
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M. M. FARRAKHAN,

Plaintiff,

-vs-

J. BURGE, Superintendent; M. L. BRADT,
Deputy Commissioner of Security; C. GUMMERSON,
Captain; M. WITHER, Sgt.; R. HEWIT. Corrections
Officer,

Defendants.

Civil Action No. 03-CV-0928 (NAM/DRH)

TRIAL MEMORANDUM

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BRIEF SUMMARY

This trial memorandum is submitted in advance of trial and in support of plaintiff's Civil Rights action brought pursuant to 42 U.S.C. §1983 and the Eighth Amendment to the United States Constitution. On August 14, 2002, plaintiff was held in keeplock at Auburn Correctional Facility. While attempting to return to his cell after his shower, plaintiff was attacked by a group of fellow inmates, resulting in serious injury to his left eye, including a 90% loss of vision. Plaintiff Farrakhan maintains that prior to the attack, Auburn Correctional Facility officials were repeatedly informed both verbally and in writing that plaintiff was in imminent physical danger of being attacked by fellow inmates, and that he feared for his safety.

The 8th Amendment requires prison officials to take reasonable measures to guarantee the safety of inmates in their custody. *See Hayes v. New York City Department of Corrections*, 84 F.3d 614 (2d Cir. 1996); *citing Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970 (1994). That burden includes an obligation to protect prisoners from violence at the hands of other prisoners. *Matthews v. Armitage, et al.*, 36 F. Supp.2d 121 (N.D.N.Y. 1999); *citing Farmer v. Brennan, supra* at 833. To prove that prison officials have violated the 8th Amendment, an inmate must establish two elements: (1) that the inmate is incarcerated under conditions imposing a substantial risk of serious harm; and (2) that the defendant acted with a sufficiently culpable state of mind. *Matthews v. Armitage, et al., supra*, at 124; *see also Wilson v. Seiter*, 501 U.S. 294, 298, 111 S.Ct. 2321 (1991).

In the present case, defendants violated plaintiff Farrakhan's constitutional rights in that they failed to protect him from a foreseeable assault by other inmates within the Auburn Correctional Facility, where plaintiff's life was threatened by an inmate associated with a gang, and the defendants were aware of such threat. As a result of defendants' indifference to the risk of harm to plaintiff Farrakhan, he has suffered the permanent loss of vision in his left eye.

STATEMENT OF FACTS

In August of 2002, plaintiff Farrakhan was housed in the D Company keeplock unit of Auburn Correctional Facility. (Plaintiff's EBT, p. 31). On the evening of August 14, 2002, the time came for plaintiff Farrakhan's pre-scheduled shower. (Plaintiff's EBT, pp. 65-66). Defendant Hewit unlocked plaintiff's cell by means of an electronic control box located in an office at the end of the company. (Plaintiff's EBT, pp. 63-64). Once his cell door opened, plaintiff Farrakhan proceeded down the company to the shower and locked himself in. (Plaintiff's EBT, pp. 67-69). Plaintiff Farrakhan did not observe any other inmates on the company as he made his way to the shower. (Plaintiff's EBT, pp. 52, 91).

Defendant Hewit, along with other correctional officers, was positioned in his office at the end of the company during plaintiff's shower. (Plaintiff's EBT, pp. 66-67). After approximately ten minutes passed, defendant Hewit rose, opened the shower door through the control box, and sat back down in the office with the other officers. (Plaintiff's EBT, pp. 69-70). Plaintiff Farrakhan then exited the shower and proceeded down the company back towards his cell. (Plaintiff's EBT, pp. 70-71). About halfway down, plaintiff Farrakhan observed a group of four to five inmates approaching him. (Plaintiff's EBT, p. 71). At least two of those inmates are associated with a prison gang known as the "Bloods". (Plaintiff's EBT, pp. 55, 84-85). One of the inmates hit plaintiff Farrakhan and another, Joseph Striplin, slashed the plaintiff in the face with an unidentified weapon. (Plaintiff's EBT, pp. 87-89). Blood immediately gushed from the plaintiff's face, and he was taken back to the shower by jail staff. (Plaintiff's EBT, p. 117). A report by Counselor Kott confirms that the plaintiff was attacked by inmates Striplin, Weeks, Rose, James and Niles in retaliation for a dispute with inmate Mackenzie. (Counselor's Report 8/22/02).

Eventually, plaintiff Farrakhan was transported to the Upstate Medical Hospital in Syracuse, where he was admitted and treated for severe trauma to his left eye. (Medical Records 8/14/02 - 8/16/02). He has undergone long-term treatment for a drastic and permanent loss in vision as a result of the attack. (Hoepner/Robinson Memo 5/10/04).

