

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID LEE RODGERS,

Plaintiff,

vs.

HOWARD BUCSH, individually and
as an employee of the Gloucester
County Sheriff's Department

and

THEODORE DAMASK, individually and
as Warden of the Gloucester County
Jail,

and

GEORGE SMALL, individually and as
Sheriff of Gloucester County,

and

ANGELO ROMEO, individually, and as
a Member of the Board of Chosen
Freeholders of Gloucester County,
and as the Director of the Department
of Public Affairs of Gloucester
County,

and

DONALD WAGNER, individually, and as
the Director of the Board of Chosen
Freeholders of Gloucester County, and
as the Co-Director of the Department
of Public Affairs of Gloucester County,

Defendants.

Civil Action No. 77-
0902

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTORY STATEMENT

1. This is an action by a county jail detainee brought under the Civil Rights Act and the United States Constitution against the guard who mistreated him and then assaulted him with a crowbar when he protested the mistreatment. The action is also against the guard's supervisors and employers and includes related state claims.

JURISDICTION

2. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. 1983 and the First, Eighth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is conferred on this Court by the aforementioned statutory and constitutional provisions, by the Civil Rights Act, 28 U.S.C. 1343 (3) and by the Declaratory Judgement Act 28 U.S.C. 2201.

4. Plaintiff invokes the pendant jurisdiction of this Court to consider claims arising under New Jersey State Law, to wit, N.J.S.A. 59:1 et seq.

PARTIES

5. Plaintiff DAVID LEE RODGERS is a resident of Vineland, New Jersey and is presently incarcerated at Trenton State Prison, Trenton, New Jersey.

6. Defendant HOWARD BUSCH is an employee of the Gloucester County Sheriff's Department where he holds the rank of Corporal and is assigned to the Gloucester County Jail, Woodbury, New Jersey.

7. Defendant THEODORE DAMASK, Warden of the Gloucester County Jail, supervises the day to day operation of the facility and exercises the authority and duty of care derived from N.J.S.A. 30:8-1, 30:8-15 and 30:8-22.

8. Defendant GEORGE SMALL, Sheriff of Gloucester County, oversees the general operation of the Sheriff's Department and the jail facility and exercises the authority and duty of care derived from N.J.S.A. 30:8-17 and 40:41-4.

9. Defendant ANGELC ROMEO member of the Board of Chosen Freeholders of Gloucester County and Director of the Gloucester County Department of Public Affairs, supervises the operations of the Sheriff's Department and the jail facilities and exercises the authority and duty of care derived from N.J.S.A. 30:8-19.

10. Defendant DONALD WAGNER, Director of the Board of Chosen Freeholders of Gloucester County and the Co-Director of the Department of Public Affairs, and maintains overall responsibility for the operation of the jail facilities and Sheriff's Department and exercises the authority and duty of care derived from N.J.S.A. 30:8-19.

FACTUAL ALLEGATIONS

11. On or about September 15, 1975, Plaintiff was incarcerated in the Gloucester County Jail to await trial.

12. On or about 1:00a.m. on February 3, 1976, a sheet of plastic which had been taped over a broken window in "J Block" was dislodged resulting in the exposure of the plaintiff and others confined therein to strong winds and extreme cold.

13. Plaintiff and other inmates repeatedly asked the guards to either recover the broken window or provide the inmates with the materials to recover the window.

14. Various unidentified guards refused the requests without justification and, instead, taunted and ridiculed Plaintiff and other inmates.

15. The conduct of the guards caused Plaintiff to suffer extreme discomfort unreasonably endangered his health, and created an atmosphere of hostility and tension between the inmates, including Plaintiff, and the guards.

16. On or about 7:00 a.m., February 3, 1976, Defendant BUSCH arbitrarily ordered the shut off of all running water in J Block and had the area sealed off from the rest of the facility.

17. The actions of Defendant BUSCH caused Plaintiff and other inmates to suffer, in addition to severe cold, the deprivation of water to drink or shower with and prevented the flushing of all toilet facilities

18. On or about 3:00 p.m. on February 3, 1976, Defendant BUSCH arbitrarily ordered the termination of regular meals to J Block.

19. The punitive measures imposed by Defendant BUSCH were not preceded by a hearing or other determination of an infraction of jail rules nor were they necessitated by the situation but instead inflamed the situation.

20. Plaintiff and other inmates responded to their mistreatment by engaging in a noisy but non-violent protest during the evening of February 3, 1976 and the early morning hours of February 3, 1976

21. On or about 6 a.m. on February 4, 1976 Defendant BUSCH still continued to harrass and mistreat Plaintiff and other inmates and then ordered the removal of the seven inmates who occupied the lower tier of J Block.

22. During the above removal of inmates of lower tier inmates, Defendant BUSCH stated that Plaintiff was the cause of the problem and that he would see that Plaintiff "paid for it."

