FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

2007 AUG 13 P 2:49

CLERK, U.S. DISTRICT COURT
NORFOLK, VIRGINIA

SHERON MONTREY,
Plaintiff,

v.

Case No.: 3:07CV476

COMMONWEALTH OF VIRGINIA,
VIRGINIA DEPARTMENT OF CORRECTIONS,
Central Virginia Correctional Unit #13, f/k/a
Pocahontas State Correctional Center,
Tammy Estep, acting in her
official and individual capacity
Marilyn Hill, acting in her official and
Individual capacity, and
Bobby G. Brown, Jr., acting in his official
and individual capacity,

Defendants.

COMPLAINT

GENERAL ALLEGATIONS

1. Plaintiff is a resident of the Commonwealth of Virginia and a citizen of the United States of America. At all times relevant herein, she was an inmate at the Pocahontas State Correctional Facility ("Pocahontas") in Chesterfield County, Commonwealth of Virginia.

2. Defendant, Virginia Department of Corrections ("DOC") is an agency of the Commonwealth of Virginia having responsibility for the incarceration, care, and protection of inmates, including Plaintiff, at the Pocahontas State Correctional Center ("Pocahontas"), now operated as the Central Virginia Correctional Unit #13. At all times herein the DOC acted by and through its

officers and employees, including but not limited to Defendants Hill, Estep, and Brown in the official capacities of each.

3. Defendant, Tammy Estep, was at all relevant times the Superintendent at Pocahontas with primary supervisory responsibility over the facility, its employees and inmates. At all times relevant, Estep was the immediate supervisor of Defendant, Marilyn Hill. In her supervisory capacity, Defendant Estep was further responsible for establishing the policies of the DOC at Pocahontas, and for training and supervising Defendants Hill, Brown, and the other employees at the facility. She was further responsible for establishing the customs and practices with regard to sexual contact and conduct between employees and inmates, including the Plaintiff. Defendant Estep is sued in her official and individual capacities.

4. Defendant, Marilyn Hill, is a resident of the Commonwealth of Virginia and at all times relevant herein was employed as a Major and Chief of Security at Pocahontas, and was primarily responsible for supervising all of its uniformed employees. In her supervisory capacity, Defendant Hill was the immediate supervisor of Defendants Brown, and all subsidiary officers and employees at Pocahontas. She was further responsible for enforcing the policies of the DOC at Pocahontas, and for training and supervising Defendants Brown, and the other employees at Pocahontas. She was further responsible for establishing the customs and practices with regard to sexual contact and conduct between employees and inmates, including the Plaintiff. Defendant Estep is sued in her official and individual capacities.

5. Defendant, Bobby G. Brown, Jr., is a resident of the Commonwealth of Virginia and at all times relevant herein was employed as a Lieutenant at Pocahontas with supervisory responsibility over subsidiary officers, and the inmates. In his supervisory capacity, Defendant Brown was responsible for establishing the customs and practices with regard to sexual contact and conduct between employees and inmates, including the Plaintiff. Brown was further responsible for delegating work assignments to the inmates, and had direct supervisory responsibility over the Plaintiff. Defendant Brown is sued in his official and individual capacities.

6. The Defendants, each of them, had a special relationship with DOC inmates, including the Plaintiff, and had a constitutional and statutory duty to protect such inmates, including the Plaintiff, from injury by preventing unlawful sexual conduct and contact with inmates under their custody.

7. At all times relevant herein, each of the Defendants was aware that sexual contact by DOC officers and employees with inmates, including the Plaintiff, was unlawful and constituted a criminal offense.

8. Plaintiff has given notice of the exhaustion of her administrative remedies in compliance with Va. Code §8.01-195.6 and §8.01-243.2.

ALLEGATIONS SPECIFIC TO PLAINTIFF, SHERON MONTREY

9. Plaintiff re-alleges Paragraphs 1 through 8 as though set forth in full herein.

10. Plaintiff Sheron Montrey was incarcerated at Pocahontas between June, 2003 and October, 2005.

11. While at Pocahontas, Ms. Montrey was under the direct supervision of Defendant, Bobby G. Brown, Jr. Brown had specifically requested that Montrey serve on his work crew, and told her that if she chose to work with him she would receive a pay increase. Brown further told her that her current job was in jeopardy, which allegation was false. Ms. Montrey derived her entire income from her state paycheck.

