

WILLIAM L. LEE, et al.,)
)
Plaintiffs - Appellants,)
)
vs.)
)
)
HARRY K. SINGLETARY, et al.,)
)
Defendants - Appellees.)
)

07022481;1

CERTIFICATE OF INTERESTED PERSONS

Randall C. Berg, Jr., Esq., Counsel for Plaintiffs - Appellants

Lawrence W. Blackwell, Plaintiff - Appellant

Alton P. Christie, Defendant - Appellee

Scott Edward Clodfelter, Esq., Counsel for Defendants - Appellees

Honorable Robert L. Hinkle, Judge

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William L. Lee, Plaintiff - Appellant

Honorable Maurice N. Paul, Judge

James J. Quigley, Plaintiff - Appellant

Michael Rathmann, Defendant - Appellee

Honorable William Stafford, Judge

Honorable William C. Sherrill, Jr., Magistrate Judge

Peter M. Siegel, Esq., Counsel for Plaintiffs - Appellants

Harry K. Singletary, Defendant - Appellee

James Upchurch, Defendant - Appellee

William L. Lee, et al. v. Harry K. Singletary, et al.

Case No. 97-3428

Richard E. Ward, Defendant - Appellee

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CORPORATE DISCLOSURE STATEMENT

Florida Justice Institute, Inc., Counsel for Plaintiffs-Appellants

STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument. They believe oral argument will assist the Court to obtain a better understanding of the factual and legal basis of the claim Appellants seek to present to the Court.

STATEMENT REGARDING TYPE SIZE AND STYLE

This brief is printed in 14 point CG Times type.

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STATEMENT OF JURISDICTION

The district court entered final judgment in Appellees' favor after a bench trial. This appeal is authorized by 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Whether the use of a handcuff cover (the “black box”) when an inmate is transported in a secure prison van from one prison to another prison is so arbitrary, capacious and unreasonable as to amount to Cruel and Unusual Punishment when the same trip, if made in a prison bus, is made without the use of the black box or any other form of restraint?

STATEMENT OF THE CASE

1. Course of Proceedings and Disposition in the Court Below

This is a class action for declaratory and injunctive relief in which the plaintiffs seek to stop the routine use of a handcuff cover, generally known as the “black box,” as part of the restraints placed on inmates when they are transported from one prison to another prison in a secure prison van.

This action began with the filing of a pro se case by William L. Lee on June 2, 1996. R1-2. Thereafter, two other inmates filed similar actions, the first captioned Lawrence W. Blackwell v. Harry K. Singletary, et al., Case No. TCA 93-40176-MMP, filed June 21, 1993, and the second captioned James J. Quigley v. Harry K. Singletary, et al., Case No. TCA 93-40176-MMP, filed August 13, 1993.

The Magistrate Judge held a consolidated evidentiary hearing on October 26, 1994. Upon trying on the black box, the Magistrate Judge found that it “caused the handcuffs to press sharply against the upper inside of the wrists, causing moderate but significant pain, particularly while seated.” R1-43-2. Plaintiffs’ Motion for Appointment of Counsel was, therefore, granted. R1-41. After appearance of counsel, R1-50, the Court consolidated the three cases, designating the Lee case as the lead case. R1-53.

A Consolidated Amended Complaint was filed on May 16, 1996 seeking only declaratory and injunctive relief to bar the defendants “from routinely using the black box without any consideration being given to the security concerns posed by a specific inmate.” R2-80-16. The Amended Complaint alleged a class consisting of “all persons, other than death-sentenced persons, who are currently in the custody of the Florida Department of Corrections, or who will

come into the custody of the Florida Department of Corrections, and who will be restrained with the black box security device while being transported between one secure facility and another secure facility in a transport van operated by employees of the Florida Department of Corrections.” R2-80-4. After Class Certification, R2-89, a bench trial was held on April 16, 1997. Judgment was entered for the defendants, R3-145, with the Court rendering an opinion from the bench, R4-284 to 293, and a written Final Order. R3-144.

This appeal followed. R3-157.

2. Statement of the Facts

The Department of Corrections uses three kinds of vehicles to transport inmates, 36 passenger buses, 50 passenger buses, and 15 passenger vans. R4-78. The typical van (R4-28, 29) and typical bus are shown in Plaintiffs’ Composite Exhibit 18. Both vans and buses are radio-equipped. R3-143, Deposition of Alton Christie, p. 27, read by the Court in lieu of live testimony. R4-142. Both carry two correctional officers, one being the driver. On both buses and vans, at least one of the correctional officers is armed; in a van, the driver has a stun gun and the other officer a pistol. R4-220.

It is not apparent, and there is nothing to in the record to indicate that an inmate can do something to escape from a van that he can not do to escape from a bus. R4-82. No inmate has ever successfully escaped from a bus. R4-248. Likewise, absent outside assistance,¹ no inmate

1. There have been two van-related escapes. One involved a van which was met at its destination by an outside party with a weapon. The other involved an inmate in a wheelchair who, when removed from the van and placed on the sidewalk, jumped out of his wheelchair and
(continued...)

has ever escaped from a van.² R4-82; R4-249. There has never been a situation where an inmate, in either a van or a bus, has been able to kick out a window and escape. R4-84; R4-98. There has never been an incident where an inmate has tried to breach the integrity of either a van or a bus, R4-100, or a situation where inmates were able to take over a bus, R4-103, or a van. R4-104.

