

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW D'ALOIA,

13 CV 9037 (NSR)(LMS)

Plaintiff,

**THIRD AMENDED
COMPLAINT**

v.

SULLIVAN COUNTY CORRECTION OFFICERS
MEADE, BURY, SMITH, DAWSON, STAUDT,
DOWE, COMPASSO, MATIS, B. YEWCHUCK,
MACK, J. BELL, HOAG & PUGH;
SGTS. HARRELL, MOYER, DANZER & BINI;
CPLS. MARTY, SEARCH & MINKLER;
LT. DeVITO; COL. SMITH; CAPT. GINTY,

Defendants.
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Plaintiff, by his attorneys, Sussman & Watkins, hereby alleges against
defendants:

PARTIES

1. Plaintiff, Matthew D'Aloia is a male citizen of legal age who now resides in the County of Sullivan, State of New York, within this judicial district.
2. At the time relevant hereto, defendants CORRECTION OFFICERS MEADE, BURY, SMITH, DAWSON, STAUNDT, DOWE, COMPASSO, MATIS, YEWCHUCK, MACK, HOAG, J. BELL & PUGH; SGTS. HARRELL, MOYER, DANZER & BINI; CPLS. MARTY, SEARCH & MINKLER; Lt. DeVITO; COL. SMITH; CAPT. GINTY all worked for the Sullivan County Sheriff at the Sullivan

County Jail in Monticello, New York. The actions and omissions of each defendant, as complained of herein, were undertaken under color of state law.

JURISDICTION

3. As plaintiff alleges that defendants violated rights extended to him by the Eighth Amendment to the United States Constitution and conspired to violate these rights by their concerted actions which included physically abusing him, failing to intervene as such physical abuse was being implemented and then lying about such physical abuse on official reports, as the events which form the basis for this suit each and all occurred within this judicial district, this Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. secs. 1331, 1343(3) and (4) and 42 U.S.C. secs. 1983 and 1988. Pursuant to 28 U.S.C. sec. 1367, this Honorable Court also has jurisdiction over plaintiff's ancillary state law claims which arise from the same nucleus of operative facts as do his federal claims.

STATEMENT OF FACTS

4. During high school, plaintiff was involved in a romantic relationship with the daughter of the late Paul Trust, a ranking member of the Sheriff's Department.

5. Mr. Trust disapproved of the plaintiff and caused his daughter to make false statements against plaintiff causing the entry of an order of protection against him and in her favor.

6. On the basis of their belief that their son was not safe in Sullivan County because of the influence of the late Mr. Trust, plaintiff's parents relocated to Northern California in or about 2010-2011.
7. On a visit back to Sullivan County in December 2012, plaintiff decided to walk from his home in Yankee Lake to Middletown.
8. During this long and cold walk, plaintiff stopped at a gas station to make a phone call.
9. The proprietor of the gas station called the police and members of the Town of Wallkill Police Department arrived and apprehended plaintiff on an old warrant alleging that he had violated the order of protection referenced above.
10. The underlying allegations causing issuance of this warrant were baseless and ultimately dismissed.
11. After properly detaining plaintiff for a brief period, the Town of Wallkill police turned plaintiff over to officers from the Sullivan County Sheriff's Department.
12. The Sullivan County Sheriff's Department then held plaintiff at its jail in Monticello for all of part of five days, between January 3 and January 7, 2013.
13. During those five days, on repeated occasions, as set forth hereinafter, defendants sadistically beat the plaintiff with their fists and by kicking and pummeling him throughout his body. Each named defendant participated in these

beatings or witnessed the treatment and failed to intervene to cause them to desist and failed to report said physical abuse or render or arrange to be rendered to the plaintiff proper medical services.

14. For a total of about 30 hours - starting about six hours after his initial confinement at the Jail – defendants, as further set forth below, strapped plaintiff into a restraint chair with eight restraints tightly holding his body and, thereafter, defendants, as further set forth below, disallowed him from using the bathroom and failed to provide him with any food or water.

15. During this unprovoked and sustained restraint, defendants beat plaintiff around his face and body and then sprayed, or caused to be sprayed, a hot gaseous substance into plaintiff's cell, causing him to be burned and to become sick.

16. During these four days, defendants repeatedly denied plaintiff's repeated requests for medical attention.

17. During his confinement, defendants did not offer plaintiff food or water and told him to drink from the toilet.

18. By and through this course of treatment, defendants intentionally caused plaintiff to be degraded, humiliated and frightened for his survival.

19. At or about 4:55 pm on January 3, 2013, defendants Bini and Hoag pepper-sprayed plaintiff and used excessive force in placing him in restraints without cause.

20. At or about 7:35 p.m. on January 3, 2013, defendants Marty & Bini, along with a Correction Officer whose name is illegible from the reports provided by defendants' counsel, placed plaintiff in the emergency restraint chair ["ERC"] without provocation or cause.

21. Defendants Dowe and Compasso witnessed this baseless restraint and neither took any action to prevent the strapping of plaintiff into the restraint chair and the curtailment of his limited freedom of movement.

