

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

ARICK BUCKLES,)
)
Plaintiff,)
)
v.)
)
JOHN E. THOMPSON, individually and in his)
official capacity as Sheriff of Bureau County; L.)
ROE, Nurse of Bureau County Jail Medical)
Department, individually; WILLIAM J.)
REDSHAW, AMY J. DROZDA, JEREMY J.)
ROUSH, CRIS SPIEGEL, MARK A.)
OLSZEWSKI, DEXTER D. HANSEN,)
TERESA L. Kiest, JASON DRAKE, JOSEPH)
A. FLANAGAN, SEAN P. EGAN, JENNIFER)
M. MILLER, BRIAN D. EHLERT, Jailers of)
Bureau County Jail, individually; John Does No.)
1-10 individually; and BUREAU COUNTY,)
)
Defendants.)

Case No. 1:12-cv-1194

COMPLAINT

Plaintiff Arick Buckles, by his attorneys, states his Complaint against Defendants John E. Thompson, L. Roe, L.P.N., William J. Redshaw, Amy J. Drozda, Jeremy J. Roush, Cris Spiegel, Mark A. Olszewski, Dexter D. Hansen, Teresa L. Kiest, Jason Drake, Joseph A. Flanagan, Sean P. Egan, Jennifer M. Miller, Brian D. Ehlert, as yet unidentified individuals John Does No. 1-10 (collectively, the “Defendants”), and Bureau County, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action to redress Defendants’ failure to provide necessary and life-saving medical treatment while Plaintiff was a pre-trial detainee at the Bureau County Jail in Princeton, Illinois. Plaintiff is HIV-positive, which without proper treatment is a

life-threatening disease. Upon and throughout his incarceration, Defendants were aware of Plaintiff's HIV-positive status and the necessity for his prescribed HIV medications. However, for *seven days* Defendants were deliberately indifferent to Plaintiff's serious medical need for life-sustaining HIV medications—even ignoring the recommendations of Defendants' own medical personnel. Defendants' refusal to provide Plaintiff his HIV medications violated Plaintiff's rights under the Fourteenth Amendment. In addition, Defendants violated Plaintiff's rights under the Americans with Disabilities Act by denying him access to the same medical services that HIV-negative detainees receive for serious medical needs.

2. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 to redress violations of his rights under the United States Constitution. Defendants' deliberate indifference to Plaintiff's serious medical needs violated his rights under the Fourteenth Amendment to the United States Constitution.

3. Plaintiff also brings this action pursuant to 42 U.S.C. § 12131 *et seq.* to redress violations of the Americans with Disabilities Act. Defendants impermissibly discriminated against Plaintiff on the basis of his HIV infection, which is a recognized disability under the ADA.

4. Plaintiff seeks compensatory and punitive damages, as well as other relief.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of Plaintiff's civil rights.

6. Venue is proper in the Central District of Illinois under 28 U.S.C. § 1391(b), because at least one of the Defendants resides in this District and a substantial part of the events giving rise to Plaintiff's claims occurred in this District. Venue is proper in the Peoria Division of the Central District of Illinois, because Local Rule 40.1 provides that cases arising out of Bureau County shall be heard in the Peoria Division.

PARTIES

7. Plaintiff Arick Buckles was incarcerated at the Bureau County Jail located in Princeton, Illinois from September 30, 2010 until October 6, 2010, and at all times relevant to this Complaint. He has since been released and is currently a resident of Cook County.

8. Defendant John E. Thompson at all times pertinent to the allegations in the Complaint has been the Sherriff of Bureau County. He is sued in his individual and official capacity.

9. Defendant L. Roe (first name unknown) at all times pertinent to the allegations in the Complaint has been a licensed practical nurse and employed as a member of the medical staff at Bureau County Jail. She is sued in her individual capacity.

10. Defendants William J. Redshaw, Amy J. Drozda, Jeremy J. Roush, Cris Spiegel, Mark A. Olszewski, Dexter D. Hansen, Teresa L. Kiest, Jason Drake, Joseph A. Flanagan, Sean P. Egan, Jennifer M. Miller, and Brian D. Ehlert (collectively, "the Jailers of Bureau County Jail") at all times pertinent to the allegations in the Complaint have been employed as jailers at the Bureau County Jail. Each of these defendants are sued in his or her individual capacity.

