Baroni, New York, NY, for Plaintiffs.

Michael D. Hess, Corporation Counsel of the City of New York, By: Jennifer E. Liddy, Assistant Corporation Counsel, New York, New York, for Defendants.

MEMORANDUM DECISION

CHIN, J.

***1** In this class action suit brought on behalf of current and future pre-trial detainees in New York City who are awaiting arraignments or appearances in other proceedings, plaintiffs seek a declaration pursuant to 42 U.S.C. § 1983 that the conditions of their detention violate their rights to be free from unreasonable seizures, to counsel, and to due process of law under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Plaintiffs also seek an injunction enjoining defendants from continuing to detain plaintiffs in these conditions and ordering defendants to establish and maintain humane and hygienic conditions for them by setting and enforcing standards concerning overcrowding, lighting, ventilation, sanitation, security, medical care, and adequate facilities for private consultation with counsel before and after court proceedings.

Before the Court is plaintiffs' motion for partial summary judgment concerning the alleged constitutional denial of the following: (1) adequate medical care and treatment; (2) adequate ventilation; (3) fire safety; (4) mattresses to persons held overnight in all detention facilities; and (5) private attorney-client interview facilities in Richmond County.

Although the Court is persuaded that plaintiffs have raised serious questions concerning the constitutionality of conditions being alleged, the motion for partial summary judgment is nonetheless denied for the reasons set forth below.

BACKGROUND

A. *The Parties*

1. *Plaintiffs*

Plaintiffs are a class of persons who are, or will in the future be, detained by defendants in New York City ("NYC") police precincts, central booking facilities, and criminal court buildings while awaiting their arraignments or appearances in other proceedings in connection with potential criminal prosecutions against them. (Cmplt.¶¶ 1–2, 8). Each of the named plaintiffs was detained in one of New York City's detention facilities when the case was filed. (*Id.* ¶ 14).[1]

2. *Defendants*

Plaintiffs name three defendants in the case in their official capacity only: (1) NYC's police commissioner; (2) the commissioner of NYC's Department of Correction ("DOC"); and (3) NYC's mayor. The police

commissioner is responsible for the policies and practices of the NYC police force and is responsible for custody of persons arrested in NYC following their arrest and prior to their arraignment.

B. *The Facts*

At issue in this case are the conditions of confinement faced by a class of individuals detained after arrest and/or before trial in police precinct and courthouse facilities maintained by defendants in New York City.

Based on defendants' admissions to portions of plaintiffs' Rule 56.1 Statement, and construed in the light most favorable to defendants, the relevant facts are as follows:

1. *Arrest to Arraignment Process*

In New York City, an arraignment is the proceeding at which an accusatory instrument is first filed, and it is the first opportunity for a neutral magistrate to determine whether probable cause exists for an arrest. (*See* Pls. Local Rule 56.1 Statement ¶ 15). At arraignment, plaintiffs, who are represented by counsel, are informed of the charges against them, enter a plea to the charges, and, if the case is not disposed of by dismissal or plea, are informed of their pre-trial bail status. (*Id.*). The arrest-to-arraignment process varies among the counties. What follows is a brief, general description of the process.

***2** After being arrested, detainees are taken to a NYC precinct for initial arrest processing and then they are transported by the New York City Police Department (the "NYPD") to the Central Booking Facility in the county of their arrest. At Central Booking, detainees are held in cells or pens until their arrest processing is complete, at which time they are moved to other holding cells within the courthouse where they await the completion and assembly of all court paperwork and the docketing of their cases. Once the cases are "docketed"—that is, once the case is assigned a docket number and the accusatory instrument, the criminal history sheet, the Criminal Justice Agency interview form concerning bail, and any warrants have been completed and assembled and brought to the courtroom—detainees are moved either to a "feeder pen," located near the arraignment courtroom, or to a bench in the courtroom itself to be interviewed by counsel prior to their appearances. (*See generally* Pineiro Dec. Ex. F; Maxian Aff.[2] Ex. 1).

