

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

TAMMY WILLIAMS, EARL RUSSELL and
CHERYL HAMBRICK,

Plaintiffs

VERSUS

CIVIL ACTION NO.: 2:05CV83-P-B

JAMES RILEY, individually and in his
official capacity as Sheriff of DeSoto County
Mississippi, STEVE ATKINSON and
LARRY GATLIN, individually and
in their official capacities
as deputy sheriffs and jail administrators
of Desoto County, Mississippi,

DEFENDANTS

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

This is an action to recover actual and punitive damages for violation of First and Fourteenth Amendment rights and for state law claims of malicious interference with employment relations, civil conspiracy and discharge in violation of public policy. The following facts support the action: 1.

Plaintiff, TAMMY WILLIAMS, is an adult resident citizen of 3624 Bluff Road, Hernando, Mississippi 38632.

Plaintiff, EARL RUSSELL, is an adult resident citizen of 1016 Wakefield Road, Coldwater, Mississippi 38618.

Plaintiff, CHERYL HAMBRICK, is an adult resident citizen of 498 Tuscan Way, Southaven, Mississippi 38671.

2.

Defendant, SHERIFF JAMES A. RILEY, is the sheriff of DeSoto County Sheriff's Department. He is sued in his official and personal capacities. He may be served with process at his place of employment at 311 West South Street, Hernando, Mississippi 38632.

3.

Defendants, STEVE ATKINSON and LARRY GATLIN, are individual adult resident citizens of DeSoto County, Mississippi, and are sued individually and in their official capacities and may be served with process at 311 West South Street, Hernando, Mississippi 38632.

4.

This Court has federal question jurisdiction under 28 U.S.C. § 1331 and civil rights jurisdiction under 28 U.S.C. § 1343 over Plaintiffs' claims for violation of their rights under the United States Constitution. This Court also has supplemental jurisdiction over Plaintiffs' state law claims.

5.

All three Plaintiffs worked as jailers for the DeSoto County Sheriff's Department.

6.

On December 28, 2004, Victor Dockery was brought to the DeSoto County Jail on a public drunk charge. He became loud and belligerent after being placed in a holding cell. Sgt. Steven Winters entered the cell and began beating Dockery. Plaintiffs Hambrick and

Williams heard the commotion and entered the holding area. They observed Dockery backed up in a corner. Sgt. Winters was hitting him with his fists. Plaintiff Williams entered the cell and stepped between Dockery and Sgt. Winters. She placed handcuffs on Dockery and told Sgt. Winters "that's enough." Sgt. Winters then grabbed Dockery and slammed his head into the holding cell wall.

7.

The Plaintiffs' duties did not include reporting crimes in the jail. It was understood in the jail that reporting wrongdoing by members of the department could result in termination. There were many occasions of illegal conduct, including use of unnecessary force by members of the department, including ranking officers. Nothing had been done about previous reports of criminal behavior by members of the department, so Plaintiffs understood they were not to report such activity.

8.

The Plaintiffs were never informed that they were to report wrongdoing and criminal behavior on the part of members of the department, nor were they shown any handbook or policy which required them to do so.

9.

On one occasion, Plaintiff Tammy Williams actually reported a sergeant taking drugs off of a prisoner and not logging it in. She was almost fired because she reported it. Chief Mitchell informed officers that what happened in the jail stayed in the jail. Mitchell stated that it was a corrections facility, and that they handled the law in their own way on the inside of the jail. Jail employees were scared to report wrongdoing that they witnessed. Plaintiffs

were aware that Alice Cox, another jailer, was fired two months before for reporting a beating by the same officer.

10.

The Plaintiffs, as citizens know the difference between right and wrong. As citizens, they knew that the way Officer Winters was assaulting inmates was wrong. They, therefore, did their duties, as citizens, and reported the incident. They made the report through the chain of command, because they did not want to be fired for not using the chain of command.

11.

Plaintiffs Hambrick and Williams reported the incident to their Supervisor, Plaintiff Russell. Plaintiff Russell told Plaintiffs Hambrick and Williams to report the incident to Defendant Gatlin. When they could not get in touch with Defendant Gatlin, Plaintiffs Hambrick and Williams contacted Captain Brenda Stewart who came to the jail and told them that she had contacted Defendant Atkinson and for them to write out a report and place it under his door.

12.

Plaintiff Hambrick wrote a detailed report describing how she and Plaintiff Williams observed Sgt. Winters assaulting Dockery, how Plaintiff Williams intervened and how Sgt. Winters slammed Dockery's head into the cell wall after he was restrained. Plaintiff Hambrick placed the report under Defendant Atkinson's door as they left work that morning.

13.

Later that morning, December 29, 2004, Plaintiffs Hambrick and Williams were called and told to report to Commander James Dunn. They reported to him and he conducted a

taped interview with them. The information they gave to Defendant Dunn was no different than what Plaintiff Hambrick had put in her report.

14.

At some point during that day, Defendant Atkinson called Defendant Riley and told him that Sgt. Winters was again being accused of assaulting an inmate, this time by the Plaintiffs. Defendant Atkinson told Defendant Riley that he wanted the Plaintiffs terminated. Defendant Riley gave Defendant Atkinson permission to arrange for the Plaintiffs' termination.

15.