Defendants' witnesses disagree among themselves about whether there is a significant difference in security between vans and buses. According to Colonel Christie, a bus is not necessarily a more secure means of transport than a van. R3-143, Christie Deposition, p. 13. However, according to Stan Czerniak, the buses are significantly more secure. R4-212 - 215.³ Plaintiffs' expert testified that while the buses "are probably more secure," the "vans are also secure." R4-162-164.

Inmates transported by bus wear no restraints. R4-82; R4-222. On the other hand, inmates transported by van usually are restrained with leg irons, waist chain, handcuffs and the

1. (...continued)
ran off. R4-99.

2. The Department of Corrections requires that prior to a trip from prison to prison or to any other location, an inmate be strip-searched. R4-79. However, at least at some prisons, the rule is only applied to van trips, and not to bus trips, where inmates may only be pat-searched. R3-143, Christie Deposition, p. 22. The vans and buses, as well as any inmate property, are also searched before embarking on a trip. Christie Deposition, p. 24-25.

3. One of the reasons advanced by Mr. Czerniak in support of his testimony that the vans were less secure than the buses was the greater number of van accidents. However, no inmate has ever escaped as the result of a van accident. R4-249. Moreover, if the security of the van was breached in an accident, the black box would not prevent an inmate from walking away. R4-250.

black box. Plaintiffs' Exhibit 15, Request for Admissions 1. Any prison which transported close custody inmates in a van without restraints would be in violation of the Department's Security Operation Manual. R4-200.

There are two authorized methods of restraint to be used when transporting inmates by van. One is leg irons, waist chain, handcuffs and black box and the other is leg irons, and a waist chain with side cuffs. R4-74; R4-197. Which method to use is a local decision left to the discretion of the Chief Correctional Officer at each prison. R4-75, 77.⁴ Things to consider include the inmate, the inmate's record, the destination and the type of transport vehicle, R4-81, as well as the actual equipment available at each prison. R4-92. And the decision as to what type of equipment to have is left to the discretion of the Superintendent of each prison. R4-94.

The black box, properly known as a handcuff cover, is a device which fits over the chain which joins the handcuffs, and is secured in place by having the waist chain pass through it. It creates a rigid unit, which holds the prisoner's wrists in a fixed position adjacent to the waist chain and prevents access to the handcuff key hole. R4-153. Its purpose is security. By covering the keyhole, it prevents the prisoner from either picking the lock or using a stolen handcuff key.

4. As written, these alternatives only apply when an inmate is being transported to a non-secure area, such as an outside medical appointment or a court appearance. Plaintiffs' Exhibit 12. For prison to prison transfers, the rules of the Department of Corrections do not mandate, or for that matter, even mention the use of the black box. Section 33-7.009(14), F.A.C. However, as a matter of practice, the Department of Corrections deems these rules to apply whenever a van, as opposed to a bus, is used to transport an inmate.

There is also disagreement over whether the two methods of restraint are equally effective. No prisoner wearing a black box has ever been able to remove his handcuffs. R4-80. Likewise, no inmate restrained with a waist chain and side cuffs has ever been able to remove his restraints. R4-80; R4-251. There are no studies to indicate that security is actually enhanced by use of the black box. R4-79. Correctional Officer Chief Charles Padgett testified by way of deposition that he had noticed no difference in terms of security issues or concerns before or after the use of the black box. R3-143, Padgett Deposition, p. 16, read by the Court in lieu of live testimony. R4-142. During his twenty years of experience (Deposition, p. 4), he never experienced a situation where an inmate was able to get out of his cuffs or an experience where an inmate, or a group of inmates, was able to take over a van. Deposition, p. 21. Colonel Christie, with nearly 18 years of experience, testified he was unaware of any inmate who managed to escape his handcuffs, when either the black box or the waist chain with side cuffs was used. R3-143, Christie Deposition, p. 26. Likewise, Richard Kirkland, a former security coordinator for the Florida Department of Corrections, and a Regional Director at the time of his testimony, R4-85, testified that both methods were equally effective. R4-96. Eugene Miller, plaintiffs' expert, described the methods as comparably effective. R4-165.

On the other hand, Stan Czerniak, the current security administrator for the Department of Corrections, testified that the use of a waist chain with side cuffs is "clearly not as secure." R4-209. He testified at length about the need for the black box. As part of his testimony, he relied on a publication of the America Correctional Association entitled Guidelines for the Development of a Security Program, R4-227, also known as "The Security Bible." R4-228. But

on cross he conceded that the publication suggests selective use of the black box, but only for high risk prisoners. R4-236.