22. After several hours of so restraining plaintiff, defendants Bini and Marty dragged the barefoot plaintiff from a downstairs [basement] location where he had been restrained to medical and misrepresented the reasons he had been pepper-sprayed several hours earlier.

23. During the delay in treating plaintiff for the pepper-spraying, plaintiff felt his skin burning and itching; defendants Bini and Marty violated departmental protocol by failing to arrange medical attention for plaintiff immediately after they pepper-sprayed him and falsely reported the timing of their actions.

24. On or about 8:30 pm, on January 4, 2013, defendant Matis wrote a false report claiming that plaintiff had spit on a chair and the unit log book.

25. At about 9:30 am, on January 5, 2013, defendants Yewchuck and Mack along with defendants Bassett and Search again forcibly placed plaintiff in the ERC after physically manhandling and beating him without cause or provocation.

26. Together, defendants Yewchuck, Mack, Bassett and Search forcibly covered plaintiff's face with a "spit mask."

27. Plaintiff was maintained in the ERC from 9:53 am to 3:35 pm.

28. While the defendants report that plaintiff was freed from this restraint on one occasion, at noon, for 15 minutes, to eat and then again forcibly placed back in the restraint by defendants Bell, Bushmann and Yewchuck, in fact, plaintiff was never afforded any break from the ERC nor allowed to use the bathroom during this more than five and one-hour hour restraint.

29. A false report of the event which allegedly triggered this nearly day long restraint was approved by defendant Cpl. Bassett who knew of the restraint and took no reasonable action to stop it.

30. At about 6:36 pm on January 5, 2013, without cause, defendant Meade, acting with defendants Sgt. Moyer and COs Dawson, Nash, Staundt, Compasso and Cpl. Marty all entered plaintiff's cell, beat him and again placed him in the ERC.

31. These defendants proceeded to keep and maintain plaintiff immobilized in this chair for hours, physically and mentally abusing him.

32. On January 6, 2013, at 12:30 pm, defendant Cpl. Bassett pepper-sprayed the plaintiff and wrote, the same day, a fabricated account of plaintiff's alleged attempt to drown himself in the toilet of his cell and the alleged consequent need for him to again be placed in ERC.

33. Defendant Sgt. Danzer also participated in falsely justifying this use of the ECR.

34. This use of force and restraint was reported to Col. H. Smith, Lt. Wm. DeVito and Capt J. Ginty, none of whom did anything to control their subordinates though each had reason to know, through the reports commencing on January 3, 2013, of the wrongful and sadistic punishment being administered to plaintiff.

35. At about 4:20 a.m. on January 7, 2013, defendant Yewchuck falsely claimed that plaintiff had spit at him, causing him again to restrain plaintiff's in the ERC.

36. Defendants Cpl. Minckler, Deputy Pugh and Yewchuck all physically caused said restraint and beat the plaintiff on this occasion.

37. Thereafter, Cpl. Minckler wrote a materially false report which claimed that the reason for this restraint was that plaintiff "was jumping around in his cell and punching the wall."

38. Defendant Yewchuck's report does not contain any such allegation, which was materially false, but he did not intervene to cause the cessation of the materially wrongful restraint.

39. Each of the named defendants either engaged in wanton physical abuse of the plaintiff believing that plaintiff's mental status would disallow him from identifying his assailants and bringing them to justice.

40. Each of the named defendants conspired with each of the others by engaging in wanton physical abuse of the plaintiff, allowing such abuse to go unrestrained and unreported and in either filing materially false reports concerning the nature of the physical and mental abuse and the alleged provocation for the same or failing to file truthful reports outlining the abuse to which co-worker defendants were subjecting plaintiff.

41. Plaintiff suffered physical and serious psychological injuries from this course of confinement such that he could not reasonably be expected to file any grievance with the supervisors of the jail.

42. After being released from this confinement and during the next six months, plaintiff was hospitalized more than ten times at psychiatric facilities for the post-traumatic stress the treatment outlined above caused him.

43. Plaintiff continues to be haunted by the brutal, sadistic and inhumane treatment to which defendants subjected him.

44. Said treatment suffers of no neutral explanation nor any purpose other than the wanton and intentional infliction of mental distress upon a vulnerable and incarcerated individual.

CAUSES OF ACTION

45. Plaintiff incorporates paras. 1-44 as if fully re-written herein.

46. By engaging in the sadistic conduct outlined above, each defendant violated the Eighth Amendment to the United States Constitution as enforced by 42 U.S.C. section 1983.

47. By engaging in a conspiracy to violate the civil rights of the plaintiff as set forth above, defendants, and each of them, violated 42 U.S.C. section 1985(3).

47. By engaging in the sadistic conduct outlined above, each defendant engaged in assault and battery against plaintiff.

48. By engaging in the sadistic conduct outlined above, each defendant intentionally inflicted emotional distress upon the plaintiff.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court[a] accept jurisdiction over this cause; [b] empanel a jury to hear and decide the matter; [c] award to plaintiff compensatory and punitive damages against each defendant; [d] order defendants to pay the reasonable attorneys fees and costs arising from this action and [e] enter any order required by the interests of law and equity.

Respectfully submitted,

~~Michael H. Sussman [3497]
Counsel for Plaintiff~~

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