When Plaintiffs reported to work that afternoon at 6:00, Defendants Atkinson and Gatlin set in motion a plan whereby they were able to fabricate frivolous and false charges against the Plaintiffs. The Defendants used Officer Nathan Pennington to set up Plaintiff Hambrick. He worked at her assigned duty station from 6:00 p.m. until midnight. During this time, he failed to properly maintain the log. He was promoted to Sergeant the next week.

16.

Around 3:00 a.m., all of the Plaintiffs were told to report to Defendants Atkinson and Gatlin. They reported to them separately and were given formal notice of the charges that would result in their terminations. Plaintiff Hambrick was accused of failing to make entries in a log book at a duty station other than where she was working; Plaintiff Williams was accused of failing to perform a function that was never performed at her duty station; and Plaintiff Russell was accused of sleeping for almost an hour at his duty station. All three Plaintiffs were sent home after being told to report back to work for disciplinary hearings at

10:00 a.m. that morning, December 30, 2004.

17.

That morning, the Plaintiffs were taken before the Supervisory Board, a group of ranking officers for a hearing. Before every board hearing, all the board members are told what the result will be by either Chief Deputy Charles Brown or Defendant Riley himself. Defendant Riley was always kept informed of these and other matters by Brown. During Plaintiffs' hearings, they were not given an opportunity to speak or defend themselves. Plaintiffs Williams and Hambrick were told to "shut-up" when they tried to explain how they were being wrongfully accused. Plaintiff Hambrick was called a liar.

18.

According to the DeSoto County Sheriff's Department Operations Policy and Procedures Manual, Defendant Riley had final authority over all terminations.

19.

Defendants Atkinson and Gatlin are liable to Plaintiff Hambrick for retaliation. They devised a scheme to terminate Plaintiff Hambrick because she engaged in First Amendment free speech. Atkinson and Gatlin arranged for Officer Nathan Pennington to work where Plaintiff Hambrick was assigned to work. Officer Pennington failed to make entries into a log book. Plaintiff Hambrick was then charged with failing to maintain the log book that Pennington had failed to maintain. Defendant Atkinson presented this contrived charge against Hambrick to the Supervisory Board and would not allow Plaintiff Hambrick to explain during the hearing that she was not working at that duty station during the time the log book was improperly maintained.

20.

Defendants Atkinson and Gatlin are liable to Plaintiff Williams for retaliation. They accused Plaintiff Williams of failing to perform a function that was never performed at her duty station because she engaged in First Amendment free speech. Defendant Atkinson presented this false charge to the Supervisory Board.

21.

Defendants Atkinson and Gatlin are liable to Plaintiff Russell for retaliation. They accused Plaintiff Russell of sleeping at his duty station because he engaged in First Amendment free speech. Defendant Atkinson presented this false charge to the Supervisory Board.

22.

Defendants are liable to Plaintiffs for violation of the First Amendment because they caused Plaintiffs' termination in retaliation for properly exercising their free speech right by truthfully reporting criminal conduct.

23.

Defendants are liable to Plaintiffs for violation of rights to equal protection of the laws under the Fourteenth Amendment. Defendants Riley, Atkinson and Gatlin are liable to Plaintiffs because they caused them to be discharged from their employment because they truthfully reported illegal conduct, thus violating Mississippi law. All Defendants are also liable to the Plaintiffs for intentional interference with the Plaintiffs' employment.

24.

By either directing the actions of his subordinates or being grossly negligent in controlling his subordinates, Defendant Riley, individually and in his official capacity, caused Plaintiffs to be fired because they truthfully reported an assault. These are actions by the Sheriff, individually and in his official capacity, which violated Plaintiff's First Amendment rights and their rights under state law to be free from malicious interference with employment and to be free from discharge in violation of public policy.

25.

Defendants Riley, Atkinson and Gatlin, acting in concert, engaged in a conspiracy designed to ensure that the Supervisory Board would recommend Plaintiffs' termination because they had exercised their First Amendment rights by truthfully reporting that a fellow officer had assaulted a jail inmate. The conspiracy had the object and effect of interfering with Plaintiff's employment and causing their termination in violation of public policy.

26.

All Defendants are liable to Plaintiffs for violation of free speech rights under the United States Constitution, Amendment One.

27.

All Defendants are liable to Plaintiffs for violation of petition rights under the United States Constitution, Amendment One.

28.

The Plaintiffs have been treated differently from persons who did not report

misconduct. There is no rational basis for the distinction. Plaintiffs have thus all been denied equal protection of the laws in violation of the Fourteenth Amendment.

29.

The individual Defendants have maliciously interfered with Plaintiffs' employment in violation of state law.

30.

All Defendants are liable to Plaintiffs for violation of public policy, because Plaintiffs were discharged because they reported a crime.

31.

All Plaintiffs have suffered lost wages and mental anxiety and stress.

32.

The actions of the Defendants are outrageous, such that punitive damages are due.

PRAYER

Plaintiffs pray for actual and punitive damages in an amount to be determined by a jury. Plaintiffs also pray for reinstatement to their positions and for reasonable attorneys' fees and costs.

Respectfully submitted,

WAIDE & ASSOCIATES, P.A.

BY: /s/ Luther C. Fisher, IV

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CERTIFICATE OF SERVICE

I, Luther C. Fisher, IV, attorney for Plaintiffs, do hereby certify that I have this day electronically filed the above and foregoing with the Clerk of the Court, utilizing the ECF system, which sent notification of such filing to the following:

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THIS the 8th day of September, 2008.

/s/ Luther C. Fisher, IV
LUTHER C. FISHER, IV