Each plaintiff alleged that the use of the black box caused him unnecessary pain and discomfort. Plaintiff Lee is a close custody inmate. R4-16. He is 60 years of age and suffers from chronic obstructive pulmonary disease and acute asthmatic bronchitis. Plaintiffs' Exhibit 15. He came into the prison system at the North Florida Reception Center and was then transferred to Baker Correctional Institution. R4-13. That trip took place on a "Blue Bird" bus, packed with two inmates to a seat, R4-13, and staffed with a driver and one other correctional officer, both sitting in front of a screen. R4-14.

On the bus trip no restraints of any type were placed on Mr. Lee or on any other inmate on the bus. R4-13, 14. Some of the inmates' personal property was placed behind the last seat, where inmates had access to it, and could place it on their laps. R4-14. Also at the back of the bus is a urinal which inmates could and did use during the trip. R4-15.

While at Baker Correctional Institution, Mr. Lee was transferred a number of times to the North Florida Reception Center for medical evaluation and/or treatment. R4-15. Each trip would start and end inside the prison fences. R4-19. The trips would take place in a van, with one correctional officer driving and one correctional officer riding. The number of inmates ranged anywhere from 5 to 13, with the average load being 8 inmates. Mr. Lee, as well as all the other inmates, would be restrained with a waist chain, handcuffs covered by the black box, and leg irons. Unlike the buses, the inmates could not move around and did not have their personal property with them. R4-16, 17. On several occasions, because of the pain caused by the black

box, Mr. Lee refused, or attempted to refuse, scheduled medical appointments at the North Florida Reception Center.⁵ R4-26.

According to Mr. Lee, “every time they run off the road, stop, start and move you, the way it got you down here, you’re trying to hold yourself, and it’s cutting into your wrist — the handcuff cuts into your wrist.” R4-17. However, wearing handcuffs, but not the black box, allows an inmate to hang on to the seat and avoid sliding about. R4-57. Mr. Lee would go to medical after each trip because of the pain and swelling, pain and swelling which would last three or four days. R4-18. On one trip, Mr. Lee suffered an asthma attack and, because he was restrained, could not reach his medicine. R4-18. On the return trip, unlike all the other inmates, Mr. Lee was not restrained. R4-19.

In July of 1994, Mr. Lee was transferred from Baker Correctional Institution to Apalachee Correctional Institution. He rode the Blue Bird bus to Quincy where he got on a van to finish the trip to Apalachee. R4-20. There were no restraints used on any of the inmates on the bus. R4-20. Thirteen got off at Quincy to complete the trip in the van. No restraints were used. R4-21. While at Apalachee Correctional Institution, he was sent to the North Florida Reception Center by ambulance. He returned by bus with no restraints, R4-21. Subsequently, he was transferred in a van from the West Unit to the East Unit at Apalachee Correctional Institution being restrained only with leg irons. R4-22.

On one occasion, Mr. Lee was sent by van from the East Unit to the West Unit at Apalachee Correctional Institution for the purposes of an eye exam — approximately a five

5. Other inmates also refused or attempted to refuse medical trips to avoid the black box.

R4-117; R4-137.

minute drive. He was restrained with leg irons, waist chain, handcuffs and the black box, both going and returning. R4-25, 26.

On December 4, 1996, Mr. Lee was transferred by van from Apalachee Correctional Institution to Gulf Correctional Institution. No restraints of any kind were used. R4-23. He returned in January, 1997, part of the trip utilizing a van and part of the trip utilizing a bus. No restraints were used on either vehicle. R4-24 & 25.

On the day of trial, Mr. Lee was again transported from Apalachee Correctional Institution to Tallahassee wearing the black box, which left marks on his wrists and arms. R4-11. He described it as being grooves and bruises across his wrists, just above the bone. R4-12. He also testified that his hands were cold as a result of the circulation being cut off. R4-12. However, on occasions when Mr. Lee has only been restrained by handcuffs, and no black box, there have been no marks on his wrist. R4-33.

Plaintiff James Quigley is also a close custody inmate. R4-36. After initial processing in 1979, Mr. Quigley was transferred from the North Florida Reception Center to Union Correctional Institution by Blue Bird bus. No restraints of any kind were used. R4-37. Between his initial incarceration date and February, 1992, he was transferred a number of times, usually by bus, but sometimes by van. No restraints were ever used on the buses. R4-37, 38. Occasionally, handcuffs and a waist chain were used on the vans. R4-39.

Mr. Quigley first encountered the black box in February, 1992, while being transported in a van from the East Unit to the West Unit at Apalachee Correctional Institution, a trip of a mile and a half. R4-37, 39. The trip was "extremely painful" because he was required to carry his property. R4-39.

In July, 1992, Mr. Quigley was transferred from Apalachee Correctional Institution to Baker Correctional Institution, taking a van to Quincy Correctional Institution⁶ and then a bus to Baker. No restraints were used on the trip. One correctional officer, the driver, was on board. R4-41 to 43.

At Baker Correctional Institution, Mr. Quigley was scheduled to be transported to the North Florida Reception Center for a medical evaluation. Because of the black box, he refused to go. R4-43. He was successful in obtaining a medical pass exempting himself from the black box because it deterred him from using medical services. R4-44. Plaintiffs' Exhibit 8. Another time he unsuccessfully grieved the use of the black box for transport between units of the Central Florida Reception Center. Plaintiffs' Exhibit 7; R4-49. The trip caused pain but no permanent injury. R4-50.