12. Shortly after Montrey began working for him, Brown made flattering comments to her about her appearance, and told Montrey's fellow inmates that he wanted to have sexual intercourse with her.

13. Brown made continuous excuses to have Montrey in a position where she was alone with him, such as working within his office with no additional supervision.

14. Over a course of several months, Defendant Brown coerced Montrey into engaging in sexual contact, including oral sex and intercourse, with the Plaintiff, and impregnated her. Much of this conduct was witnessed by other inmates, including Jacquelyn Dunbar and Cynthia Haskett, both of whom were on Brown's work crew.

15. Defendant Brown unlawfully sexually assaulted Ms. Montrey, and verbally harassed her. He ordered her to write love letters to him, and threatened her with punishment should she not comply.

16. On at least one occasion Brown did punish Montrey by shortening her work hours and the work hours of her fellow inmates on Brown's work crew because she failed to write him love letters and otherwise submit to his

sexual advances. This cost Montrey and the other inmates a loss of income and directly placed Montrey in fear that her fellow workers would commit acts of retaliation and violence against her.

17. Brown eventually forced Montrey to engage in sexual acts with him on a daily basis. Montrey pleaded with him to use a contraceptive device to prevent the possible transmission of disease, as well as pregnancy, which request Brown refused.

18. Defendant Brown ordered the Plaintiff to keep her pregnancy a secret until such time as he would be able to retire from the DOC with full benefits.

19. Brown continued to sexually assault Montrey during her pregnancy.

20. Defendant Brown encouraged and unlawfully covered up violations of facility rules by Montrey and promised to supply Montrey with food, to deposit money into her prisoner account, to provide her with a place to live on her release date, and to assist in locating her disabled sister, from whom Montrey was estranged. These illusory promises were entirely inducements for sexually victimizing Montrey, and to guarantee her silence.

21. As an inmate at Pocahontas, Montrey could not consent to the unlawful sexual conduct and contact of her by Defendant Brown, nor report it to other officers and authorities at the facility.

22. At all times relevant herein, Defendant Brown had considerable influence at the facility, and in fact, obtained his employment through Superintendent Estep, who was his personal friend and acquaintance.

23. Montrey was thus fearful that if she rejected the unlawful sexual conduct and contact of Brown, or reported it, Brown would retaliate and punish her by placing her in administrative segregation and further jeopardize her release or transfer from the facility. Brown was in control of Montrey's paycheck, and had the authority to affect her security level and good time credits.

24. Montrey was furthermore in great fear of retaliation and harassment by other inmates of the facility who were aware of Brown's sexual relationship with her.

25. Donald Dyer, Grounds Supervisor and a colleague of Defendant Brown's who was aware of his sexual harassment of the Plaintiff, offered to have Montrey transferred to his work crew, which request Defendant Brown denied, and was ratified by Defendants Estep and Hill.

26. All sexual contact and intrusion Montrey had with Defendant Brown was under the influence of fear of punishment. Brown informed her that he was best friends with Defendant, former Superintendent Tammy Estep, and that he had come to Pocahontas as a personal friend of hers, and that his word would instantly be believed over Montrey's.

27. Plaintiff attempted to secure new employment through the DOC, which attempt was blocked by Defendant Brown, who refused to release her from his work crew.

28. Due in large part to Defendant Brown's own indiscretions and communications with other inmates and Pocahontas employees, the sexual conduct and contact by Defendant Brown of Montrey became common

knowledge at the facility. Regardless, neither Defendant Hill, who was Brown's supervisor, nor Defendant Estep, the Superintendent of the facility, took any action against Brown until her pregnancy was reported to them by another inmate.

29. Before, during, and after Defendant Brown's unlawful sexual conduct and contact with Montrey, Defendants DOC, Estep, Hill, and other officers and employees of Pocahontas and the DOC knew or should have known of Brown's history of illicit and illegal conduct with inmates and others and that he was continuing such conduct. Despite this knowledge, Defendants DOC, Estep, Hill, and other officers and employees of the DOC at Pocahontas and elsewhere intentionally covered up and took no action to stop such conduct by Brown or to protect inmates, including Montrey, from such conduct and injury by Brown.

30. In September, 2004, Joan Carter, an inmate of the Pocahontas facility, sent a letter to Defendant Estep and the DOC's Internal Affairs Unit complaining that Defendant Brown would comment about her breasts, watch her sleep in her bunk, and come to work reeking of alcohol, among other transgressions of an illicit and sexually harassing nature. As a direct consequence of making this complaint, Defendants DOC, Hill and Estep ordered that Carter be placed into administrative segregation as punishment.

