

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

91-3176

ALBERT LEWIN)
)
v.)
)
JOSEPH FITZPATRICK, RICHARD)
POND, RICHARD FLYNN, RUSSELL)
CHICKERING, AND VICTOR)
WELLINGTON)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
1993

NOV 13 1991

MICHAEL JOSEPH
CLERK OF COURT

COMPLAINT

Introduction

1. This is an action for money damages brought by a pretrial detainee who was assaulted and beaten by guards while incarcerated at the Suffolk County Jail at Charles Street. The plaintiff seeks relief for violation of G.L. c.12, §11I, 42 U.S.C. §1983, and for the common law tort of assault and battery, and intentional infliction of emotional distress.

Parties

2. Plaintiff Albert Lewin is currently a resident of Kingston, Jamaica. At all times relevant to this complaint, the plaintiff was confined at the Suffolk County Jail on Charles Street ("Charles Street Jail") in the City of Boston, in the state of Massachusetts, was a resident of Massachusetts and was a citizen of the United States.

3. Defendants Joseph Fitzpatrick, Richard Pond, Russell Chickering and Victor Wellington were, at all times material to this Complaint, employed by Suffolk County as guards at the

Charles Street Jail. Defendants Fitzpatrick, Pond, Chickering and Wellington held the rank of officer.

4. Defendant Richard Flynn was, at all times material to this Complaint, employed by Suffolk County as a guard at the Charles Street Jail. Defendant Flynn held the rank of lieutenant.

5. The defendants acted under color of law, statutes, ordinances, regulations, customs and usages of the Commonwealth of Massachusetts.

Facts

6. On or about May 14, 1988, plaintiff was detained at the Charles Street Jail without bail pending his trial on an indictment charging him with the murder of a Boston City Police Officer, Sherman Griffiths. Plaintiff was later found not guilty of this charge.

7. Plaintiff's cell #39 was located on the second tier of the south side of the east wing of the jail. It was the eleventh cell from the guardroom floor.

8. On Saturday, May 14, 1988, plaintiff was on the "flats" during afternoon recreation. He was standing with a towel around his neck, as he had the habit of doing, holding his Bible, and conversing with a fellow inmate.

9. Defendant Flynn, the floor lieutenant at the jail, alerted defendant Pond that plaintiff was in contravention of a rule announced the previous morning that inmates were not allowed to have towels during afternoon recreation.

10. Defendant Flynn then ordered plaintiff to return his towel to his cell. Lewin agreed to go back to his cell voluntarily.

11. Defendant Flynn deviated from normal procedure by sending two officers, defendants Pond and Fitzpatrick, to accompany plaintiff to his cell. Defendant Chickering, who was the two tier officer at the time, would normally have been responsible for Lewin's return to his cell.

12. Defendants Pond and Fitzpatrick frustrated plaintiff's efforts to place his towel in the cell through the bars. Defendant Fitzpatrick grabbed plaintiff's arm and pushed him forcibly into the cell. Defendant Fitzpatrick then pushed plaintiff on the floor and tipped a steel bed, weighing about two hundred pounds, on top of him. The fall of the bed produced a loud noise and resulted in plaintiff being pinned to the ground.

13. Defendant Pond then entered the cell and stood on the bed preventing plaintiff from moving while defendant Fitzpatrick punched and kicked plaintiff continuously in the head, face, and chest. As a result of this attack plaintiff was bleeding profusely from his nose and mouth. He lay prostrate on the ground, unable to move, for about two or three hours and did not leave his cell again until the following day.

14. Shortly after the incident, defendant Chickering entered plaintiff's cell, cleaned some of the blood off the floor, and left with the towel. A large blood stain of approximately one and one half square feet remained on the floor. Plaintiff was

lying on the floor of his cell, crying and moaning during the time defendant Chickering was inside the cell.

15. Around 6:00 that evening, defendants Chickering and Wellington entered plaintiff's cell and righted his bed. At the time, plaintiff was still lying on the floor. They asked plaintiff whether he "was talking." Plaintiff did not respond.

16. During the incident, defendant Flynn was standing on the guardroom floor in full view of plaintiff's cell. He did not act to curtail the violence.

17. Plaintiff sustained serious injuries as a result of the unprovoked attack. Plaintiff had two black eyes, one of which was swollen shut, an inflammation of the right head and lower back, pain in the chest and legs, difficulty breathing, and he was coughing up of blood.