In August, 1993, Mr. Quigley was moved from Baker Correctional Institution to Hardee Correctional Institution in a van, accompanied by one other inmate, and restrained by a waist chain with side cuffs and leg irons. R4-50. Thereafter, he went to Polk Correctional Institution on a bus, with no restraints, R4-51, and then to Hendry Correctional Institution, again on a bus with no restraints. R4-51. Eventually, he was sent by bus, without restraints, from Hendry Correctional Institution to Apalachee Correctional Institution for purposes of trial in this case. R4-52.

On the day of trial, Mr. Quigley, like Mr. Lee, was also transported from Apalachee Correctional Institution to Tallahassee wearing a waist chain, handcuffs, the black box, and leg

6. The van to bus transfer at Quincy Correctional Institution took place outside the fence. R4-41.

irons. The black box was painful and left marks on his wrist. However, on occasions when Mr. Quigley was only restrained with handcuffs, there were no marks. R4-36.

Plaintiff Lawrence Blackwell, age 66, is also close custody inmate. R4-54. He came into the system at the North Florida Reception Center and then went to Baker Correctional Institution by bus, without any restraints. R4-54 & 55. In the summer of 1987 he made as many as eight trips to the North Florida Reception Center in a van, restrained only with handcuffs. R4-56.

Later, after the black box came into use, Mr. Blackwell was sent several times from Baker Correctional Institution to the North Florida Reception Center for medical treatment, a trip of about an hour. R4-58. According to Mr. Blackwell:

It [the black box] was painful. It made it difficult to maintain your position on the seat; because, again, those were the parallel bench seats, and it was impossible to stay steady when they start fast or hit the brakes and slow down. Some of those back roads are pretty wild, too.

R4-58. Each trip went from inside one prison to inside another prison. R4-59. Each time, two correctional officers were present. R4-59. Each van had an expanded metal screen over the windows and a screen, usually laced with Plexiglass, to separate the front compartment from the back. The back doors were locked and secured with a bar. R4-60.

On one occasion plaintiff Blackwell refused a dental appointment because of the pain and discomfort associated with the black box. R4-58.

After Mr. Blackwell left Baker Correctional Institution, he was transferred to several prisons by bus, each time without any restraints. R4-60 & 61. In 1991, he returned to Baker Correctional Institution by bus, again without restraints, R4-62, remaining there until he was transferred to Apalachee Correctional Institution in October, 1994, for purposes of a hearing in

this case. R4-62. The trip involved a bus from Baker Correctional Institution to the North Florida Reception Center, then a bus from the North Florida Reception Center to Quincy Correctional Institution, and then a van from Quincy Correctional Institution to Apalachee Correctional Institution. No restraints were used during any part of the trip. R4-63. After the court appearance, the same trip took place in reverse, again without any restraints. R4-64. Leg irons, waist chain, handcuffs and the black box were used on the trip from Apalachee Correctional Institution to the Court and back. R4-64. Plaintiffs do not contest the use of the black box for trips which end outside of a secure facility.

In April of 1995, Mr. Blackwell left Baker Correctional Institution on a bus for Polk Correctional Institution. No restraints were used. R4-64. For purposes of the trial in this case, he went by bus from Polk Correctional Institution to the Central Florida Reception Center, then to the North Florida Reception Center, and finally to Apalachee Correctional Institution. No restraints were used on any part of the trip. R4-66.

At Apalachee, Mr. Blackwell was originally placed in the East Unit and then transferred to the West Unit. The transfer took place in a van with Mr. Blackwell being placed in leg irons, waist chain, handcuffs and the black box. R4-66. The same means of transport and restraint was used when Mr. Blackwell was brought from the West Unit to the East Unit to meet with his attorney and then returned to the West Unit. R4-67. The van contained two correctional officers, one of whom was armed, and one inmate. R4-67.

Like Mr. Lee and Mr. Quigley, on the day of trial Mr. Blackwell was also transported from Apalachee Correctional Institution to Tallahassee wearing a waist chain, handcuffs, the

black box, and leg irons. R4-55. Although the van has seat belts, they were not used.⁷ R4-57. He described the difficulties caused by the black box:

Well, they have a tendency to bite into the wrist. It's very difficulty to — well, it restricts the movement of my hands to essentially zero, and that causes problems that way. And from that, also, I might add, it also makes it impossible to get your medication or to, because I wear glasses, to push my glasses up, if they slide down my nose, or anything like that.

R4-55. When asked whether the trip to court left any injuries or marks, Mr. Blackwell responded, "A little bit." R4-56.