Arrest to arraignment time varies for a number of reasons. For instance, any of the following can cause a delay in the process: (1) the need for further investigation; (2) medical problems; (3) the need for an interpreter; (4) the detainee refuses to be fingerprinted; and/or (5) the detainee's attorney is unavailable for an interview. (Pineiro Dec. Ex. F ¶¶ 17, 45).

From July 1996 until August 1997, approximately 26,756 people were detained prior to their arraignments. (Maxian Aff. Ex. 1 ¶¶ 55–56). The average length of pre-arraignment detention in 1996 was 28.28 hours. The average length of pre-arraignment detention for the first eight months of 1997 was 23.77 hours. (*Id.* ¶ 57).

In September 1997, the average arrest to arraignment time in NYC was 21.34 hours broken down as follows: (1) 19.18 hours in New York County; (2) 22.72 hours in Kings County; (3) 21.35 hours in Queens County; (4) 23.44 hours in Bronx County; and (5) 20.98 hours in Richmond County. (Pineiro Dec. Ex. F ¶ 44).[3]

2. *Medical Screening and Access to Medication*

When this lawsuit was filed in 1992, NYC did not medically pre-screen pre-arraignment detainees. Since that time, however, NYC has implemented medical screening programs in every county except for Richmond County. The medical screening programs have been "continuously funded since [their inception in each of the various counties] and there is no plan to eliminate or curtail the program at this time." (*See* Defs. Response to Pls. 56.1 Statement ¶ 116; Novack Dec. Ex. D ¶ 50).

After arrest, detainees are searched and personal items (including prescription medication) are removed from their possession. NYPD regulations do not permit self administration of any medication to a detainee or administration by on-site medical screening personnel. Rather, if a detainee needs medication, the detainee must be transported to a hospital. (Pls. 56.1 Statement ¶¶ 159–61, 167).

3. *Ventilation and Fire Safety*

***3** Plaintiffs contend that ventilation and preventive measures concerning fire evacuation in all NYC facilities are so inadequate and inhumane that the conditions rise to the level of a constitutional violation as to all pre-trial detainees. There are no facts on which the parties agree with respect to ventilation and fire safety conditions in NYC facilities. Defendants submitted a number of declarations and other exhibits to support their claim that ventilation and fire safety in all NYC pre-trial detention facilities are adequate. (*See* Defs. Exs. P–CC, HH–MM, OO–UU).

4. *Floor Mats for Overnight Detention*

The DOC has promulgated no rule or regulation that requires defendants to provide sleeping mats for pre-arraignment detainees. Even though there is no such rule, sleeping mats are, however, provided to the female pre-arraignment population in all borough court facilities.

Female pre-arraignment detainees are provided sleeping mats for a number of reasons, including: (1) some female detainees are pregnant and need a place to rest; (2) female detainees generally have not exhibited violent behavior in detention areas; (3) female detainees do not have a history of vandalizing cells and amenities that are provided to them; (4) after medical screening, female detainees are generally held in the same cell until they are brought to feeder pens just prior to arraignment; and (5) there are far fewer female detainees awaiting arraignment than male detainees. (McGrane Dec. Ex. M ¶ 10).

Because pre-arraignment detainees are theoretically detained for a "relatively brief" time, and because of security, safety, and logistical considerations, male pre-arraignment detainees are not provided with sleeping mats. (McGrane Dec. Ex. M ¶¶ 13–31). Hence, male detainees have no sleeping mats or beds, even though they may be detained as long as twenty-four hours or more.

Detainees who are committed to DOC custody at their arraignment to await trial, however, are not kept overnight in NYC court facilities. Rather, individuals in these circumstances are kept in other DOC facilities where they are provided with a bed every night. (McGrane Dec. Ex. M ¶¶ 32–33).

5. *Attorney–Client Interview Facilities*

The Richmond County criminal courthouses do not have facilities for private attorney-client consultations prior to court appearances. Richmond County is the only borough in NYC that completely lacks such facilities. (*See* Bomba Aff. Ex. 19 ¶ 2; Matsoukas Aff. Ex. 18 ¶ 8; Maxian Aff. Ex. 1 ¶ 18; Lasser Dec. Ex. NN ¶ 9; Corvino Dec. Ex. VV ¶¶ 8–9; Vitucci Dec. Ex. WW ¶ 2)). Even though private attorney-client consultation facilities are not available in Richmond County courthouses, they are available at all DOC facilities. Post-arraignment detainees committed to the custody of DOC are housed in DOC facilities when they are not appearing in court. (Lasser Dec. Ex. NN ¶ 10).

