

COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
CIVIL DIVISION _____
CASE NO. 12-CI-_____

BRANDON MILAM

PLAINTIFF

vs.

COMPLAINT AND JURY DEMAND

WARREN COUNTY REGIONAL JAIL

DEFENDANTS

Serve through:
Warren County Regional Jail
920 Kentucky St.
Bowling Green, KY 42101

WARREN COUNTY
Serve through:
Michael Buchanon
Warren County Judge/Executive
429 E. 10th Ave.
Bowling Green, KY 42101-2250

JACKIE T. STRODE, INDIVIDUALLY,
AND IN HIS OFFICIAL CAPACITY AS
WARREN COUNTY REGIONAL JAILER
Serve at:
Warren County Regional Jail
920 Kentucky St.
Bowling Green, KY 42101

TIMOTHY MICHAEL SCHWARTZ
Serve at:
Warren County Regional Jail
920 Kentucky St.
Bowling Green, KY 42101

UNKNOWN DEFENDANT

** ** * * * * * * * * * * **

1. Plaintiff Brandon Milam (“Plaintiff”) is a resident of Bowling Green, Warren County, Kentucky.
2. Defendant Warren County Regional Jail is a county jail located in Warren

County, Kentucky at 920 Kentucky St., Bowling Green, Kentucky 42101.

3. Defendant Warren County is located in Kentucky and its service of process agent, pursuant to KRCF 4.04(7) is Michael Buchanon, County Judge/Executive for Warren County, located at 429 E. 10th Ave., Bowling Green, Kentucky 42101.

4. Defendant Jackie T. Strode was, at all times relevant to the allegations set forth herein, jailer of the Warren County Regional Jail, located at 920 Kentucky St., Bowling Green, Kentucky 42101.

5. Unknown Defendant was, at all times relevant to the allegations set forth herein, Deputy Jailer of the Warren County Regional Jail, located at 920 Kentucky St., Bowling Green, Kentucky 42101.

6. Defendant Timothy Schwartz was, at all times relevant to the allegations set forth herein, and remains, upon information and belief, an inmate in the Warren County Regional Jail, located at 920 Kentucky St., Bowling Green, Kentucky 42101.

7. Plaintiff was incarcerated in the Warren County Regional Jail for missing a parole meeting, which was a condition of his probation following his pleading guilty to felony theft.

8. Plaintiff is, and was at all times relevant to the allegations set forth herein, openly homosexual.

9. Hereinafter all named Defendants, except for Defendant Schwartz, shall be referred to collectively as “non-inmate Defendants.” The term “Defendants” will refer collectively to all named Defendants.

10. Non-inmate Defendants were aware of Plaintiff’s sexual orientation and consequently placed him in what is referred to as “protective custody.” As a result, Plaintiff was placed in a single cell with approximately fourteen (14) other men.

11. For the duration of approximately one week leading up to July 2, 2012, Plaintiff was subjected to verbal harassment and threats (including death threats) by inmates, including Defendant Schwartz and other inmates in the cell, who yelled anti-homosexual slurs, insults and remarks at him.

12. On or about July 2, 2012, Defendant Schwartz approached Plaintiff while Plaintiff was sitting on his bed, pinned Plaintiff against the wall, and began punching him in the face.

13. Defendant Schwartz then bit Plaintiff's nose. Plaintiff heard a crunching sound as Defendant Schwartz bit part of Plaintiff's nose off, severing it from Plaintiff's face. Schwartz then spit the piece of Plaintiff's nose out onto the floor.

14. Another inmate found the severed piece of Plaintiff's nose, which doctors at Vanderbilt hospital later tried to reattach to Plaintiff's face. The attempt proved unsuccessful.

15. As a result of the actions and omissions of Defendants, Plaintiff has suffered severe physical and emotional trauma and damages. Plaintiff has been left permanently disfigured by the attack, he has lost his sense of smell, he has lost feeling in parts of his nose, and he experiences pain that continues to this day.

16. Plaintiff now seeks damages for physical and emotional pain and suffering, medical expenses, as well as all other damages and relief to which Plaintiff may appear entitled, which exceed the jurisdictional limits of this Court.

Assault and Battery

17. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 16.

18. Defendant Schwartz intentionally and unlawfully threatened Plaintiff with an unwanted, harmful and/or offensive touching.

19. Defendant Schwartz acted with a manifest intention to cause the harmful and/or offensive touching.

20. Plaintiff was aware of, apprehensive of, and fearful of such touching.

21. Defendant Schwartz intentionally and unlawfully caused an unwanted and non-consensual touching to the person of Plaintiff.

Intentional Infliction of Emotional Distress and Outrageous Conduct

22. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 21.

23. Defendant Schwartz acted intentionally and/or recklessly towards Plaintiff.

24. Defendant Schwartz's conduct was outrageous and extreme, as well as intolerable, because it offends the generally accepted standards of morality and decency.