31. No one from the DOC Internal Affairs Unit interviewed Ms. Carter about her grievance against Defendant Brown until 2005. Despite having actual knowledge of this grievance, the DOC and its employees and supervisors at

Pocahontas, including Defendants Hill and Estep, took no action to discipline Brown or restrict his contact with female inmates.

32. It was common knowledge among the inmates, officers and employees of the DOC at Pocahontas that Defendant Brown would frequently work at his post while visibly intoxicated, and yet, neither this behavior nor his sexual innuendos and misconduct with regard to Sheron Montrey and other inmates resulted in any discipline.

33. Defendants Hill and Estep allowed Brown to access all areas of the facility, including prohibited areas, such as Ms. Montrey's dormitory, where he would sit with her for hours. Brown would also invite Montrey and her fellow inmates, Jacquelyn Dunbar and Cynthia Haskett, to unauthorized picnics on the prison grounds, which activities were unsupervised and uncensored by anyone at the Pocahontas facility, including Defendants Hill and Estep.

34. Defendant Brown would have sexual intercourse with Montrey in his office, which area was unsupervised and unchecked by anyone at the Pocahontas facility, including Defendants Hill and Estep.

35. Said Defendants and other officers and employees of the DOC at Pocahontas and elsewhere knew that inmates, including Plaintiff, faced substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it, and by covering up and giving tacit approval of Brown's conduct.

36. In October, 2005, a fellow inmate, Jacqueline Dunbar, reported to Defendant DOC through its medical department that Ms. Montrey was pregnant.

37. Due to Montrey's reluctance to identify the father of her unborn child, which hesitation was born out of fear for her safety, Defendant Estep ordered that Montrey be placed in administrative segregation as punishment. Montrey was only released when Defendant Brown came forward and confirmed his paternity.

38. On or about October 7, 2005, Defendants DOC, Estep and Hill transferred Montrey to the Fluvanna Women's Correctional Center.

39. Despite having had actual and constructive knowledge of Brown's relationship with Montrey and other inmates, Defendants DOC, Hill and Estep did not call in the Internal Affairs Unit to investigate the matter until after the fact of Montrey's pregnancy was discovered and disseminated throughout the prison to its employees and inmates.

40. The transfer of Plaintiff to Fluvanna resulted in a loss of her income.

41. The other inmates at Fluvanna knew of Montrey by reputation, and they subjected her to harassment, humiliation, and placed her in fear for her physical safety and the safety of her unborn child.

42. In February, 2006, Plaintiff gave birth to her child, and friends of Ms. Montrey's were given temporary guardianship of the infant girl.

43. The Chesterfield County Office of the Commonwealth Attorney brought charges against Brown for engaging in carnal knowledge with an inmate, and in July, 2006, Brown entered a guilty plea, and was sentenced to five (5) years imprisonment with all but six (6) months suspended, and further was ordered to pay $66,917.28 to the Commonwealth as restitution for medical

expenses related to Montrey's childbirth, court costs, and related expenses. Montrey was not allocated any restitution. Brown was released in January, 2007.

44. On or about April 4, 2006, Warden Barbara J. Wheeler, Warden of the Fluvanna Women's Correctional Center, granted Ms. Montrey an extension of time to file an administrative grievance, which process she completed.

45. On or about August 3, 2006, Ms. Montrey filed her Affidavit of Exhaustion of Administrative Remedies in accordance with Va. Code §8.01-195.6 and §8.01-243.2.

46. Plaintiff was released in March, 2007 after serving the maximum time on her sentence, and she resides with her child and the child's guardians in Virginia.

COUNT I: 42 U.S.C. §1983; EIGHTH AMENDMENT
ALL DEFENDANTS

47. Plaintiff re-alleges Paragraphs 1 through 45 as though set forth in full herein.

48. The acts and omissions of each Defendant, set forth above, were objectively serious as they were incompatible with cruel and unusual contemporary standards of decency.

49. The acts and omissions of the Defendants regarding the sexual conduct and contact of inmates, including Ms. Montrey, by the Pocahontas prison officers and officials, including Defendant Brown, and the policy, custom, pattern or practice thereon, as set forth above, have no legitimate law enforcement or penological purpose.