Prior to the attack, the plaintiff wrote a letter to defendant Perkins, dated June 28, 2001, in which he informed defendant Perkins that inmate and Blood leader McKenzie threatened his life and ordered other inmates to attack him. (Letter to Perkins 6/28/01). According to Auburn Correctional Facility records, said threats were issued by McKenzie and recorded by the prison system on May 26, 2001. (Separation Data Report 6/4/01). That report stated that during a family visit, McKenzie threatened Farrakhan and his family. Farrakhan reported to security that he feared for his life, as McKenzie was the self-proclaimed leader of the Bloods. (Separation Data Report 6/4/01). On May 30, 2001 a transfer review form in the Auburn Correctional Facility database was generated and signed by Farrakhan's counselor, John Srokra, which listed McKenzie as a known enemy of plaintiff Farrakhan and ordered that the two be housed in separate units. (Transfer Review Report 5/30/01). In his letter to defendant Perkins, plaintiff Farrakhan repeatedly requested that McKenzie and those inmates associated with the Bloods not be allowed near him for fear of what might result. (Letter to Perkins 6/28/01).

Plaintiff Farrakhan again gave defendants detailed notice that inmate McKenzie threatened his life and ordered other inmates to attack him during a Tier III hearing held by Hearing Officer Flores on December 7, 2001. During the hearing, plaintiff stated that he has "a problem with McKenzie", that McKenzie has "sent his little henchmen after me", and that McKenzie put a "contract" out on him. (Transcript pp. 19-21). Plaintiff Farrakhan further stated that he wrote up a

complaint regarding the threats and submitted it to defendant Burge. (Transcript p. 21). At several points throughout the hearing, Plaintiff Farrakhan emphasized that his life was threatened by not only inmate McKenzie, but other members of the gang known as the "Bloods", who were under McKenzie's influence. (Transcript pp. 19-21, 24-25).

Plaintiff Farrakhan also wrote to defendant Gummerson on August 12, 2002, two days prior to his attack, stating that he received numerous threats on his life from other inmates, particularly from the inmate clerk and day porter, both of whom plaintiff thought to be Bloods. (Letter to Gummerson 8/12/02). Plaintiff Farrakhan requested to meet with someone from defendant Gummerson's office to try to resolve the problem immediately, as he felt that something bad would take place if preventative measures were not taken. (Letter to Gummerson 8/12/02).

In addition to the letters plaintiff Farrakhan wrote to defendants prior to his injury, plaintiff spoke to defendant Hewit three times before he was attacked later on in the evening. (Plaintiff's EBT, p.50). Plaintiff Farrakhan informed defendant Hewit that there was a serious problem between himself and several other inmates, namely a clerk (Striplin) and other Blood members. (Plaintiff's EBT, pp.56-62). On all three occasions, plaintiff told defendant Hewit that he was afraid, and believed himself to be in physical danger. (Plaintiff's EBT, pp.50, 56-62).

Despite defendants' knowledge of the highly probable risk that plaintiff Farrakhan would be attacked by Blood gang members, particularly inmate Striplin, by order of inmate McKenzie, the defendants failed to take reasonable measures to protect the safety of plaintiff Farrakhan. As a result, he was subjected to serious physical injury, which could have been avoided.

POINT I

**DEFENDANTS INCARCERATED PLAINTIFF
UNDER CONDITIONS IMPOSING A
SUBSTANTIAL RISK OF HARM**

For a plaintiff to have been subjected to conditions imposing a substantial risk of harm, the objective standard is whether the deprivation of the right to be safe from violence at the hands of other prisoners was sufficiently serious. *Byrd v. Abate*, 945 F. Supp. 581, (S.D.N.Y. 1996); citing *Farmer v. Brennan*, *supra*. A sufficiently serious deprivation occurs where a prison official's acts or omissions result in the denial of the "minimal civilized measure" of life's necessities. *Byrd v. Abate*, *supra*; *Farmer v. Brennan*, *supra*; *Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2392 (1981); *Knowles v. New York City Department of Corrections*, 904 F. Supp. 217 (S.D.N.Y. 1995).

In *Byrd*, the plaintiff inmate was blinded in his left eye after being stabbed by a fellow inmate with an unknown instrument. The District Court held that the loss of an eye "plainly constitutes a denial of the minimal civilized measure of life's necessities." *Byrd v. Abate*, at 581. Similarly, where an inmate was attacked by another inmate and sustained a deep cut to his face requiring sixty stitches to close, the injury was sufficiently serious to satisfy the objective element of an Eighth Amendment claim. *Knowles v. New York City Department of Corrections*, *supra*.