11. The true names and capacities, whether individual, corporate, or otherwise of Defendant John Does No. 1-10, inclusive, are not known to Plaintiff at this time and therefore

Plaintiff sues each of these Defendants by fictitious names. The John Doe Defendants include John Doe 1, the physician employed as a member of the medical staff at Bureau County Jail who examined Plaintiff's medical chart. The John Doe Defendants also include, without limitation, the correctional personnel at Bureau County Jail who knew that Plaintiff was HIV-positive, were responsible for ensuring the Plaintiff was provided his prescribed medication, and failed to fulfill those responsibilities. Plaintiff will amend his Complaint to allege the true names and capacities of the Doe Defendants when they can be identified.

12. Defendant Bureau County is a necessary party, because Plaintiff is seeking damages from Defendant John E. Thompson in his official capacity as Sheriff of Bureau County. Defendant Bureau County is joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003).

13. Each Defendant acted under color of state law at all times relevant to the Complaint.

STATEMENT OF FACTS

14. Plaintiff is HIV-positive.

15. A diagnosed HIV infection constitutes a serious medical need.

16. HIV attacks and destroys infection-fighting CD4 cells in the human body's immune system, thereby inhibiting the immune system's ability to fight off infection. For a person infected with HIV, it is a lifelong disease. Without early treatment, HIV can lead to a greater incidence of infection and aggravate associated diseases, including cardiovascular disease, kidney disease, liver disease, and cancer. If the disease progresses, the HIV severely weakens the immune system resulting in, among other symptoms, rapid weight loss, fever,

tiredness, swollen lymph nodes, diarrhea, sores, pneumonia, skin blotches, and neurological disorders.

17. Successful HIV treatment, which reduces “HIV-associated morbidity and prolong[s] the duration and quality of survival,” requires adherence to the prescribed medication regimens. *See* HHS Panel on Antiretroviral Guidelines for Adults and Adolescents, *Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents*, AIDSINFO, 24 (Oct. 14, 2011), <http://www.aidsinfo.nih.gov/ContentFiles/AdultandAdolescentGL.pdf>; *see also id.* at 122 (“Adherence to antiretroviral therapy (ART) has been strongly correlated with HIV viral suppression, reduced rates of resistance, an increase in survival, *and* improved quality of life.”).

18. There are two primary effects to missing one’s antiretroviral medications for more than one or two days: (i) immediate physical effects and (ii) long-term virological effects. Immediate physical effects include, without limitation, diarrhea, vomiting, and even increased likelihood of death. Long-term virological effects include, without limitation, development of drug resistance—meaning a drug is no longer effective in fighting HIV—which can result in a reduced likelihood of survival for an HIV patient.

19. Prior to his incarceration, Plaintiff was being successfully treated for his HIV-positive condition by his physician.

20. Plaintiff’s physician prescribed a cocktail of antiretroviral drugs to suppress the virus, comprising a regimen of NORVIR (ritonavir), REYATAZ (atazanavir), and EPZICOM (abacavir + lamivudine) to be taken every day.

21. If Plaintiff adheres to his prescribed medication regimen, he is expected to survive indefinitely and is expected to die of conditions other than complications from his HIV.

22. If Plaintiff does not strictly and consistently take his medications, in vital compliance with the physician prescribed regimen for treatment of his HIV, then the adverse and detrimental effects on his condition and prognosis continue and exacerbate.

23. Prior to his incarceration, Plaintiff had adhered to his HIV treatment regimen, taking his HIV medications as prescribed by his physician.

24. On September 29, 2010, Plaintiff appeared in DuPage County Courthouse in Wheaton, Illinois to clear an outstanding warrant from an old charge for check forgery. A criminal background check that was performed in 2010 after Plaintiff was hired for a new job revealed the outstanding DuPage County warrant. At DuPage, Plaintiff was sentenced to 30 days of community service and Plaintiff was taken temporarily into custody. During his processing, DuPage County discovered an outstanding Bureau County warrant, so Plaintiff was held at the DuPage County Jail for extradition to the Bureau County Jail. Upon being admitted to the DuPage County Jail, Plaintiff informed staff, including medical personnel, of his HIV-positive status. This fact was noted on Plaintiff's Medical/Mental Health Intake Screening Sheet.