Other prisoners agreed that the black box caused pain, in some cases extreme. R4-109; R4-120; R4-123. As described by one inmate, when you are trying to brace yourself while sliding around in the back of the van, the black box cuts into your wrists and causes "severe pain." R4-125. Another inmate testified that:

Well, it causes swelling, bruising, sometimes cuts. Depends if the handcuffs have a sharp edge; but, due to the stiffening, you are forced, I mean, your body and physical forced your arms at an angle, which put pressure to the cuffs, because the cuffs don't move. The cuffs were stiff by the box, and that's what caused the pain, great pain and discomfort for the whole period of time, even afterwards when you took them off, there was discomfort.

R4-135. This inmate suffered bruises and swelling which would sometimes last for days and cuts, including one where a scar created from a 1994 trip which was still visible at the time of trial. R4-136. On the other hand, when restrained with a waist chain and side cuffs, the pain and discomfort is absent. R4-127.

7. Although some of the vans have seat belts, an inmate restrained with the black box has no ability to fasten the seat belts. R4-109; R4-119.

Another inmate transferred from Apalachee Correctional Institution to testify in this case, a trip of a half hour to 45 minutes (R4-109), left Apalachee at about 7:30 a.m. and testified at 12:10 p.m. He still had a “few marks” and still could feel exactly where the black box had been located. R4-125 & 126.

The district court found that the Florida Department of Corrections uses the handcuff cover to prevent escapes during transports. R3-144-3. The court further found that side cuffs are not as effective as the black box and that no other device is equally practicable and effective. R3-144-3. In the written Final Order, the district court found that the black box is “mildly uncomfortable,” but that in “ordinary and proper use” it “does not inflict significant pain, even during transportation.” R3-144-3. Although the Final Order did not address the van versus bus issue, in the ruling from the bench, the district court found “that the buses and vans are at least somewhat different in terms of security concerns. The difference may not be as great as the defense tried to suggest; but, again, that’s an issue to be addressed by the correctional officers or the correctional officials in the state.” R4-290.

3. Statement of the Standard or Scope of Review

The factual findings of the district court are subject to review under the “clearly erroneous” rule. *Anderson v. Bessemer City*, 470 U.S. 564, 84 L.Ed.2d 518, 105 S.Ct. 1504 (1985). The legal standard utilized by the district court, and its application to the facts of the case, is subject to *de novo* or plenary review. *Hall v. Holder*, 955 F.2d 1563 (11th Cir. 1992). In particular, the standard of review for whether use of the black box itself amounts to cruel and unusual punishment is *de novo*. *Moody v. Proctor*, 986 F.2d 239, 241 (8th Cir. 1993).

SUMMARY OF THE ARGUMENT

The black box is a security device which fits over the handcuffs and the chain joining the handcuffs, resulting in the formation of a hard, rigid unit separating a prisoner's wrists. It causes significant, and in some cases extreme pain, especially when worn for a prolonged period of time, as is frequently the case when inmates are transported from one prison to another prison.

The Department of Corrections uses two type of vehicles to transport inmates from prison to prison, buses and vans. Both are secure vehicles. Despite the essentially equivalent security provided by the buses and vans, inmates travelling by van are restrained by leg irons, waist chain, handcuffs and the black box while inmates travelling by bus are not restrained in any way.

There is no record of any inmate ever escaping from a bus. Likewise, there is no record, either before or after the use of the black box, of any inmate ever escaping from a van. There is simply no valid rational connection between the differentiation the Department of Corrections draws between buses and vans and the legitimate penological interest of security. Rather, the difference in treatment is so arbitrary, capricious and irrational as to amount to the infliction of cruel and unusual punishment.

ARGUMENT

THE DIFFERENCE IN TREATMENT WHEN PRISONERS ARE TRANSFERRED FROM PRISON TO PRISON ON A VAN AS COMPARED TO WHEN PRISONERS ARE TRANSFERRED FROM PRISON TO PRISON ON A BUS SERVES NO LEGITIMATE PENOLOGICAL OBJECTIVE AND SHOULD BE STRUCK DOWN AS VIOLATIVE OF THE CRUEL AND UNUSUAL PUNISHMENTS CLAUSE OF THE EIGHTH AMENDMENT BECAUSE OF THE UNNECESSARY PAIN AND SUFFERING IT CAUSES TO THOSE RESTRAINED WITH LEG IRONS, WAIST CHAINS,

HANDCUFFS AND BLACK BOX

This case is about the use of unnecessary and very painful restraints when inmates are transported from one secure prison facility to another secure prison facility. On such trips, the Department's own rule provides that: "Use of restraint equipment, except for death row and high security inmates, will not be necessary when inmates are transferred within the state from institution to institution provided a physically secure transfer vehicle is used." Section 33-7.009 (14)(a), Florida Administrative Code.

Despite the clear directive of Section 33-7.009 (14)(a), the Department uses the most severe form of restraints when inmates go from prison to prison in a physically secure van.

The use of the black box for prison to prison transfers is arbitrary and capricious. While the black box probably does add some slight additional security, it simply makes no sense, and there is no legitimate penological interest in inflicting the pain and suffering the black box causes in the circumstances herein presented. It is not rational to use leg irons, waist chains, handcuffs and a black box when a prison to prison transfer takes place on a secure prison van while using no restraints when the identical trip takes place in a secure prison bus. Those fortunate enough to ride in a bus enjoy a relatively comfortable ride. Those sent on an equally secure van suffer unnecessary pain and distress.