18. Despite these serious injuries, defendants did not seek medical care for plaintiff.

19. The following morning, Sunday, May 15, 1988, plaintiff asked for grievance papers from the shift commander. He never received any response to his request. The shift commander did not refer plaintiff for medical care.

20. On Monday, May 16, 1988, plaintiff was able to get to a telephone to call his attorneys. Plaintiff did not receive any medical care until Monday, May 16, after his attorneys contacted the jail and reported the beating.

COUNT ONE (42 U.S.C. §1983 -- CIVIL RIGHTS VIOLATIONS)

21. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

22. By forcing plaintiff into a cell and physically beating and abusing him, the defendant deprived the plaintiff of the following clearly established and well-settled federal constitutional rights established pursuant to the 8th and 14th Amendments of the United States Constitution and actionable under Title 42 U.S.C. §1983:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel and unusual punishment.

23. By their failure to provide the plaintiff with immediate and adequate medical attention after the plaintiff was severely beaten and injured, the defendants exhibited deliberate indifference to the plaintiff's serious medical needs.

24. By their actions, the defendants subjected the plaintiff to these deprivations knowingly, intentionally, willfully, purposefully, maliciously and sadistically.

25. As a direct and proximate result of the acts and omissions of the defendants, the plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injury.

COUNT TWO G.L. c. 12, §11I -- CIVIL RIGHTS VIOLATIONS)

26. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

27. By forcing plaintiff into a cell and physically beating and abusing him, the defendants deprived the plaintiff of the following clearly established and well-settled rights under Articles 1, 10, 12 and 26 of the Massachusetts Declaration of Rights, all of which are actionable under G.L. c.12, §11H and I:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel or unusual punishment.

28. By their failure to provide the plaintiff with immediate and adequate medical attention after the plaintiff was severely beaten and injured, the defendants exhibited deliberate indifference to his serious medical needs.

29. By their actions, the defendants subjected the plaintiff to these deprivations knowingly, intentionally, willfully, purposefully, maliciously and sadistically.

30. As a direct and proximate result of the acts and omissions of the defendants, the plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injuries.

COUNT THREE (42 U.S.C. §1983 -- CONSPIRACY TO VIOLATE CIVIL RIGHTS)

31. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

32. Defendants Flynn, Pond, Fitzpatrick, Wellington and Chickering conspired to violate plaintiff's civil rights. Defendant Flynn, who sent two officers to accompany plaintiff to his cell when he was going there voluntarily, conspired with defendants Pond and Fitzpatrick to isolate plaintiff in his cell and physically abuse him. Defendants Chickering and Wellington participated in the plan to deprive plaintiff his civil rights in that they conspired to cover up the actions of their fellow officers by removing the blood from the cell floor, by uprighting the bed which was used to restrain plaintiff, by intimidating plaintiff to not speak to others about the incident and by failing to provide him with medical care.

33. By their conspiratorial actions defendants deprived plaintiff of the following clearly established and well-settled federal constitutional rights established pursuant to the 8th and 14th Amendments of the United States Constitution:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel and unusual punishment.

34. By their conspiratorial actions defendants deprived plaintiff immediate and adequate medical attention after the plaintiff was severely beaten and injured. The defendants exhibited deliberate indifference to the plaintiff's serious medical needs.

35. As a direct and proximate result of the conspiratorial actions of the defendants, plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injuries.

COUNT FOUR (ASSAULT AND BATTERY)

36. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

37. Defendants Fitzpatrick and Pond committed the common law tort of assault and battery against plaintiff.

38. As a result thereof, the plaintiff was seriously and permanently injured, and suffered great pain and anguish of mind and body.

COUNT FIVE Intentional Infliction of Emotional Distress

39. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

40. Defendants committed the common law tort of intentional infliction of emotional distress by conspiring to assault and batter plaintiff, by severely beating the plaintiff, and by conspiring to deprive, and by depriving plaintiff medical care.

41. Said defendants actions were intentional, extreme, outrageous and beyond all bounds of decency that should be tolerated in a civilized community.

42. As a result thereof, the plaintiff suffered great emotional pain and anguish.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Allow compensatory damages.

2. Allow punitive damages.
3. Allow attorney fees, costs and interest.
4. Grant such other relief as is necessary, appropriate, equitable or just.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Albert Lewin

By his attorneys,

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Dated: ~~12/13~~

May

13, 1991