23. On or about 7:30 a.m., February 4, 1976 Defendant BUSCH entered the upper tier of J Block armed with a steel crow bar approximately three feet long, accompanied by approximately eight other guards.

24. With crowbar in hand, Defendant BUSCH approached Plaintiff in a threatening manner which caused Plaintiff to retreat to the wall of his cell.

25. Defendant BUSCH used the crowbar to pin Plaintiff against the wall, turned Plaintiff around and pinned Plaintiff's face to the wall by thrusting the crowbar against the back of Plaintiff's neck.

26. As Plaintiff suffered severe pain and feared for his life, he struggled to free himself but was knocked to the floor, punched repeatedly by Defendant BUSCH and again had his head pinned to the floor by the crowbar.

27. Though present throughout the above attack, the other approximately eight guards made no efforts to prevent the attack or stop the attack once it commenced.

28. Despite his repeated requests for medical attention, Plaintiff was drug to a "strip" cell which lacked even a mattress and where he remained for approximately six hours.

29. On or about 1:30 p.m., February⁴, 1976, Plaintiff was transported to Underwood Memorial Hospital where he received emergency treatment for the injuries and pain resulting from the above mistreatment and assault.

30. Plaintiff returned to the jail the same day and was again placed in a "strip" cell where he remained for three days despite the fact that he had not been charged with any infractions of jail rules.

31. On or about February 9, 1976, Defendant Warden DAMASK questioned Plaintiff regarding the above incidents, advised Plaintiff that he would investigate the matter, and obtained Plaintiff's consent to submit to a polygraph examination on his allegations.

32. Plaintiff was never administered the polygraph examination and neither Defendant DAMASK or any other Defendant has made any investigation or taken any other action regarding this matter.

33. On April 28, 1976, Plaintiff caused to be served upon Defendant Sheriff George SMALL a Notice of Claim, pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:8-4, by mailing the Notice by Certified Mail, #305886, return receipt requested, but neither Plaintiff or his attorney has received a response.

34. Plaintiff continues to suffer pain and discomfort from the injuries he received during the above incidents.

35. On information and belief, previous complaints of arbitrary mistreatment and violence had been lodged against Defendant BUSCH but neither Defendant DAMASK, SMALL, ROMEO nor WAGNER took any steps to investigate the allegations so as to protect the rights and safety of Gloucester County Jail inmates.

LEGAL CLAIMS

COUNT ONE

36. The allegations set forth in paragraphs 1 thru 35 are incorporated herein by reference.

37. The actions of Defendant BUSCH in a) intentionally exposing Plaintiff to severe cold, b) depriving Plaintiff of water and regular meals, c) assaulting Plaintiff with a deadly weapon, d) placing Plaintiff in a "strip " cell and e) refusing Plaintiff's request for medical attention, violated Plaintiff's right to be free from cruel and unusual punishment guaranteed by the Eighth Amendment, his right to due process and equal protection of the law guaranteed by the Fourteenth Amendment and his rights to freedom of expression and to petition for redress of greivances as guaranteed by the First Amendment.

COUNT TWO

38. The allegations of paragraphs 1 thru 35 are incorporated herein by reference.

39. The failures of Defendants DAMASK, SMALL ROMEO and WAGNER to a) investigate the prior claims of mistreatment concerning Defendant BUSCH, b) to screen, train and supervise Defendant BUSCH, an employee who acts on their behalf and c) to discharge the duty of care derived from their authority to incarcerate citizens, violated Plaintiff's right to be free from cruel and unusual punishment guaranteed by the Eighth Amendment, his right to due process and equal proteciton of the law guaranteed by the Fourteenth Amendment and his rights to freedom of expression and to petition for redress of greivances, guaranteed by the First Amendment.

RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter an Order granting him:

1) A declaratory judgement that the Defendants are jointly and severably liable for the above violations of Plaintiff's rights as guaranteed by the First, Eighth and Fourteenth Amendments to the United States Constitution,

- 2) Compensatory damages in the amount of \$25,000.,
- 3) Punitive damages in the amount of \$10,000.,
- 4) Costs of litigation, including reasonable attorney's fees,
- 5) Any other relief the Court deems necessary and just.

Respectfully Submitted
CAMDEN REGIONAL LEGAL SERVICES, INC.
Attorney for Plaintiff

BY: 
STEPHAN HAIMOWITZ, ESQUIRE

VERIFICATION

STATE OF NEW JERSEY:

SS

COUNTY OF MERCER .

The undersigned, having been duly sworn according to law,
desposes and says:

- 1) I am the plaintiff in the within cause of action.
- 2) I have read the Complaint and am familiar with the contents thereof. The allegations of the Complaint are true to the best of my information, knowledge and belief.

David Lee Rodgers
DAVID LEE RODGERS

Sworn to and subscribed
before me this 9th day
of May, 1977.

Stephen Hammond
An Attorney of the State
of New Jersey