To violate the Eighth Amendment, the actions of the defendants must amount to the "wanton and unnecessary infliction of pain." *Rhodes v. Chapman*, 452 U.S. 337, 345, 101 S.Ct. 2392, 2398 69 L.Ed.2d 59 (1981); *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991). That aptly describes the use of the black box for prison to prison transfers in a van.

It is not necessary to prove a serious or significant injury to establish an Eighth Amendment violation. The infliction of injuries such as bruises and abrasions is unconstitutional if there was no need to use force at all. *Hudson v. McMillian*, 503 U.S. 1, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992) (bruises, swelling, loosened teeth). See *Valencia v. Wiggins*, 981 F.2d 1440, 1443 (5th Cir.) (scratches, cuts and bruises not requiring medical attention), *cert. denied*, 113 S.Ct. 2448 (1993).

Whenever a prison regulation or practice impinges on an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). Here, the established practice of the Florida Department of Corrections inflicts severe pain and discomfort on inmates as part of

routine prison transfers. In determining whether the punitive conditions imposed on inmates as part of the transportation process violates the Eighth Amendment, the court must examine the following four factors:

(1) whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it, (2) whether there are alternative means of exercising the right that remains open to prison inmates, (3) the impact accommodation of the asserted constitutional right will have on guards, other inmates, and on the allocation of prison resources, and (4) the presence or absence of ready alternatives that fully accommodate the prisoner's rights at *de minimis* costs to valid penological interests.

Turner v. Safley, supra, 107 S.Ct. at 2262.

In applying these factors, it is clear that the punitive conditions imposed on inmates during the transfer process cannot pass constitutional muster.

A. There Is No Valid, Rational Connection Which Supports

Punishing Those Transferred from Prison to Prison on a Van

Security is, indeed, a primary function of prison officials. One could imagine many things that a prison system could do to increase security. Some would easily pass constitutional muster, others would not. For example, nobody could seriously contend that a prison system could eliminate medical care for all inmates because an inmate managed to escape while visiting a doctor. R4-206. Likewise, nobody could seriously contend that, to prevent escapes or prison disruption, inmates should remain in restraints at all times. *French v. Owens*, 777 F.2d 1250, 1253-54 (7th Cir. 1985) (chaining prisoners to beds for 12 hours and longer with hard shackles violated the Eighth Amendment), *cert. denied*, 479 U.S. 817 (1986); *Putman v. Gerloff*, 639 F.2d 415, 419-20 (8th Cir. 1981) (jury could find overnight chaining and handcuffing of prisoners locked in cells unconstitutional); *Picariello v. Fenton*, 491 F.Supp. 1020, 1024 (M.D.Pa. 1980)

(jury could find that three to five days in restraints in cell was unconstitutional); *Tate v. Kassulke*, 409 F.Supp. 651, 654 (W.D.Ky. 1976) (“protracted” chaining to bed would violate the Eighth Amendment); *Landman v. Royster*, 333 F.Supp. 621, 647-48 (E.D.Va. 1971) (shackling of inmates in cells, interfering with eating, sleeping, and using the toilet, was unconstitutional).

Of course, restraints, including the black box, may be used on segregation or other high-security inmates. That, in fact, is exactly what Section 33-7.009(14)(a), Florida Administrative Code, provides, as does the Department’s Security Operations Manual. Plaintiffs’ Exhibit 2.

It must be conceded that the decided cases to date are not favorable to the plaintiffs’ position, although there is no reported precedent in this Circuit. Apparently, the first reported case to consider the use of the black box was *Fulford v. King*, 692 F.2d 11 (5th Cir. 1982). In that case, high risk prisoners confined in an extended lockdown unit challenged the requirement that they wear a black box on trips outside the prison because the device holds the wrists and arms in a rigid, unnatural position and causes the prisoners’ arms to become numb and leaves a temporary, albeit noticeable, mark when removed. The Court held that use of the black box was “justified by the greater risk of escape when prisoners are outside the institution and the reduced number of guards available to oversee the prisoners during those journeys.” 692 F.2d at 14. Under these circumstances, the Court held that the use of the black box was not without penological justification.

Fulford was followed in *Moody v. Proctor*, 986 F.2d 239 (8th Cir. 1993). In that case, the court held that the defendants were not liable for injuries sustained by the plaintiff as a result of use of the black box, citing *Fulford*’s statement of justification. In *Bruscino v. Carlson*, 654 F.Supp. 609 (S.D. Ill. 1987), *aff’d*, 854 F.2d 162 (7th Cir. 1988), *cert. denied*, 491 U.S. 907, 109

S.Ct. 3193, 105 L.Ed.2d 701 (1989), the court upheld the use of handcuffs, leg irons and black box during legal visits for federal prisoners at the most maximum of federal facilities.