The facts in the present case are almost identical to those in *Byrd*. Plaintiff Farrakhan was stabbed in his left eye with an unidentified weapon. He has since lost ninety percent of his vision in that eye. As the *Byrd* Court clearly stated, blindness in one eye constitutes a sufficiently serious denial of the minimal civilized measure of life's necessities. *Byrd v. Abate*, *supra*. Moreover, the loss of the use of an eye could reasonably be thought of as a greater injury than the cut to the face sustained by the plaintiff in *Knowles*. *Knowles v. New York City Department of Corrections*, *supra*.

Therefore, plaintiff Farrakhan has satisfied the substantial harm required to sustain an Eighth Amendment claim.

POINT II

DEFENDANTS ACTED WITH A SUFFICIENTLY CULPABLE STATE OF MIND

The defendants' state-of-mind requirement in the context of a failure to protect claim is deliberate indifference to the inmate's health and safety. *Wilson v. Seiter, supra; Farmer v. Brennan, supra*. Deliberate indifference requires "more than negligence, but less than conduct undertaken for the very purpose of causing harm." *Murray v. Michael*, 2005 WL 2204985 (N.D.N.Y) at 12; *citing Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994). The deliberate indifference standard provides that prison officials are liable for failure to protect an inmate where they know of and disregard an excessive risk to inmate health and safety by failing to take reasonable measures to abate the harm. *Hayes v. New York City Department of Corrections, supra* at 629; *Farmer v. Brennan, supra*, at 837. When the inmate suffers serious injury due to such indifference, the prison officials are liable to him.

The mere awareness of a substantial risk of harm to the prisoner establishes notice. *Mathews v. Armitage et al., supra*. The plaintiff does not have to have identified specific enemies by name, nor does he necessarily have to have informed officials of a danger. Once they have knowledge of the substantial risk, they have a duty to protect the inmate from it. *Hayes v. New York City Department of Corrections, supra* at 621.

The Second Circuit reversed a lower court judgment on jury verdict in favor of prison officials where the inmate was transferred to a prison which also housed a man the inmate previously implicated in the kidnaping and murdering of a child. *Hendricks v. Coughlin*, 942 F.2d 109, 111 (2d

Cir. 1991). The inmate was placed in the Special Housing Unit of the facility, and it was there that he was repeatedly threatened by those who heard about the earlier implication. *Id.* The inmate sought protection from prison officials, meeting with them on two occasions to discuss his fears. *Id.* He also contacted Legal Services to act on his behalf. *Id.* He then had another meeting with both Legal Services and prison officials, where it was determined that he should be transferred to another facility, but the transfer was later denied. *Id.* Shortly thereafter, someone threw hot water through the door of his cell, causing severe burns. *Id.* The Court found that this evidence sufficiently established that the defendants acted with deliberate indifference towards a serious risk of injury and danger to the inmate to at least go to a jury. *Id.*, at 112. Similarly, the *Hayes* Court determined that where an inmate was attacked on three separate occasions, despite repeated requests for a transfer and frequent voicing of fears for his safety by himself and third parties to prison officials, an 8th Amendment violation did occur. *See, Hayes v. New York City Department of Corrections, supra.*

In the present case, plaintiff Farrakhan frequently notified defendants verbally and in writing that a contract on his life was put out by the leader of the Bloods, inmate McKenzie, and that at least one of the Bloods, inmate Striplin, was determined to satisfy that order. Plaintiff's letters, conversations, and testimony directed to the defendants, which began over a year prior to the attack, and continued until just hours prior to the attack, were detailed and specific, clearly surpassing the mere awareness requirement set forth in *Mathews. Matthews v. Armitage et al., supra.*

Similar to the inmate plaintiff in *Hendricks*, Farrakhan sought the aid of prison officials by notifying them of the persistent threats he received, and requesting meetings with their staff to try to prevent those threats from being carried out. *Hendricks v. Coughlin, supra.* Unlike *Hendricks*, however, plaintiff Farrakhan was never granted a single meeting to discuss his concerns, which are


documented in Auburn Correctional Facility's own records. Plaintiff Farrakhan's reports were not taken seriously by the defendants. Simply because defendants chose to ignore his letters and the facility's own reports and records does not mean that they did not have notice of the danger to plaintiff Farrakhan. Their indifference to the plaintiff's danger was obvious, and therefore in violation of the Eighth Amendment.

CONCLUSION

The severity of the attack on the plaintiff by his fellow inmates, and the ample notice defendants had of the risk that such an attack would be likely to occur clearly indicates that defendants did indeed violate plaintiff Farrakhan's Civil Rights under the Eighth Amendment by failing to protect him from a violent attack by fellow inmates.

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