

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Aja Kennedy, *

Plaintiff, *

-against - *

Rockingham County, Correction Officers *

“John” Este, and John and Jane Does, *

Defendants. *

DOCKET NO.

JURY TRIAL DEMANDED

COMPLAINT

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff, AJA KENNEDY, seeks relief for the defendants’ violation of AJA KENNEDY’S rights secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983, rights secured by the fourteenth amendment to the United States Constitution, and of rights secured under the laws and constitution of the State of New Hampshire. The plaintiff seeks damages, compensatory, enhanced and punitive, affirmative and equitable relief, an award of costs, interest and attorneys’ fees, and such other further relief as this Court deems just and equitable.

JURISDICTION

2. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4), this being an action seeking redress for the violation of plaintiff’s constitutional and civil rights.

3. Jurisdiction is also invoked herein pursuant to the fourteenth amendment to the United States Constitution and 42 U.S.C. § 1983.

4. The plaintiff requests that this Court exercise supplemental jurisdiction over any state court cause of action that arise from a common nucleus of operative facts that give rise to the federally based causes of action pleaded herein. 28 U.S.C. § 1367.

JURY TRIAL DEMANDED

5. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

VENUE

6. Venue is proper for the United States District Court for the District of New Hampshire pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. At all times relevant AJA KENNEDY was a resident of Rockingham County of the State of New Hampshire.

8. Defendant ROCKINGHAM COUNTY is a municipal entity created and authorized under the laws of the State of New Hampshire. It is authorized by law to operate a jail, through its Department of Corrections, to house inmates and detainees.

9. Defendants ESTE and JOHN and JANE DOES were, at all times relevant, acting under color of state law as officers, employees and agents of the Department of Corrections of the defendant ROCKINGHAM COUNTY. These defendants are being sued individually and not in their official capacity.

**AS AND FOR A FIRST CAUSE OF ACTION:
CIVIL RIGHTS VIOLATION AGAINST ALL INDIVIDUAL DEFENDANTS**

10. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 9 above as is fully set forth herein.

11. On or about May 2, 2012, AJA KENNEDY entered the jail as an inmate.

12. Ms. Kennedy, at all times relevant, was and is a transgender woman, was feminine-appearing, held herself out as female and lived her life as a female.

13. Approximately twenty years earlier Ms. Kennedy legally had her gender changed to female on her New Hampshire driver's license.

14. Despite her being legally female, and over the vocal protests of Ms. Kennedy, defendants ESTE and JOHN and JANE DOES wrongfully classified Ms. Kennedy as male.

15. Again, over Ms. Kennedy's protest, Ms. Kennedy was designated to a male housing unit.

16. For approximately the next five days after her being housed with male inmates, Ms. Kennedy was subjected to verbal abuse and harassment by male inmates.

17. Additionally, on two different occasions during that time period, Ms. Kennedy was sexually assaulted by male inmates.

18. The situation became so unbearable that Ms. Kennedy ingested an overdose of medication in an effort to commit suicide.

19. The individual defendants had a duty to keep inmates in their custody safe and to exercise reasonable care in protecting inmates in their custody.

20. The individual defendants knew or should have known that housing Ms. Kennedy, a transgender woman, in a male housing unit would pose a serious risk of emotional and physical injury to Ms. Kennedy.

21. The conduct and action of defendants, ESTE and JOHN and JANE DOES, acting under color of state law, was not done in good faith and was done intentionally with a deliberate indifference to the rights of AJA KENNEDY, and was done in violation of AJA KENNEDY'S constitutional rights as guaranteed under 42 U.S.C. §1983 and the fourteenth amendment to the United States Constitution.

22. The conduct articulated above was a proximate cause of the injuries and constitutional deprivations set forth above.

AS AND FOR THE SECOND CAUSE OF ACTION:
CIVIL RIGHTS VIOLATION AGAINST DEFENDANT
ROCKINGHAM COUNTY

23. Plaintiff repeats and re-alleges each and every allegation contained in paragraph 1 through 22 above as if fully set forth herein.

24. At all times material to this complaint, defendant ROCKINGHAM COUNTY had in effect *de facto* policies, practices, customs and usages that were a direct and proximate cause of the unconstitutional conduct of defendants ESTE, and JOHN and JANE DOES, including but not limited to the unconstitutional classification and housing of transgender inmates.

25. Defendant ROCKINGHAM COUNTY failed to establish guidelines for, and/or train, supervise or educate its agents, and employees including the defendants, about correct practices and procedures in the classification and housing of transgender inmates, thereby permitting the defendants to be in a position to violate the plaintiff's federal and state constitutional and statutory rights.

26. The conduct of defendant ROCKINGHAM COUNTY was the direct and proximate cause of bodily and psychological harm, pain and suffering in violation of AJA

KENNEDY'S rights as guaranteed by 42 U.S.C. §1983 and the fourteenth amendment to the United States Constitution.

27. As a direct and proximate result of the defendant's wrongful policies, practices, customs and usages complained of herein, AJA KENNEDY has suffered physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment.

**AS AND FOR THE THIRD TO FOURTH CAUSE OF ACTION:
SUPPLEMENTAL STATE CLAIMS AGAINST ALL DEFENDANTS**

28. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 27 above as if fully set forth herein.

29. The conduct of defendants ESTE and JOHN and JANE DOES alleged herein occurred while, and during the course and scope of their duties and functions as Correction Officers, and while they were acting as agents and employees of the defendant ROCKINGHAM COUNTY, and as a result, defendant ROCKINGHAM COUNTY is liable to AJA KENNEDY pursuant to the state common law doctrine of *respondeat superior*.

30. Pursuant to N.H. R.S.A. 507-B:7, the plaintiff, by certified mail, return receipt requested, gave notice to the defendant, ROCKINGHAM COUNTY, of this claim.

31. By the actions described above, the defendants individually and collectively, have committed the following wrongful acts against AJA KENNEDY:

- a. Intentional and negligent infliction of emotional distress on plaintiff, AJA KENNEDY;
- b. Sex discrimination of plaintiff, AJA KENNEDY; and
- c. Violation of the rights otherwise guaranteed to the plaintiff under the laws and constitutions of the State of New Hampshire, and the United States.

WHEREFORE, the plaintiff demands the following relief jointly and severally against all of the defendants:

- A. Injunctive relief;
- B. Compensatory damages;
- C. Punitive damages;
- D. Enhanced compensatory damages;
- E. The convening and impaneling of a jury to consider the merits of the claims

herein;

F. Costs, interest and attorney's fees; and

G. Such other and further relief as this Court may deem appropriate and

equitable, including injunctive and declaratory relief as may be required in the interests of justice.

Dated: January 26, 2015
Manchester, New Hampshire

/s/ Lawrence A. Vogelmann

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