

## Johathan Lee X v. Murray

United States District Court for the Western District of Virginia, Lynchburg Division

July 14, 1988, Filed

Civil Action No. 86-0082-L, Civil Action No. 86-0117-L

**Reporter:** 1988 U.S. Dist. LEXIS 18259

JOHNATHAN LEE X, ET AL, Plaintiffs v. ED MURRAY, ET AL., Defendants; JOHNATHAN LEE X, Plaintiff v. GEORGE RICKETT, ET AL., Defendants

**Judges:** [\*1] Kiser

**Opinion by:** JACKSON L. KISER

### Opinion

#### MEMORANDUM OPINION

By: Jackson L. Kiser, Judge, United States District Court

This case arises from constitutional challenges by one current and two former Buckingham Correctional Center ("BCC") inmates to certain prison policies and actions they claim infringe on their freedom to practice the Muslim religion. Plaintiffs Johnathan Lee X, Nathaniel X and Raymond Lee X bring three complaints about BCC's policies:

1. They are forbidden from wearing bow ties as an expression of their religious piety, while other inmates are allowed to wear crosses, chains, yarmulkes, and other religious symbols;
2. In 1985, prison officials cancelled activities in observance of Ramadan, a month long religious celebration; and
3. The prison does not serve a menu complying with Muslim dietary requirements.

The case is before me on objections by Plaintiffs and Defendants to United States Magistrate Glen E. Conrad's Report and Recommended Disposition. After a de novo review of the evidence and the law, I adopt the Magistrate's careful and thorough recommendation, with the minor adjustment noted below.

The Magistrate found in favor of Defendants on the first two issues and [\*2] for Plaintiffs on the question of the Muslim diet. Plaintiffs objected only to the Magistrate's conclusion that they were not constitutionally entitled to wear bow ties as a sign of their piety.

In *Turner v. Safley*, 55 U.S.L.W. 4719, 4722 (1987), the Supreme Court reviewed the standard for determining the

reasonableness of prison regulations interfering with an inmate's constitutional rights. The Court stated, "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id.* In determining this, the court should consider (1) whether there is a rational connection between the regulation and the governmental interest used to justify it; (2) whether there are alternative means of exercising the right in question; and (3) the impact accommodation of the right would have on guards and other inmates, and on the allocation of prison resources. *Id.* Bow ties and other distinctive clothing are forbidden by prison regulations to maintain uniformity in the population, discourage the formation of potentially hostile subgroups and minimize jealousy over possessions. [\*3] There is clearly a rational connection between the government's security interest and the outlawing of distinctive clothing, particularly clothing marking one as a member of a group. As the Magistrate pointed out, the wearing of bow ties is not mandated in the Koran, the Bible or other Muslim treatises. There are bountiful other ways in which Muslims can show their piety without creating a grave security risk. Obviously, BCC wishes to minimize fragmentation of the prison population, at least in part, to protect the safety of inmates and guards. This regulation is, therefore, reasonable under *Turner*.

Plaintiffs argue that there is no logical reason for distinguishing between bow ties and religious ornaments permitted to other prisoners. I disagree. Religious symbols such as the cross or yarmulke have a symbolic value tied to the doctrine of the religion. They are worn not only as a sign of piety, but to symbolize a basic tenet of the religion. In addition, the historic tradition behind a particular belief is valuable in evaluating its sincerity and predicting its future life span. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The bow tie, unlike the [\*4] cross or yarmulke, has not been integral to an established religious practice for thousands of years. Moreover, bow ties are worn by the population in general and bear no religious significance. I find these facts sufficiently distinguish bow ties from permitted religious symbols and agree with the Magistrate's conclusion that their ban does not offend the Constitution.

Plaintiffs do not contest the Magistrate's conclusion that BCC's cancellation of the 1985 Ramadan observance was a reasonable exercise of discretion based on security and

practicality. There is abundant support for this conclusion in the record, and I hereby adopt it.

Finally, I turn to Defendants' objection to the Magistrate's recommendation that BCC provide Plaintiffs with a diet consistent with the requirements of their religion.