25. Defendant Schwartz's conduct was the direct factual and legal cause of Plaintiff's emotional distress.

26. Plaintiff's resulting emotional distress was severe.

Jailer's Breach of Duty and Negligence under KRS 71.020 et seq.

27. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 26.

28. Non-inmate Defendants negligently, and in bad faith, placed Plaintiff in the cell with Defendant Schwartz and the other anti-homosexual inmates, and allowed him to remain housed in that cell for an extended and unreasonable period of time, and additionally failed to respond timely and appropriately to the incident at issue, instead taking an unreasonable amount of time to respond to the attack.

29. Non-inmate Defendants acted in bad faith and negligently and failed to exercise

reasonable care by placing Plaintiff in the cell with Defendant Schwartz and the other anti-homosexual inmates and by allowing Plaintiff to remain housed in said cell for an extended and unreasonable period of time despite clear evidence of a conflict between Plaintiff's openly homosexual orientation and the other inmates' prejudices and anti-homosexual remarks, insults, and behavior, and despite the fact that many of the inmates in Plaintiff's cell were offenders charged with violent crimes and sexual crimes such as rape and sodomy, and by also failing to respond timely and appropriately to the incident at issue, instead taking an unreasonable amount of time to respond to the attack.

30. Non-inmate Defendants acted negligently and in bad faith in their individual capacities and in their official capacities, and breached a duty owed by jailers and deputy jailers to protect the inmates of their facility and to exercise reasonable care in doing so.

31. Defendant Warren County and Defendant Warren County Regional Jail are to be held liable for Defendant Strode and Defendant Unknown Deputy Jailer's negligence, bad faith, and breach of duty, by principles of agency and/or directly.

Negligence

32. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 32.

33. Non-inmate Defendants owed a duty to Plaintiff, to protect him from harm and to treat him fairly and lawfully.

34. Non-inmate Defendants breached that duty by placing Plaintiff in harm's way and allowing him to remain there despite clear evidence of a conflict between Plaintiff's openly homosexual orientation and the other inmates' prejudices and anti-homosexual remarks, insults, and behavior, and despite the fact that many of the other inmates in Plaintiff's cell were

offenders charged with violent crimes and sexual crimes such as rape and sodomy.

35. Non-inmate Defendants' breach of their duty was the factual and legal cause of Plaintiff's injuries and harm caused to him.

36. Plaintiff suffered damages as a result.

Common Law Bad Faith and Breach of Fiduciary Duty

37. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 37.

38. Non-inmate Defendants owe, and owed, a fiduciary duty to protect all inmates of the Warren County Regional Jail, including Plaintiff. Said duty also applies to the jail guards, staff and employees.

39. Non-inmate Defendants' conduct and unfair treatment in handling Plaintiff's situation and failing to protect Plaintiff and placing him in harm's way constitutes bad faith and a breach of their fiduciary duty to act in good faith and to fairly treat and protect Plaintiff as provided by common law. Non-inmate Defendants knew or should have known and/or acted recklessly as to their unfair and unlawful treatment of Plaintiff and their failure to protect Plaintiff.

40. Defendant Warren County and Defendant Warren County Regional Jail are to be held liable for Defendant Strode and Defendant Unknown Deputy Jailer's bad faith, and breach of fiduciary duty by principles of agency and/or directly.

41. As a direct and proximate result of non-inmate Defendants' bad faith and breach of fiduciary duty, Plaintiff has been damaged in an amount that exceeds the jurisdictional threshold of this Court.

Negligent Supervision and Negligent Hiring

42. Plaintiff hereby incorporates all of the factual and legal allegations asserted in paragraphs 1 through 42.

43. Non-inmate Defendants were negligent in their supervision of the inmates, including Plaintiff and Defendant Schwartz, as well as the guards and/or other staff and employees on duty at the time of the incident and the guards and/or other staff and employees who knew or should have known that Plaintiff was placed in a cell with inmates charged with violent and sexual crimes and who had obvious extreme anti-homosexual sentiments, but nevertheless allowing Plaintiff to remain housed there for an extended and unreasonable period of time and failing to timely and reasonably respond to the incident when it occurred.

44. Non-inmate Defendants were negligent in their hiring of the jailer, Defendant Strode, Unknown Defendant, guards and/or staff and other employees who were on duty at the time of the incident or at any time relevant to the incident and who knew or should have known that Plaintiff had been placed in a cell with inmates charged with violent and sexual crimes and who had obvious extreme anti-homosexual sentiments, but nevertheless allowing Plaintiff to remain housed there for an extended and unreasonable period of time and failing to timely and reasonably respond to the incident when it occurred.

WHEREFORE, Plaintiff, Brandon Milam, hereby requests:

A. Judgment against all Defendants for physical and emotional/mental damages and pain and suffering, humiliation and embarrassment, for inconvenience, compensatory damages, punitive damages, and attorney's fees and interest.

B. Trial by jury.

C. Pre-judgment and post-judgment interest against all Defendants.

D. Any and all other relief to which Plaintiff appears entitled.

Respectfully Submitted:

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