25. On September 30, 2010, at approximately 2:59 P.M., Plaintiff was remanded to the custody of Bureau County officials and transported to the Bureau County Jail.

26. The Bureau County Jail is responsible for the medical care of all individuals in its custody. Individuals detained at the Bureau County Jail are wholly dependent on the Bureau County Jail for medical services as well as for all of their basic daily needs, including food, exercise, and safety.

27. Promptly upon entering the custody of Bureau County and his arrival at the Bureau County Jail, Plaintiff notified Bureau County Jail personnel that he is HIV-positive and requires daily prescribed medications for this life-threatening disease. Plaintiff also

provided Bureau County Jail personnel the names of his prescribed medicines and medical providers.

28. On October 1, 2010, Defendant Roe medically examined Plaintiff. During his examination, Plaintiff again stated that he is HIV-positive and must take prescribed medications for his HIV. Plaintiff identified Gaining Ground, a housing program for people with AIDS that provided Plaintiff with HIV case management services, as the proper contact to obtain his diagnosis and medications. Recorded in Plaintiff's Medical Progress Note, which was signed by Defendant Roe and John Doe 1, an as yet unidentified physician working as a member of the medical staff at Bureau County Jail, Plaintiff was directed to "please take meds / Dr's order." The plan detailed in the Plaintiff's Medical Progress Note was to "Have Pt sign a ROI form et fax to Gaining Ground/Atten: Gaberilla Zapata requesting Dx et MED to be sent to BCJ."

29. On the same day, Plaintiff executed a release of information authorizing the release of his medical information, including "Aids / HIV test reports," "History of physical exam," "Consultative reports," "Laboratory reports," and "Emergency Room report" to the Bureau County Jail Medical Department.

30. Later that same day, the Bureau County Jail Medical Department contacted Gaining Ground to obtain Plaintiff's diagnosis, medication information, and medications "so [patient] can continue [with] meds/his medical care needs."

31. Gaining Ground responded the same day, providing the Bureau County Jail with Plaintiff's HIV diagnosis, a list of his HIV medications, and the name, phone number, and facsimile number of Plaintiff's treating physician, Dr. Moswin of Mercy Hospital, who could provide medication dosage information.

32. On, October 2, 2010, John Doe 1, an as yet unidentified physician working at the Bureau County Jail Medical Department, reviewed Plaintiff's patient chart and ordered staff to "[c]ontact [patient's] provider Gaining Ground in order to get his meds."

33. On October 5, 2010, Defendant Roe signed a note in Plaintiff's Medical Progress Notes, describing the necessary medications as "costly" and stating that the plan was to "[n]otify the States Attorney of Bureau County" to inform him "that it would be very costly" to provide medical care.

34. Between September 30, 2010 and October 6, 2010, Plaintiff also approached corrections personnel, including the Jailers of Bureau County Jail, multiple times daily to remind them that he is HIV-positive and is in dire need of his HIV medication. Plaintiff emphasized that he needed these life-saving medications to treat his chronic disease. Plaintiff continued to ask the corrections personnel about providing his HIV medications.

35. Staff of the Gaining Ground housing program, staff from the AIDS Foundation of Chicago, and Plaintiff's partner and friend contacted the Bureau County Jail separately to request that Plaintiff be provided his HIV medication. Plaintiff's partner, Jeffrey Pulliam, also offered to bring Plaintiff's medications from Plaintiff's home to the Bureau County Jail.

36. Plaintiff was released from jail on October 6. Despite Plaintiff's and Plaintiff's friends' repeated requests to both Bureau County Jail medical and correctional personnel, Plaintiff did not receive any treatment for his HIV for the seven days he was detained. When Plaintiff was released, one of the jail personnel informed him that he was being released because his medication was too expensive for the jail to purchase.

37. Defendants at all relevant times had actual knowledge of Plaintiff's serious medical condition and the necessity of his prescribed medications for his HIV.

38. Defendants disregarded Plaintiff's requests and failed to take reasonable measures to meet Plaintiff's serious medical needs.

39. Defendants' systemic and individual actions and inactions separately and in combination denied Plaintiff lifesaving HIV treatment for the seven days he was detained.

Defendant Thompson

40. Defendant Thompson has final policymaking authority at the Bureau County Jail and the authority and responsibility over the dispensing of prescribed medications to detainees. *See* 730 ILCS 125/2; *DeGenova v. Sheriff of DuPage Cnty.*, 209 F.3d 973, 976 (7th Cir. 2000).