C. *Prior Proceedings*

***4** Plaintiffs filed suit in this case on March 25, 1992. The Court granted class certification on January 19, 1996. At a conference on June 27, 1997, after the completion of discovery, I set a briefing schedule for the parties to move for summary judgment.

This motion by plaintiffs followed. Defendants did not move for summary judgment.

D. *Plaintiffs' Allegations*

Plaintiffs contend that defendants' failure to provide them with adequate medical screening, emergency care, and/or access to prescribed medication is unconstitutional as to pre-arraignment detainees. Plaintiffs also contend that NYC pretrial detention facilities do not have adequate ventilation and/or fire safety equipment or evacuation procedures. They further contend that the denial of adequate ventilation and substandard fire prevention mechanisms violate the constitutional rights of all pre-trial detainees, and that the denial of sleeping mattresses to male pre-arraignment detainees violates their constitutional rights. Finally, plaintiffs allege that the denial of private attorney-client interview facilities in Richmond County violates plaintiffs' Sixth Amendment right to counsel.

DISCUSSION

A. *Applicable Legal Standards*

The standards governing motions for summary judgment are well-settled. Summary judgment may be granted when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 585–87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Accordingly, the Court's task is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v.. Liberty Lobby, Inc.,* 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). To create an issue for trial, there must be sufficient evidence in the record supporting a jury verdict in the nonmoving party's favor. *See id.* at 249–50.

To defeat a motion for summary judgment, however, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita,* 475 U .S. at 586. The nonmoving party may not rest upon mere "conclusory allegations or denials," but must set forth "concrete particulars" showing that a trial is needed. *National Union Fire Ins. Co. v. Deloach,* 708 F.Supp. 1371, 1379 (S.D.N.Y.1989) (quoting *R.G. Group, Inc. v. Horn & Hardart Co.,* 751 F.2d 69, 77 (2d Cir.1984)).

The parties disagree as to the law governing the merits of certain of plaintiffs' claims. Plaintiffs contend that the constitutionality of some of the alleged conditions faced by pre-arraignment detainees is governed by the Fourth Amendment. Defendants contend that these claims are governed by due process under the Fifth and Fourteenth Amendments. Because issues of fact preclude the Court from deciding these claims at this stage in the litigation, I do not here decide this legal issue.

***5** As to plaintiffs' claim concerning attorney-client consultation in Richmond County, the parties appear to agree that the Sixth Amendment applies.

B. *Application*

1. *Medical Screening, Emergency Care, and Access to Prescribed Medication*

To support their claim of unconstitutionality as to medical screening, emergency care, and access to prescribed medication, plaintiffs contend that: (1) Richmond County does not have a medical screening program in place; (2) NYPD officers, without input from qualified, licensed medical improperly make determinations concerning the medical status of some detainees and whether these individuals should be segregated from the general detainee population; (3) defendants have failed to develop reasonable protocols for providing emergency health services and for evacuating detainees to hospital emergency rooms; (4) defendants refuse to allow arrestee's to self-administer medication despite the fact that the screening programs' protocols permit prison health care specialists to assist arrestee's in the self administration of prescribed medication. (*See generally* Pls. Mem. at 11–14 and sources cited therein).

Although some of plaintiffs' contentions are compelling, there are several issues of fact that preclude a ruling on this claim, at this juncture, as a matter of law. Defendants have presented evidence from which a reasonable finder of fact could rule in their favor.[4] For instance, there is an issue of fact as to whether the volume of arrest activity in Richmond County warrants or necessitates the need for medical screening of all arrestees in that county. There is also an issue of fact as to the precise role that NYPD officials have in the medical screening process as well as whether NYC detention facilities have basic life support equipment. Finally, there are issues of fact concerning the necessity and propriety of defendants' policy concerning access to prescribed medication.[5]

Accordingly, plaintiffs' motion for summary judgment as to this claim is denied.

