

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

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF KY
05 MAR 18 AM 9:20

EDWARD LEE SUTTON, LESTER H. TURNER,
LINDA JOYCE FORD AND TIMOTHY D. MAY
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

PLAINTIFFS

v.

HOPKINS COUNTY, KENTUCKY

AND

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

DEFENDANTS

FIRST AMENDED COMPLAINT

I. Introduction

1. Edward Lee Sutton and Lester H. Turner, Plaintiffs, 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 suspicion that they were carrying or concealing weapons or contraband ("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 believing that they were concealing weapons

or contraband. This subclass of people includes all individuals who were so treated from January 9, 2002 to the present.

2. Linda Joyce Ford and Timothy D. May file this action in their individual capacity and on behalf of all persons arrested for 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 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.

3. 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

4. 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

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

6. The second subclass consists of all persons who were required by Defendants in the Jail, just after becoming entitled to release, to remove all of their clothing for a visual inspection despite the absence of any reasonable suspicion that they were carrying or concealing weapons or contraband.

7. 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.

8. Given the circumstances of their search, as detailed below, Plaintiffs allege, on information and belief, that Defendants regularly require all persons arrested for nonviolent minor offenses to remove their clothing for a visual inspection of their bodies on admission to the jail and all inmates after their return from Court appearances and prior to their release from

the Hopkins County Jail, even though (a) there exists no reasonable grounds for believing that weapons or contraband have been concealed upon their persons and (b) such persons have been ordered released on their own recognizance. 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.

9. 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

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

11. 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.

12. 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

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

14. 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. Because their offense, their background and their behavior did not generate any suspicion that they were carrying or concealing weapons or contraband on their persons, Plaintiffs were not strip-searched upon admission to the Hopkins County Jail. Plaintiffs were subsequently taken to Court where they were ordered released on their own recognizance. Instead of being released immediately, Plaintiffs were taken back 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**.

15. 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. Plaintiff was taken into a room where she was told to take off her clothes, squat on the floor and cough. Then she was forced to turn around, bend over, spread her buttocks and cough. Plaintiff Timothy D. May was subjected to similar treatment. 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. He was taken to the Hopkins County Jail, where he was told take off all of his clothes, lift his genitals, turn around, bend over, and spread his buttocks.

VII. The Law and Defendants' Policy

16. 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. Neither their behavior nor their background gave Defendants any reasonable grounds for believing that they 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

17. Paragraph 1-16 above are incorporated herein by reference and made this Paragraph 17.

18. Plaintiffs' searches, described above, were part of a continuing pattern of misconduct and is the result of statutes, ordinances, regulations, 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.

19. As a result of the foregoing, Plaintiffs and their classes, through Defendants' intentional or grossly negligent conduct, 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.

20. 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

21. Paragraphs 1-20 above are incorporated herein by reference and made this Paragraph 21.

22. 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

23. Paragraphs 1-22 above are incorporated herein by reference and made this Paragraph 23.

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

IX. Damages

25. Paragraphs 1-24 above are incorporated herein by reference and made this Paragraph 25.

26. 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

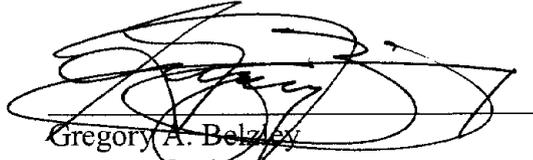
27. Paragraphs 1-26 above are incorporated herein by reference and made this Paragraph 27.

28. In addition to the foregoing, Plaintiffs and the class 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,

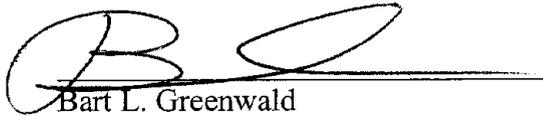
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