41. Defendant Thompson knew that Plaintiff had a serious medical need that was not being treated with the necessary prescribed medication and failed to provide Plaintiff his necessary HIV medications.

42. In the alternative, Defendant Thompson established and maintained a policy, de facto policy, or custom of denying HIV medication to individuals diagnosed with HIV that have a serious medical need for HIV medication, or of denying costly medication to individuals that have a serious medical need for their medication. This policy, de facto policy, or custom prevents such people from following their prescribed medication regimens. Defendants' actions and inactions as alleged herein were in furtherance of Defendants' policy, practice, and custom.

43. Defendant Thompson's policies, practices, or customs are the driving force behind the actions and inaction alleged herein and Plaintiff's injuries.

44. In the alternative, Defendant Thompson failed to train and supervise his employees, supervisees, or agents—including Defendant Roe, John Doe 1, Jailers of Bureau County Jail, and other not-yet identified John Doe Defendants—and knew that his employees, supervisees, or agents were inadequately trained to care for HIV-positive detainees. This failure caused the injuries Plaintiff suffered.

L. Roe

45. Defendant L. Roe personally examined Plaintiff and knew he had a serious medical condition that was being treated with prescribed medications according to a strict treatment regimen. Despite receiving information about Plaintiff’s treatment regimen prescribed by Plaintiff’s physician and her responsibility to provide necessary medical care to Plaintiff, Defendant Roe failed to provide Plaintiff his necessary HIV medications.

Jailers of Bureau County Jail

46. Defendants Redshaw, Drozda, Roush, Spiegel, Olszewski, Hansen, Kiest, Drake, Flanagan, Egan, Miller, and Ehlert were jailers during Plaintiff’s detainment at Bureau County Jail. These defendants knew that Plaintiff was HIV-positive, were responsible for ensuring the Plaintiff was provided his prescribed medication, and failed to ensure that Plaintiff was provided his HIV medication.

John Doe Defendants

47. Defendant John Doe 1, the as yet unidentified physician working as a part of the medical staff at Bureau County Jail, was responsible for providing necessary medical care to Plaintiff, and failed to provide Plaintiff his necessary HIV medications.

48. The John Doe Defendants also include the correctional personnel at Bureau County Jail who knew that Plaintiff was HIV-positive, were responsible for ensuring the

Plaintiff was provided his prescribed medication, and failed to ensure that Plaintiff was provided his HIV medication.

49. At all times relevant to the allegations herein, Defendants were aware of Plaintiff's serious medical needs, were deliberately indifferent to Plaintiff's serious medical needs, and violated Plaintiff's rights under the Fourteenth Amendment to the United States Constitution.

50. Defendants also discriminated against Plaintiff because he has HIV by failing to provide Plaintiff with access to the same medical services that HIV-negative detainees receive for their serious medical needs. Plaintiff was discriminatorily denied access to the HIV medications necessary to treat his HIV while in Defendants' custody and under their supervision in violation of Plaintiff's rights under the Americans with Disabilities Act.

51. As a direct and proximate cause of Defendants' failure to provide Plaintiff with adequate and constitutionally required medical care, Plaintiff suffered injuries, including:

- a. Bodily injury—Plaintiff experienced severe diarrhea, vomiting, abdominal pain, light-headedness, high cholesterol, reddish/yellowish eye color, weight loss, and swollen lymph nodes, for which Plaintiff sought medical treatment;
- b. Adverse and detrimental effects on Plaintiff's condition or prognosis or both—Plaintiff was subjected to an unreasonable danger of developing resistance to one or more of his HIV medications which has potentially reduced his likelihood of surviving HIV;
- c. Mental and emotional distress—Plaintiff suffered great mental and emotional distress, because he feared that he would die if he did not

adhere to his prescribed HIV treatment plan and reasonably feared that his HIV would become more susceptible to resistance and transmission to others; and

- d. Violation of constitutional and statutory rights.

LEGAL CLAIMS

Count I

Claim Under 42 U.S.C. § 1983 for Violation of the Fourteenth Amendment (Against All Defendants)

52. Plaintiff repeats and realleges paragraphs 1-51, inclusive, as if fully set forth herein.

53. A physician diagnosed Plaintiff as HIV-positive, which is a serious medical condition requiring prescribed medications.