2. *Ventilation and Fire Safety*

Without addressing plaintiffs' specific contentions concerning ventilation and fire safety, it is clear that summary judgment must be denied on both of these claims. Even a cursory review of the exhibits offered in favor of summary judgment as to these claims, and those

offered in opposition to it, demonstrate that innumerable issues of fact preclude summary judgment. Although plaintiffs have provided the Court with an extremely disturbing picture of these (and other) conditions in NYC facilities (*see* Pls. Exs. 3–17, 37–39, 57–63), defendants have countered with exhibits that directly contradict plaintiffs' allegations (*see* Defs. Exs. N, P–CC, HH–MM, OO–UU). In addition, the parties' experts have come to starkly contradictory conclusions as to the adequacy of NYC facilities on these counts. (*See* Pls. Exs. 2, 22, 29–31; Defs. Exs. DD–GG).

Accordingly, plaintiffs' motion for summary judgment on these claims is also denied.

3. *Sleeping Mats*

***6** Likewise, issues of fact preclude summary judgment on this claim. Although the Court agrees that denying sleeping mats to pre-trial detainees may rise to the level of a constitutional violation, *see Lareau v. Manson,* 651 F.2d 96 (2d Cir.1981); *Zolnowski v. County of Erie,* 944 F.Supp. 1096, 1112–1114 (W.D.N.Y.1996); *but see Antonelli v. Sheahan,* 81 F.3d 1422, 1430 (7th Cir.1996), there are several issues of fact that preclude the Court from determining at this juncture whether the denial of sleeping mats in this case violates the constitution.

For instance, defendants have cited a number of reasons as to why male detainees are not provided sleeping mats during the arrest to arraignment process that, if credited, further valid penological objectives. I simply cannot determine at this point whether plaintiffs carry their burden of demonstrating that the policy is unreasonable, let alone unconstitutional. In addition, there are issues of fact in this record concerning the amount of time plaintiffs are actually detained—a critical fact necessary to determine whether this condition is indeed unconstitutional under the circumstances. Through no fault of plaintiffs, some of the evidence relied upon in support of this motion is outdated. Indeed, a number of the conditions complained of when this suit was originally filed have been addressed and/or corrected by defendants. Accordingly, at this stage in the litigation, I am not prepared to rule on this claim as a matter of law. A trial is necessary.

Accordingly, plaintiffs' motion for summary judgment on this claim is also denied.

4. *Private Attorney–Client Interview Rooms*

Unlike plaintiffs' other claims on this motion, there are no factual disputes as to the claim concerning plaintiffs' ability to confer privately with counsel prior to arraignment and/or other court appearances. Private attorney-client consultation facilities are not available in the Richmond County Criminal Court. (*See, e.g .,* Defs. Ex. NN).

Defendants make three principal arguments as to this claim: (1) the Sixth Amendment right to counsel has not attached in a situation where a detainee wishes to confer with counsel prior to arraignment; (2) plaintiffs can speak to their clients through the bars of general cells (where many detainees are placed); and (3) defendants "cannot create individual interview rooms in a landmark building [as are the facilities in Richmond County]." (Defs. Opp. at 45–47). I reject these arguments.

The Sixth Amendment "right to counsel attaches only when formal judicial proceedings are initiated against an individual by way of indictment, information, *arraignment,* or preliminary hearing." *United States v. Gouveia,* 467 U.S. 180, 185, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984) (emphasis added). The Supreme Court has described the moment at which this right attaches as "at or after the initiation of adversary judicial proceedings." *Id.* at 187; *see also United States v. Abdi,* 142 F.3d 566, 569 (2d Cir.1998) (same). As to the scope of this right, the Supreme Court has stated: "Whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him—'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." ' *Brewer v. Williams,* 430 U.S. 387, 398, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) (quoting *Kirby v. Illinois,* 406 U.S. 682, 689, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1977)).