Despite the holdings in *Fulford*, *Moody* and *Bruscino*, there is case law suggesting that the use of the black box can be harmful. *See Gomm v. DeLand*, 729 F.Supp. 767 (D. Utah 1990). In fact, even in the absence of the black box, there are cases where the evidence demonstrated that handcuffs alone can be harmful. *Harris v. Coweta County*, 21 F.3d 388 (11th Cir. 1994) (hand injury caused by over-tight handcuffs); *Simpson v. Saroff*, 741 F.Supp. 1073 (S.D. N.Y. 1990) (allegations of swollen and bleeding wrists from tight handcuffs, and a faintly detectable scar on her wrist were sufficient to allege a § 1983 claim under the Fourth Amendment); *Ismail v. Cohen*, 712 F.Supp. 416 (S.D. N.Y. 1989) (damage award for a police arrest and beating resulting in various continuing painful consequences of excessively tightened handcuffs plus a broken rib).

Only one reported case has limited the use of the black box. In *Women Prisoners of the District of Columbia Dept. of Corrections v. District of Columbia*, 877 F.Supp. 634 (D. D.C. 1994), the court held that defendants' manner of shackling women in their third trimester (leg shackles, handcuffs, belly chain and black box) was unconstitutional; leg shackles provide sufficient security. Additionally, in *Nami v. Fauver*, 82 F.3d 63 (3d Cir. 1996), the court reversed the dismissal of Eighth Amendment claims which included allegations that the black box is “so uncomfortable that they deter inmates from seeking medical and dental help.” 82 F.3d at 68.

Fulford, *Moody* and *Bruscino* are all distinguishable in two very important ways. First, each involves either high risk prisoners or prisoners travelling outside the prison system. Second, and more importantly, none of them involve the truly irrational distinction made by the Florida

Department of Corrections between secure vans and secure buses. As the dissenting Judge in *Moody* stated: “Here the evidence of deliberate indifference is plain, given the complaints by plaintiff and the fact of his previous injury, of which defendants, as the magistrate found, were specifically made aware.” *Moody v. Proctor, supra*, 986 F.2d at 242. Like Mr. Moody, the plaintiffs in the case before this Court have complained about the severe pain caused by the black box. Like Mr. Moody, each of the plaintiffs suffered some injuries as a result of the black box. Unlike Mr. Moody, however, the plaintiffs’ complaints involve prison to prison trips, not trips to free-world hospitals. And, unlike Mr. Moody, the use of the black box depends solely on whether the trip takes place in a van or a bus.

Under the *Turner* standard, when prison rules and practices are challenged, officials must justify their policies and provide factual support for their arguments. *Hunafa v. Murphy*, 907 F.2d 46, 48 (7th Cir. 1990) (whether a regulation has a rational basis is a factual question); *Walker v. Sumner*, 917 F.2d 382, 386-87 (9th Cir. 1990) (prison officials may not obtain summary judgment based on conclusory assertions without explanation or factual support); *Salaam v. Lockhart*, 905 F.2d 1168, 1174 (8th Cir. 1990) (officials may not “pil[e] conjecture upon conjecture” to justify their policies), *cert. denied*, 111 S.Ct. 677 (1991).

On the record in this case, there is no justification for the harsh treatment afforded van passengers. The routine use of the black box for prison-to-prison transfers in a secure van cannot be justified by legitimate security concerns. Its use on secure vans simply makes no sense in light of the total absence of any restraints on the similarly secure busses. *See Griffin v. Lombardi*, 946 F.2d 604, 607-08 (8th Cir. 1991) (evidence that a rule officials claimed was necessary was not followed in dealing with other prisoners or at other prisons raised a factual

issue whether the rule met the *Turner* standard); *Whitney v. Brown*, 882 F.2d 1068, 1074, 1076 (6th Cir. 1989) (“glaring” inconsistencies between security arguments for restricting religious services and other practices of defendants rendered restrictions irrational; “flurry of disconnected and self-conflicting points” cannot justify serious restrictions).

B. Availability of Alternatives

Under the second *Turner* factor, the court must consider whether there are alternatives available to the inmates. On the prisoners’ side there are none. Prisoners cannot refuse transfers and when being transferred, cannot pick their vehicles. To force prisoners to choose between the black box and medical treatment is not a realistic alternative. On the other hand, and consistent with the prison system’s own regulations, there is an alternative readily available to the prison system if restraints are deemed necessary, the use of waist chains with side cuffs.

C. Impact on Correctional Staff, Other Inmates and the Prison

Under this *Turner* factor, the court must consider the impact of the requested accommodation on staff, other inmates and the prison. It is clear that removing the punitive aspects of a transfer will have no real impact on staff, other inmates, or the prisons. No harm befalls staff if they must give individualized consideration to the security threats posed by individual inmates. No harm befalls other inmates if those being transferred are transferred in a way that does not punish them. No harm befalls the prison system if transfers are done in a humane way.

The defendants may say that giving individualized consideration to the security threat posed by inmates is too difficult. There are several ready answers to that contention. First, the Rules of the Department of Corrections already require staff to give individualized consideration. Section 33-7.009(14), F.A.C. Second, the Security Operations Manual already requires a

different method of transport for high security inmates. See Plaintiffs' Exhibits 2 & 3. Third, the Rules require that all inmates leaving prison property be strip searched and that the vehicle be searched prior to any inmate boarding it. That is deemed adequate for inmates fortunate enough to go by bus. It should be just as adequate for inmates placed on a van.

