

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
CLERKS OFFICE  
2005 JAN 18 A 11: 58

CHARLES V. RYAN IV on behalf of himself )  
and on behalf of others similarly situated, )  
Plaintiffs )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

v.

Civil Action No.

05 - 30017 - MAP

ROBERT J. GARVEY, and PATRICK J. )  
CAHILLANE in their individual capacities, )  
Defendants )

RECEIPT # 305827  
AMOUNT \$ 150.00  
SUMMONS ISS. Y  
LOCAL RULE 4.1 ↓  
WAIVER OF SERV. ↓  
MCF ISSUED ↓  
AO 120 OR 121 ↓  
BY DFTY CLK MLW  
DATE 1/21/05

COMPLAINT

INTRODUCTION

1. This is a civil rights class action for declaratory and injunctive relief and money damages against Hampshire Sheriff Robert J. Garvey in his individual capacity for routine unconstitutional strip searches on intake of pre-arraignment detainees.

2. The named plaintiff Charles V. Ryan IV, seeks to represent a class of all people strip searched on or after January 18, 2002, without individualized reasonable suspicion at the Hampshire Jail and House of Correction due to the policies or practices of the defendant Hampshire Sheriff:

while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony, including arrests on a default or other warrant on charges that did not involve a weapon or drugs or contraband or a violent felony.

3. "Strip search" is used in this Complaint to refer to the inspection by a law enforcement officer of a person's bare breasts, buttocks, or genitals.

4. On information and belief, over a hundred people have been subjected to unconstitutional strip searches upon admission to the Hampshire Jail/House of Correction.

### JURISDICTION

5. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343.

### PARTIES

6. Named plaintiff Charles V. Ryan IV was at all times relevant to this complaint a resident of the Commonwealth of Massachusetts. He is an attorney and former Hampshire County Commissioner. He was arrested at his home law office at approximately 4:45 p.m. on the Friday before a long weekend (Martin Luther King, Jr. holiday).

7. The defendant Robert J. Garvey was a resident of the Commonwealth of Massachusetts and the Hampshire Sheriff during the time period relevant to this complaint. He is sued in his individual capacity for actions he took under color of law.

8. The defendant Patrick J. Cahillane was a resident of the Commonwealth of Massachusetts and the Deputy Superintendent responsible for operation of the

Hampshire Jail and House of Correction during the time period relevant to this complaint. He is sued in his individual capacity for actions he took under color of law.

### FACTS

9. At 4:45 p.m. on Friday, January 18, 2002, plaintiff Charles V. Ryan IV was arrested in Worthington, Massachusetts for allegedly violating a protective order two days earlier. The alleged violation consisted of driving by his ex-wife's home.

10. There was no allegation that the violation of the protective order involved violence or a threat of violence.

11. Mr. Ryan was taken by state police officers to the Russell State Police Barracks for booking.

12. State police officers then took Mr. Ryan to the Hampshire Jail and House of Correction to be held for his first court appearance on the following Tuesday morning, since Monday was a holiday.

13. On information and belief, it was the practice of State Police officers and other police officers in Hampshire County to bring pre-arraignment detainees to the Hampshire Jail and House of Correction to be held before a first court appearance when the person could not make bail.

14. On admission to the Jail and House of Correction, a correctional officer ordered Mr. Ryan to remove all of his clothing and submit to a strip search.

15. Because he had no choice, Mr. Ryan complied with the request. He removed his clothing and followed orders of the correctional officer to bend over.

16. The correctional officer visually inspected the plaintiff's nude body including his genitals.

17. The correctional officer had no reason to suspect that Mr. Ryan had any weapons or contraband hidden on his person.

18. After the strip search, the correctional officer told Mr. Ryan to change into a jail uniform.

19. Because the following Monday was a holiday, Mr. Ryan did not appear in court until Tuesday, January 22, 2002. On that day Sheriff's officers took Mr. Ryan to court. He was arraigned by the judge and released from custody.

20. The criminal charge against Mr. Ryan was dismissed a few months later in May 2002, when the Commonwealth filed a *nolle prosequi*.

21. Mr. Ryan suffered emotional distress as a result of the strip search. He was shocked by the incident. He felt humiliated, degraded, and violated.

22. The policy or practice established and/or maintained by Sheriff Garvey and implemented by defendant Cahillane was to require Hampshire Jail and House of Correction officers to view, without evaluating for individualized reasonable suspicion, the naked body of every person at the time of admission to the Hampshire Jail and House of Correction. This policy or practice applied regardless of the person's charges or anticipated duration of detention. The policy or practice directed employees of the Sheriff's Department to conduct illegal strip searches of the plaintiff and members of the plaintiff class.