50. The acts and omissions of each Defendant were committed with a culpable state of mind in that they were knowledgeable at all times that the sexual conduct and contact by Defendant Brown on inmates, including Sheron Montrey, was unlawful, that the cover-up of such conduct and contacts was unlawful, that the aforesaid policy, custom, pattern or practice regarding the same was unlawful and unconstitutional, and that such conduct and contacts, the cover-up of such conduct and contacts, and the policy, custom, pattern or practice of the same would cause, or would likely cause injury to the inmates, including Montrey.

51. Montrey, at all times during her incarceration, possessed a right under the Eighth Amendment of the United States Constitution to be secure in her bodily integrity, and to be free from excessive force, unnecessary and wanton infliction of pain or cruel and unusual punishment. The acts and omissions of the Defendants set forth above constituted an invasion of Montrey's bodily integrity, excessive force, and unnecessary and wanton infliction of pain and risks of disease and other health risks attendant to pregnancy, upon Sheron Montrey.

52. The acts and omissions of the Defendants set forth above were committed with deliberate indifference or reckless disregard toward Montrey's constitutional rights, health and safety.

53. As a direct and proximate result of the acts and omissions of the Defendants alleged herein, Plaintiff Montrey suffered and continues to suffer severe injury, including but not limited to extreme humiliation and embarrassment,

fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, economic injury due to the cost of child care, and deprivation of constitutional rights and privileges, including those under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

COUNT II: 42 U.S.C. §1983; FOURTH, FIFTH, AND FOURTEENTH AMENDMENTS-ALL DEFENDANTS

54. Plaintiff re-alleges Paragraphs 1 through 52 as though set forth in full herein.

55. The acts and omissions of the Defendants intruded or caused the intrusion into the realm of personal privacy, bodily security, and integrity of Sharon Montrey.

56. The aforesaid intrusions violated the constitutional rights of Plaintiff Montrey secured by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

57. As a direct and proximate result of the acts and omissions of the Defendants alleged herein, Plaintiff Montrey suffered and continues to suffer severe injury, including but not limited to extreme humiliation and embarrassment, fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, economic injury due to the cost of child care, and deprivation of constitutional rights

and privileges, including those under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

COUNT III: 42 U.S.C. §1983 ; FAILURE TO SUPERVISE DEFENDANTS VIRGINIA DEPARTMENT OF CORRECTIONS, MARILYN HILL, AND TAMMY ESTEP

58. Plaintiff re-alleges Paragraphs 1 through 56 as though set forth in full herein.

59. Defendants DOC, Hill, and Estep, each of them, failed to adequately screen, investigate, supervise or discipline Defendant Brown for his sexual improper, inappropriate and unlawful sexual conduct and contacts with inmates, including Sheron Montrey.

60. Defendants DOC, Hill and Estep had prior notice as early as October, 2005 that Brown had made sexual innuendos to inmate Joan Carter, the investigation of which did not result in any discipline of Brown or restriction of his contact with female inmates. In fact, Brown was in charge of an entire work crew of female inmates, including Sheron Montrey, at the time of the allegations set forth herein.

61. Defendants DOC, Hill and Estep, each of them, failed to transfer or remove Defendant Brown from Pocahontas or suspend or terminate Defendant Brown's employment with the Virginia Department of Corrections at any time prior to the discovery of Sheron Montrey's pregnancy, despite having actual and constructive knowledge of his sexual misconduct and assault on Ms. Montrey.

62. As a direct and proximate result of the acts and omissions of Defendants DOC, Hill and Estep, Plaintiff suffered and continues to suffer severe injury,

including but not limited to extreme humiliation and embarrassment, fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, economic injury due to the cost of child care, and deprivation of constitutional rights and privileges, including those under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

COUNT IV: 42 U.S.C. §1983; MONELL
DEFENDANT, VIRGINIA DEPARTMENT OF CORRECTIONS

63. Plaintiff re-alleges Paragraphs 1 through 62 as though set forth in full herein.

64. Defendant DOC, by and through Defendants Hill, Estep, Brown, and other officials, officers and employees of the DOC, as set forth above, implemented or executed the aforesaid unconstitutional policies, customs, patterns, or practices regarding the sexual conduct and contact by officers, officials and employees, including Defendant Brown, with inmates, including Sheron Montrey.