***7** For this "help" to have any meaning, the right to counsel must include an opportunity for plaintiffs to confer with counsel immediately prior to arraignment or any other court proceeding. Indeed, it defies logic that plaintiffs are entitled to the assistance of counsel at their arraignments, but that they are not entitled to confer with their counsel concerning their arraignments.

Ultimately, defendants do not disagree. In fact, there is no legitimate dispute in this case that plaintiffs are entitled to counsel at their arraignments or that plaintiffs have a right to confer with their counsel just prior to arraignment. Thus, the issue as to when the Sixth Amendment right to counsel attaches is not seriously in question. What defendants actually dispute is whether access to a private consultation room is required.

As to this issue of privacy, I do not accept defendants' argument that speaking to one's attorney in the presence of other detainees as well as court officers (who are also in the vicinity) is sufficient for every detainee. The assistance of counsel would be rendered meaningless if that counsel's client were to be inhibited from speaking openly and freely. The existing condition in Richmond County may well prevent a plaintiff from speaking openly and freely to her/his counsel prior to a court appearance. (*See generally* Bamba Aff. Ex. 19; Matsoukas Aff. Ex. 18).

Defendants fail to address this point. Instead, they offer an affidavit from a commanding officer of the Richmond County facility who states that "[i]n the last eight years only on one or two occasions has an attorney approached me and said that he has a sensitive matter he needs to discuss with his client and needs some place private to talk. On those occasions, we were able to make accommodations." (Vitucci Dec. Ex. WW ¶ 6). Because there is no private space available for attorney-client consultation, it is not surprising that attorneys do not routinely request private space for consultation. Moreover, the fact that defendants concede that they "were able to make accommodations" demonstrates both that they can make such accommodations, and that they concede that plaintiffs may, in some cases, need to consult with their attorneys privately.

Because there are a number of facts and issues that the Court must consider in fashioning a remedy for this claim, however, I do not here decide what defendants must do to provide access for private attorney-client consultations in Richmond County.

Accordingly, plaintiffs' motion for summary judgment as to this claim is denied, as the remedy to which plaintiffs are entitled must be determined at trial.

CONCLUSION

For the reasons discussed herein, plaintiffs' motion for summary judgment is denied. The parties shall appear for a final pre-trial conference on February 5, 1999 at 9:30 a.m. in Courtroom 11A at 500 Pearl Street, New York, New York.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 1999 WL 20855

Footnotes

1 The majority of class members in this case are individuals who were (or will in the future be) taken into custody by the police and held for the purpose of arraignment ("pre-arraignment" detainees). Other members of the class are individuals who were (or will in the future be) held in lieu of bail after arraignment ("pre-trial" detainees). On this motion for summary judgment, plaintiffs' claims concerning ventilation and fire safety are common to all class members (although it is claimed that certain areas with poor ventilation only affect pre-arraignment detainees). Plaintiffs' claims concerning medical care and sleeping mats, however, are specific to pre-arraignment detainees.

2 Defendants contend that the affidavit submitted by Michelle Maxian is not based upon personal knowledge. The Court rejects this argument. (*See* Pls. Supp. Ex. R. 84).

[3] These are, of course, averages. Plaintiffs point out that despite overall average arrest to arraignment times there were detainees in NYC whose arrest to arraignment time exceeded 24 hours. (*See, e.g.,* Pls. 56.1 Statement ¶¶ 44–47, 58–59, 66–67, 74–75; 85–86).

[4] The Court, however, rejects defendants' exhibits A, B, C, E, H, I and K, which relate to this claim. Exhibits A, B, and E contain opinion testimony by individuals that defendants failed to identify as experts in this case. Exhibits C, H, I, and K are documents that defendants failed to produce to plaintiffs as supplemental discovery. (*See* Pls. Supp. Ex. R. 84).

[5] Plaintiffs submitted a number of disturbing exhibits and affidavits concerning the harmful consequences of defendants' policies concerning detainees in need of medical attention and as to the administration of prescribed medication. (*See* Pls. Exs. 3–17, 64–75). It is because of this evidence that the Court rejects any contention by defendants that their current practices and policies pass constitutional muster as a matter of law.