Defendants argue initially that Plaintiffs have attempted to create a class without meeting the requirements of *Fed.R.Civ.P. 23(a)*. Plaintiffs have not sought to be qualified as representatives of a class, but have pursued this suit on their own behalf. Since this case was initiated, two of the three named Plaintiffs have been transferred from BCC. While they have requested that [\*5] any injunction issued apply to them wherever they are incarcerated, I find this impractical due to the inevitable variations in the food service capabilities of the different institutions. Therefore, any remedy fashioned here will apply to officials at BCC and their successors in their accommodation of the dietary requirements of Muslim inmates.

Defendants argue this Court is precluded from hearing this case on principles of res judicata and collateral estoppel. They cite cases in which Johnathan Lee X unsuccessfully demanded a Muslim diet while incarcerated at other institutions. However, as stated above, all institutions vary in food service capabilities, and as none of the cases cited dealt with BCC, principles of preclusion would be highly inappropriate here.

As to the substance of Plaintiff's dietary complaint, Defendants contend *O'Lone v. Estate of Shabazz*, 482 U.S. \_\_\_, 55 U.S.L.W. 4792 (1987), is dispositive of the claim. In *O'Lone*, the Court held that Muslim inmates detailed to work outside the main prison building were not constitutionally entitled to return on Friday afternoons to participate in Jumu'ah, a sacred Muslim ceremony. Defendants [\*6] argue that restrictions on Plaintiffs' rights in this case are far less onerous than those in *O'Lone*.

*O'Lone* is distinguishable from this case. Accommodation of the religious practice at issue in *O'Lone* would have resulted in a real threat to the security of the institution. The very purpose of having prisoners assigned to work outside the prison facility was to reduce overcrowding in the main building. As the Court stated:

Evidence showed that the return of prisoners during the day resulted in security risks and administrative burdens that prison officials found unacceptable. Because details of inmates were supervised by only

one guard, the whole detail was forced to return to the main gate when one prisoner desired to return to the facility. The gate was the site of all incoming foot and vehicle traffic during the day, and prison officials viewed it as a high security risk area. When an inmate returned, vehicle traffic was delayed while the inmate was logged in and searched. *Id.* at 5793. *Id.* at 4692. Clearly, accommodation of Plaintiffs' dietary requirements as dictated by their religion does not raise these security concerns.

The administrative [\*7] burden of accommodating this practice does not appear overwhelming, certainly no more so than problems officials currently overcome in accommodating the diets of Orthodox Jews, vegetarians and inmates with medical conditions. The Magistrate concluded from testimony before him that accommodation of the fish-oriented diet required by Plaintiffs would require "no greater, average cost than that incurred in providing a kosher diet to certain other religious groups." Report at 24.

Defendants argue that this accommodation will produce an undue administrative burden in preventing non-Muslim's from "crossing-over" to the special diet on days when unpopular items are served to the general inmate population. I believe this could be avoided by issuing an identification card to the Muslims and requiring presentation of that card to receive the special meals. In the alternative, a prison official could be furnished a list of Muslim believers and ensure that only those on that list go through the line accommodating the Muslim diet. A two-line system is already in place to serve those with special dietary requirements separately from the rest of the population. Regardless of the system implemented, [\*8] the administrative burden of preventing this cross-over does not outweigh Plaintiffs' constitutional right to freedom of religion to the extent not inconsistent with their confinement and valid penological objectives.

I find, based on all of the above, that BCC's refusal to accommodate Plaintiff's dietary needs is unreasonable under *Turner*. Neither administrative nor security concerns prevent BCC from preparing and serving a Muslim diet. Muslim inmates have absolutely no other means of fulfilling this dictate of their faith. And neither the other inmates nor the guards will be affected by this accommodation.

The Magistrate's Report would require Defendants to "accommodate plaintiffs' sincere, particularized religious and dietary needs." Report at 26. Several witnesses for the defense testified to problems in finding authoritative direction on what Muslims may eat. I do not believe prison authorities must adapt themselves to every idiosyncratic

interpretation of Muslim dietary requirements. It is sufficient if they make a good faith effort to ascertain the proper Muslim diet and furnish it.

The Clerk is directed to send a certified copy of this Memorandum Opinion to all [\*9] counsel of record.

/s/Jackson L. Kiser, United States District Judge