65. As a direct and proximate result of the acts and omissions of the Defendant alleged herein, Plaintiff Montrey suffered and continues to suffer severe injury, including but not limited to extreme humiliation and embarrassment, fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, economic injury due to the cost of child care, and deprivation of constitutional rights

and privileges, including those under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

COUNT V; BATTERY
DEFENDANT, BOBBY G. BROWN, JR.

66. Plaintiff incorporates by reference paragraphs 1 through 65 as though the same were set forth fully herein.

67. Defendant, Eugene A. Mason committed battery against the Plaintiff by intentionally and repeatedly sexually assaulting the Plaintiff, which sexual assaults were neither consented to, excused or justified, and were unlawful.

68. As a direct and proximate result of Brown's repeated sexual battery of Plaintiff, she suffered and continues to suffer severe injury, including but not limited to extreme humiliation and embarrassment, fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, and economic injury due to the cost of child care,

COUNT VI; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
DEFENDANT, BOBBY G. BROWN, JR.

69. Plaintiff incorporates by reference paragraphs 1 through 68 as though the same were set forth fully herein.

70. Defendant, Bobby G. Brown, Jr., intentionally and willfully committed unlawful sexual harassment and battery of the Plaintiff.

71. Defendant Brown knew or should have known that emotional distress was likely to result to the Plaintiff as a result of his unwelcome and unlawful actions.

72. Defendant Brown's unlawful harassment and battery of the Plaintiff was outrageous and intolerable in that it offends against the generally accepted standards of decency and morality.

73. Plaintiff in fact suffered severe emotional and psychological injury requiring medical treatment, as a direct and proximate result of Defendant's.

COUNT VII; NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS ALL DEFENDANTS

74. Plaintiff incorporates by reference paragraphs 1 through 73 as though the same were set forth fully herein.

75. Defendant, Bobby G. Brown, Jr., negligently and recklessly committed sexual harassment and battery of the Plaintiff, resulting in her pregnancy.

76. The fact that Defendant Brown was repeatedly sexually assaulting the Plaintiff was known to, or should have reasonably been known to Defendants DOC, Hill and Estep, who at all times were charged with supervisory responsibility of Brown.

77. Defendants knew or should have known that emotional distress was likely to result to the Plaintiff due to Brown's sexual assault of her.

78. Defendant Brown's unlawful harassment and battery of the Plaintiff was outrageous and intolerable in that it offends against the generally accepted standards of decency and morality.

79. Plaintiff in fact suffered severe emotional distress, requiring medical treatment, as a direct and proximate result of Defendants' collective actions and omissions.

COUNT VII; NEGLIGENT RETENTION
DEFENDANTS DOC, HILL, AND ESTEP

80. Plaintiff incorporates by reference paragraphs 1 through 79 as though the same were set forth fully herein.

81. Defendants DOC, Hill and Estep negligently continued to employ Defendant Brown in a supervisory capacity despite having actual and constructive knowledge that Brown was repeatedly sexually assaulting the Plaintiff.

82. Defendants DOC, Hill and Estep negligently continued to employ Defendant Brown in a supervisory capacity despite having actual and constructive knowledge that Brown had sexually harassed another inmate, Joan Carter, who had formally complained about his sexually inappropriate behavior towards her.

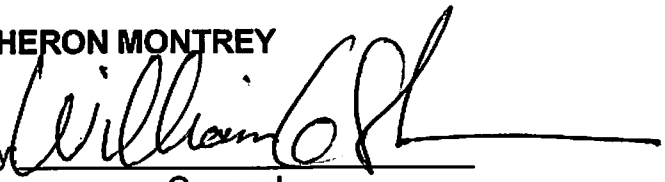
83. Defendants DOC, Hill and Estep negligently continued to employ Defendant Brown in a supervisory capacity despite having actual and constructive knowledge That Brown had the propensity to harm inmates under his control.

84. As a direct and proximate result of the acts and omissions of the Defendant alleged herein, Plaintiff suffered and continues to suffer severe injury, including but not limited to extreme humiliation and embarrassment, fear of serious bodily injury or death from attacks by other inmates, fear of physical injury and assault and battery by other inmates, medical expenses, injury to her reputation, severe emotional and psychological injury, economic injury due to the cost of child care.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, general and punitive damages, in the amount of ten million dollars ($10,000,000.00), including pre and post-judgment interest, and costs of suit, including but not limited to expert witness fees and attorney's fees.

TRIAL BY JURY IS DEMANDED.

SHERON MONTREY

By 

Counsel