D. There are Simple Alternatives Available With No Cost to Valid Penological Interests

The final *Turner* factor for the court to consider is whether there are ready alternatives to satisfy Plaintiffs' requirements at *de minimis* cost to valid penological interests. In fact, the implementation of a non-punitive transport system is encompassed within the Department of Corrections' existing rules, which provide the alternative of waist chains with side cuffs where restraints are deemed to be necessary. Moreover, that is the less expensive alternative. R4-230.

There is simply no meaningful difference between the buses and the vans. Both are secure vehicles. Both carry two correctional officers. In both, the staff are separated from the prisoners by a wire mesh screen. In both, the windows and doors are secured to prevent inmates from escaping. Both are in radio contact with the prison system. For both, there is no history of escape. But, the inmates on the buses travel without restraints while the inmates on the van travel with the most severe restraints available to the prison system. There is simply no rational relationship which supports this difference in treatment.

Based on the record before the Court, the justification which sustained the use of the black box in *Fulford* is absent. There is no difference in escape risk between van and bus passengers. The correctional staff available for each type of transport is the same. Because of that, the ratio of staff to prisoners is far higher on the vans than the buses. For both vans and

buses, prisoners board and disembark inside a secure prison facility. Under these circumstances, there is no penological justification for the inflection of severe and unnecessary pain and discomfort on inmates being transferred from prison to prison dependent on whether a van or a bus is used.

Finally, to the extent that the deliberate indifference standard applies in this case, the defendants were on notice of the harm caused by the black box as a result of the grievance process,⁸ of the filing of this lawsuit, and of the finding of the Magistrate Judge's Order that the black box causes "moderate but significant pain, particularly while seated." R1-43-2. Despite this knowledge, the defendants have refused to take any corrective action. Thus, both the objective and subjection components of the deliberate indifference test have been satisfied.

Each of the named plaintiffs has been transferred numerous times during the course of his incarceration. Each of the named plaintiffs, as a result of his lengthy sentence, and in the case of Mr. Lee and Mr. Blackwell, because of their health status, can expect to again be transferred from one secure facility to another secure facility at some future time during the course of his incarceration.⁹ As their testimony indicates, the pain and discomfort caused by the black box is especially severe when bouncing about on bumpy secondary roads or when the inmate is forced to brace himself as the van rounds a corner.

8. Plaintiffs' Exhibits 5, 6, 7, 9 and 13. See also Plaintiffs' Exhibit 15, Requests for Admissions 8-11.

9. And, since this is a class action, it cannot be disputed that literally thousands of members of the class will take either van or bus trips every year.

In contrast to van trips, when prisoners are transported on a bus, no restraints are used. Although the buses may be a bit more secure than vans, the difference is more theoretical than real. In each, there are two correctional officers, at least one of whom is armed, separated from the inmates by a wire screen. In the vans, the windows are protected by an interior cage. In the buses, the windows are covered by screening on the inside and expanded metal strips on the outside. Doors lock from the outside. The buses hold up to 50 unrestrained inmates. The vans hold up to 13 fully restrained inmates. Literally tens of thousands of inmates ride the buses, as well as the vans, each year. No inmate has escaped from either form of transportation. There is no reason, grounded in a legitimate penological objective, to treat prisoners so differently depending on whether they ride in a bus or a van.

The task of the court is determine, while giving appropriate deference to the judgment of prison officials, whether a challenged practice is, in fact, reasonable or whether it is an “exaggerated response” to the “legitimate governmental interest put forward to justify it.” *Turner v. Safley, supra*, 482 U.S. at 89-90. Here, there is simply no valid rational connection between the differentiation the Department of Corrections draws between buses and vans and the legitimate penological interest of security. Rather, the “logical connection between the regulation and the asserted goad is so remote as to render the policy arbitrary or irrational.” *Id.*

As the Court held in *Walker v. Sumner, supra*: “Prison authorities cannot rely on general or conclusory assertions to support their policies. Rather, they must first identify the specific penological interests involved and then demonstrate both that those specific interests are the actual basis for their policies and that the policies are reasonably related to the furtherance of the identified interests.” 917 F.2d at 386. Certainly, the defendants have a legitimate identified

interest in preventing escapes. Just as certainly, on the state of the record in this case, subjecting inmates on vans to the black box while exempting inmates on buses from all restraints, is not reasonably related to that identified interest.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and remanded for entry of judgment in the plaintiffs' favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two true and correct copies of the foregoing and one copy of the Record Excerpts have been furnished to furnished to Donna La Plante, Esq. and Caryl Sue Kilinski, Esq., Assistant Attorneys General, Department of Legal Affairs, The Capitol, Suite PL-01, Tallahassee, Florida 32399-1050, by First Class United States Mail on this ____ day of September, 1998.

By: Peter M. Siegel, Esq.