## CLASS ACTION ALLEGATIONS

23. This action is brought pursuant to Rule 23(a) and (b) (1) and (3) of the Federal Rules of Civil Procedure by the named plaintiff as a class action on behalf of all people strip searched on or after January 18, 2002, without individualized reasonable suspicion at the Hampshire Jail and House of Correction due to a policy or practice of Sheriff Garvey:

while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony, including arrests on a default or other warrant on charges that did not involve a weapon or drugs or contraband or a violent felony.

24. The named plaintiff, Charles V. Ryan IV, is a member of the class. The class represented by the plaintiff is so numerous that joinder of all such persons is impractical. On information and belief, the policy or practice described above has existed for several years, affecting hundreds of potential class members. It continued to exist for approximately one year after this incident until a policy that comports with constitutional standards was implemented.

25. There are questions of law and fact common to the class of plaintiffs. Central to all the claims is the nature and constitutionality of the policy or practice of Sheriff Garvey regarding intake strip searches without individualized reasonable suspicion of pre-arraignment detainees.

26. The named plaintiff's claims or defenses are typical of the claims or defenses of the class of plaintiffs.

27. The named plaintiff will fairly and adequately represent and protect the interests of the members of the class. Counsel for the plaintiff is experienced and capable in civil rights litigation. Class counsel has successfully represented plaintiffs in other class actions alleging unlawful strip searches. Counsel has the resources and expertise to prosecute this action.

28. This action is properly maintainable as a class action because the prosecutions of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the defendant.

29. This action is properly maintainable as a class action because the prosecutions of separate actions would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members who are not parties or would substantially impair or impede their ability to protect their interests.

30. As a direct result of policy or practice, class members have been subjected to unlawful strip searches, which has caused each member of the class to endure emotional distress, humiliation, and degradation.

**CLAIM: 42 U.S.C. § 1983**

31. The above paragraphs are incorporated herein.

32. Sheriff Garvey was the chief executive officer of the Hampshire Sheriff's Department. In this position he was responsible for establishing policies for correctional

officers and for supervising correctional officers at the Hampshire Jail and House of Correction.

33. At the time of this incident, the Sheriff's formal written policies for the Jail and House of Correction did not make any distinction in the level of cause needed to conduct a strip search of pre-arraignment detainees from the cause needed to strip search pre-trial detainees or convicted prisoners. The policy affirmatively permitted strip searches on a detainee's entrance into the facility without any reason to suspect the person had hidden contraband.

34. On information and belief every person who was required to put on a jail uniform during the class period was subjected to a strip search without regard for cause.

35. Sheriff Garvey implemented, knew, or should have known that there was a policy or practice of conducting strip searches, without individualized reasonable suspicion, at intake of pre-arraignment prisoners in violation of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution but instead he allowed it to continue.

36. Deputy Superintendent Cahillane was responsible for supervision and daily operations of the Hampshire Jail and House of Correction.

37. Deputy Superintendent Cahillane implemented, knew, or should have known that there was a policy or practice of conducting strip searches, without individualized reasonable suspicion, at intake of pre-arraignment prisoners in violation

of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution but instead he allowed it to continue.

38. By January 18, 2002, the law was clearly established that routine intake strip searches of pre-arraignment detainees like the plaintiff and members of the plaintiff class without evaluating for cause were unconstitutional. A decision granting summary judgment to plaintiffs for a similar policy implemented by the Sheriff of Suffolk County, Massachusetts was issued on July 31, 2001. Ford v. City of Boston, 154 F.Supp.2d 131 (D.Mass. 2001) holding the law was clearly established in 1997.

39. By the actions described above, the defendants deprived the named plaintiff and members of the plaintiff class of their clearly established right, guaranteed by the Constitution of the United States, to be free from unreasonable searches.

40. As a direct and proximate result of this conduct, the plaintiffs have suffered injuries as described above.

**WHEREFORE** the plaintiffs request that this Court:

1. Award compensatory damages and punitive damages to the named plaintiff and to members of the plaintiff class;
2. Award the plaintiffs the costs of this action including reasonable attorney's fees; and
3. Award whatever additional relief this Court deems necessary and appropriate.

**JURY DEMAND**

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,



Howard Friedman

Jennifer Bills

Myong J. Joun

**Law Offices of Howard Friedman P.C.**

90 Canal Street, 5th Floor

Boston, MA 02114-2022

(617) 742-4100

(617) 742-5858 (fax)

HFriedman@civil-rights-law.com

Date: 1/18/05