54. Defendants intentionally or recklessly failed to provide Plaintiff with necessary medical care for seven days to treat his serious medical condition of HIV.

55. Defendants' failure to provide Plaintiff with the necessary prescribed medications for his serious medical condition constitutes deliberate indifference to Plaintiff's serious medical needs.

56. Defendants' actions, inactions, policies, and/or widespread customs caused Plaintiff actual injury as specified above.

57. Plaintiff continues to suffer from this serious medical condition and suffers from an increased risk of serious harm as a result of Defendants' conduct as set forth above.

58. Defendants' actions and inactions were performed under color of state law. By Defendants' deliberate indifference to Plaintiff's serious medical needs, Defendants violated Plaintiff's rights under the Fourteenth Amendment to the United States Constitution.

Count II

**Discrimination on the Basis of a Disability in Violation of the
Americans with Disabilities Act, 42 U.S.C. § 12131 et seq.
(Against Defendant Thompson in Official Capacity)**

59. Plaintiff repeats and realleges paragraphs 1-51, inclusive, as if fully set forth herein.

60. On July 12, 1990, Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

61. Bureau County Jail is a public entity covered by the ADA.

62. HIV infection is a disability under the ADA. *See* 28 C.F.R. § 35.104.

63. Plaintiff is a qualified individual with a disability within the meaning of Title II of the ADA, 42 U.S.C. § 12131(2).

64. At all times relevant to this action, the ADA was in full force and effect in the United States, and Plaintiff had a right not to be subjected to discrimination on the basis of his disability by Defendants. 42 U.S.C. § 12132.

65. Defendants' failure to provide proper medications for HIV-positive individuals denied Plaintiff, on the basis of his disability, the same access to Defendants' services, benefits, activities, programs, or privileges as provided to HIV-negative individuals.

66. Plaintiff was unable to obtain access to Bureau County Jail's medical services, benefits, activities, programs, or privileges as effectively as HIV-negative individuals in Bureau County Jail's custody.

67. Defendants intentionally discriminated against Plaintiff solely on the basis of his disability, in violation of his rights under the ADA. Defendants have done this by refusing to provide prescribed HIV medications and by failing to ensure that adequate access to medical services is made available to individuals with HIV in Bureau County Jail's custody or under Bureau County Jail's supervision.

68. In the alternative, Defendant intentionally or with deliberate indifference to Plaintiff's serious medical need refused to provide Plaintiff with a reasonable accommodation to have Plaintiff's prescribed HIV medication delivered to Bureau County Jail, whereby without such accommodation Plaintiff was denied access to medical care services provided by Defendant. Defendant denied a request from Plaintiff's partner, Jeffrey Pulliam, to bring Plaintiff's medication from Plaintiff's home to Bureau County Jail. Plaintiff's request to have his medication delivered from home was a necessary and reasonable modification in light of Defendant's policy, de facto policy, or custom of denying HIV medications to individuals in need of them.

69. The failure to provide effective medical services and the failure to provide comparable access to services, benefits, activities, programs, or privileges to persons with HIV are Defendants' policies, regular practices, and/or customs.

70. As a proximate result of Defendants' violations of Plaintiff's rights under the ADA, Plaintiff has suffered discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and privileges), violations of his rights under the laws of the United States, and actual injury as specified above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court find in his favor and against Defendants on all claims of this Complaint and award the following relief:

- a) compensatory damages, in an amount to be proven at trial, for the physical injury and the pain and suffering caused by Defendants' denial of necessary medical treatment and violation of Plaintiff's constitutional and statutory rights;
- b) punitive damages to sanction Defendants' deliberate misconduct and to deter Defendants and others from engaging in similarly inhumane conduct in the future;
- c) an award of Plaintiff's expenses and attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and
- d) such other relief as this Court deems proper.

Respectfully Submitted,
ARICK BUCKLES

s/ Samuel S. Park

By: One of his Attorneys

Dated: June 18, 2012

Michael L. Brody
Samuel S. Park
Dan H. Hoang
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

John A. Knight
Harvey Grossman
ROGER BALDWIN FOUNDATION OF ACLU, INC.
180 North Michigan Avenue
Suite 2300
Chicago, Illinois 60601
(312) 201-9740